



W.P.(MD)Nos.11995, 11833, 2057, 1425 to 1427 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 11.06.2024

CORAM

THE HONOURABLE MS JUSTICE R.N.MANJULA

W.P.(MD)Nos.11995, 11833, 2057, 1425 to 1427 of 2024

and

W.M.P(MD)Nos.10682, 10552, 2073, 1463, 1467, 1470 of 2024

W.P(MD)No.11995 of 2024:

1.R.Saravanan

2.N.Vengatesan

3.K.Esakki Muthu

... Petitioners

Vs.

1.The State of Tamil Nadu

Represented by its Deputy Secretary to Government,

Human Resource and Management Department,

Secretariat,

Chennai - 600 009.



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2.The Secretary

Tamil Nadu Public Service Commission,
TNPSC Road,
Broadway,
Chennai - 600 003.

3.The Member Secretary,

Tamil Nadu Uniformed Services Recruitment Board,
Old Commissioner of Police Office Campus,
Egmore,
Chennai – 600 008.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Mandamus to direct the respondents to consider the petitioners for appointment to the posts of Group II A posts under Ex-Serviceman Category in pursuant to the then notification No.3/2022, dated 23.02.2022 on the basis of the merit of the respective candidates and allow them to participate in the further process.



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In all Writ Petitions

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For Petitioners : Mr.M.Ajmal Khan
Senior Counsel
for M/s.Ajmal Associates
For Respondents : Mr.M.Lingadurai- for R1
Special Government Pleader
Mr.V.Panneer Selvam - for R2

COMMON ORDER

Since the issue raised in these writ petitions is one and the same, these writ petitions are disposed of, by way of this common order.

2. Heard Mr.M.Ajmal Khan, learned Senior Counsel for M/s.Ajmal Associates appearing for the petitioners, Mr.M.Lingadurai, learned Special Government Pleader appearing for the first respondent and Mr.V.Panneer Selvam, learned counsel appearing for the second respondent.



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3. The petitioners who are Ex-servicemen had applied to the post called for by TNPSC / Group II / Group II (A) and Group – IV services. The Notification calling for Group II(A) posts has been issued on 23.02.2022 and Notification calling for Group IV posts has been issued on 24.07.2022. The preliminary examination for Group–II(A) has been conducted on 21.05.2022 and the main examination was scheduled to be held on 25.02.2023.

4. Group IV Service did not have preliminary or main examinations, but also a competitive examination. The said examination for Group-IV examination was held on 24.07.2022.

5. The result of the preliminary examination for Group-II(A) was published on 08.11.2022. The main examination for Group-II(A) was scheduled on 25.02.2023.



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6. Even though Group-II(A) was notified before the notification issued for Group-IV posts, the results for Group-IV has been published earlier on 24.03.2022 and the Group-II(A) posts were published on 11.01.2024.

7. The petitioners who have got selected in Group-IV posts have joined on 08.08.2023. When the results for main examination for Group-II(A) was published on 11.01.2024, the petitioners found that they have also cleared the main examination for Group-II(A). The petitioners have given with the call letters to participate in the counselling. Since the petitioners had already joined in Group -IV Service and passed Group-II(A) main examination and got call letters from the second respondent, they sought permission from the Department by making representation on 26.09.2023. But through a letter, dated 09.12.2023, the first respondent has rejected the representation of the petitioners stating that as per the proviso to Rule 3(j)(x) of Tamil Nadu Government Service Conditions of Rules and Act, once an Ex-serviceman is



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recruited to any post in any service or class of category, he cannot claim concession of being called an Ex-serviceman for being considered his further recruitment.

8. By citing the above Rules, the petitioners' request seeking permission to participate in the counselling was rejected. Now, the petitioners have filed these writ petitions challenging the above impugned order, dated 09.12.2023 and requested the relief of setting aside the same along with a direction to the respondents to allow them to participate in the further selection process.

9. The one and only reason why the petitioners were denied permission to participate in the counselling that might be held in any short time, is due to their joining in Group IV Services, result of which, has been published prior to the publishing of the Group-II(A) results.



