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W.A.No.102 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.03.2025

CORAM

**THE HONOURABLE MR.JUSTICE R.SURESH KUMAR
and
THE HONOURABLE DR.JUSTICE A.D.MARIA CLETE**

W.A.No.102 of 2023

M.S.Kalaivani

... Appellant

-Vs-

1. The Secretary,
Tamil Nadu Public Service Commission,
Frazer Bridge Road, V.O.C Nagar,
Chennai - 3.

2. The State of Tamil Nadu,
Represented by its Secretary,
Revenue Department,
Fort St.George,
Chennai - 9.

... Respondents

PRAYER : Appeal under Section 15 of Letters Patent against the order dated
W.P.No.15390 of 2019 dated 28.10.2022.

For Appellant : Mr.L.Chandrakumar

For Respondents : Mrs.G.Hema
Standing Counsel for R1

Mr.M.Alagu Gowtham
Government Advocate for R2



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J U D G M E N T

WEB COPY (Judgment of the Court was delivered by **R.SURESH KUMAR, J.**)

This intra Court appeal has been directed against the order dated 28.10.2022 made in W.P.No.15390 of 2019.

2. That the first respondent / Tamil Nadu Public Service Commission in short 'TNPSC' issued a notification for appointment to the post of Combined Civil Services Examination-II (Interview Posts) (Group-II Services) for the years 2014-15 and 2015-16 vide Notification No.7/2015 dated 30.04.2015.

3. The appellant was one of the candidates, who applied for the said selection process, where, after completion of the selection process, she has been ranked at Serial No.1572, she belongs to BC Community.

4. It is the case of the appellant / petitioner that though she secured the ranking of Serial No.1572 and the last person who was selected was in Serial No.1546, in BC category, she stood next to the last person who was selected and had there been a Reserve List, the appellant / petitioner would have been placed in the Reserve List as No.1 candidate, therefore whoever not joined from



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among the selected candidates or those who joined immediately left, by thus, if any vacancy is caused under BC quota, certainly the appellant / petitioner would have been in a position to be called for selection and she would have been selected and appointed. Therefore, the non-selection of the appellant / petitioner is due to the dispensing with the system of having the Reserve List of TNPSC, therefore the said dispensing of the Reserve List as has been done by TNPSC in the said recruitment is against the provisions of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016 in short '2016 Act' and therefore, seeking a writ of mandamus, the appellant / petitioner had approached the writ Court to publish the Reserve List for the Regular Selection List pertaining to the Combined Civil Services Examination-I (Group-II) (Interview Posts) for the years 2014-15 and 2015-16 as notified in Notification No.7/2015 dated 30.04.2015 and consequently to fill up the unfilled vacancies caused due to non-joining / leaving of selected candidates with the candidates in the Reserve List to be published by TNPSC in the order of seniority and as per roster within a reasonable time.

5. The said writ petition having been considered was dismissed by the writ Court through the order impugned dated 28.10.2022.



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6. Assailing the impugned order passed by the writ Court, Mr.L.Chandrakumar, learned counsel appearing for the appellant would contend that, under Section 3(u) of 2016 Act, the Reserve List has been defined, which reads thus:

"3(u) "reserve list" means a list which is prepared so as to contain not less than 25% 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."

7. Therefore, the publication of the Reserve List contains not less than 25% of the candidates of each reservation group including general turn and to keep the same till the next recruitment is published. It is must and is a mandate under 2016 Act, therefore such a mandate cannot be given a go-by by TNPSC as they have unilaterally seems to have taken a decision not to publish the Reserve List in the said recruitment, therefore, the appellant / petitioner is entitled to seek for such mandamus and the same since has not been considered in proper perspective by the writ Court by rejecting the writ petition through the impugned order which warrants interference at the hands of the Division Bench, he contended.



