



W.P.(MD)No.2682 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 22.04.2025

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THE HON'BLE MR.JUSTICE M.JOTHIRAMAN

W.P.(MD)No.2682 of 2019

and

W.M.P.(MD)Nos.2041, 2042 & 12696 of 2019

C.Selva Priya

... Petitioner

Vs.

1.The Secretary,
Tamil Nadu Public Service Commission (TNPSC),
TNPSC Road, Chennai-1.

2.The Principle Secretary to the Government,
The Revenue Department,
St.George Fort, Chennai-9.

3.B.Ganesh

... Respondents

(R3 is impleaded vide Court order dated 26.02.2019 in W.M.P.(MD) No.3461 of 2019 in W.P.(MD)No.2682 of 2019)

PRAYER : Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the records relating to the first respondent by their proceedings in Memorandum No. 7879/OTD-C1/2013 dated 01.02.2019 for the post of Deputy Collector MBC/DC and consequently direct the first respondent to conduct counselling to the post of Deputy Collector in MBC/DNC (Women) vacancy.



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For Petitioner : Mr.S.Mohamed Imran,
for M/s.Ajmal Associates

For R1 : Mr.J.Anandha Kumar

For R2 : Mr.G.V.Vairam Santhosh,
Additional Government Pleader.

For R3 : Mr.T.Lajapathi Roy,
Senior Counsel,
Assisted by Mr.R.Rajasekar,

ORDER

Under assail is the proceedings dated 01.02.2019 issued by the first respondent and consequently direct the first respondent to conduct counselling to the post of Deputy Collector in MBC/DNC (Women) vacancy.

2.The case of the petitioner is that TNPSC announced notification dated 10.05.2015 for the post included in combined Civil Services-I (Group-I Services 2014 and 2015). She was participated in the written examination and interview conducted by the first respondent. Thereafter, the first respondent allotment of the posts through counselling following the rules of reservation. She belongs to DNC (Women) and her rank as per the list is 16th with the total marks of 617. She was allotted during



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counselling the post of Assistant Commissioner of Commercial Taxes

and thereafter, the Government approved her appointment and posted as

Assistant Commissioner of Commercial Taxes and she joined duty on

09.11.2017 and now she is working at Tuticorin. One Mr.Sathishkumar

has obtained 642 marks and his rank is 7th rank and he was allotted

during counselling post of Deputy Collector in MBC (General Turn) and

he is relinquished his selection even before taking up the post of Deputy

Collector. The 7th rank is vacant from 2017 onwards and the next person

available in the seniority list is automatically eligible for the place of 7th

rank. Further, if 8th rank person is accommodated in the place of 7th rank,

the 8th women (MBC) quota is automatically vacant. As per the seniority

list, she is the next available person. The first respondent called for

counselling on 07.02.2019 and the vacancy was mentioned in the

counselling to the post of Deputy Collector (MBC/DC)(G) of one

vacancy. But the post mentioned in the counselling itself is not correct.

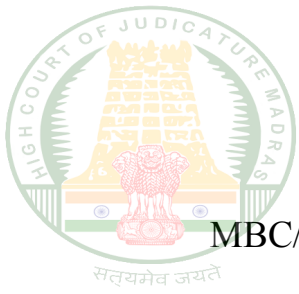
Originally, the post is vacant from 2017 onwards. The first respondent

issued a notice of counselling dated 01.02.2019 is illegal. She has

submitted a representation dated 06.12.2017 and requested to recast the

selection list and allot the post of Deputy Collector MBC/DC Women

arising due to the moving up M/s.Soundariya (8th Rank) to occupy



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MBC/DC (G). She has received order impugned dated 01.02.2019 on 02.02.2019. After receiving the counselling notice, immediately she sent a detailed representation to the first respondent on 04.02.2019 through mail as well as registered post. The first respondent has not passed any orders with regard to her representation dated 04.02.2019.

3.The learned counsel appearing for the petitioner would submit that the petitioner belongs to DNC (Women) and she secured total marks 617 in 16th rank. One Mr.Sathishkumar has obtained 642 marks in 7th rank and he was allotted during counselling post of Deputy Collector in MBC general turn and he was relinquished selection even before taking up the post of Deputy Collector. He would submit that the 7th rank is vacant from 2017 onwards and the next immediate person available in the seniority list is automatically eligible in the place of 7th rank. