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WA Nos.1917 of 2019 and 693 of 2



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21-06-2024

CORAM

**THE HONOURABLE MR.JUSTICE S.M. SUBRAMANIAM
And
THE HONOURABLE MR. JUSTICE C.KUMARAPPAN**

**WA Nos.1917 of 2019 and 693 of 2021
And
CMP Nos.13066 of 2019 and 3845 of 2021**

WA No.1917 of 2019:

A.Ramesh

.. Appellant in WA 1917/2019

-Vs-

- 1.Tamil Nadu Public Service Commission,
Represented by its Secretary,
Fraser Bridge Road,
Park Town,
Chennai-600 003.
- 2.The Commissioner,
Hindu Religious and Charitable Endowment
Department,
Nungambakkam,
Chennai-600 034.



3.E.Rajeshwari

[R-3 impleaded vide order of Court made in

WMP No.25273 of 2019 in WP No.1917

of 2019 dated 19.07.2019]

.. Respondents in WA 1917/2019

WA No.693 of 2021:

Tamil Nadu Public Service Commission,

Represented by its Secretary,

Fraser Bridge Road,

V.O.C.Nagar,

Chennai-600 003.

.. Appellant in WA 693/2021

-Vs-

1.E.Rajeshwari

2.The Commissioner,

Hindu Religious and Charitable Endowment

Department,

Nungambakkam,

Chennai-600 034.

.. Respondents in WA 693/2021

WA No.1917 of 2019 is preferred under Clause 15 of the Letters Patent against the order passed by this Court in WP No.32801 of 2015 dated 21.03.2018.



WA No.693 of 2021 is preferred under Clause 15 of the Letters Patent against the order passed by this Court in WP No.14440 of 2018 dated 01.08.2019.

For Appellant in WA 1917/2019 : Ms.Susanna Prabhu

For Appellant in WA 693/2021 : Mr.P.S.Raman,
Advocate General Assisted by
Mr.I.Abrar Mohamed
Abdullah,
Standing Counsel for TNPSC.

For Respondent-1 in WA 1917/2019: Mr.P.S.Raman,
Advocate General Assisted by
Mr.I.Abrar Mohamed
Abdullah,
Standing Counsel for TNPSC.

For Respondent-1 in WA 693/2021 : Mr.V.Raghavachari,
Senior Counsel for
Ms.V.Srimathi.

For Respondent-2 in WA 1917/2019: Mr.S.Ravichandran,
and WA 693/2021 Additional Government
Pleader
[HR&CE]



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WA Nos.1917 of 2019 and 693 of 2



For Respondent-3 in WA 1917/2019: Mr.V.Raghavachari,
Senior Counsel for
Ms.V.Srimathi

COMMON JUDGMENT

[JUDGMENT OF THE COURT WAS DELIVERED

BY S.M.SUBRAMANIAM, J.]

The legal principles governing for selection to public posts are:-

(1) Applications submitted by the candidates aspiring to secure employment must be strictly scrutinised in accordance with the terms and conditions stipulated in the Recruitment Notifications.

(2) Process of selection must be conducted in accordance with the Rules.

(3) Rejection of application or disqualification of candidates must be done by following the due process.

(4) Mere selection would not confer any right on the candidates. In other words, the selected candidates cannot seek appointment as a matter of absolute right.



2. Therefore, the process of selection or selected candidates possess limited right with reference to the Rules for selection and it is the prerogative of the employer to appoint the selected candidates. This exactly is the reason why the Courts have reiterated that mere selection would not confer any right on the selected candidates.

3. Equally the right of an employer is to be considered.

(1) The Competent Authorities/employers are empowered to take administrative decision to fill up the posts

(2) It is the prerogative of the employer to fix the educational qualifications, age and other criterias for selection and appointment, unless such criterias fixed are contrary to the Service Rules.

(3) Employers are empowered to assess the suitability and eligibility of the candidates for selection and appointment, and it is their prerogative. The scope of judicial review in the matter of eligibility and suitability is limited.

