



W.A.(MD).No.1417 of 2017

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 06.03.2024

CORAM

THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

and

THE HONOURABLE MR.JUSTICE K.K.RAMAKRISHNAN

W.A(MD)No.1417 of 2017

and

W.M.P.(MD)Nos.10586 and 2576 of 2021

Dr.B.Saravanan

... Appellant

vs.

- 1.The Secretary,
Tamil Nadu Public Service Commission,
Greens Road,
Chennai.
- 2.The Government of Tamil Nadu
represented by its Secretary,
Health and Family Welfare Department,
Secretariat,
Fort St. George,
Chennai 600 009.
- 3.The Deputy Secretary,
Government of Tamil Nadu,
Health and Family Welfare Department,
Secretariat,
Fort St. George,
Chennai 600 009.



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4.The Commissioner,
Indian Medicine and Homeopathy,
Chennai 600 106.

... Respondents

PRAYER: Writ Appeal is filed under Clause XV of Letters Patent, against the order passed by this Court dated 21.08.2014 in W.P.(MD).No. 297 of 2014.

For Appellant	: M/s.M.R.Rooshi Maas for M/s. Isaac Chambers
For R1	: Mr.J.Anand Kumar
For R2 to R4	: Mr.A.K.Manikkam Special Government Pleader

ORDER

(Order of the Court was pronounced by **V.BHAVANI SUBBAROYAN, J.**)

This writ appeal has been filed by the candidate, who was unsuccessful before the learned single Judge of this Court in W.P. (MD).No.297 of 2014, dated 21.08.2014.



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2. According to the appellant/writ petitioner, the first respondent has issued a notification for appointment to the post of Assistant Medical Officer (Siddha/Ayurveda/Unani). The fourth respondent is the appointing authority for the year 2007 – 2008. The petitioner has applied for the above said post and successfully selected by securing 258 marks. He belongs to Backward Class (OBCM). The first respondent has selected five candidates. Out of these five candidates, one Dr.S.Raneesh's selection was withheld, since his native place is Bangalore. As per the letter dated 23.07.2010, the petitioner's name has been included in the Reserve List in the category of General Turn. Thereafter, as per the appointment order of the fourth respondent, dated 22.12.2011, the said Dr.S.Raneesh joined as Lecturer Grade - II at Government Ayurvedic Medical College, Kottar, Nagercoil. Out of the 5 selected candidates, in the next Reserve List ie., the petitioner has to be appointed. The above said circumstances was brought to the notice of the respondents. But there was no reply and hence, the petitioner has filed a writ petition in W.P.No.15306 of 2012, since the first respondent has not drawn the next batch of selection. This Court, by order dated 04.01.2013, directed the



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first respondent to send a communication to the petitioner, if any of the candidate selected for the same post for 2007 -2008 selection, failed to join as per the selection list. But till date they have not given the required answer. Instead the fourth respondent has sent a reply on 13.02.2013, stating that only four selected candidates have joined duty and nothing was stated about Dr.S.Raneesh, whose selection had been withheld. That apart, the first respondent has informed that they have not received any proposal from the respondents 2 to 4 for the appointment to any candidate in the Reserve List ie., the petitioner. Hence, the petitioner has filed the writ petition before this Court, seeking for issuance of a Writ of Mandamus, directing the fourth respondent to issue appointment and posting orders to the petitioner for the post of Assistant Medical Officer, Ayurvedha in any one of the Government Medical Hospitals in the vacancy as on date as per the appointment order dated 23.07.2010, due to non-joining of withheld candidate and as per the direction of this Court, dated 04.01.2013 in W.P.(MD).No.15306 of 2012.



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3. The first respondent has filed a counter stating that the contention of the petitioner that he was selected to the post of Assistant Medical Officer (Ayurvedha) is totally wrong and baseless. He has been kept in the Reserve List only. Further, Reserve List is valid till the next selection list is drawn for the post of Assistant Medical Officer by the Commission. The next direct recruitment for the post of Assistant Medical Officer (Ayurvedha) for 6 vacancies for the year 2012 has been finalised and provisionally selected list of 6 candidates has been forwarded to the Government on 24.07.2013 for appointment. As the next selection list has been drawn by the Commission, the Reserve List becomes invalid. As such, the question of enforcing the Reserve List does not arise at this stage as the Reserve List lost its validity.

4. The learned single Judge of this Court dismissed the writ petition by observing that the Reserve List would be maintained only till the next selection. The respondents have already resorted to the second selection. Therefore, there is no question of enforcing the Reserve List. Challenging the same, the present writ appeal has been filed by the writ



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petitioner.

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5. According to the appellant, out of the 5 vacancies notified for the post of Assistant Medical Officer in the Department of Indian Medicine and Homeopathy in the year 2007 - 2008, the TNPSC had provisionally selected 5 candidates and the result of one person viz., Dr.S.Raneesh was withheld because of his ineligibility. As per the norms, whenever the candidate selected has not joined or joined duty but left thereafter or cancellation of provisional selection of the selected candidates for some reason, the candidates available in the Reserve List should be given appointment. Further, as per the norms of the TNPSC, as a result of one among the 5 selected candidates Dr.S.Raneesh was withheld, the appellant became eligible to be appointed to that post as being Rank No.1 in the Reserve list.

