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W.A.No.192 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.01.2025

CORAM :

THE HONOURABLE MR.JUSTICE R. SURESH KUMAR
AND
THE HONOURABLE MR.JUSTICE C. SARAVANAN

W.A.No.192 of 2025

1. The Government of Tamil Nadu
Rep. By its Additional Chief Secretary to Government
(Courts – VI) Department
Chennai – 600 009.
2. The Director of Vigilance and Anti-Corruption
No.293, M.K.N. Road, Alandur
Chennai – 600 016. .. Appellants

Vs.

1. S.Rajan
2. The Accountant General
(Accounts and Entitlements)
Tamil Nadu, No.361, Anna Salai
Chennai – 600 018. .. Respondents

Prayer: Appeal filed under Clause 15 of the Letters Patent Act,
against the order dated 01.03.2024 made in W.P.No.19882 of 2022.

For the Appellant : Mr.R.Neelakandan
Additional Advocate General
assisted by Mr.Stalin Abimanyu
Additional Government Pleader

For the Respondents : Mr.R.Subramanian
for Mr.B.Ravvi
for R1



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JUDGMENT

(Judgment of the Court was authored by R.SURESH KUMAR, J.)

This intra-Court appeal has been directed against the common order passed by the Writ Court dated 01.03.2024 made in W.P.Nos.29880 and 19882 of 2022.

2. The Tamil Nadu Public Service Commission [for brevity, herein after referred to as "the TNPSC"] has issued a notification for Direct Recruitment to the post of Assistant Public Prosecutor (Grade II) for the year 1998-2002. Both the writ petitioners applied for the post of Assistant Public Prosecutor Grade II. Totally fifty three candidates were selected to the said post and the writ petitioners were placed in the reserved list. Thereafter, though three selected candidates failed to join and since vacancies arose, immediately, the reserve list has not been operated by giving appointment to the writ petitioners.

3. Therefore, the writ petitioners and another approached the Writ Court by filing W.P.Nos.6085, 9823 and 11234 of 2004. The Writ Court, by orders dated 27.04.2006 and 21.06.2006, allowed those writ petitions by giving directions to the Department to appoint the writ petitioners in the resultant vacancies. However, the



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said judgment of the Writ Court was challenged at the instance of the Department by way of an intra-Court appeal in W.A.No.891 to 893 of 2007 and these writ appeals also were dismissed. As against the same, an attempt has been made by the Government to prefer a Special Leave Petition, where also, they failed before the Hon'ble Supreme Court of India.

4. Only after loosing all these legal battle, the Government has come forward to issue G.O.(4D) No.104, Home (Courts - VI) Department dated 05.12.2007, thereby, appointment orders have been given to the writ petitioners to the post of Assistant Public Prosecutor Grade II for the Panel Year 1998-2002.

5. The writ petitioners joined into service and their seniority also were initially fixed based on the roster point and subsequently, after the judgment of the Hon'ble Supreme Court in the year 2013, the same has been fixed by way of merit list fixed by the TNPSC. When this being the position, the writ petitioners were not allotted with the GPF Numbers and they have been allotted only with the contributory pension, which is the New Pension Scheme, which has been implemented by virtue of G.O.No.259, Finance (Pension) Department dated 06.08.2003 from 01.04.2003.



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6. Aggrieved over the non-inclusion in the Old Pension Scheme and inclusion in the New Pension Scheme, the writ petitioners have made requests after requests to the appellant Department. Despite that, since no fruitful answer has come from them, they approached this Court by filing W.P.Nos.19880 & 19882 of 2022, seeking a writ of mandamus to direct the respondents 1 and 2 therein to extend the benefits of Old Pension Scheme under the Tamil Nadu Pension Rules, 1978 to the writ petitioners. These writ petitions were allowed through the impugned common order dated 01.03.2024.

7. Aggrieved over the same, the present writ appeal has been directed at the instance of the appellant State.

8.1. Heard *Mr.R.Neelakandan*, learned Additional Advocate General appearing for the appellant State, who would submit that, even though the selection was over and appointments have been made, insofar as the selectees are concerned, prior to 01.04.2003, these writ petitioners have never been selected and merely because they have been in the reserve list, they cannot seek any right to be selected.



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8.2. Assuming that there were some vacancies arising subsequently and based on the vacancies and pursuant to the orders passed by the Division Bench of this Court, which has been confirmed by the Hon'ble Supreme Court, if appointment orders were given to them in G.O.No.104 Home (Courts VI) Department dated 05.12.2007, that shall be treated only as an appointment from 05.12.2007, that is well after the cut-off date of 01.04.2003, which is from the date the new pension scheme has come into effect. Therefore, at no stretch of imagination, these writ petitioners could seek indulgence of this Court to include them in the Old Pension Scheme.

8.3. The learned Additional Advocate General would also submit that even at the time when the seniority list has been finalized, where seniority of these writ petitioners have been fixed in the year 2013, they knew well that their seniority have been fixed in the year 2013 based on merits, even then they are not entitled to get pension benefits under the Old Pension Scheme. It is not the case of the writ petitioners that at any point of time, for all these years, even after joining service on 05.12.2007, they are entitled to get pension benefits under the Old Pension Scheme.