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8. However, Mrs.G.Hema, learned Standing Counsel appearing for the Tamil Nadu Public Service Commission would submit that, it is a Combined Civil Services Examination-II (Interview Posts) (Group-II Services). As several posts have been included in the same examination and selection process, the TNPSC thought it fit to introduce the counselling system. Since the counselling system has been introduced, the preparation and publication of the Reserve List may be a difficult one or it may not be required and therefore, in order to dispense with the publication of Reserve List in the said recruitment, TNPSC already had written to the State Government and based on which, TNPSC had issued a Office Order to dispense with the publication of the Reserve List, accordingly in the said recruitment, the Reserve List has not been published.

9. Moreover immediately after the publication of the final selection list pursuant to the notification or selection in question, subsequent notification was issued shortly within few months where also the selection process went on, therefore, assuming that, there had been a Reserve List published by TNPSC that would have been last only till the next process is taken up and once the next selection process is taken on, the Reserve List issued already pursuant to the previous selection process would come to an end, therefore on that score



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also, the plea raised by the learned counsel for the appellant / petitioner to have a Reserve List at this juncture may not be a feasible one, therefore on that ground also, dispensing with the publication of the Reserve List as has been decided and implemented by the Service Commission in the recruitment in question has to be approved, therefore the said position having been considered by the writ Court, the stand of TNPSC have been accepted by the writ Court through the impugned order, hence the order impugned does not warrant any interference at the hands of the Division Bench, she contended.

10. On the other hand, Mr.M.Alagu Gowtham, learned Government Advocate appearing for the second respondent / State, on instructions, would submit that, TNSPC had written a letter on 01.09.2021 to the Secretary to Government to make an amendment to the provisions of 2016 Act where the publication of the Reserve List has been mandated and such an amendment enabling TNPSC to dispense with the system of publishing the Reserve List has to be introduced and such an amendment shall be given retrospective effect also.

11. Though such a request has been made by TNPSC that was considered and rejected by the State Government through its letter dated 27.01.2020 where



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they have made it clear that, insofar as the publication of Reserve List is concerned, it is mandated under the provisions of 2016 Act, behind which, there is a reasonableness and logic attached with, as number of candidates who had been selected might not have been joined and number of them, who have been joined subsequent to the selection, might have left the job after joining the post and thereby it caused so much of vacancies which would be kept vacant till the next recruitment is made. Therefore, in order to avoid such anomalous situation, the Government thought it fit to have the system of Reserve List which in fact has been followed for several decades and the system of Reserve List also has been dealt with under 2016 Act where under Section 3(u), it has been made clear that not less than 25% of the candidates of the selection list can be kept in the Reserve List in each of the communal category including the general turn and such list would last, till the final selection is made through the next recruitment.

12. When such is the mandate of the legislature and accordingly it has been inserted in 2016 Act, such a procedure cannot be dispensed with easily as per the request of TNPSC, this stand of the State Government has already been made clear to TNPSC, the learned Government Advocate contended.



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13. Therefore, atleast twice the Government of Tamil Nadu has made it very clear about their stand that the Reserve List should be prepared and published and it cannot be dispensed with, the learned Government Advocate contended.

14. We have considered the said rival submissions made by the learned counsel appearing for the appellant, the learned Standing Counsel appearing for the first respondent and the learned Government Advocate appearing for the second respondent.

15. It is a stand of TNPSC that, first time they brought the counselling system for the Combined Group-II Examination conducted by TNPSC and once the counselling system is followed for selection and appointment to various Group-II Posts at various Units or Departments, the publication of the Reserve List may be a impracticable one and also may not be required or necessary, therefore, this has been brought to the notice of the Government by issuance of letter dated 08.02.2020 of TNPSC.

16. We have gone through the letter of TNPSC dated 08.02.2020 where the Secretary of TNPSC has *inter alia* stated the following:



"3. In addition, I would like to inform that except for the candidates who are selected for appointment to posts preferred by them, the other candidates (lower in rank) are invariably selected against posts that are not their first / second choices. In this scenario, a reserve list, if drawn up, would have to include the latter candidates for consideration against the posts preferred by them.

