



W.A(MD)No.916 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 20.11.2024

CORAM

**THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN
and
THE HONOURABLE MS.JUSTICE R.POORNIMA**

W.A(MD)No.916 of 2019

The Secretary,
Tamil Nadu Public Service Commission,
Frazer Bridge Road, V.O.C.Nagar,
Park Town,
Chennai – 600 003.

... Appellant /
9th Respondent

Vs.

1.Paramanantham

... 1st Respondent /
Writ Petitioner

2.Government of Tamil Nadu
Rep.by its Chief Secretary,
Secretariat, Fort St.George,
Chennai – 600 009.

3.The Director,
Directorate of Public Health and
Preventive Medicine,
No.359, Anna Salai,
Chennai – 600 006.

4.The Commissioner of Treasuries
and Accounts,
O/o.The Commissioner of
Treasuries and Accounts,
571, Anna Salai, Nandanam,
Chennai - 600 035.



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5.The Commissioner of Commercial Taxes,
O/o.the Commissioner of Commercial Taxes,
Chennai – 600 006.

6.The Director,
NCC Directorate (TN, P&AN),
State Cell, Chennai – 600 009.

7.The Inspector General of Registration,
O/o. The Inspector General of Registration,
100, Santhome High Road,
Chennai – 600 028.

8.The Chief Engineer,
State Highway Department,
HRS Complex,
76, Sardar Patel Road,
Guindy, Chennai – 600 025.

9.The Principal Chief Conservator of
Forest,
O/0.The Principal Chief Conservator
of Forest,
Panagal Maligai,
Saidapet, Chennai – 600 015.

... 2 to 9th Respondents /
1 to 8 Respondents

Prayer: Writ Appeal filed under Clause 15 of Letters Patent, to set aside the order made in WP(MD)No.10797 of 2017 dated 29.04.2019 by allowing the writ appeal.

For Petitioner : Mr.V.Panneer Selvam

For Respondents : Mr.G.Prabhu Rajadurai
for Mr.I.Robert Chandrakumar for R1

Mr.M.Siddarthan,
Additional Government Pleader
for R2 to R5, R7 to R9



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JUDGMENT

(Judgement of the Court was delivered by G.R.SWAMINATHAN, J.)

Heard both sides.

2.The writ petitioner/first respondent herein belongs to Scheduled Caste community. The appellant TNPSC published notification on 06.02.2014 calling for applications for Combined Civil Services Examination – II (Non-Interview Post) (Group – IIA Services). Totally 2269 vacancies were notified in the posts of Personal Clerks and Assistants in various departments. Subsequently, a supplemental notification was issued on 16.04.2014 adding 577 posts of Assistants and Accountants. Thus, the total notified vacancies was 2846. The writ petitioner wrote the written examination on 29.06.2014. TNPSC published the provisional list of selected candidates on 14.07.2015 to attend the second phase of certificate verification. The writ petitioner's name figured in the said list. He was however not appointed. His name figured in the provisional list of the selected candidates for the fifth phase of certificate verification published on 02.03.2016. But he was not appointed. In the meanwhile, recruitment notifications for the years 2014-15 and 2015-16 were notified.



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3.The writ petitioner sought information under the RTI Act regarding the number of vacancies and the persons appointed during the five phases of certificate verifications. Information was provided. The writ petitioner noted that a large number of notified vacancies were not filled up on account of the non-joining by the selected candidates. It was also informed that only 2690 candidates were appointed. In this background, the petitioner filed WP(MD)No.10747 of 2017. The writ petition was allowed on 29.04.2019. Questioning the same, TNPSC filed this intra-court appeal.

4.The learned standing counsel for TNPSC submitted that TNPSC did not prepare any Reserve List since the recruitment involved multiple posts and in multiple unit offices. Reliance is placed on the order dated 08.08.2024 made in WP Nos.32640 and 32644 of 2023. The learned standing counsel reiterated all the contentions set out in the memorandum of grounds of appeal. He called upon this Court to set aside the impugned order and allow this writ appeal.

5.Per contra, the learned counsel appearing for the writ petitioner submitted that interference is not warranted. He called upon this Court to dismiss the writ appeal.