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8.4. After several years of service, all of a sudden, they woke up and made a plea before the Writ Court and these writ petitions have been allowed without considering the issue in proper perspective by the learned Single Judge and therefore, the learned Additional Advocate General would seek indulgence of this Court to set aside the order that is impugned herein.

9. We have considered the said submissions made by the learned Additional Advocate General appearing for the appellants and have perused the materials placed before this Court.

10.1. It is not in dispute that the TNPSC called for applications to make appointments to the post of Assistant Public Prosecutor Grade II only for the Panel Year 1998-2002. Pursuant to the said notification, selection was over and appointments were given before 01.04.2003, which is the date the New Pension Scheme has come into effect. Insofar as these writ petitioners are concerned, admittedly, they have been placed in the reserved list. As per the Rules, which are in vogue, the reserve list will be in operation for the period of one year or till the issuance of the next notification for the same post by the Service Commission.



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10.2. In this context, even though three vacancies had arisen immediately, as three of the selected candidates have not chosen to join in the selected post, only the reserve list ought to have been operated by the TNPSC by sending names to the Government and the Appointing Authority would have given the appointments even well prior to 01.04.2003. However, the TNPSC has not forwarded the names to the Government and the Appointing Authority also has not sought the names from the reserve list, to be appointed in the vacancies caused because of the not joining of the three selectees.

10.3. Because of this inaction on the part of either the TNPSC or the Appointing Authority, the writ petitioners, though were entitled to get appointments as they were in the reserve list, approached this Court and filed writ petitions in W.P.No.6085 of 2007 and etc. batch and these writ petitions, though were allowed by the Writ Court, the appellant Government, that is the employer, did not stop there and filed an intra-Court appeal in W.A.Nos.891 to 893 of 2007, where also, they became unsuccessful.



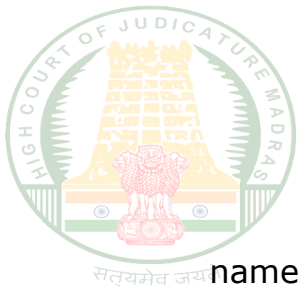
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10.4. Even after that unsuccessful legal battle, the appellant Government did not come forward to make appointments to these writ petitioners and in fact, they preferred a Special Leave Petition before the Hon'ble Supreme Court, where also, the said SLP got dismissed. Then only, the appellant Government came forward to issue G.O.No.104 Home (Courts VI) Department dated 05.12.2007.

10.5. Therefore, the delay caused till 05.12.2007 to make appointments to these writ petitioners is fully attributable only on the appellant Government and partly on the TNPSC. Such a fault or delay caused by the appellant Government or the TNPSC cannot be fastened on the shoulders of the writ petitioners, whereby, their right of getting appointment and their right of getting included in the Old Pension Scheme, have already been accrued prior to 01.04.2003. Such a legal right accrued on them cannot be denied merely because the appointments have been made belatedly, that too, after a long legal battle undertaken by the Authorities concerned.

10.6. It is also admitted in the counter affidavit filed by the appellant Government, which was filed before the Writ Court, that out of the 53 selectees, due to the withheld of the two candidates,



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namely, one *P.Ranjith Raj* and *Sahadevan*, have not joined for want of certain certificates and ultimately, those two vacancies has arisen for the post of Assistant Public Prosecutor Grade II for the Panel Year 1998-2002 on 13.10.2003, that is the next recruitment year 2002-2003.

10.7. This reason cannot be accepted as if the selected candidates have not joined within the joining time that has been given to the selected candidates and within time, if necessary certificates and verification also have not been completed by these candidates, the same shall be deemed to have been lapsed, thereby, the vacancies arose well prior to 01.04.2003.

10.8. More over, this position cannot be raised at this stage for the simple reason that the entitlement of these writ petitioners to get appointment for the Panel Year 1998-2002 have been considered and accepted by the Writ Court, confirmed by the Division Bench and also further confirmed by the Hon'ble Supreme Court in a series of litigations, which we have discussed hereinabove.

11. Therefore, we do not find fault with the reasons given by



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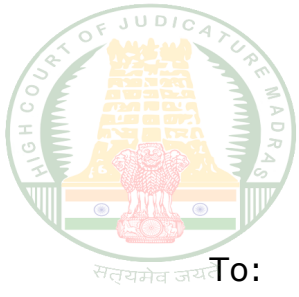
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the learned Single Judge through the impugned order and the conclusion arrived by him and therefore, we are not inclined to interfere with the impugned judgment. Resultantly, these appeal fails and hence is liable to be dismissed. Accordingly, the present writ appeal stands dismissed. However, there shall be no order as to costs. For compliance of the orders passed by the Writ Court in the impugned order, three months' time is granted. Consequently, C.M.P.No.1316 of 2025 is closed.

(R.S.K., J.) (C.S.N, J)
30.01.2025

Neutral Citation:Yes/No

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To:

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1. The Accountant General
(Accounts and Entitlements)
Tamil Nadu, No.361, Anna Salai
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AND
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