4. This would involve obtaining post preferences from almost all candidates attending counselling. Consequently, the reserve list is likely to contain a majority of those candidates who have already selected one or another post, but prefer other posts in which vacancies may arise subsequently. This would also mean that one candidate may be placed in the reserve list for a number of posts.

5. The operation of a reserve list thus drawn up, would require summoning of candidates already appointed to other posts via the same recruitment for subsequent rounds of counselling to allocate posts of their choice. Consequently, the posts in which they were originally appointed would fall vacant and would also have to be filled up through further rounds of counselling. This would, in effect, mean the sliding up of candidates through almost all the posts filled up through that recruitment and would be equivalent to making the entire selection again and again many times.



6. *While agreeing that the Tamil Nadu Government Servants (Conditions of Service) Act, 2016, provides for maintenance of reserve list for the purpose of filling up vacancies arising subsequently, I wish to point out that in view of the transparency afforded by the method of selection through counselling and the difficulties in maintaining the reserve list, the Commission had made a considered decision to dispense with the drawl of reserve list for recruitment to posts wherein selection is made through counselling. The reserve list is being drawn up in all other cases.*

7. *As regards vacancies arising subsequently, I wish to say that these are to be filled up through further recruitments for selection for appointment to the said posts. I would also like to point out that this way would be more expeditious than selection by operation of the reserve list, as outlined in para (5) above.*

8. *I therefore request once again that the following amendment may be made to Section 27 of the said Act.*

After the seventh proviso to Section 27(f) of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016:

"provided that in cases where a single recruitment is held to fill up vacancies in multiple posts / vacancies in a single post in multiple units and the selection of candidates is made through the



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method of counselling, the reserve list shall not be drawn".

9. Further, in view of the need to justify the bonafide decision of the Commission, I am directed to reiterate the Commission's request to provide retrospective effect to the said amendment."

17. This of TNPSC letter having been considered was replied by the State through their Letter No.62865/S2/2007-23 dated 27.11.2020 for the following reply:

"I am directed to invite your attention to the references cited, wherein among others, it has been stated that due to difficulties in maintenance of reserve list, the Commission had made considered decision to dispense with the drawl of reserve list for recruitment to posts wherein selection is made through counselling.

2. In this connection, I am directed to point out that in selection of Candidates by direct recruitment by the TNPSC for appointment to multiple posts / single post in multiple units through a single competitive examination also, reserve list have to be prepared as stipulated in Sections 3 and 27 of Tamil Nadu Government Servants (Conditions of Service) Act, 2016 and the said Act does not contemplate counselling procedure to be adopted during selection by the Tamil Nadu Public Service Commission.



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Moreover, non-adherence of existing rules cannot be considered as a reason for amendment to the Act. Hence, the proposal to dispense with the preparation of Reserve List for the selection of candidates by counselling is not feasible of compliance.

3. In the above circumstances, the TNPSC is directed to

(i) arrive at a procedure for selection adhering to the provisions in Tamil Nadu Government Servants (Conditions of Service) Act, 2016 with regard to Reserve List.

(ii) follow up the Court cases in this regard based on the existing rules."

18. Despite the stand having been made very clear by the State Government, TNPSC seems to have proceeded with the selection in question without publishing the Reserve List.

19. Be that as it may, now let us look into the legal position as to the mandatoriness of publishing the Reserve List as provided under the provisions of 2016 Act.

20. In two places, 2016 Act speaks about the Reserve List. First is under Section 3(u) under the heading 'Reserve List', it states that the Reserve List



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means, the list which is prepared so as to contain not less than 25% 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.

21. In Section 27(f) last proviso, it states that, "provided also that the Reserve List shall be operated even against the vacancies caused due to the fact that the candidates have joined duty but left thereafter while the Reserve List is in force".

22. These two provisions have been mentioned in the letter of the Government dated 27.11.2020 and has further stated that, 2016 Act does not contemplate counselling procedure to be adopted during selection by TNPSC. Moreover, non-adherence of existing rules cannot be considered as a reason for amendment to 2016 Act. Hence, the proposal to dispense with the preparation of Reserve List for the selection of candidates by counselling is not feasible of compliance.

