



WP.No.23364 of 2024

In the High Court of Judicature at Madras

Reserved on : 04.9.2024	Delivered on : 06.9.2024
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Coram :

The Honourable Mr.Justice N.ANAND VENKATESH

Writ Petition No.23364 of 2024 &
WMP.Nos.25521, 25524, 25525 & 25527 of 2024

G.Vinitha

Vs

...Petitioner

- 1.The State through the Principal Secretary to Government of Tamil Nadu, Labour Welfare & Skill Development Department, Fort St.George, Chennai-9.
- 2.The Tamil Nadu Public Service Commission, rep.by its Secretary, Frazer Bridge Road, VOC Nagar, Park Town, Chennai-3.
- 3.The Director, Industrial Safety & Health, Tamil Nadu Factory Service, Industrial Estate, Guindy, Chennai-32.

...Respondents

PETITION under Article 226 of The Constitution of India praying
for the issuance of

(i) a Writ of Certiorarified Mandamus to call for the records of impugned Memorandum No.3091/OTD-A4/2019 dated 22.1.2024 issued by the 2nd respondent, quash the same and subsequently



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direct the respondents to appoint the petitioner to the vacant post of Assistant Director of Industrial Safety and Health under BC (OBCM) (W) Category, which arose due to non-joining and leaving of selected candidates in pursuance of Notification No.18/2019 dated 29.5.2019; and

(ii) to issue a Writ of Certiorari to call for the records of G.O. (MS) No.207 (Labour Welfare and Skill Development (M1) Department) dated 05.4.2023 issued by the 1st respondent and quash the same.

For Petitioner	:	Mr.Balan Haridas for Mr.R.Hari
For R1 & R3	:	Mr.P.Balathandayutham, SGP
For R2	:	Mr.I.Abrar Mohamed Abdullah

ORDER

This writ petition has been filed challenging the memorandum dated 22.1.2024 issued by the second respondent and G.O.Ms.No.207 dated 05.4.2023 issued by the first respondent and for the issuance of consequential directions to the respondents to appoint the petitioner in the post of Assistant Director of Industrial Safety & Health under BC (OBCM) (W) category pursuant to the Notification dated 29.5.2019 issued by the second respondent.

2. When the writ petition came up for hearing on 28.8.2024, this Court passed the following order :



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"This writ petition was filed challenging the impugned Memorandum dated 22.01.2024, issued by the 2nd respondent and also G.O.Ms.No.207 dated 05.04.2023 issued by the 1st respondent and for a consequential direction to the respondents to appoint the petitioner to the post of Assistant Director of Industrial Safety and Health under BC (OBCM)(W) Category.

2. When the matter came up for hearing on 13.08.2024, this Court passed the following order:

'Mr.P.Balathandayutham, learned Special Government Pleader takes notice for respondents 1 and 3.

2. Mr.R.Bharanidharan, learned Additional Government Pleader, takes notice for second respondent.

3. The short issue that arises for consideration in the present writ petition is that the selection was to the post of Assistant Director of Industrial Safety and Health and twenty six vacancies were identified. The petitioner, who participated in the selection, secured 353.50 marks [both written examination and oral test put together]. The petitioner also appeared during counselling and stood at the 51st rank in the overall rank list. She stood in the sixth position among the female candidates under the category - BC (OBCM)(W). According to the petitioner, the female candidates in the first and second position have joined. The female candidate placed in the third position did not attend the counselling and the female candidate in the fourth position had joined in another post. Therefore, the female candidates in the positions 3 and 4 did not make it to the selection post. Insofar as the female candidate in the fifth position is concerned, she subsequently took



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employment through TRB in Government Polytechnic College, Perundurai. In view of the same, there are three vacancies. Hence, the petitioner, who was holding the sixth position among the female candidates was expecting that she will be called and appointed in the post, which has not been filled up. However, there was no call letter received from the respondents and attempts are being made to carry forward the vacancies to the next recruitment. The main grievance that was expressed by learned counsel for petitioner is that the respondents were bound to follow the reserve list mechanism as per Section 3(u) and section 27(f) of the Tamil Nadu Government Servants (Condition of Service) Act, 2016.

4. Mr.R.Bharanidharan, learned counsel appearing on behalf of second respondent, seeks for some time to take written instructions in this regard.

Post this writ petition under the caption 'for orders' on 27.08.2024 at 02.15 p.m. In the mean time, one post of Assistant Director of Industrial Safety and Health shall be kept vacant.'

3. When the matter was taken up for hearing today, the counter affidavit filed on behalf of the 2nd respondent was placed before this Court. The stand taken in the counter affidavit is that in 2019 Notification dated 29.05.2019, one of the candidate who was selected under BC (OBCM)(W) Category did not join the post. Hence, the name of that candidate was removed. A request was made to the Government to include that vacancy that had arisen due to the non-joining of the candidate in that post in the future recruitment.