6. As per the direction of this Court in W.P.(MD).No.8134 of 2012, dated 18.06.2012, the appellant had submitted a detailed representation to the TNPSC, on 27.06.2012, requesting him to appoint the appellant as



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Assistant Medical Officer (Ayurveda). Even after receiving the representation, the first respondent has not taken any steps on the representation. Without considering the candidature of the appellant, surprisingly the TNPSC issued another Notification vide No.48/2012, dated 16.11.2012, again inviting candidates for 6 posts of Assistant Medical Officer (Ayurveda). The said Notification was challenged by the appellant in W.P.(MD).No.15306 of 2012. This Court, by order dated 04.01.2013, disposed of the writ petition, directing the Director of Indian Medicine to communicate to the TNPSC within two weeks as to whether any candidates selected in the year 2007 - 2008 had not joined duty and if the candidate who did not join was relatable to the same post, the TNPSC should forward the name of the candidate at Serial No.1 in the Reserve List of the year 2007 – 2008. Further, if the candidate who did not join belonged to a different category or if all the candidates had joined duty, the TNPSC shall send a reply in that regard to the petitioner. The fourth respondent, vide Ref.No.644/E1/2/2003, dated 13.02.2013 forwarded the list of selected candidates to the first respondent TNPSC. On receipt of the same, the TNPSC vide Memorandum dated 26.03.2013 stated that out



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of 5 provisionally selected candidates, 4 candidates have joined duty and the remaining one candidate is kept in wait by the Government/HOD and that the operation of the Reserve List would start only after receipt of proposal from the Government/HOD. The said waiting candidate Dr.Raneesh had already been appointed as Lecturer Grade II in the Department of Indian Medicine and Homeopathy Department vide proceedings of the Commissioner of Indian Medicine and Homeopathy, Chennai vide Ref.No.11143/E1/2/2008-3, dated 22.12.2011 and he joined duty as early as on 26.12.2011 at Government Ayurveda Medical College, Nagercoil, Kanyakumari District. In case of non-joining of any selected candidate, the TNPSC should forward the candidate at Rank No. 1. But, strangely the TNPSC vide Memorandum dated 26.03.2013, gave reply the details regarding Dr.Raneesh is awaited from Government /HOD. The learned single Judge dismissed the writ petition simply relying upon the counter affidavit filed by the first respondent.

7. Heard the learned counsel appearing for the appellant, the learned counsel appearing for the first respondent and the learned



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counsel appearing for the respondents 2 to 4.

8. On going through the typed set of documents and also the Tamil Nadu Government Servants (Conditions of Service) Act, 2016, it is seen that "reserve list" means a list which is prepared so as to contain not less than twenty five per cent of the candidates of each reservation group including General Turn in the regular list and shall be in force until the regular list is drawn up subsequently.

9. Here is a case where the petitioner has participated in the selection process to the post of Assistant Medical Officer for the year 2007 – 2008 and secured 258 marks. He has not been selected. However, he has been placed in the Reserve List and one vacancy withheld was not filled up, since there was no request from the appointing authority for releasing the said name. Subsequent to the order of Full Bench of this Court in W.A.(MD).No.104 of 2014, dated 12.08.2011, the withheld result of Dr.S.Raneesh has been cleared and his name and other particulars have been forwarded to the Government for conditional



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temporary appointment, subject to verification and acceptance of his community claim vide Letter No.5359/OTD/A2/2008, dated 08.05.2012.

As per Rules in force, the reserve list can be operated for the following reasons:

- 1.Non-joining duty of selected candidates
- 2.Selected candidates who joined duty but left thereafter
- 3.Cancellation of Provisional selection of the selected candidates for any reason.

10. In this case when a subsequent notification was issued and the petitioner has not participated in the next selection process. Hence, the petitioner has not made out a case as he has not participated in the next selection process. Now, the petitioner is aged about 39 years old and we do not know what is the present status of age and qualification to the said post. If the petitioner is still eligible, it is left open to him to approach the authorities by way of participating in the next selection process. In the case of ***Dinesh Kumar Kashyap and others vs. South East Central Railway and others*** reported in ***(2019) 12 SCC 798*** the Hon'ble Apex



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Court has held that mere selection does not give any vested right to the selected candidate to be appointed. At the same time, when a large number of posts are lying vacant and selection process has been followed then the employer must satisfy the Courts as to why it did not resort to and appoint the selected candidates, even if they are from the replacement panel. Just because discretion is vested in the authority, it does not mean that this discretion can be exercised arbitrarily.

11. In view of the above said circumstances of this case, the precedent relied by the learned counsel for the appellant in the case of ***Dinesh Kumar Kashyap and others vs. South East Central Railway and others*** reported in ***(2019) 12 SCC 798*** is not applicable to the present case and this Court finds no arbitrary exercise of power by both selection authority and the appointing authority.



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12. In the result, this Writ Appeal is dismissed and the order this Court in W.P.(MD).No.297 of 2014, dated 21.08.2014 is confirmed. There shall be no order as to costs. Consequently, the connected Miscellaneous Petitions are closed.

**[V.B.S.J.] & [K.K.R.K.J.,]
06.03.2024**

Index: Yes/No
Internet: Yes/No
NCC: Yes/No
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and
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