23. Since the publication of Reserve List in each of the recruitment to be conducted by TNPSC is a must and inevitable one, which cannot be dispensed with in view of the provisions of 2016 Act, especially in view of Sections 3(u)



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as well as 27(f) as stated *supra*, the Government has made very clear about the stand of the State that such a plea raised by TNPSC to dispense with the publication of the Reserve List cannot be accepted as it is not feasible of compliance.

24. Therefore, the question of making any amendment to 2016 Act as sought for by TNPSC through its letter dated 08.02.2020 does not arise.

25. However, it seems that, TNPSC has not stopped with that by accepting the stand of the State Government as stated in the letter dated 27.11.2020, in fact, once again TNPSC has written another letter dated 01.09.2021 where what has been stated by TNPSC in fact has been extracted in paragraph No.4 of the order impugned, almost entirety of the letter of TNPSC dated 01.09.2021 has been extracted by the writ Court, however it has been mistakenly noted as if that it was the letter written by the State Government and it was the stand of the State Government.

26. But the fact remains that for the second letter issued by TNPSC reiterating the earlier request, the State Government has issued further reply in their letter dated 25.03.2025 in Letter No.27758/S1/2021-1, that was written by



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the Human Resources Management (S) Department, Secretariat, Chennai, Government of Tamil Nadu by its Principal Secretary to Government to the Secretary, Tamil Nadu Public Service Commission, Chennai where they have stated the following:

"I am directed to invite attention to the references cited, wherein, it has been stated that the proposal to dispense with the preparation of reserve list for the selection of candidates by counselling is not feasible of compliance. Further, it has been directed to arrive at a procedure for selection adhering to the provisions in Tamil Nadu Government Servants (Conditions of Service) Act, 2016 with regard to Reserve List and to follow up the court cases in this regard based on the existing rules.

2. I am therefore directed to inform that the reply furnished to the Commission in the letter first cited (copy enclosed for ready reference) is re-iterated by the Government."

27. Therefore, once again the State Government by recent letter dated 25.03.2025 reiterated their earlier stand which has been made clear through their letter dated 27.11.2020. Therefore, at no point of time, the Government has agreed for dispensing with the publication of the Reserve List by the



TNPSC, nor the Government has also agreed even to consider the amendment to be made in 2016 Act as sought for by TNPSC.

28. When that being the legal position, TNPSC on its own seems to have issued some Office Order in Office Order No.134 dated 12.11.2020 which in fact has been extracted by the writ Court in yet another case, i.e., in W.P.Nos.32640 & 32644 of 2023 in paragraph No.17. For immediate reference and better appreciation, the said portion of the order is extracted hereunder:

"17. The TNPSC through Office Order No.134 dated 12.11.2020 has dealt with the manner in which the candidates will be drawn from the reserve list and how it will be operated. The bone of contention is Clause 4 of the Office Order. It will be relevant to extract Clause 4 and Clause 5 of the Office Order hereunder:

(4) In cases where recruitment to multiple posts or one post in multiple unit offices, is made through a single competitive examination and a single Ranking List is drawn, the Reserve List shall not be drawn up.

(5) In the case of (4) above (except in the case of recruitment to posts included in Combined Civil Services Examination~I), where a candidate fails to join duty or fails to produce the requisite documents including the certificates of physical fitness or where



such candidate is found to be physically not fit on production of such certificate of physical fitness or where such candidate, on production of the requisite documents is found to be not qualified for appointment to the post, his name shall be deleted from the approved list by the appointing authority themselves. In cases where the candidate joins duty and leaves thereafter or the post falls vacant due to the death of the candidate after joining, the appointing authority shall make a suitable indication against the candidate's name. In either case, the resultant vacancies shall be included in the estimate of vacancies for the next recruitment year and the same may be informed to the Commission."

29. The writ Court in fact seems to have approved the said Office Order issued by TNPSC in Office Order No.134 dated 12.11.2020.

