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W.P.No.11582 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 18.03.2024

PRONOUNCED ON : 16.04.2024

CORAM:

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

W.P.No.11582 of 2023
and W.M.P.Nos.11482 & 11483 of 2023

R.Appash

...Petitioner

-Vs-

1. The State of Tamilnadu,
Rep. by its Additional Chief
Secretary to Government,
Home (Pol.2) Department,
Secretariat, Fort St. George,
Chennai – 600 009.

2. The Secretary,
Tamil Nadu Public Service Commission,
TNPSC Road, VOC Nagar,
Park Town,
Chennai – 600 003.

3. S.Sangeetha
4. L.D.Vivekkannan

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, to call for the records relating to the impugned order issued by the first respondent in G.O.Ms.No.64, Home (Police-2) Department dated 14.02.2023 and to quash the same and consequently directing the first respondent to issue



W.P.No.11582 of 2023

appointment order to the post of Deputy Superintendent of Police (Category-I) to the petitioner based on the selection order issued by the second respondent in Memorandum No.6543/OTD-B1/2017, dated 21.10.2021, with consequential order of institutional training with other attendant benefits.

For Petitioner : Mr.G.Sankaran, Senior Counsel
For Mr.S.Nedunchezhiyan
For Respondents
For R1 : Mr.R.Neelakandan
Additional Advocate General
Assisted by Dr.T.Seenivasan
Special Government Pleader
For R2 : Mr.I.Abrar Mohammed Abdullah
Standing Counsel
For R4 : Mrs.A.L.Ganthimathi, Senior Counsel
For Mr.L.Palanimuthu

ORDER

This petition has been filed challenging the order passed by the first respondent in G.O.Ms.No.64, Home (Police-2) Department dated 14.02.2023, thereby directing to absorb the respondents 3 & 4 herein in Tamil Nadu Police Service as Deputy Superintendents of Police (Grade-I) as per Section 14 of the Tamil Nadu Government Servants (Conditions of Services) Act, 2016 (hereinafter referred to as “TNGS Act”).

2. The case of the petitioner is that the second respondent issued notification No.1/2019 calling upon the application for direct



W.P.No.11582 of 2023

recruitment to the post of Group-I services by notifying 181 vacancies for different posts viz., Deputy Collector, Deputy Superintendent of Police (Category-I), Assistant Commissioner, Assistant Director of Rural Development etc. The petitioner is qualified with B.E. Degree and applied for selection in Group-I service. The petitioner had cleared preliminary examination and his name was short listed for writing main examination. He had cleared main examination and he was selected for personality test in the shape of an interview.

3. Thereafter, the second respondent published consolidated mark list in which, the petitioner was assigned with rank No.110 and he was included in the selection list of candidates for the post of group-I services. He had participated in the counselling based on the rank and in application of rule of reservation. Accordingly, he was selected for the post of District Officer in Fire and Rescue Service. He had joined in the said post on 27.07.2020.

4. Likewise the candidates, who were appointed in the post of Deputy Superintendent of Police (Category-I), were also issued with order of appointment. The third and fourth respondents herein were



W.P.No.11582 of 2023

selected and appointed as Deputy Superintendent of Police (category-I) and they have been sent for institutional training for the period of one year at Tamil Nadu Police Academy on 03.08.2020. However, they had submitted representation stating that they have been allotted for Indian Defence Accounts Service and Indian Civil Accounts Service respectively through UPSC examination, 2019 and requested to relieve them from the service of Deputy Superintendent of Police on 27.10.2020.

5. Considering the said request, the government issued order thereby relieving them from the service of Deputy Superintendent of Police (category-I) subject to condition stipulated in G.O.Ms.No.25 P&AR Department, dated 09.01.1980. Therefore, there were some vacancies arose in the post of Deputy Superintendent of Police and other posts due to the fact that the candidates appointed and left service.

6. Therefore, the second respondent had sent proposal for allotment of substitutes in the place of candidates who had not joined and relieved from the respective post. Therefore, the government had sent communication to the second respondent to allot suitable candidates from the selection list, as per proviso to Section 27(f) of the TNGS Act.



W.P.No.11582 of 2023

Thereafter, the second respondent issued memorandum dated 28.09.2021 calling upon the petitioner along with others for supplemental counseling for appointment to the post of Deputy Superintendent of Police. The petitioner participated and submitting willingness for appointment to the said post. The second respondent issued selection order dated 21.10.2021 and accordingly, the petitioner was selected and appointed to the post of Deputy Superintendent of Police. However, the petitioner was not issued with appointment order.

