



W.P.Nos.32640 & 32644 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

ORDERS RESERVED ON : 05.08.2024

PRONOUNCING ORDERS ON : 08.08.2024

Coram:

THE HONOURABLE JUSTICE MR.N.ANAND VENKATESH

W.P.Nos.32640 & 32644 of 2023
and WMP No.32243 of 2023

- 1.R.Manikandan
- 2.S.Sugadev
- 3.V.Kanagaraj
- 4.K.Kamal
- 5.C.Austin
- 6.K.V.Kiruban
- 7.F.Darwin
- 8.K.Hariharan
- 9.A.Rajesh
- 10.M.Mohana Prasath
- 11.A.Muthu Kumar
- 12.K.M.Suganth
- 13.G.Arunmozhi
- 14.G.Rajasekar
- 15.S.Jegatheeswaran



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16.K.Shiva Sankar

17.C.Senthamil

18.R.Veerapathiran

19.S.Suman

20.P.Suresh Bhalaji

21.M.Sanjeevi

22.E.Chitra

23.M.Bharanika

24.A.Anusuyadevi

25.S.Ashok

26.R.Karunakaran

27.M.Thiyagarajan

28.A.Ibrahim

29.W.Vivek

30.M.Sarath Kumar

31.S.Yuvaraj

32.N.Gurunathan

3.S.Saravanakumar

..Petitioners
in Both WPs

.Vs.

1.Tamil Nadu Public Service Commission
Rep.by the Secretary
TNPSC Road, V.O.C.Nagar
Park Town, Chennai 600 003.



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2.The Director

Directorate of Survey and Settlement
Central Survey Office, Survey House
PWD Estate, Chepauk, Chennai 600 005.

3.The Director

Directorate of Town and Country Planning
CMDA Office Complex, E & C, Market Road, Koyambedu
Chennai 600 107.

... Respondents
in Both WPs

Prayer in W.P.No.32640 of 2023: Writ Petition under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorarified Mandamus, to call for the records of the 1st Respondent relating to the communication dated 13.09.2023 having reference in Letter No.1920/PSD.A1/2021 sent by the 1st Respondent to the 2nd Respondent that it is not possible to hold 3rd Counselling for the vacant posts and quash the same and consequently direct the 1st Respondent to conduct a 3rd Counselling for the vacant posts of i) Field Surveyor ii) Draftsman in the Tamil Nadu Survey and Land Records Department iii) the 2nd Respondent herein and vacant posts of Surveyor-cum-Assistant Draughtsman in the Tamil Nadu Town and Country Planning Department the 3rd Respondent herein pursuant to Notification No. 18 of 2022 dated 29.07.2022.

Prayer in W.P.No.32644 of 2023: Writ Petition under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorarified Mandamus, to call for Clause 4 of the Office Order No.134 dated 12.11.2020 issued by TNPSC that in cases where recruitment to multiple posts or one post in multiple unit offices is made through a single competitive examination and a single ranking list is drawn, the reserve list shall not be drawn and quash the same and consequently direct the 1st respondent to draw the reserve list for the vacant posts in the Survey and Land Records department and posts of Surveyor-cum-Assistant Draughtsman in Directorate of Town and Country



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Planning in accordance with rule 15 A of the of the Tamil Nadu State and Subordinate Service Rule and section 3(u) read with the proviso to section 27 (f) of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016 and make appointment of the petitioners from the said reserve list.

For Petitioners : Mrs.Nalini Chidambaram
(Both WPs) Senior Counsel
for Mrs.C.Uma

For Respondents : Mr.R.Bharanidharan for R1
(Both WPs)
Mrs.V.Yamunadevi
Special Government Pleader
for R2
Mr.P.Balathandayutham
Special Government Pleader
for R3

COMMON ORDER

The issue involved in both these writ petitions are interconnected and therefore they are taken up together, heard and disposed of through this common order.

