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W.A.No.604 of 2018
and Cont.P.No.2271 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : **29.09.2023**

Pronounced on : **05.01.2024**

CORAM:

THE HON'BLE MR. JUSTICE R.SURESH KUMAR
AND
THE HON'BLE MR.JUSTICE K.KUMARESH BABU

W.A.No.604 of 2018
in W.P.No.6842 of 2013
and C.M.P.No.5872 of 2018
and Cont.P.No.2271 of 2017

W.A.No.604 of 2018

The Secretary
Tamil Nadu Public Service Commission
Frazer Bridge Road,
Chennai - 600 003.

... Appellant /
Respondent

Vs.

S.Saibulla

... Respondent /
Writ Petitioner

Prayer : Writ Appeal filed under Clause 15 of Letters Patent Act, to set aside the order, dated 05.01.2017 made in W.P.No.6842 of 2013 and dismiss the above writ petition.

For Appellant : Mr.J.Ravindran, AAG
assisted by Ms.G.Hema

For Respondent : Mr.S.Selvathirumurugan



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S.Saibulla

... Petitioner

Vs.

The Secretary
Tamil Nadu Public Service Commission
Frazer Bridge Road,
Chennai - 600 003.

... Respondent

Prayer : Contempt Petition filed under Section 11 of Contempt of Courts Act, 1971 to punish the respondent for having committed wilful disobedience of the order passed by this Court in W.P.No.6842 of 2013, dated 05.01.2017.

For Petitioner : Mr.S.Selvathirumurugan

For Respondent : Mr.J.Ravindran, AAG
assisted by Ms.G.Hema

COMMON JUDGMENT

R.SURESH KUMAR, J

Since this Intra Court Appeal and the Contempt Petition arise out of the order passed by the learned Judge in the writ petition, dated 05.01.2017, both the Writ Appeal as well as the Contempt Petition were heard together and are disposed of by this common order.



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2. This Intra Court Appeal is directed against the order passed by the writ court, dated 05.01.2017 made in W.P.No.6842 of 2013.

3. The short facts leading to filing of this writ appeal reads thus :

(i) That the appellant Tamil Nadu Public Service Commission (in short the "TNPSC") had issued Advertisement Nos.258, dated 30.12.2010 and 265, dated 08.02.2011 respectively and further issued Advertisement No.280, dated 11.06.2011.

(ii) These notifications were issued by the TNPSC inviting applications from eligible candidates for direct recruitment to the post included in Combined Subordinate Services Examination-I, which is otherwise called as Group-II Examination.

(iii) The third advertisement, dated 11.06.2011 was issued because some more posts additionally were added to be filled up.



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(iv) The respondent was one of the candidate who made application for the said selection process to the appellant / TNPSC. There are two type of posts, one is interview post and another one is non-interview post. Insofar as the non-interview post is concerned, based on the marks obtained by the candidates in the written examination selection will be made by applying the 69% communal reservation. Insofar as the interview post is concerned, after the written examination by applying the rule of reservation, candidates would be called for interview and the marks they obtained in both the written examination and interview will be taken together and accordingly, selection would be made for interview post.

(v) In respect of certain posts which are meant for the non-interview post, the marks obtained by the petitioner was considered under the category namely, Backward Classes Muslim (G) [BCM(G)].

(vi) Insofar as the BCM(G) is concerned, according to the TNPSC there were 69 posts earmarked, 8 posts were reserved for women and 28 posts were reserved for Destitute Widows, therefore the remaining 33 posts



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would be filled up from among the BCM(G) category. These posts are non-interview posts, therefore the only criteria to be followed for selection is based on the marks obtained by the candidates in the written examination.

(vii) After the written examination was over, the cut-off marks was declared for each category and insofar as the category of the respondent is concerned, since he belongs to BCM and he is a male candidate he can only compete for the posts earmarked for BCM(G). For the said category, the cut-off mark was 223.50, it means that, the last candidate who has to be selected from the category of BCM(G) for these non-interview posts must have secured 223.50 and those who secured lesser marks than 223.50 marks would not be selected.

(viii) It is the case of the respondent that, he secured 223.50 marks, despite he having secured such marks he was not called for selection process and his name was not considered for selection, therefore in order to consider his candidature for selection, the respondent / writ petitioner had given a representation to the TNPSC on 20.12.2012.



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(ix) Since the said representation having not been considered and his candidature was never been considered for the purpose of selection and appointment, despite he having secured 223.50 marks which was the cut-off marks for the non-interview post under the category of BGM(G), the respondent / writ petitioner had approached this Court and filed the writ petition in W.P.No.6842 of 2013, seeking for a writ of mandamus to direct the TNPSC to select the writ petitioner who had secured 223.50 marks being the cut-off marks for appointment as Assistant in the Combined Subordinate Services Examination 2009-2011 conducted by the TNPSC under BCM(G) quota, since candidates who have secured lesser marks were selected by the TNPSC under BCM(G) quota. The learned Judge who disposed the said writ petition by the order impugned, dated 05.01.2017, having considered the merits of the case, was pleased to allow the said writ petition by giving directions to the TNPSC to select the writ petitioner to the post of Assistant in the Combined Subordinate Services Examination 2009-2011 under BCM(G) quota and such exercise was directed to be completed within a period of eight weeks. Having aggrieved over the same only, this Appeal has



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been directed at the instance of the appellant / TNPSC. That is how the Writ Appeal has come.