30. However, the fact remains that under the provisions of 2016 Act, it is mandatory on the part of the recruiting agency, especially TNPSC to publish the Reserve List in each of the recruitment process. The Reserve List according to Section 3(u) of 2016 Act will be in force till the final selection list is drawn in the subsequent recruitment. During this period, when the Reserve List is in



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operation, if any vacancies caused due to the non-joining of selected candidates or if a vacancy is caused by any candidates, who joined and left, those vacancies to be immediately intimated to TNPSC, who in turn depending upon the vacancies caused, as to whether it belongs to a particular communal category or general turn, accordingly the necessary candidates from among the Reserve List which has already been prepared and published by TNPSC would be taken and be sent by TNPSC to the concerned Department for appointment.

31. This is the system being followed for number of years for various recruitment by TNPSC, however, all of a sudden, TNPSC has come forward to write these letters to the State Government seeking to dispense with the Reserve List system by making an amendment to the provisions of 2016 Act.

32. Even though a reason was given by TNPSC that the counselling was to be adopted in such kind of group posts to various Units in Combined Examinations, therefore the Reserve List can be dispensed with, even that reason was not accepted specifically by the State Government in two such letters written to TNPSC which we have discussed and extracted herein above.



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33. When that being the position, the stand taken by TNPSC in not maintaining the Reserve List or publishing the Reserve List in respect of the Combined Civil Services Examination-II (Interview Posts) (Group-II Services) under Notification No.7/15 dated 30.04.2015 would go against the import of the provisions of 2016 Act, therefore such a practice in dispensing with the Reserve List cannot be approved.

34. Therefore, the stand of TNPSC in not publishing the Reserve List for the said recruitment as has been approved by the writ Court through the impugned order is unsustainable and therefore, the said decision taken by TNPSC through the Office Order No.134 dated 12.11.2020 also is to be declared as unsustainable one.

35. As a result of which, the order passed by the writ Court which is impugned herein approving the said stand of TNPSC also is erroneous and hence, it requires interference at our hands.

36. In that view of the matter, this Court is inclined to dispose of the writ appeal with the following orders:



(i) that the impugned order of the writ Court is set aside.

As a sequel, the stand of TNPSC reflected or emanated from TNPSC Office Order No.134 dated 12.11.2020 is declared as unenforceable in view of the mandatory legal provisions of 2016 Act.

(ii) As a result of which, TNPSC is bound to publish a Reserve List in each of the communal category even for the Combined Civil Services Examination-II (Interview Posts) (Group-II Services) pursuant to Notification No.7/2015 dated 30.04.2015.

(iii) Therefore, there shall be a direction to TNPSC to prepare a Reserve List in each of the communal category including the general turn category and such a list consisting of not less than 25% equal to the selected candidates be published by TNPSC within a period of four weeks from the date of receipt of a copy of this order.

(iv) Coming to the relief sought for by the appellant / petitioner, even though the appellant / petitioner claimed that she being in Serial No.1572 comes next to the last person selected in BC category who stood in Serial No.1546, whether the appellant / petitioner also would be entitled to get such a benefit of selection and appointment pursuant to the said selection based on the Notification No.7/2015 dated 30.04.2015 shall be decided by TNPSC in accordance with the law and to that extent, the issue is left to TNPSC to finalise and communicate the same to the appellant / petitioner.



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37. With these directions, this Writ Appeal is allowed to the extent of the orders that have been indicated above. However, there shall be no order as to costs.

(R.S.K., J.) (A.D.M.C., J.)
26.03.2025

NCC : Yes
Index : Yes
Speaking Order : Yes

vji

Note: Issue order copy by 28.03.2025.

To

1. The Secretary,
Tamil Nadu Public Service Commission,
Frazer Bridge Road,
V.O.C Nagar,
Chennai - 3.
2. The Secretary,
The State of Tamil Nadu,
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**R.SURESH KUMAR, J.
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A.D.MARIA CLETE, J.**

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