(4) Courts cannot sit as an Appellate Authority to revise the decisions taken by the Selection Committee regarding suitability. Suitability, being the subjective satisfaction of the Selection Committee, interference



would result in larger repercussions affecting the rights of other candidates, who all are selected. Thus the scope of judicial review is limited and the High Court is expected to exercise restraint in selection matters, more specifically, in the matter of assessment of suitability by the Selection Committee.

4. Undisputed facts between the parties are that Recruitment Notification for selection and appointment to the post of Assistant Commissioner and Executive Officer in Hindu Religious, Charitable and Endowments Department [hereinafter referred to as the 'HR&CE' Department, in short], was issued by the Tamil Nadu Public Service Commission [hereinafter referred to as the 'TNPSC', in short]. However, the litigations on hand are connected with the post of Assistant Commissioner of HR&CE Department.

5. The appellant in WA No.1917 of 2019 Mr.A.Ramesh and the first respondent in WA No.693 of 2021 Smt.E.Rajeshwari participated in the process of selection and appointment to the post of Assistant Commissioner in HR&CE Department.



6. It is not in dispute that Mr.A.Ramesh, appellant in WA No.1917 of 2019, was selected and his name was ranked as No.1 in the Select List. However, the first respondent in WA No.693 of 2021 Smt.E.Rajeshwari was placed in Rank No.8 in the General Selection List.

7. The case of Smt.E.Rajeshwari was allowed by the Writ Court in WP No.14440 of 2018 dated 01.08.2019. Thus TNPSC filed WA No.693 of 2021.

8. Mr.P.S.Raman, learned Advocate General would submit that the first respondent has no vested right to seek selection and appointment in view of the fact, her name was placed in Rank No.8 and cancellation of selection order of Mr.A.Ramesh would not confer any right on the first respondent to seek selection and appointment.

9. No Reserve List was published for the selection conducted in the year 2011-2012 to the post of Assistant Commissioner in HR&CE Department. In the absence of any Reserve List, the first respondent cannot seek selection and appointment automatically.



10. The learned Single judge has considered the fact that the selection of Mr.A.Ramesh was cancelled. Therefore, the name of the first respondent Smt.E.Rajeshwari is to be included in the Select List under the Scheduled Caste Community category. One post is reserved for Scheduled Caste Community. When Mr.A.Ramesh was excluded from the Selection List, automatically the name of the first respondent Smt.E.Rajeshwari must be included in the Select List. Such a proposition adopted by the Writ Court is untenable, in view of the fact that Smt.E.Rajeshwari was not selected by TNPSC. Thus, the non-selected candidates cannot seek selection and appointment merely on the ground that one selected candidate was disqualified on account of concealment of certain material facts relating to departmental disciplinary proceedings initiated and pending against the said candidate.

11. In support of the contention, the learned Advocate General would rely on the judgment of the Supreme Court in the case of **Satish Chandra Yadav vs. Union of India and Others** [((2023) 7 SCC 536], wherein the Supreme Court observed as follows:-



will be the first candidate under the Scheduled Caste Community category and automatically she will be selected, since the name of Mr.A.Ramesh was excluded from the Select List. On account of the lapses committed by TNPSC, the first respondent cannot be made to suffer, as she was also a candidate in the list published by TNPSC, wherein her name is ranked as No.8.

14. Mr.V.Raghavachari, learned Senior Counsel would rely on third Proviso to Rule 4 of Tamil Nadu State and Subordinate Service Rules and contend, in respect of each reserved vacancy to be filled by the candidate belonging to Scheduled Caste or Scheduled Tribe, the names of the first two qualified candidates belonging to the Scheduled Caste, as the case may be, shall be considered subject to their availability.

15. Therefore, two Scheduled Caste Community candidates ought to have been considered for inclusion in the Selection List. In the present case, the first two candidates are Mr.A.Ramesh and the first respondent Smt.E.Rajeshwari. Therefore, since Mr.A.Ramesh was excluded from the Select List, the first respondent Smt.E.Rajeshwari ought to have been selected in the place of Mr.A.Ramesh.