4. In fact, the Writ Appeal when came up before a Division Bench on 20.03.2018, the Division bench has granted an interim order to the following effect "there will be an order of status quo till then".

5. Therefore, an order of status quo had been issued by a Division Bench and since 2018 the appeal has been pending before this Court.

6. When this Appeal had come before us on 19.07.2023, we have heard the learned counsel appearing for both sides and in order to get clarification with regard to what has been held by the learned Judge in para 2 of the impugned order, on 19.07.2023 we passed the following order :

"In paragraph 2 of the impugned order dated 05.01.2017, the learned Judge has referred about three candidates, who have scored less than the mark scored by the respondent/writ petitioner. However, the learned Standing Counsel appearing



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for the appellant/TNPSC would submit that those three candidates belongs to Backward Class Muslim (Women), therefore, they were selected only under the quota ear-marked for BC Muslim(Women) and not under the quota BC Muslim(General).

2. In order to substantiate the said contention, the learned Standing Counsel wants to file a positional note with documents to substantiate the same.

3. For the aforesaid purpose, post the matter on 28.07.2023."

7. Again the matter came up for hearing on 31.07.2023, where also after hearing the learned counsel appearing for both sides, we passed the following order :

"In the Combined Group II Subordinate Services Examination, the posts earmarked as non interview post are concerned, only on the basis of the written marks, final selection would be made. In this context, according to the TNPSC, 69 posts were earmarked for BC Muslim (General), out of which, 8 were reserved for Women for BC Muslim



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and 28 were reserved for Destitute Widow BC Muslim, the cut off marks respectively for these category are 223.50, 214.50 and 120.

2. The stand of the TNPSC is that, the cut off mark 223.50 obtained by more candidates, therefore based on the date of birth, the candidates were selected, last such candidate who secured 223.50 was selected in BC Muslim (General) category, his date of birth is 10.05.1973. Whereas the petitioner's date of birth is 09.05.1975 and in between the last candidate and the petitioner, there were 41 candidates with the same mark.

3. Therefore the petitioner has not come even nearer to the cut off mark or to the candidate who has been lastly selected with the date of birth 10.05.1973. However, Mr.S.Selvathirumurugan, learned counsel appearing for the respondent has pointed out that, a candidate who secured 220.50 has been selected under the BC Muslim (General) category.

4. When this was specifically asked, Ms.G.Hema, learned Standing Counsel appearing for the appellant TNPSC would contend on instructions that, the said candidate since was possessing the



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P.G. Qualification, on that basis he was selected.

5. However, we find nothing in the TNPSC Notification issued in this regard especially paragraph 8 under the caption 'Procedure of Selection' to give weightage to the candidates who are holding P.G. Degree, on what basis such selection has been made merely based on P.G. Degree has to be explained. In this regard, the selection list consisting of such selectees who are having P.G. Qualification have been selected only on the basis of P.G. Qualification, unmindful of the cut off marks alone, have to be earmarked and to be filed before this Court during the next hearing date with supporting documents and for the said purpose, the learned Standing Counsel seeks a week's time.

6. Post the matter on 07.08.2023."

8. Again the matter came up for hearing on 21.08.2023, where based on the input supplied by the TNPSC pursuant to the earlier order, we found that at least four candidates who have secured lesser marks than the respondent / writ petitioner since had been selected for the non-interview



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post, to know on what basis such selection has been made as admitted by the TNPSC, we passed the following order on 21.08.2023, seeking an explanatory affidavit with substantiating documents from the Secretary, TNPSC. The order, dated 21.08.2023 reads thus :

"According to the TNPSC, out of the 69 posts earmarked for BC (Muslim), 8 posts are reserved for women and 28 for destitute women BCM.

2. So far as the contesting respondent is concerned, he is a male candidate so he can compete only for BCM (G).

3. Out of the 69 posts, if the 8 posts earmarked for women and the 28 posts earmarked for destitute women are reduced, the remaining posts will be 33. Therefore for the 33 posts i.e., for BCM (G) both sex can compete, where, according to TNPSC, the cut off mark was 223.50, the contesting respondent secured 223.50.

4. Whereas in the following posts, candidates who secured less than 223.50 were selected.

(i) Assistant in the Prison Department in the Tamil Nadu Ministerial Service, a woman candidate who secured 220.50 has been selected.



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(ii) Like that, for the post of Assistant in the Police Department in the Tamil Nadu Ministerial Service, a woman candidate who secured 220.50 has been selected.