4. The petitioner filed WP.No.10326 of 2023 to provide her with appointment in the post that was not



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filled due to non-joining of the selected candidate. This writ petition was disposed of by an order dated 11.12.2023, wherein this Court granted liberty to the petitioner to give a representation to the respondents and the respondents were directed to consider the same on its own merits and in accordance with law within a period of two weeks. Pursuant to this order, a reply was sent to the petitioner dated 22.01.2024, stating that she has not reached the zone of consideration for the post of Assistant Director of Industrial Safety and Health.

5. It is further stated in the counter affidavit that a reserve list could not be drawn for the reason that the method of selection of candidates was to multiple posts and it involves drawal of reserve list based on the preferences given by the candidates. Therefore, it is contended that if the claim made by the petitioner is to be considered, it involves conducting another set of counselling by calling upon the candidates who have already been appointed to the other posts in the same recruitment. The 2nd respondent has also relied upon the recent Order passed by this Court in WP.No.32640 etc., of 2023 dated 08.08.2024. Accordingly, the 2nd respondent has sought for the dismissal of this writ petition.

6. The learned counsel for the petitioner submitted that admittedly there was one vacancy in the 2019 Notification due to one of the selected candidates not joining the post under BC (OBCM)(W) Category. This vacancy was not carried forward to the next recruitment that took place in the year 2022. Even in the subsequent Notification dated 13.10.2023, a total of 20 vacancies was estimated for the post of Assistant Director of Industrial Safety and Health. Out of this 20



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vacancies, one vacancy was identified for BC (OBCM)(W) Category. According to the petitioner, this vacancy is the carried forward vacancy and this vacancy has not been filled up. The learned counsel therefore submitted that the petitioner is the most eligible candidate to be considered for being posted in this vacancy which has been carried forward in the 2023 Notification and which is yet to be filled up by the 2nd respondent.

7. Per contra, the learned counsel for the 2nd respondent submitted that the claim of the petitioner pertains to 2019 Notification dated 29.05.2019. Thereafter, two more Notifications have been issued on 04.04.2022 and on 13.10.2023. In view of the same, the first Notification automatically lapses. Hence, no claim can be made by a candidate who participated under that Notification. To substantiate this submission, the learned counsel relied upon the judgment of the Division Bench in W.A.No.1917 of 2019 etc., dated 21.06.2024. The learned counsel submitted that even if a reserve list has been prepared, its validity would have lapsed after the subsequent Notifications were issued.

8. The learned counsel further submitted that even in the Notification of the year 2019, it involved filling up of nearly nine posts. Therefore, there were multiple posts which has to be filled from among the candidates. If the unfilled post is to be filled up, it will virtually amount to conducting a new counselling since even the selected candidates for various posts will have to be given an opportunity to give their preference.

9. The counter affidavit filed by the 2nd respondent is totally silent regarding one vacant post which was not filled up under the 2019 Notification.



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There is no indication in the subsequent Notifications that it has been carried forward. Therefore, this Court wants to ascertain as to whether one post that fell vacant was even carried forward during the next recruitment process carried out in the year 2022 and 2023. On getting a clear answer for this question, the writ petition itself can be disposed of.

10. Post this case under the caption "for orders" on 02.09.2024."

3. Pursuant to the said order dated 28.8.2024, an additional counter has been filed, in which, respondents 1 and 2 have taken a stand that in the said Notification dated 29.5.2019, totally 26 vacancies were identified to the post of Assistant Director of Industrial Safety & Health. After the selection was made, one of the candidates expressed her unwillingness to join in the post and the Appointing Authority, by letter dated 17.11.2022 requested the Tamil Nadu Public Service Commission (TNPSC) to remove the name of that candidate from the selection list. The next Notification was issued on 04.4.2022 and in this Notification, totally 18 vacancies were identified to the said post and after the selection was made by the second respondent, six candidates did not join and their names were removed from the approved list. The said six vacancies were included in the future estimate of vacancies.

4. The next Notification was issued on 13.10.2023 and in this



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Notification, totally 20 vacancies were identified and out of the 20 vacancies, the six vacancies that were not filled up in the earlier Notification were carried forward. The distribution of vacancy under all the three Notifications have been tabulated, the scanned copy of which is as follows :



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Distribution of Vacancy

The Distribution of vacancy in the **notification no.18/2019** for Assistant Director of Industrial Safety and Health (ADISH) as follows:-

GT (G)	GT (G) PSTM	GT (W)	GT (W) PSTM	GT (W) (LV)	BC (OBCM) (G)	BC (OBCM) (G) (PSTM)	BC (OBCM) (W)	BC (M) (G)	MBC/DC (G)	MBC/DC (W)	SC (G)	SC (G) (PSTM)	SC (W)	SC (W) (PSTM)	TOTAL
4	1	1	1	1	4	1	2	1	3	2	2	1	1	1	26

