



W.P.(MD)No.17468 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 30.07.2024

CORAM

THE HONOURABLE MS JUSTICE R.N.MANJULA

W.P.(MD)No.17468 of 2024

and

W.M.P.(MD).No.15011 of 2024

S.Karuppaiah

... Petitioner

Vs.

The Tamil Nadu Public Service Commission,
through its Secretary,
Chennai.

... Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Mandamus, directing the respondent to consider the candidature of the petitioner for selection to Group-II Services under Ex-Service man category in the Combined Civil Service Examination-II (Non Interview Post) in pursuant to the Notification No.03/2022 dated 23.02.2022 and conduct counselling in accordance with the rank of the petitioner in the examination.

For Petitioner : Mr.G.Prabhu Rajadurai

For Respondent : Mr.V.Paneerselvam,
Standing Counsel



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ORDER

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By consent of both parties, this Writ Petition is taken up for final disposal at the admission stage itself.

2. Heard Mr.G.Prabhu Rajadurai, learned counsel appearing for the petitioner and Mr.V.Paneerselvam, learned Standing Counsel appearing for the respondent.

3. The petitioner is an Ex-Militaryman, who has applied for the post of Commercial-cum-Ticket Clerk in the Indian Railways in the year 2019. After he had written the examination for the said post, the respondent / Commission issued a Notification in Notification No.3/2022, dated 23.02.2022, calling for application for Group II-(A) Services (Non Interview Post) by way of the Combined Civil Services Examination-II. The petitioner applied to the said post under the category of Ex-Serviceman quota and he attended the written examination on 25.02.2023. However, the results of the Indian Railways were released earlier and hence, the petitioner got selected as Commercial-cum-Ticket Clerk and joined the post on 28.12.2023. However, he is yet to complete his probation period.



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4. In the meanwhile, the respondent Commission published the results of the Group-II-(A) Services Examination and the petitioner found himself selected under the category of BC / Ex-Serviceman and he received a Call Letter for attending the Interview-cum-Certificate verification to be held on 18.06.2024. Thereafter, the petitioner intimated the Southern Railways about his selection in the Tamil Nadu Group II-(A) Services and the Southern Railways has issued No Objection Certificate on 30.05.2024 to participate in the selection process. The petitioner participated in the selection process and produced all his credentials. However, his candidature has been rejected stating that he has already got an appointment by making use of the Ex-Serviceman quota.

5. Mr.G.Prabhu Rajadurai, learned counsel appearing for the petitioner submitted that the proviso to Section 3 (j) (x) of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016, is not applicable to the case in hand, because, as per Section 3 (r) of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016, a person would be deemed to recruit in service only after completion of five years of service. It is further submitted that the information obtained by the petitioner on a query dated 22.09.2020 as per



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the Right to Information Act, 2005, the respondent has also accepted the view that the Indian Railways would not be covered under the exclusion found under Section 3(j)(x) of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016.

6. There cannot be any clarification on the point that once an Ex-Serviceman has recruited to a post in any service or class or category, cannot claim the concession of being called as an Ex-Serviceman for his further recruitment. So far as the term 'appointed to a service' as defined under Section 3 (b) of the Tamil Nadu Government Servants (Conditions and Service) Act, 2016, the same is extracted as under:

Section 3(b) of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016:

“(b). “appointed to a service” means when a person appointed in accordance with this Act or in accordance with the rules applicable at the time, as the case may be, discharges, for the first time the duties of a post borne on the cadre of such service or commences the probation, instruction or training prescribed for members thereof.”

7. So, all those appointments would refer to only the recruitment made under the Tamil Nadu Government Servants (Conditions of Service) Act, 2016.



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No doubt, the petitioner has joined in the Indian Railways and the Indian Railways will not fall under the Tamil Nadu Service. But, however, the petitioner had made use of the Ex-Serviceman reservation quota for getting selection in the Railways as well. But the exclusion provided under Section 3 (j) (x) of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016. No doubt, it would refer to only the Tamil Nadu State Services and not in any other service.

8. No explicit reference or implicit inference can be made by construing the service referred under the Tamil Nadu Government Servants (Conditions of Service) Act, 2016, which would include all those services other than the said service and further, the member of service as referred to under Section 3(m) of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016, would only mean that a person appointed to a service and who has not retired or resigned has been removed or dismissed from service been substantively transferred or reduced to any another service or been discharged otherwise than for want of a vacancy. However, the member of service may be a probationer or an approved probationer or full member of that service. Had the petitioner was appointed under any of the Tamil Nadu State Services, it would have been appropriate to presume that the petitioner had already used his quota under the



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Ex-Militaryman in the State Services. For the sake of more clarity, it is

appropriate to refer to hereunder Section 3(y) which defined 'what is service':

Section 3 (y) of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016:

“(y) “service” means a group of persons classified by the Government as a State Service or Subordinate Service, as the case may be.”

9. So the above definition would clarify that the service means a group of persons classified by the Government as a State service or Subordinate service, as the case may be.

10. So far as the persons directly recruited to the State Services, that would only mean that those persons who have not completed five years of service, since his first appointment of service in the Government of India or the Government of a State. For a better understanding, Section 3(r) is extracted as under:

Section 3(r) of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016:

“(r). “recruited direct to a service” means when a candidate, in



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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, Schedules Tribes or Backward Classes;”*

11. Since the proviso to Section 3 (r) of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016, would exclude all those persons in the service of Government or India or the Government of State for whom five years have not been lapsed, if their appointment to a service in the Government or India or the Government of State and if they belong to Scheduled Caste or Scheduled Tribe or Backward Class.

12. If the above proviso is invoked, the inevitable conclusion would be all those persons, who have joined in any of the State or Central Service and who did not complete five years of service or those belonged to SC / ST /



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Backward Class will not be considered to be called themselves as *persons recruited to a service*’.

13. Even if a person has been appointed to a service and has not completed five years of service or he belongs to any of the above category, the person is still eligible to apply to any other service under the same category to Ex-serviceman, because the proviso to Section 3(j)(x) of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016, would only exclude those Ex-Servicemen recruited to a post in any service, Class or category.

14. Had the intention of the legislature is to include everyone under the definition of recruited directive service, there would not have been any distinction as to class or category of persons belonging to certain community or within a ceiling of five years of service. If an Ex-Serviceman has been allowed to central or State service and if he happened to be selected in some other service in the State of Tamil Nadu, he can still be considered under Section 3 (j) (x) of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016, provided, he did not complete five years of service in the earlier post or he belongs to SC/ST and backward class.



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15. Since the petitioner is still a probationer and he has not completed five years of service, I feel that the respondent can release the appointment order of the petitioner if he has found a place in the selection list or has the necessary cut-off to be included in the cut-off pertaining to his Ex-serviceman category.

16. With the above observation and direction, the Writ Petition is allowed. No costs. Consequently, the connected miscellaneous petition is closed.

30.07.2024

NCC:yes/no
Index:yes/no
Internet:yes/no
TSG
To
The Secretary,
Tamil Nadu Public Service Commission,
Chennai.



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R.N.MANJULA, J.

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