2.W.P.No.32640 of 2023 has been filed against the communication dated 13.09.2023 issued by the 1st respondent to the 2nd respondent informing that it will not be possible to hold the 3rd counselling to fill up the vacant posts and for a consequential direction to the 1st respondent to conduct the 3rd counselling for the vacant posts of (i) Field Surveyor (ii) Draftsman in Tamil Nadu Survey and settlement wing and (III) Surveyor-cum-Assistant Draughtsman in the Tamil Nadu Town and



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Country Planning Department. W.P.No.32644 of 2023 has been filed challenging Clause 4 of the Office Order No.134 dated 12.11.2020 issued by the TNPSC and for a consequential direction to the TNPSC to draw the reserve list for the vacant posts in the Survey and Land Records department and posts of Surveyor-cum-Assistant Draughtsman in Directorate of Town and Country Planning and make appointments from the reserve list.

3.The case of the petitioners is that the 1st respondent issued an advertisement dated 29.07.2022 inviting applications for direct recruitment to the posts of i) Field Surveyor, ii) Draftsman included in the Tamil Nadu Survey and Land Records Subordinate Service and iii) Surveyor-cum-Assistant Draughtsman in Tamil Nadu Town and Country Planning Subordinate service. The total number of vacancies that was notified including the addendum was 1338 vacancies for the above three posts.

4.The further case of the petitioners is that they were qualified to apply for the above said posts and they also wrote the examination that was held on 06.11.2022. The list of candidates provisionally admitted for physical certificate verification and counselling was released by the 1st respondent on 27.02.2023. The names of the petitioners also found place in that list. During the first phase of counselling, the petitioners being low in the merit list did not get the appointment. The second phase of counselling was conducted on 10.5.2023 and even during this counselling, the petitioners were not selected for any one of the three posts.



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5.The 2nd respondent made a request to the 1st respondent through communication dated 10.05.2023 to issue allotment orders for 365 posts. The petitioners were also expecting the 1st respondent to conduct the 3rd counselling in order to fill up the posts which were not occupied due to various reasons. Applications were submitted under the RTI regarding the filling up of the posts and the petitioners were given an impression that steps will be taken to conduct the 3rd counselling. However, through impugned communication dated 13.09.2023, the 1st respondent informed the 2nd respondent that it is not possible to hold the 3rd counselling to fill up the 197 vacant posts which was as a result of the selected candidates not joining the posts for which they were selected. This communication has been put to challenge in W.P.No.32640 of 2023.

6.The petitioners also made a request to the effect that the vacant posts can atleast be filled from among those candidates whose names are found in the reserve list. However, this request of the petitioners could not be considered in the light of Clause 4 of the Office Order No.134, dated 12.11.2020 which provides that in cases where recruitment to multiple posts or one post in multiple union offices, is made through a single competitive examination and a single ranking list is drawn, the reserve list cannot be drawn up. This Clause has been put to challenge in W.P.No.32644 of 2023.



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7.The 1st respondent has filed a common counter affidavit in both the writ petitions. The 1st respondent has taken a stand that counselling was conducted for the entire notified vacancies i.e., 1338 vacancies and 1327 vacancies have been filled up in the 1st and 2nd counselling. In view of the same, there was no occasion to conduct one more counselling. Insofar as Clause 4 of the Officer Order No.134 dated 12.11.2020, the 1st respondent has given the justification from paragraphs 9 to 13 as to why the TNPSC cannot follow the procedure of drawl of reserve list.

8.Heard Mrs.Nalini Chidambaram, learned Senior Counsel for the petitioners and Mr.R.Bharanidharan, learned counsel for R1, Mrs.V.Yamunadevi, learned Special Government Pleader for R2 and Mr.P.Balathandayutham, Special Government Pleader for R3.

9.This Court has carefully considered the submissions made on either side and the materials available on record.

10.There are only two issues which requires the consideration of this Court in these writ petitions and they are ; (a) Whether the TNPSC must be directed to conduct the 3rd conselling in order to fill up the vacant posts which has arisen due to non-joining of certain candidates who were selected during the 1st and 2nd phase of counselling and (b) Whether Clause 4 of the Office Order No.134 dated 12.11.2020, issued by the TNPSC justifies the non drawl of the reserve list where the recruitment is



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made through a single competitive examination for multiple posts or one post in multiple offices and a single rank list is drawn or it suffers from any arbitrariness or illegality warranting its interference.