16. In support of the said contention, the judgment of the Division Bench of this Court in the case of **The Secretary, Tamil Nadu Public Service Commission, Omandurar Government Estate, Chennai 600 002 vs. R. Nagarajan and Others [2008 (6) MLJ 1259]**, is relied upon. The Division bench made an observation that the duty of Public Service Commission is only to make available to the Government a complete list of qualified candidates arranged in order of merit. It is for the State to make appointments accordingly.

17. Therefore, the Writ appeal preferred by TNPSC itself is not maintainable and TNPSC is not the Appointing Authority. They, being the Recruiting Agency, have got limited role to send the Select List to the Appointing Authority for issuance of appointment order. The order passed by the learned Single Judge of this Court in the case of **Dr.D.Karal and Others vs. State of Tamil Nadu, Represented by its Secretary, Health and Family Welfare Departmental, Chennai and Others [(2009) 1 MLJ 1259]** is relied upon and the learned single judge in the said order made an observation as follows:-



"14. It is to be noted that Appointing Authority viz., Government has not preferred any appeal. As held in AIR 1987 SC 169 [Miss Neelima Shangla v. State of Haryana and ors.], duty of Public Service Commission is only to make available to the Government a complete list of qualified candidates arranged in order of merit. It is the Government who strictly appoints in the order in which they have been placed by the Commission as a result of the examination. When there are resultant vacancies, TNPSC cannot contend that the selected list prepared in 2002 got expired. In fact, while issuing notification inviting applications for 44 vacancies of Additional Public Prosecutor Grade II, it was notified that "the recruitment of the posts is subject to the result of various cases filed in the High Court Madras, which are still pending". Having said so, the appellant is not justified in contending that at present there is no vacancy. This is all the more so, when the Government and TNPSC had taken time in the contempt proceedings for implementing the order."

18. The first respondent Smt.E.Rajeshwari was included in the list in Rank No.8. Therefore, the Writ Court has rightly considered the



issues and allowed the writ petition. Thus no interference is called for.

19. We have considered the rival submissions made on behalf of the parties to the lis on hand.

20. Admittedly, the selection was of the year 2011-2012 for the post of Assistant Commissioner in HR&CE Department. Mr.A.Ramesh was a selected candidate and placed in Rank No.1 and he belongs to Scheduled Caste Community. The first respondent Smt.E.Rajeshwari was also a Scheduled Caste Community candidate, ranked No.8. However, the first respondent Smt.E.Rajeswari was not a selected candidate. Since the notified posts were four in numbers. Therefore, TNPSC selected four candidates and finalised the Select List in the year 2013.

21. Perusal of the list of candidates selected provisionally to the post of Assistant Commissioner in HR&CE Department reveals that four candidates were selected for four notified vacancies as per the Recruitment Notification and those candidates are as under:-

- (1) Thiru Ramesh, A.,
No.1, VOC Nagar 4th Street,
Perambur Baracks Road,
Pulianthope,



Chennai-600 012.

- (2) Thiru Sivalingam, D.,
No.158, Mariyamman Koil Street,
Rajanthangal Village,
Sanipoondi Post, T.V.Malai,
Thiruvannamalai-606 755.
- (3) Thiru Senthil Kumar, R.,
16, Ramamoorthi Layout,
V.Marudur,
Villupuram-605 602.
- (4) Tmt/Selvi Harishinii S.V (@),
W/o.N.Krishnamoorthy,
Salaipudur,
Chencheriputhur Post,
Coimbatore-641 671.

22. There is no controversy between the parties that Reserve List was not published by TNPSC only for 2011-2012. It is further made clear for the post of Assistant Commissioner in HR&CE Department, further notification was issued for the year 2012-2013. The first respondent Smt.E.Rajeshwari participated in the said selection process and was unsuccessful. Subsequently, she has participated in another selection process for appointment to the post of Executive Officer-Grade IV selected and now she is working as Executive Officer Grade-II in HR&CE Department.