The Distribution of vacancy in the **notification no.10/2022** for ADISH as follows:-

GT (G)	GT (G) PSTM	GT (W)	BC (OBCM) (G)	BC (OBCM) (G) (PSTM)	BC (OBCM) (G) (H/H)	BC (OBCM) (W) (PSTM)	BC (M) (G) (PSTM)	MBC/DC (G)	MBC/DC (G) (PSTM)	MBC / DC (W)	SC (G)	SC (A) (W) (PSTM)	TOTAL
3	1	2	1	1	1	1	1	2	1	1	2	1	18

The Distribution of vacancy in the **notification no.23/2023** for ADISH as follows:-

GT (G)	GT (G) PSTM	GT (W)	BC (OBCM) (G)	BC (OBCM) (W)	MBC/DC (G)	MBC/DC (PSTM)	MBC / DC (W)	BC (M) (W)	SC (G)	SC (G) (PSTM)	SC (W)	SC (A) (G)	TOTAL
4	1	1	4	1	2	1	1	1	1	1	1	1	20



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5. Heard the learned counsel appearing on behalf of the petitioner, the learned Special Government Pleader appearing for respondents 1 and 3 and the learned Standing Counsel appearing for the second respondent.

6. It is quite evident from the additional counter affidavit and the materials placed before this Court that the vacancy that arose under the Notification of the year 2019 was not carried forward during selection in the year 2022, which was conducted under the Notification dated 04.4.2022. This vacancy was subsequently added in the total vacancies identified during selection in the year 2023, which was conducted pursuant to the Notification dated 13.10.2023.

7. The learned counsel appearing on behalf of the petitioner submits that the Appointing Authority ought to have filled up the vacancy in 2019 itself since the petitioner was the only candidate, who was eligible and hence, the decision not to fill it up is arbitrary and capricious. Therefore, it is contended that the right that was available to the petitioner to be considered for appointment to the said post was denied and that the same has given rise to a cause of action for the petitioner to question the same even though two subsequent notifications were issued in the years 2022 and 2023.



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8. In the considered view of this Court, the petitioner is claiming for selection to the post of Assistant Director of Industrial Safety & Health based on the Notification issued on 29.5.2019. During this selection, one of the candidates did not join and as a result, one vacancy was not filled up.

9. The claim made by the petitioner is that she was the most eligible candidate, who should have been accommodated in that vacancy as and when such vacancy arose due to the non joining of one of the selected candidates.

10. It must be kept in mind that if the petitioner is to be accommodated in the post, which fell vacant, the TNPSC should have adopted the practice of preparing a reserve list. However, in a recruitment involved in multiple posts or one post in multiple unit offices where the recruitment is made through a single competitive examination by drawing a single ranking list, it is not possible to draw a reserve list. This is in view of the fact that for filling up that vacancy, an opportunity must be given even to the selected candidates, who are more meritorious than the petitioner and they must also be given an option to take up that vacancy. If this process is undertaken, it will virtually amount to conducting another



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exhaustive counselling. Therefore, the TNPSC does not adopt the practice of preparing a reserve list in such recruitments. This practice adopted by the TNPSC was upheld by this Court in a recent order in the case of ***R.Manikandan & Others Vs. Tamil Nadu Public Service Commission & Others [W.P.Nos.32640 & 32644 of 2023 dated 08.8.2024]***.

11. In the light of the above finding, it cannot be held that the decision taken by respondents 1 and 2 to carry forward the vacancy to the next recruitment is arbitrary or capricious. The materials placed before this Court would show that this vacancy was ultimately carried forward during selection in the year 2023 and totally, six vacancies were included in Notification No.23/2023 dated 13.10.2023 out of the total 20 vacancies in the post of Assistant Director of Industrial Safety & Health.

12. The petitioner has not chosen to participate in the selection process and the petitioner is attempting to claim a right over the vacancy, which was carried forward in the Notification of the year 2023 based on her participation in the selection of the year 2019. This is yet another ground, on which, the relief sought for by the petitioner cannot be granted by this Court.



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13. In the result, this Court does not find any ground to interfere with the proceedings of respondents 1 and 2. Accordingly, the writ petition is dismissed. No costs. Consequently, the connected WMPs are also dismissed.

06.9.2024

To

- 1.The Principal Secretary to Government
of Tamil Nadu, Labour Welfare & Skill
Development Department,
Fort St.George, Chennai-9.
- 2.The Secretary, Tamil Nadu Public
Service Commission, Frazer Bridge
Road, VOC Nagar, Park Town, Chennai-3.
- 3.The Director, Industrial Safety &
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