(iii) Also, a woman candidate who secured 222.00 has been selected in the post of Assistant in Rural Development and Panchayat Raj Department.

(iv) Like that, for the post of Assistant in Rural Development and Panchayat Raj Department, a woman candidate who also secured 223.50 with a date of birth 15.11.1988 has been selected.

5. Whereas the contesting respondent secured 223.50 and his date of birth is 09.05.1975, therefore atleast in respect of these 4 candidates who secured lessor marks had been selected under the BCM (G) category, for which, both women and men can compete, hence the selection in respect of these four candidates, certainly it is in violation of the Selection Procedure as many number of candidates like the contesting respondent who secured 223.50 marks were in the queue or in the waiting list for want of vacancy or want of post.

6. In this regard, though it was submitted by the learned Standing Counsel appearing for the



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TNPSC that, during the counselling if somebody become absent, based on the willingness expressed by the candidates who attended the counselling, such kind of selection had been made.

7. However, we are unable to accept the said contention made by the learned Standing Counsel appearing for the TNPSC because of this reason that, insofar as Selection is concerned, it is purely on the basis of the marks they obtained or secured in the written examinations as these posts are called non-interview posts. Based on the mark they secured if a Selection list is prepared and a cut off mark accordingly is prescribed, the Selection process would be over.

8. However, since various posts are included in the combined selection, for which this competitive examination was conducted, post wise selection are to be given based on the willingness to be given by the candidates who have already been selected based on the cut off marks, for such kind of purpose only counselling would be conducted, therefore in that counselling only the Department they choose based on their mark alone would be permitted and not the very selection to be made



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based on the counselling as that procedure cannot be and could not have been adopted by the TNPSC.

9. Therefore, on what basis atleast the 4 candidates mentioned above have been selected despite the candidates who secured higher marks in the same category were available including the contesting respondent and this has to be explained by the TNPSC. An explanatory affidavit to that effect with substantiating documents shall be filed by the Secretary to the Tamil Nadu Public Service Commission not by any other lower level official of the TNPSC before this Court during the next hearing date, for such compliance post the matter on 30.08.2023."

9. Thereafter the case came up for further hearing on 08.09.2023. In response to our earlier query raised by our order, dated 21.08.2023, the Secretary, TNPSC has filed an affidavit, dated 07.09.2023. Having gone through the affidavit, we found that, since the cut-off mark according to the TNPSC for BCM(G) category was 223.50 with degree qualification and the last person had been selected with cut-off mark 223.50 and according to the



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TNPSC, his Date of Birth was 10.05.1973, whereas the respondent / writ petitioner's Date of Birth is 09.05.1975, therefore even though he secured 223.50 marks he was not called for counselling and not selected was the stand taken by the TNPSC.

10. However, we found that, even in the earlier statement given by the TNPSC, at least 4 candidates, according to them, who secured lesser marks than the respondent / writ petitioner since had been selected, we raised the question earlier as to on what basis such selection had been made. For the said pointed query no answer had been given by the TNPSC in the affidavit filed by the Secretary, TNPSC and therefore, we construed it as a suppression of fact or misleading statement. Therefore we were constrained to pass the following order on 08.09.2023 :

"3. In response to the same, the Secretary, Tamil Nadu Public Service Commission has filed an affidavit dated 07th September, 2023.

4. We have gone through the said affidavit where absolutely there has been no answer to our query, especially the pointed query raised by our order dated 21.08.2023.

5. Insofar as the 4 candidates mentioned in our order, as to



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how selections were given to those 4 candidates who are less meritorious than number of candidates including the contesting respondent was asked. For which the answer of the Secretary, TNPSC reads thus:

“3. iii. Four women candidate's register number mentioned in the court order, were admitted to Oral Test in the ratio of 1:2 based on rule of reservation and as per merit, and their Register numbers were also published in publication list calling the candidates for Oral Test. But the above four candidates were not selected for Oral Test Posts. However, after reorganizing Non-OT Rank, they were called for Counselling for Non-OT posts, and their Register Numbers were published vide List dated 20.11.2012 at the ratio of 1:1.5.”

6. It is the further answer given by the TNPSC Secretary that, the cut-off mark for admission to 1st phase of counselling conducted for NonOral Test posts under BCM(G) and BCM(W) categories were as follows:

Category	Common post	Assistant in Finance Department, Secretariat
BCM- General	223.50/Degree/10.05.1973	223.50/Degree/29.06.1988
BCM- Women	214.50/Degree/30.11.1987	-----



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7. After having given this, the Secretary, TNPSC has further stated that, in the 1st counselling itself, the entire vacancy have been exhausted, therefore there was no chance for any other candidates for seeking selection for the Non-Oral Test post, who got lesser mark than 223.50 in BCM(G) and 214.50 in BCM(W).