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10. All these confusions are caused only because of the intensity on the part of the second respondent to release the results of the higher services later than the lower services even if the Notification for the higher service has been issued earlier than the Group-IV services. In view of the above fact, the petitioners are before this Court.

11. Rule 3(j)(x) of Tamil Nadu Government Servants (Conditions of Service) Act, 2016 would define the Ex-serviceman. There is no quarrel on the point that the petitioners are Ex-servicemen. The hurdle comes only due to the existence of the proviso to Rule 3(j)(x) which reads as under :

*(3)(j) “**ex-servicemen**” means,.....*

(x) Such other person as may be notified by the Government from time to time;

Provided that in all cases, an ex-serviceman once recruited to a post in any service or class or category, cannot claim



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the concession of being called an ex-serviceman for his further recruitment:

12. So once an Ex-serviceman is recruited to the posts in Public Service, they cannot claim the same concession for further recruitment. But here is the extraneous circumstance where the petitioners who are Ex-servicemen have applied for both the post under Group-IIA and Group – IV and they had written the examination for both the Groups. Unfortunately, second respondent has released the result of Group-IV before releasing the result of Group-IIA. The persons like petitioners who are qualified for consideration under both the services did not have the mind to take risk and they had join Group-IV services, once its results were published. When the results for Group-IIA were published, they came to know that they have been coming under the zone of consideration for Group-IIA also in view of their pass in the main examination.



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13. This is not the case where the Ex-servicemen were already joined in one service that is Group-IV and thereafter, applied to other service called for Group II(A) services. Neither the petitioners have got any selection through promotion from the Department where they have joined. As they had applied to the post called under Group-IIA also, even before they got selected and joined in Group-IV service.

14. There cannot be any second opinion when a group of persons were ex-service person once had availed the concession, cannot seek the same concession once again. Here is a case where the petitioners who had availed the concession for a lower cadre posts has sought permission to shift to higher level posts by availing the benefit of their selection to Group-IIA, for which they had already applied and written the examination even before jointing the Group-IV post.



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15. Had the petitioners availed the concession and service in any one category and later resigned or dismissed or even completed the said service and then opted to apply to the other service also, on the basis of the concession available to the Ex-serviceman, it is right to invoke the restriction under proviso to Rule 3(j)(x). As stated already, the petitioners have applied for both Group-IIA and Group-IV post and Group-IIA notification had been issued prior to Group-IV. Obviously, if Group-IIA results were published, the petitioners would have naturally opted to avail the concession by joining in Group-IIA post and they would not have preferred to join Group-IV post.

16. Even by giving some technical interpretation the phrase “*recruited direct to a service*” as defined under Rule 3(r), the petitioners would still be at in a better position. Rule 3(r) of Tamil Nadu Government Servants (Conditions of Service) Act, would define “*recruited direct to a service*” as below :

3(r) “*recruited direct to a service*”



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means when a candidate, in case his first appointment to a service, class or category has to be made in consultation with the Commission, on the date of its notification inviting applications for the recruitment and in any other case, at the time of his first appointment thereto, he is not in the service of the Government of India or the Government of a State:

Provided that, for the purpose of this definition, a person shall be deemed to be not in the service of the Government of India or the Government of a State—

(i) if a period of five years has not elapsed since his first appointment to a service of the Government of India or the Government of a State; or

(ii) if he belongs to the Scheduled Castes, Scheduled Tribes or Backward Classes;

17. As per the above rule, the purpose of the above



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definition, a person shall be deemed to be not in services of the State Government or Central Government unless he has completed 5 years of service from his first appointment to the service or he belongs to Scheduled Castes, Schedules Tribes or Backward Classes.

18. As the petitioners have not been completed 5 years of service, they cannot be deemed to be in service. The position in some of the petitioners belongs to Scheduled Castes, Schedules Tribes or Backward Classes.

19. But the matter in issue does not relate to the definition of “**recruited direct to a service**”. But its spins around the fact whether the persons who have availed the concession can be allowed to take the concession once again in some other service.