7. Whereas the other candidates, who were selected in the post of Assistant Director of Rural Development, Assistant Commissioner of Commercial tax etc., have been issued with appointment order by the respective departments. Therefore, the petitioner submitted representation for issuance of appointment order to the post of Deputy Superintendent of Police. Since the same was not considered, the petitioner approached this Court in W.P.No.4999 of 2023. In that writ petition, the first respondent filed counter stating that the respondents 3 & 4 herein submitted representation dated 02.12.2021 and 23.11.2021, thereby informing their willingness to join back to the post of Deputy Superintendent of Police, as per Section 14 of the TNGS Rules. Considering the said



W.P.No.11582 of 2023

representation, the first respondent issued order in G.O.Ms.64, Home (Police-2) Department, dated 14.02.2023, thereby allowed them to join as Deputy Superintendent of Police. Therefore, the writ petition filed by the petitioner was withdrawn with liberty to challenge the said order and filed the present writ petition.

8. The learned Senior Counsel appearing of the petitioner submitted that the petitioner was duly selected to the post of Deputy Superintendent of Police in the supplemental counseling conducted by the second respondent as on 20.10.2021 itself viz., prior to the representation submitted by the respondents 3 & 4. Therefore, the petitioner's selection was earlier to their representation and as such, the petitioner ought to have been appointed to the post of Deputy Superintendent of Police. So far, the third respondent had not been joined in the post of Deputy Superintendent of Police and it is lying vacant.

8.1. The first respondent by its proceedings dated 23.12.2021, requesting the second respondent to allot candidates from the reserved list as per the proviso to Section 27(f) of the TNGS Act and accordingly, the second respondent conducted supplemental counseling in which, the



W.P.No.11582 of 2023

petitioner was duly selected to the post of Deputy Superintendent of Police. Therefore, it cannot be nullified in order to accommodate the respondents 3 & 4 herein.

8.2. He further submitted that the vacancies arose due to non joining and left the service of the selected candidates viz., the respondents 3 & 4, have been notified for supplemental counseling in accordance with the rank of the selected candidates including the petitioner. Therefore, the subsequent representation submitted by the respondents 3 & 4 cannot be acted upon since, the petitioner was already selected to the post of Deputy Superintendent of Police. He further submitted that other candidates, who were selected for the different posts based on their rank, have been given appointment order and they have joined in their respective posts by the supplemental counselling.

8.3. In support of his contention, he relied upon the judgment reported in **(1992) 1 SCC 105** in the case of **Dr.Umakant Vs. Br.Bhikalal Jain and ors**, in which the Hon'ble Supreme Court of India held as follows :-

“In our view the High Court was wrong in taking the



aforesaid view. Sec. 5 only provides for the constitution of Selection Committee and the words "for every selection" used in sub-sec. (1) of Sec. 5 only mean that in case of every selection of a teacher or of an officer in university, a Committee would be constituted of the persons mentioned in sub-clause (i) to (v) of the said Section. So far as the present case is concerned, even the High Court has arrived to the conclusion that the Committee constituted for the selection of a professor in Botany was proper and in accordance with the provisions of Sec. 5 of the Act of 1974. The appellant, Dr. Uma Kant was found suitable for the post of professor in Botany and his name was recommended in the reserve list by the duly constituted Selection Committee. Sec. 6(4) of the Act of 1974 clearly provides that the Selection Committee while making its recommendations to the syndicate under sub-sec. (2) shall prepare a list of candidates selected by it in order of merit and shall further prepare a reserve list in the same order and to the extent of 50% of the vacancies for the post of teachers or officers. Thus a reading of Sec. 5 with Sec. 6(4) makes it quite clear that the Selection Committee constituted shall recommend not only the candidates selected by it in order of merit but shall further prepare a reserve list to the extent of 50% of the vacancies and persons kept in the reserve list will be considered as having been selected for the concerned post and shall be entitled



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W.P.No.11582 of 2023

for appointment if any vacancy is caused during the validity period of the reserve list. The suitability of the persons kept in the reserve list is also adjudged by the Selection Committee which is constituted for selection of a teacher in the university. Thus no fault can be found that the incumbent recommended in the reserve list by the Selection Committee was not selected for the concerned post of teacher. In our view the very purpose of preparing a reserve list would be defeated if the view taken by the High Court is accepted that once a person selected by the selection committee has joined that post then selection made by the Committee is exhausted and the reserve list is of no avail and becomes extinct. There was no meaning or purpose of keeping the reserve list alive for a long period of one year, as no person selected for the post can at all be expected not to join for such a long period of one year.”

Thus, the provision makes it clear that the Selection Committee constituted shall recommend not only the candidates selected by it in order of merit but shall further prepare a reserve list to the extent of 50% of the vacancies and persons kept in the reserve list will be considered as having been selected for the concerned post and shall be entitled for appointment if any vacancy is caused during the validity period of the reserve list.



W.P.No.11582 of 2023

8.4. He further submitted that though the third respondent submitted her representation thereby willing to join in the post of Deputy Superintendent of Police and even till today, the third respondent did not join in the post of Deputy Superintendent of Police, as per the order passed in G.O.Ms.No.64 Home (Police -2) Department, dated 14.02.2023 and it is lying vacant. Therefore, in view of the above judgments, the petitioner is entitled for appointment to the post of Deputy Superintendent of Police.