8. Insofar as the BCM(G) is concerned, it is the case of the TNPSC that, the cut-off mark was 223.50 with degree qualification, and the last person has been selected with the cut-off mark 223.50 and his date of birth is 10.05.1973, whereas, the contesting respondent's date of birth is 09.05.1975, therefore even though he secured 223.50 marks, he was not called for counselling or not selected.

9. However, the Secretary, TNPSC in her reply affidavit has conveniently omitted to give reply or answer to the pointed queries raised by our order dated 21.08.2023 as to how atleast the 4 candidates mentioned herein above, who admittedly secured lesser marks i.e. lesser than 223.50 marks, were selected under BCM(G) category.

10. That apart, when we worked out based on the Selection List produced before this Court, even though only 8 vacancies were earmarked for BCM(W), beyond 8 candidates several woman candidates belongs to BCM(W) were selected, therefore such selection could have been



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made only under BCM(G).

11. But none of those candidates numbering nearly about 15 had secured higher marks than the contesting respondent i.e., either 223.50 or above. Despite that lesser marks they secured those woman candidates also have been selected under BCM(G) according to the Selection List which were produced before this Court.

12. How this kind of selection could be made has not at all been explained by the Secretary, TNPSC in the affidavit filed by her.

13. Therefore, after having analysed all these aspects, we are of the view that, either certain facts were attempted to be concealed before this Court or by giving such vague reply by way of affidavit, the TNPSC wanted to cover up certain violations in the particular selection especially in the context of vacancies earmarked for Backward Class Muslim (General) as well as Backward Class Muslim (Women).

14. It is a settled proposition of law that, if any material facts are concealed or suppressed before the Court of law that would amount to interference in dispensation of justice of this Court and such kind of attitude can even be construed as a perjury committed on the Court. Therefore, certainly actions can be taken against such person or



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official who either suppressed the material fact or by giving vague reply, despite the pointed query raised by the Court, to cover up the misdeeds if any.

15. However, Ms.G.Hema, learned Standing Counsel appearing for the appellant TNPSC made a fervent request before this Court to give a shorter accommodation as a last chance to come out with clear facts by filing a further affidavit by the Secretary, TNPSC with substantiated documents to put the facts straight.

16. Considering the said plea made by the learned Standing Counsel appearing for the TNPSC, a week's time is given to file affidavit with proper facts on the issue raised in this lis especially in the context of query that we have raised in 21.08.2023 order as well as this order. Such affidavit with supporting documents shall be filed by the Secretary, TNPSC on 19.09.2023, failing which, the Secretary, TNPSC shall appear before this Court to give explanation as to why action shall not be taken against her for either having suppressed the material facts before this Court or having given a misleading reply to the pointed query raised by this Court.

17. Post the matter on 19.09.2023 as a first case."



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11. Thereafter on 19.09.2023, a further affidavit had been filed by the Secretary, TNPSC. In order to consider the same, at request of the TNPSC, the matter has been taken up for hearing on 26.09.2023. In the affidavit filed on 19.09.2023, we found certain shocking revelation from the TNPSC, which we have noted in paragraphs 10 to 14 of the said affidavit, dated 19.09.2023. Therefore extracting the said portion of the affidavit dated 19.09.2023, we passed the following order on 26.09.2023, which reads thus:

"Pursuant to our order dated 08.09.2023, a further affidavit dated 19th September, 2023 was filed by the Secretary, TNPSC on 20.09.2023. On that date, at the request of the learned Senior Counsel appearing for the TNPSC, it was directed to be listed today. That is how the matter is again taken up for hearing today.

2. We have gone through the further affidavit filed by the Secretary, TNPSC dated 19.09.2023, where certain shocking revelation has been made by the Secretary to TNPSC. Paragraphs 10 to 14 of the affidavit speak for itself. Therefore, for better appreciation, the said paragraphs of the affidavit filed by the Secretary dated 19th September, 2023 is extracted hereunder:



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“10. It is respectfully submitted that after filling up the 61 vacancies reserved for Backward Classes Muslim (BCM) – General category and in view of the nonavailability of any other candidates admitted under the Backward Classes Muslim (BCM) – General category (due to absenteeism/unwillingness), the correct course of action would have been halting further selection against the vacancies reserved for Backward Classes Muslim (BCM) – General category at that point and eligible candidates next in rank to the last candidate admitted in the Backward Classes Muslim (BCM) – General category (from the overall ranking list), ought to have been called for the IInd phase of counselling and remaining 6 vacancies ought to have been filled up with meritorious candidates only. However, selection was continued by filling up the 6 vacancies with candidates available during the counselling session of I phase, who were in fact ineligible for selection against the Backward Classes Muslim (BCM) – General vacancies.

11. It is respectfully submitted that the above



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lapse was the reason for the selection of less meritorious candidates in Backward Classes Muslim (BCM) – General category.