20. As stated already, the facts of this case are distinguishable in view of their applications held to both the services in one and the same time, in view of the fact that the notification for



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Group -IIA was issued earlier than Group-IV. The petitioners have not completed their probation.

21. So far as these petitioners are concerned, they do not belong to the category of persons, who are going to complete their services in Group-IV or resign their posts or have been dismissed or gone on voluntary retirement and then opt to join the Group-IIA by availing the very same concession.

22. This is a simple case where the persons who are in a lower service seeks permission to participate in the counselling for the higher service because they happened to get the results of the higher service later than the results of the lower service. So the best thing which can be done by the first respondent for the petitioners in the event of their selection in Group-IIA counselling would be relieving them in order to enable them to join in the higher post for which they have been selected.



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23. At this juncture, the learned counsel for the second respondent brought to the attention of this Court that some other Ex-serviceman have filed Writ petitions in W.P.Nos.13550 and 13553 of 2024 seeking a Writ of Certiorarified Mandamus to call for the records of the second respondent and its publication, dated 07.05.2024 comprising the Register Number of candidates admitted provisionally for physical certificate verification and counselling for filling up posts notified in Advertisement No.605 Notification No. 03/2022, dated 23.02.2022 and quash the same insofar as the said list includes the register numbers of Ex-serviceman who have already availed the benefit of 5% reservation for Ex-serviceman in State Services under Section 27(c) of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016 in accordance with law.

24. It is also brought to the notice of this Court that an interim order of stay has been granted for publishing the list of candidates who have been selected subsequent to their physical

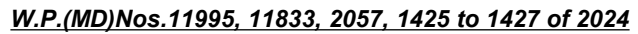


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certificate verification and counselling for filling up the post in Group-IIA service until the second respondent/TNPSC could identify and eliminate the register numbers of Ex-serviceman who have already availed the concession. As stated already, persons once availed the benefits shall not be allowed to avail the concession once again. Even without a petition filed by a private person like the petitioners in W.P.Nos.13550 and 13553 of 2024, a duty is bestowed on the second respondent to identify the persons who have availed concession earlier and delete their names in order to ensure that they are not availing the concession once again.

25. As already elaborated, these petitioners stand in a different footing, for the reasons already detailed above and hence, the above writ petitions cannot have any impact on these writ petitioners, who have just sought permission of the first respondent to allow them to participate in the counselling scheduled to be held for Group-IIA services and relieve them in case they are chosen in Group-IIA services. So as against these petitioners, they are not



26. So the respondents ought to have understood the
caused to the petitioners in view of their own fault of
the results of the higher service later than the results
for the lower service.

27. Even though an interim order has been granted in W.P.Nos.13550 and 13553 of 2024, that would be only to the limited aspect of releasing the list of selected candidates who have been admitted provisionally for physical certificate verification and counselling. So what is applicable for every other Ex-serviceman who are allowed to participate for physical certificate verification and counselling will be applicable to these petitioners also after they are allowed to participate in the counselling. Hence, the second respondent has got no difficulty to comply with the orders passed by



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both the Benches in both the writ petitions. Since the relief sought in both the writ petitions are different and the repercussion of the stay order granted in the earlier writ petition also does not have any impact upon permitting these petitioners to participate in the counselling that is going to be held shortly.

28. It is clarified that these petitioners will be exempted while identifying the persons who have already availed the concession in public service in view of the orders now passed in their favour.

29. In view of the aforesaid discussion, the respondents are directed to consider the petitioners' claim for appointment to the post of Group-IIA posts under Ex-serviceman category in pursuant to the then notification No.3 of 2022, dated 23.02.2022 on the basis of merit and allow them to participate in the further selection process.



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30. With the above observation and direction, these Writ Petitions are allowed. No costs. Consequently, connected miscellaneous petitions are closed.

11.06.2024

NCC :yes/no

Index :yes/no

Internet:yes/no

RM



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- 1.The State of Tamil Nadu
Represented by its Deputy Secretary to Government,
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Secretariat,
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R.N.MANJULA, J.

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