W.P.No.11582 of 2023

9. The learned Additional Advocate General appearing for the first respondent submitted that the respondents 3 & 4 were provisionally selected and appointed as Deputy Superintendent of Police vide G.O.Ms.No.288, Home (Police-2) Department dated 25.08.2020. They were subjected for one year basic institution training in Tamil Nadu Police Academy. While being so, they had requested to relieve them to join in the Indian Defence Accounts Services and Indian Civil Accounts Services respectively, as they were selected through UPSC, as per the rights of lien under Section 14 of the TNGS Act, 2016. Considering the said request, they were relieved from the post of Deputy Superintendent of Police, so as to enable them to join in the selected post.

9.1. In order to fill up the said vacancies, the first respondent by its communication dated 23.02.2021, requested the second respondent to allow suitable substitute candidates in the place of the respondents 3 & 4, as per proviso to Section 27(f) of the TNGS Act. Accordingly, supplemental counselling was conducted in which the petitioner was selected to the post of Deputy Superintendent of Police. The selection of the petitioner was communicated to the first respondent on 21.10.2021. However, the respondents 3 & 4, had submitted representation thereby,



W.P.No.11582 of 2023

expressing their willingness to join back as Deputy Superintendent of Police. Therefore, they were permitted to rejoin the said post and hence the selection of the petitioner to the post of Deputy Superintendent of Police was dropped.

10. Heard the learned counsel appearing on either side and perused the material placed before this Court.

11. It is seen that the petitioner was initially selected to the post of District Officer in Fire and Rescue Service and thereafter in the supplemental counselling, he was selected to the post of Deputy Superintendent of Police. However, as per Section 14 of the TNGS Act, the respondents 3 & 4 were permitted to rejoin in the post of Deputy Superintendent of Police. It is relevant to extract the provisions under Section 14 of the TNGS Act as follows :-

“A member of a service, whenever selected by direct recruitment for appointment in any other service of the Government or in other State Governments, Central Government, Universities, or any other quasi-government organizations, shall hold the service right in the former service for a period not exceeding one year only from the



W.P.No.11582 of 2023

date of relief from the former service”

Accordingly, the first respondent passed order in G.O.(Ms.)No.64, Home (Police-2) Department dated 14.02.2023, thereby ordered to allow the respondents 3 & 4 to rejoin in the post of Deputy Superintendent of Police.

12. Though the petitioner was selected as per the supplemental counselling in the post of Deputy Superintendent of Police, it doesn't confer any right to claim appointment. It is relevant to extract Section 7(4) of the TNGS Act as follows :-

“The inclusion of a candidate's name in any list of approved candidates for any class or category in a service shall not confer on him any claim to appointment to the class or category in that service”

13. Further the second respondent had conducted next selection of Group-I service and the candidates selected for the post of Deputy Superintendent of Police have been issued appointment order, in G.O.(Ms.)No.1, Home (Police-2) Department, dated 02.01.2023. Therefore, the reserve list for the year 2016-2019 has become defunct. As per the willingness shown by the respondents 3 & 4, the fourth



W.P.No.11582 of 2023

respondent had joined in the post of Deputy Superintendent of Police.

Though the third respondent did not join in the post of Deputy Superintendent of Police, the entire reserve list for the year 2016-2019 to the post of Deputy Superintendent of Police has become defunct. Therefore, the petitioner cannot be considered to the said vacancy, since the said vacancy has been carried forwarded to the next selection process.

14. That apart, after supplemental selection of the petitioner to the post of Deputy Superintendent of Police, the second respondent had forwarded selection list to the first respondent for issuance of appointment order. However, on receipt of the representation from the respondents 3 & 4 herein, to rejoin in the post of Deputy Superintendent of Police, the Additional Chief Secretary to Government, Home (Police-2) Department, by its letter dated 14.02.2023 has stated that the government have decided to drop the appointment of substitute candidates viz., the petitioner and another, who were provisionally selected through supplemental counselling in the place of the respondents 3 & 4 in the post of Deputy Superintendent of Police. Hence, This Court finds no infirmity or illegality in the order passed by the first respondent and the writ petition is devoid of merits and liable to be dismissed



W.P.No.11582 of 2023

WEB COPY 15. Accordingly, the Writ Petition stands dismissed.

Consequently, connected miscellaneous petitions are closed. There shall be no order as to costs.

16.04.2024

Index : Yes/No
Speaking/Non Speaking order
Neutral Citation : Yes/No
rts

To

1. The Additional Chief
Secretary to Government,
State of Tamilnadu,
Home (Pol.2) Department,
Secretariat, Fort St. George,
Chennai – 600 009.
2. The Secretary,
Tamil Nadu Public Service Commission,
TNPSC Road, VOC Nagar,
Park Town,
Chennai – 600 003.



WEB COPY



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G.K.ILANTHIRAIYAN. J.

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ORDER IN
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