12. Thiru. S.Saibulla filed W.P.No.6842 of 2013 alleging that certain candidates with lesser marks were selected. The W.P. Was allowed in favour of the petitioner by orders dated 05.01.2017. In the said W.P., the Hon'ble Court has passed orders as follows:

“XXX

5.Under such circumstances, the petitioner is liable to succeed in the writ petition. Consequently, the respondent is directed to select the petitioner to the post of Assistant in the Combined Services of Examination 2009-2011 under BC (Muslim) (General) quota. Such exercise shall be completed within a period of eight weeks from the date of receipt of a copy of this order.”

13. The Commission filed Writ Appeal in W.A.No.604 of 2018 against the above order. The petitioner filed Contempt Petition in



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C.P.No.2271 of 2017. Hence, the Commission ordered that “Thiru.S.Saibulla may be accommodated in the post of Assistant in Prison Department earmarked for BC(M)(Women) category subject to outcome of the Writ Appeal filed against the orders of the Hon'ble High Court dated 05.01.2017” and the same was communicated to the candidate vide Memo dated 14.03.2018. By that time, status quo was granted in Writ Appeal in W.A.No.604 of 2018 vide Orders dated 20.03.2018. Therefore, based on this order, physical certificate verification and counselling was not conducted for the said candidate Thiru.S.Saibulla and the same was communicated to the individual by Memo.No.6207/OTDB2/2010 dated 21.03.2018.

14. Further, it is humbly submitted that I have due regard to the Orders of the Hon'ble Court and have no willful intention to disobey the Orders of this Hon'ble Court. The earlier affidavit submitted on 08.09.2023 was based on the positional note given by the concerned officials for the recruitment of 2009-2011 and I



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render my unconditional apology for lack of details in the same. It is also submitted that disciplinary action has been initiated against the concerned officials in this regard. Hence it is humbly submitted that the affidavit filed on 08.09.2023 may be treated as withdrawn.”

3. According to the Secretary, TNPSC, the eligible candidates next in rank to the last candidate admitted in the Backward Class Muslim - General category (from the overall ranking list) after first round of counselling ought to have been called for the II phase of counselling and the remaining 6 vacancies ought to have been filled up with meritorious candidates only. However, selection was continued by filling up the 6 vacancies with candidates available during the counselling session of Phase I, who were in fact ineligible for selection against the Backward Class Muslim (BCM) - General vacancies.

4. The Secretary has further stated in para 11 of the affidavit that, the above lapse was the reason for the selection of less meritorious candidates in Backward Class Muslim (BCM) - General category.

5. In para 14 of the affidavit, the Secretary, TNPSC has further stated that, “the earlier affidavit submitted on 08.09.2023 was based on the positional note give by the concerned officials for



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the recruitment of 2009-2011 and I render my unconditional apology for lack of details in the same. It is also submitted that the disciplinary action has been initiated against the concerned officials in this regard”. Hence, the Secretary has submitted that the affidavit filed on 08.09.2023 may be treated as withdrawn.

6. These revelations made by the Secretary, TNPSC has made it abundantly clear that, all is not well in the concerned Selection i.e., Group - IV selection of the year 2009-2011.

7. In this case, we have dealt with only the vacancies earmarked for Backward Class Muslim alone, where initially it was the stand taken by the TNPSC that, there were only 69 vacancies earmarked for BCM, out of the 69, 8 vacancies were earmarked for Women i.e., BCM - Women and 28 posts were earmarked for Destitute Widow.

8. However, now it is the stand of the TNPSC that, there are 112 vacancies for Backward Class Muslim, out of which 69 vacancies originally earmarked for BCM (General) was reduced to 67 and 8 vacancies were earmarked for BCM (Women) and 28 vacancies were earmarked for BCM (Destitute Widow), 2 for Ex-servicemen, 4 for PSTM candidates and 1 for Physically Challenged Person.

9. This revelation has further raised a question that, if the total vacancies is 112 earmarked for BCM candidates, out of which



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if at all any further sub-reservation has to be given for Women candidates, Destitute Women candidates, Ex-serviceman, PSTM, etc., such kind of reservations should be made only horizontally not vertically.

10. When that being so, on what basis or under what rule such a vertical reservation has been made by the TNPSC for those categories mentioned above is not known and has not been explained even in the present affidavit filed by the TNPSC, Secretary.

11. Therefore, the following position has emerged after having gone through the present affidavit filed by the Secretary, TNPSC.

(i) The reservation policy of the State has been violated in the Selection Process;

(ii) The constitutional mandate of reservation to various communal categories has been messed up by giving vertical reservation to various categories, but only in the name of communal categories, that is against the constitutional reservation which includes the 69% communal reservation being followed in the State of Tamil Nadu;

(iii) It is an admitted case on the part of the TNPSC that, Selection had been made where less meritorious candidates had been selected, for which, absolutely no reason has been given by the TNPSC;



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(iv) When specific pointed queries repeatedly raised by this Court, a misleading affidavit had been filed earlier by the TNPSC by its Secretary, which, according to the Secretary, has occurred, because of the misleading positional note given by the concerned officials of the TNPSC against whom, even though it is claimed by the Secretary of the TNPSC that, disciplinary actions have been initiated, on what basis such officials/staff had given misleading statement and in order to cover up which lapses, such a misleading statement had been given even to the Secretary of the TNPSC by her own officials/staff are to be unearthed. Therefore, in this context who are all the officials and staff who are responsible to give such misleading information or statement to the Secretary, who in turn filed an affidavit dated 08.09.2023 in the earlier occasion, which the Secretary, TNPSC now wants to withdraw, are to be found out.