23. Therefore, the first respondent Smt.E.Rajeshwari cannot be construed as selected candidate for selection and appointment to the post of Assistant Commissioner in HR&CE Department for the year 2011-2012 and 2012-2013. The selection of the year 2013 to the post of Assistant Commissioner in HR&CE Department, is not in dispute.

24. The question arises whether an unsuccessful non-selected candidate in the recruitment process can seek selection merely on the ground that the selected candidate was excluded on account of concealment of certain material facts before the Selection Committee. In other words, the exclusion of Mr.A.Ramesh from the Select List would confer no right to the non-selected candidate to seek inclusion in the Select list.

25. The legal position is unambiguous. Even a selected candidate has no right to claim appointment, and least the non-selected candidate. Once a candidate is not selected in the recruitment process, he/she is ousted from the selection process and further process will be undertaken only in respect of the selected candidates. Therefore, the names of non-selected candidates will be dropped and their right to participate in



further process were ceased to exist.

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26. The next question would be non-publication of Reserve List by TNPSC can be considered as a ground to consider the case of non-selected candidates for inclusion of their names in the Select List.

27. In this context, the learned Advocate General would submit that publication of Reserve List is not mandated under the Statutes or Regulations. However, TNPSC prepared the Reserve List for every selection and published the same in order to ensure that notified posts are filled and not left unfilled. It is for the convenience of TNPSC and the employer to ensure that the notified posts filled. The life of the Reserve Lists exist until the next selection notification has been issued. Even in case, the Reserve List has been published in the present case for the selection of the year 2011-2012 and presuming that the name of the first respondent Smt.E.Rajeshwari was included in the Reserve List, the validity of the said Reserve List would have been lapsed before appointment of the selected candidates. Since further selection notification for Assistant Commissioner in HR&CE Department was published by TNPSC for the year 2012-2013. Therefore,



non-publication of Reserve List had no impact in respect of the selection made for appointment to the post of Assistant Commissioner in HR&CE Department for the year 2011-2012.

28. Pertinently, the first respondent Smt.E.Rajeshwari has not questioned the non-publication of Reserve List during the relevant point of time. She had participated in the process of selection notification for the year 2012-2013 and was unsuccessful in the said selection.

29. That being the case, now she cannot turn around and claim that her name ought to have been included by publishing the Reserve List for selection of the year 2011-2012.

30. The Fourth Proviso to Rule 4 of Tamil Nadu and Subordinate Service Rules, as relied upon by Mr.V.Raghavachari, learned Senior Counsel for the first respondent, has no application. Non-selected candidates cannot rely on the said Rule, which is to be applied for the qualified selected candidates. The Proviso Clause further speaks about the reserved vacancy to be filled up by the candidate belonging to the Scheduled



Caste Community. The question of filling up of the vacancies would arise only if persons are selected.

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31. In the present case, the first respondent Smt.E.Rajeshwari was not even selected by TNPSC and her case was that Reserve List ought to have published by TNPSC and if at all such Reserve List is published, her name would have been placed in Rank No.1. Since Mr.A.Ramesh was disqualified, her name ought to have been included in the select list.

32. All such ifs and buts cannot be a ground to select and appoint a person in the recruitment process. The process of selection conducted reveals that four candidates were selected and rest of the candidates were not selected. The Reserve List was not published. The non-publication of Reserve List would not vitiate the entire selection process. Therefore, the first respondent Smt.E.Rajeshwari remained as non-selected candidate. The candidature of Mr.A.Ramesh was disqualified for concealment of the departmental proceedings/punishment pending against him. Therefore, the said vacancy continued to be vacant in the Department.



33. In the present case, the Recruitment Notification was issued immediately next year i.e., 2012-2013. That being the case, now the first respondent Smt.E.Rajeshwari cannot seek selection. The first respondent, being a non-selected candidate, cannot seek selection merely on the ground that Reserve List ought to have published and after disqualification of Mr.A.Ramesh, her name should have been included in the Select list.

34. Therefore the first respondent Smt.E.Rajeshwari has not established any right to secure selection and appointment to the post of Assistant Commissioner in HR&CE Department. Once the right for selection has not been established, the relief granted for selection and appointment by the Writ Court is infirm.