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6.We carefully considered the rival contentions. The recruitment process took place before the enactment of Tamil Nadu Act 14 of 2016. However, there were statutory rules corresponding to Section 3(u) and proviso 2 to Section 27(f) of the Act. Rule 22 of the Tamil Nadu State and Subordinate Service Rules contained the following proviso :

“Provided also that when a candidate selected for appointment against a vacancy for Scheduled Castes, Scheduled Tribes, Most Backward Classes/Denotified Communities, Backward Classes, Backward Class Muslims or General Turn, does not join duty in the post for which he is appointed or his provisional selection for that post is cancelled for any reason, a candidate in his place shall be appointed from the respective @category and in accordance with the ranking from the Reserve list:”

The scope of the above Rule and the right of a candidate whose name is included in the Reserve List has been dealt with in a catena of decisions. In ***Dr.D.Karal vs The State Of Tamil Nadu (2009) 1 MLJ 1259***, the petitioners applied for the post of Assistant Surgeon (Dental) in the Tamil Nadu Medical Service. They were in the Reserve List. Even though 14 selected candidates failed to join duty, the petitioner who were in the Reserve List were not given appointments. Instead, a fresh recruitment notification was issued. The writ petition was allowed by applying the ratio laid down by the Hon'ble Division Bench in the decision reported in ***(2008) 3 L.W. 222 (The Secretary, TNPSC v. R.Nagarajan)***. The Hon'ble Division Bench had held that it is a fallacy to argue that persons in the Reserve List cannot be appointed in the vacancies



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caused on account of the selected candidates not joining the posts. To the same effect is the decision rendered in ***M.Pradeepa v. The Secretary to Government, HR&CE Department (2016 SCC OnLine Mad 23971)***. In paragraph 9, the issue to be answered was framed as follows :

“When the petitioners are admittedly placed at Serial No.1 in the Reserve List in the respective categories ie., MBC and SC, whether they have a vested right to be appointed to the posts in question following non-joining of a selected candidate or a selected candidate leaving the job after joining duty.”

Following the decision of the Hon'ble Supreme Court rendered in ***Surinder Singh v. State of Punjab (1997) 8 SCC 488*** and earlier precedents, it was held that the candidates appropriately ranked in the Reserve List have the vested right to claim appointment for the posts in question when the selected candidates do not join or leave the posts after joining. The learned Judge also relied on the decision reported in (1994) 3 JT 559.

7.The learned Single Judge in the order impugned in this writ appeal had relied on the order dated 25.01.2019 in ***WP(MD)No.15009 of 2016 (Anbarasan v. Secretary to Government, Government of Tamil Nadu)***. Though this was confirmed by the Hon'ble Division Bench, the Hon'ble Supreme Court had stayed the operation of the order dated 07.11.2019 in WA(MD)No.866 of 2019. Copy of the interim order dated 27.01.2020 reads as follows :



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“Issue notice.

*In the meantime, there shall be stay of the operation
of the impugned judgment.”*

The question that calls for consideration is whether in view of the interim order granted by the Hon'ble Supreme Court, the order impugned in this writ appeal should be set aside. We are of the view that when the SLP has not attained finality, the issue can be disposed of on merits. It is not as if **Anbarasan** stands alone. There are several earlier decisions to the effect that candidates in the Reserve List have to be appointed when vacancies arise due to circumstances mentioned above. In fact, that is what the Rule itself states. The expression employed in the Rule is “Shall”. Of course, the order dated 08.08.2024 in WP Nos.32640 and 32644 of 2023 favors the stand taken by the appellant. We are however not inclined to approve the said decision for more than one reason. The learned Judge holds that there will be no issue to draw a Reserve List for a single post in a single examination. But things will get 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 single ranking list drawn. When the statute does not make a distinction between recruitment for single post in a single examination and multiple posts or one post in multiple unit offices on the other, it is not open to the Court to make such a distinction. The recruiting agency may have to do some extra work but that is its job and it cannot



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complain about the resulting complications. In fact, we do not see any complication at all. Once a person joins in a post, he must be taken to have exercised his option finally. He cannot subsequently complain about the joining of a lower ranked candidate in what is perceived as plum post. This is due to fortuitous circumstances. In the case on hand, recruitment is for the posts of Personal Clerks and Assistants and Accountants. They are in the same pay band. The learned Single Judge who dismissed WP Nos.32640 and 32644 of 2023 has not discussed the earlier precedents governing the issue.

8.The order impugned in this writ appeal is sustained. The writ appeal is dismissed. No costs.

[G.R.S., J.] [R.P., J.]
20.11.2024

NCC : Yes / No
Internet : Yes / No
Index : Yes / No
SKM

To

- 1.The Directorate of School Education,
College Road, Chennai – 600 006.
- 2.The District Educational Officer,
Thuckalay, Kanyakumari District.
- 3.The Corporate Manager,
Corporate Management,
Kanyakumari Diocese,
Kanyakumari District.



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and

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