(v) It is a serious lapse on the part of the very administration of the TNPSC as this very Court itself has been misled by the action on the part of the officials and staff of the Tamil Nadu Public Service Commission, which act of TNPSC is despicable. Hence this Court cannot tolerate it by merely taking it as a statement mistakenly given before this Court.

(vi) Therefore those officials' name are to be listed and placed before this Court by the Secretary, TNPSC and what



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disciplinary action had already been initiated against those officials and staff shall also be placed before this Court, based on which, the Court will take decision to take separate action for having committed perjury before this Court.

12. Mr.J.Ravindran, learned Additional Advocate General appearing for the TNPSC has made a request before this Court to give one day time to produce the relevant records before this Court for perusal.

13. Hence, such time of one day is given till tomorrow i.e., 27.09.2023 to produce the relevant records in support of the contentions that has been made atleast in the present affidavit filed by the Secretary dated 19.09.2023. 14. After verifying the records and by giving further opportunity of hearing to the TNPSC counsel by tomorrow, the Court will take further decision as to what action shall be taken, for all the violation that has been indicated herein above, against the TNPSC and its officials.

15. For the aforesaid compliance, post this matter on **27.09.2023** as first case."

12. Thereafter at request of the TNPSC, the matter was taken up for further hearing on 29.09.2023, where Mr.J.Ravindran, learned Additional



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Advocate General appearing for the TNPSC had stated that, insofar as the said selection process is concerned, there was an infirmity in the selection process, which in fact had been admitted in the last affidavit filed by the TNPSC through its Secretary. The learned Additional Advocate General would further submit that, the second aspect of the issue was that, in the earlier report or affidavit filed by the Secretary, TNPSC, the necessary factors had not either been properly placed before this Court or suppressed all those factors.

13. In this context, the learned Additional Advocate General would contend that, insofar as the suppression of the material facts are concerned, the TNPSC decided to take disciplinary action against four such officials of the TNPSC who are allegedly responsible for giving the misleading information or suppressing the facts before this Court and the four officials name and designation also had been given. That apart, the learned Additional Advocate General would submit that, in order to go into the correctness of the selection process and also to ascertain where went wrong by whom and what extent the selection had become infirm and how it



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should be rectified and what remedial measures have to be taken, all can be decided, for which the Service Commission itself can conduct an In-house enquiry by constituting a team of enquiry officers and based on such In-house enquiry report, further remedial action would be taken by the TNPSC.

14. The learned Additional Advocate General would also submit that, instead of accepting this proposal made by the TNPSC, to give a quietus to the issue, if the Court further wants to enlarge the scope of such enquiry to be gone into on the alleged aspect of flaws and infirmity in the said selection is concerned, the learned Additional Advocate General would submit that, in such case, the TNPSC would be put in deep trouble. Therefore in order to avoid such unpleasant and unwarranted circumstances and contingency, the stated measure namely to have an In-house enquiry and to take disciplinary action against the erring officials and to select the respondent / writ petitioner would be the solution and thereby that would be fair enough to be adopted for giving the entire gamut of the issue a quietus. This of the stand taken by the TNPSC as projected by the learned Additional Advocate General was recorded by our order, dated 29.09.2023 and the said order is



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also extracted hereunder for ready reference :

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"Heard Mr.J.Ravindran, learned Additional Advocate General appearing for the appellant TNPSC.

2. Pursuant to the earlier orders passed by this Court including the last order dated 26.09.2023, when this case is taken up for final hearing, Mr.J.Ravindran, learned Additional Advocate General appearing for the TNPSC on instructions would submit that, there are two aspects of the issue. The first aspect is that, there is an infirmity in the very Selection itself, which in fact has been admitted in the last affidavit filed by the TNPSC through the Secretary to TNPSC. The second aspect is that, in the earlier affidavit those factors had either not been properly placed before this Court or suppressed of those factors.

3. He would further submit that, insofar as the second aspect of the issue is concerned, the officers concerned of the TNPSC, who are allegedly responsible for giving the misleading information or suppressing the fact before this Court in the earlier affidavit filed by the Secretary,



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the TNPSC decided to take disciplinary action against atleast 4 officers viz., 1) Tmt.Francis Maria Puvi, Joint Secretary; 2) Thiru.A.V.Gnanamoorthy, Deputy Secretary; 3) Thiru.G.Sivakumar, Under Secretary; and 4) Thiru.K.Baskara Pandian, Under Secretary. Against whom Rule 17(a) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules, proceedings have already been initiated by Memorandum dated 11.09.2023 and copy of such Memorandum also has been produced before this Court.