11.It is quite apparent from the materials placed before this Court that the TNPSC published the combined notification dated 29.07.2022 for direct recruitment to the posts of Field Surveyor and Draftsman included in the Tamil Nadu Survey and Land Records Subordinate Service and Surveyor-cum-Assistant Draughtsman in Tamil Nadu Town and Country Planning Subordinate Service. The total vacancies including the addendum which was issued subsequently on 15.02.2023 was identified as 1338 vacancies. Written examination was conducted and petitioners also wrote the examination and they were called for physical certificate verification and counselling held in two phases from 06.03.2023 to 11.03.2023 and again on 23.05.2023. It is quite apparent from paragraph 7 of the counter affidavit that the phase I and phase II counselling was conducted for the entire notified 1338 vacancies. Out of this, 1327 vacancies were filled up. Therefore, on the part of TNPSC, they have taken all steps to fill up all the vacancies by conducting counselling twice. Unfortunately, the petitioners were not able to get selected since they were lower down in the merit list.

12.The learned Senior Counsel appearing on behalf of the petitioners submitted that the 2nd respondent through communication dated 10.05.2023 requested the TNPSC to conduct the counselling to fill up the vacant posts and that it was not followed



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through. However, it is seen that the II phase of counselling that had taken place thereafter on 23.05.2023. Thus, the 1st respondent has acted upon the request made by the 2nd respondent. Ultimately, 11 vacancies were not able to be filled up during the 2nd counselling. This is proposed to be carried forward during the next recruitment. Out of this, 4 posts of Draftsman has been kept vacant as per the directions of the Madurai Bench of Madras High Court.

13.Insofar as TNPSC is concerned, they have conducted the counselling to fill up the entire 1338 vacancies and therefore, there is no scope for directing them to conduct the 3rd counselling only on the ground that some of the selected persons have not joined in their selected posts. If there are any such vacancies, it can only be carried forward to the next recruitment under Section 27 (bbb) of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016 (hereinafter referred to as the 2016 Act)

14.In the light of the above discussion, this Court does not find any ground to interfere with the impugned communication dated 13.09.2023 of the 1st respondent sent to the 2nd respondent informing the 2nd respondent that the 3rd counselling cannot be conducted to fill up 197 posts to which the selected candidates have either not joined or are not willing to join. The first question that was taken up for consideration is answered accordingly.



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15.The next issue pertains to Clause 4 of the Office Order No.134 dated 12.11.2020. The petitioners are putting forth for an alternative to fill up the vacant posts by drawing candidates from the reserve list. According to the petitioners, there are suitable candidates who can be accommodated in the unfilled posts and it is not necessary to carry forward those vacancies to the next recruitment.

16.Section 3(u) of the 2016 Act defines a reserve list. Fifth proviso to Section 27 (f) of the 2016 Act, deals with the manner in which the unoccupied posts must be filled up from the reserve list.

17.The TNPSC through Office Order No.134 dated 12.11.2020 has dealt with the manner in which the candidates will be drawn from the reserve list and how it will be operated. The bone of contention is Clause 4 of the Office Order. It will be relevant to extract Clause 4 and Clause 5 of the Office Order hereunder:

(4) In cases where recruitment to multiple posts or one post in multiple unit offices, is made through a single competitive examination and a single Ranking List is drawn, the Reserve List shall not be drawn up.

(5) In the case of (4) above (except in the case of recruitment to posts included in Combined Civil Services Examination-I), where a candidate fails to join duty or fails to produce the requisite documents including the certificates of physical fitness or where such candidate is found to be physically not fit on production of such



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certificate of physical fitness or where such candidate, on production of the requisite documents is found to be not qualified for appointment to the post, his name shall be deleted from the approved list by the appointing authority themselves. In cases where the candidate joins duty and leaves thereafter or the post falls vacant due to the death of the candidate after joining, the appointing authority shall make a suitable indication against the candidate's name. In either case, the resultant vacancies shall be included in the estimate of vacancies for the next recruitment year and the same may be informed to the Commission.