35. Regarding WA No.1917 of 2019, Ms.Susanna Prabhu, learned counsel appearing on behalf of the appellant, would submit that the appellant Mr.A.Ramesh has not concealed any material facts. Charges under Rule 17(a) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules, was issued. Subsequently after submission of application by the appellant, punishment under Rule 17(b) of the Tamil Nadu Civil Services (Discipline



and Appeal) Rules, was imposed in the year 2014. Therefore, the reasons stated for cancelling the selection is unsustainable.

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36. The learned Single Judge disagreed with the appellant Mr.A.Ramesh mainly on the ground that the appellant was facing 17(b) charges during the relevant point of time when the selection process was in progress. When 17(b) charges were pending and the appellant was facing the proceedings, he was disqualified.

37. We would like to add, beyond concealment of pendency of the disciplinary proceedings or the punishment imposed thereon, the assessment of suitability is the prerogative of the Selection Committee/employee. More specifically, the suitability is to be assessed by verifying the character and antecedents of the persons. The High Court cannot act as an Expert Body by assessing the character and antecedents of a candidate and should be done by the Competent Authority.

38. In this context, the judgment earlier we have referred,



namely, **Satish Chandra Yadav vs. Union of India and Others [((2023) 7 SCC 536]**, the Apex Court held that employer has a right to consider the antecedents and cannot be compelled to appoint the candidate. The acquittal in a criminal case would not automatically entitle a candidate for appointment to the post. It would be still open to the employer to consider the antecedents and examine whether the candidate concerned is suitable and fit for appointment to the post. Therefore, the scope of judicial interference in selection matters are limited and judicial restraint is required in such matters, more specifically, when verification of character and antecedents are done by Selection Committee/Competent Authority.

39. The Supreme Court in unequivocal terms held that even in case where the employee has made declaration truthfully and correctly about his/her involvement criminal case, the employer still has the right to consider the antecedents and cannot be compelled to appoint the candidate. This being the term emphasised by the Apex Court, we do not find any reason to interfere with the Writ Order passed by the learned Single Judge in rejecting the prayer made by the appellant Mr.A.Ramesh.



40. The learned counsel appearing on behalf of Mr.A.Ramesh in WA No.1917 of 2019 would submit that the appellant was debarred from participating in TNPSC examinations indefinitely. Such a penalty imposed on the appellant Mr.A.Ramesh seems to be harsh.

41. Perusal of the disciplinary proceedings would reveal that there is no allegation of corruption charges or serious imputations against the appellant Mr.A.Ramesh. The punishment imposed on him may be a disqualification in the particular selection of the year 2011-2012. Already Mr.A.Ramesh had suffered debarment for about 10 years.

42. That being the factum, there is no impediment for the appellant Mr.A.Ramesh to participate in the forthcoming recruitment process, if any notified by TNPSC. In other words, TNPSC shall not reject the application for any other recruitment made hereinafter in the event of receiving any application for the appellant Mr.A.Ramesh. Further, it is informed that the appellant was exonerated from the punishment and the charges levelled against him.



43. For the reasons stated above, the impugned order dated 01.08.2019 passed in WP No.14440 of 2018, is set aside and WA No.693 of 2021 filed by TNPSC stands allowed. The impugned order dated 21.03.2018 passed in WP No.32801 of 2015 stands confirmed and WA No.1917 fo 2019 is dismissed. However, there shall be no order as to costs. Consequently, the connected miscellaneous petitions are closed.

(S.M.SUBRAMANIAM,J.) (C.KUMARAPPAN,J.)

21-06-2024

Index : Yes/No
Internet: Yes/No
Speaking order/Non-Speaking order
Neutral Citation : Yes/No
Svn/Sha



To

1. The Secretary,
Tamil Nadu Public Service Commission,
Fraser Bridge Road,
Park Town,
Chennai-600 003.
2. The Commissioner,
Hindu Religious and Charitable Endowment
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