4. The learned Additional Advocate General further submits that, insofar as such disciplinary proceedings initiated against them, let it go on to reach its logical conclusion on merits, accordingly necessary action would be taken against those officials if the guilty is proved on them.

5. Insofar as the first aspect of the issue is concerned, the learned Additional Advocate General would contend that, inasmuch as the injustice done to the respondent herein who was the writ petitioner is concerned, since he is eligible to be selected in the Backward Class Muslim



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(General) quota, his candidature would be considered for selection from the original date i.e. of the year 2012-2013 along with other candidates or from the date of the order passed by the Writ Court and accordingly the selection would be given to him.

6. He would further submit that, insofar as the infirmity that has been found in the Selection itself, especially in respect of vacancies that has been earmarked for Backward Class Muslim (General) and Backward Class Muslim (Women) are concerned, what went wrong, by which, to what extent the Selection had become infirm, in order to rectify the same, what remedial measures have to be taken, all would be decided, for which, the TNPSC can conduct an In-house enquiry by constituting a Team of Enquiry Officers and based on such In-house enquiry, further remedial action would certainly be taken by the TNPSC.

7. Therefore by taking these measures, the two aspects of the issue can be given a quietus, the learned Additional Advocate General contended.



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8. It has also been submitted by the learned Additional Advocate General that, if this Court further go into the issue with a roving enquiry expanding the scope of the lis, by getting further input from the TNPSC, insofar as the entire Selection covering all the communal category candidates, that may put the TNPSC in deep trouble. Therefore, in order to avoid such unpleasant and unwarranted circumstances and contingency, the aforestated measures would be fair enough to be adopted for giving the entire gamut of the issue a quietus.

9. The said submissions made by the learned Additional Advocate General appearing for the TNPSC is taken on record.

10. Considering the same, to pass a final order in this writ appeal, the Judgments are reserved."

15. The aforestated earlier orders passed by this Court as has been extracted herein above has revealed beyond any doubt that, the selection in question, i.e., Combined Subordinate Services Examination-I for Group II posts are concerned conducted in the year 2011-2012, there has been a



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severe flaw in distribution of vacancies as well as the selection which we could find only after verifying the facts in respect of the vacancies earmarked for BCM(G) and BCM(W) alone.

16. In fact, the short comings as well as the flaw have been accepted in unequivocal terms by the TNPSC. In fact, they initially tried to conceal these factors by giving a misleading statement by way of an affidavit filed by the Secretary of TNPSC which we found out. Only thereafter the TNPSC had come forward to file a rectified affidavit stating that a misleading statement had been given, therefore the earlier affidavit filed by the TNPSC had been withdrawn.

17. Also the Secretary, TNPSC has revealed that, at least four officials of TNPSC were responsible for such misleading statement given before this Court suppressing the material factors and therefore disciplinary action under Rule 17(a) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules have been initiated and notice has been issued.

18. They also admitted in the affidavit filed on behalf of the TNPSC



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that, selection ought to have been made properly including the selection of the respondent / writ petitioner. Therefore the TNPSC wanted to comply with the orders of the writ court passed in this regard, which in fact they wanted to comply, for which, already communication had been sent to the respondent / writ petitioner even at the time of filing this writ appeal in the year 2018 for selection and appointment to him. However since no reply had come from him and in the meanwhile an interim order has been passed by a Division Bench at the admission stage of this writ appeal to maintain status quo, thereafter nothing was moved.

19. However, the TNPSC now has taken a stand that, non-selection of the respondent / writ petitioner is concerned, it is the flaw, therefore he would be either selected from the original date of selection of others in the said selection process or at least from the date of any order to be passed by this Court in this writ appeal.

20. But any how the TNPSC had expressed its willingness to accommodate the respondent / writ petitioner as he has secured the cut-off mark of 223.50 in the said category of BCM(G) and since that was the cut-



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off mark and so many persons who secured lesser marks was selected, naturally the respondent / writ petitioner would be entitled to seek for such selection which would be given to him, the TNPSC has stated.

21. Therefore insofar as the relief sought for by the respondent / writ petitioner is concerned and the direction given to that effect by the learned Judge in the order impugned is concerned, absolutely there has been no issue to confirm the said order.

22. However insofar as the misleading statement that has been given by way of filing an affidavit by the Secretary, TNPSC is concerned, that factor in fact has been accepted by the TNPSC and to that extent, the Secretary, TNPSC wanted to withdraw the earlier affidavit giving such misleading statement or suppression of material facts.