18.Clause 4 provides for a contingency as to when the reserve list cannot be drawn up. Clause 5 provides the manner in which the vacancies will be carried forward to the next recruitment year.

19.A combined reading of Section 3 (u) and the fifth proviso to Section 27(f) of the 2016 Act talks about drawl of reserve list and filling up of vacancies arising due to candidates getting selected for the post and later not joining the duty or they join and thereafter leave the job. There will be no issue to draw a reserve list for a single post in a single examination. However, it gets more complicated to draw a reserve list for multiple posts or one post in multiple unit offices where the recruitment is made through a single competitive examination and a single ranking list is drawn.

20.In the case in hand, the notification dated 29.07.2022 consisted of three posts. The recruitment was to the Town and Country Planning Subordinate Service and



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to the Revenue Department which consists of multiple units. The reason as to why a reserve list cannot be drawn to fill up the vacant posts is explained in the following manner in the counter affidavit filed by the TNPSC:

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(i) Common rank list has been drawn for all the three posts as per para.9 of Notification for this recruitment and the qualification of Diploma in Civil engineering is one among the qualification for all the 3 posts.

(ii) During counselling, category wise vacancies for all posts which are announced in the notification are clubbed together and based on their merit order, the candidates are admitted to the counselling for opting the post and unit (District). According to rule of reservation of appointment, eligibility of candidates, vacancies are shown for candidates to opt the post and unit. Selection is made purely based on the option exercised by the candidates during counselling.

(iii) The method of selection of candidates by counselling, involves on the spot decisions by candidates on their preferences. Thus, without knowing the willingness of the candidate drawl of a reserve list become impossible.

(iv) As per Act 3(u) of Tamil Nadu Government Servant (Condition of Service) Act, 2016, if reserve list is to be drawn, it has to be drawn for each post / unit. But is not possible since category wise vacancies for all the posts are clubbed together and based on



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which the candidates are admitted to Physical Certificate Verification and Counselling.

If the vacancies arise in a particular part/unit due to the candidates who joined and left and not joined etc, would be filled from the candidates who had not been selected (i.e. Below the last selected candidate in the respective communal category). It will invite a lot of litigations from the candidates who had already selected some other post/unit (meritorious candidates when compared to the reserve list candidate), as the said vacancies are not available when they are attending the counselling. In order to avoid such litigations supplemental selection for vacancies arise due to the candidates who are selected and not joined duty/joined & left duty etc., would be filled from next rank holder of the last selected candidate of a particular category in that particular post/unit who is already chosen some other post/unit in the selected candidates subject to willingness of them.

(vi) this would, in effect, mean the sliding up of candidates through almost all the posts filled up through this recruitment and would be equivalent to making the entire selection again and again many times.

21.This Court is convinced with the reasons assigned by TNPSC as to why the reserve list cannot be drawn in a case of this nature involving multiple posts or one post in multiple unit offices where the recruitment is made through a single competitive examination and by drawing a single ranking list. If any such reserve list is drawn, it will complicate the whole process and it will end up in conducting another exhaustive



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process to re-accommodate already selected candidates who are more meritorious than the petitioners. The petitioners cannot be straightaway accommodated in the posts in which the candidates selected have not joined or left since the first option must be given only to those who are more meritorious and the petitioners will come into the scene only after that rearrangement is made. Therefore, there is every justification for the TNPSC not to undertake this complicated process and rather carry forward those vacancies to the next recruitment.

22.In the light of the above discussion, this Court does not find any illegality or arbitrariness in Clause 4 of the Office Order No.134 dated 12.11.2020 issued by the TNPSC. The second point that was taken for consideration is answered accordingly.

23.The conspectus of the above discussion leads to the only conclusion that both the writ petitions deserves to be dismissed and accordingly, they stand dismissed. No costs. Consequently, connected miscellaneous petition is closed.

08.08.2024

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To

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Rep.by the Secretary
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N.ANAND VENKATESH. J.,

KP

**Pre-Delivery Common Order in
W.P.Nos.32640 & 32644 of 2023**

08.08.2024

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