23. The learned Additional Advocate General appearing for the TNPSC also has stated that, if this Court enlarging the scope of any rowing enquiry to find out what went wrong and where by whom during the relevant selection is concerned, that process would make the TNPSC in deep



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trouble. Since the learned Additional Advocate General has assured before this Court on behalf of the TNPSC that, the TNPSC had already decided to conduct an In-house enquiry by constituting a team of enquiry officers and after getting the report from the In-house enquiry, further remedial action would be taken is concerned, this Court feels that, even though this Court thought of appointing an independent enquiry agency to conduct an enquiry, in view of the request that has been made on behalf of the TNPSC, to seek permission to conduct an In-house enquiry by constituting a team of enquiry officers and based on which, they want to take necessary remedial action to rectify this kind of anomalies in selection process, we feel that, such an In-house enquiry can be permitted to be conducted by the TNPSC.

24. However insofar as the four officials are concerned, now the documents filed before this Court has revealed that, only disciplinary action under Section 17(a) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules has been initiated. However, the action or inaction or arbitrary action on the part of the officials to make the Secretary, TNPSC to file a misleading statement before this Court despite the pointed query and



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by thus suppressing the materials facts before this court, definitely would amount to perjury.

25. Even though this Court wanted to take action against such perjury, which has been admitted in fact by the subsequent affidavit filed by the Secretary, TNPSC, we feel that, the disciplinary action to be initiated by the TNPSC would be the fitting measure to be taken against those erring officials of the TNPSC. However, such a disciplinary action cannot be under Rule 17(a) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules but only under Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules for a major penalty proceedings.

26. Filing a misleading affidavit or filing an affidavit suppressing the fact and giving such a misleading information to the Secretary of TNPSC who in turn filed the affidavit which was found out by this Court and construed as action of perjury which are all the serious lapses on the part of the officials concerned, therefore in order to deal with such lapses, there must be a disciplinary proceedings for major penalty and therefore such a proceedings initiated on 11.09.2023 by issuing notice against those four



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officials by the TNPSC under Rule 17(a) shall be modified into 17(b) and accordingly, the enquiry shall be conducted to reach its logical conclusion.

27. Insofar as the decision taken by the TNPSC to conduct an In-house enquiry by constituting a team of officials for conducting the enquiry to identify the lapses and the remedial measures is concerned, such a measure shall also be immediately taken by the Service Commission.

28. Therefore, considering all these aspects and taking into account of the aforesaid discussions, we are inclined to dispose of this Writ Appeal with the following orders :

(i) That the impugned order passed by the learned Judge is to be sustained, accordingly it is sustained. Therefore the appeal shall fail and is liable to be dismissed.

(ii) As a sequel, there shall be a direction to the appellant / TNPSC to select the respondent / writ petitioner based on his marks he obtained in the written examination for the selection in question is concerned and accordingly, his selection shall be intimated to the Government /



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Department concerned within a period of 30 days from the date of receipt of a copy of this order.

(iii) It is made clear that, since the writ petition was allowed in the year 2017, i.e., on 05.01.2017, where two months time had been given by the learned Judge, the selection to be given to the respondent / writ petitioner shall be date back from at least 05.01.2017, if not from the original date of selection of the other candidates. From that date, his selection and appointment to be considered notionally and pursuant to the selection and appointment order, if the respondent / writ petitioner joined service, from that date he would be entitled for all other service benefits including monetary benefits.

(iv) There shall be a further direction to the appellant / TNPSC to initiate disciplinary proceedings by way of major penalty proceedings under Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules against the four erred officials and such disciplinary proceedings



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shall be allowed to reach its logical conclusion in the manner known to law. During the enquiry, necessary opportunity shall be given to the officials to defend themselves.

(v) There shall be a further direction to the appellant / TNPSC to constitute an enquiry team to conduct the In-house enquiry to identify the lapses that went on in the selection in question of the year 2009-2011 conducted in the year 2012 in all aspects and the team shall also suggest the remedial measures to be taken by the TNPSC to avoid such kind of flawed selection in future and based on such report to be filed by the Committee, necessary remedial action shall be taken by the TNPSC. For the said purpose, the Committee shall be constituted within a period of one month from the date of receipt of a copy of this order and the Committee to be constituted shall complete its enquiry and file the report to the TNPSC within three months thereafter.

(vi) In the meanwhile the disciplinary



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proceedings to be initiated against the four officials also should be completed and the result of both the Disciplinary Proceedings as well as In-house enquiry shall be filed before this court to have a follow up action.

(vii) For the said purpose, this Appeal can be listed after four months.

29. In view of the detailed orders passed in the Writ Appeal, no further persuasive action is required in the Contempt Petition. Accordingly, the Contempt Petition is closed.

30. With all these directions herein above made, this Writ Appeal is dismissed and the Contempt Petition is closed. However, there is no order as to costs.

(R.S.K., J.) (K.B., J.)
05.01.2024

Index : Yes

Speaking Order : Yes

Neutral Citation : Yes

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To

The Secretary
Tamil Nadu Public Service Commission
Frazer Bridge Road,
Chennai - 600 003.



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**R.SURESH KUMAR, J.
and
K.KUMARESH BABU, J.**

tsvn

**Common order
in
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05.01.2024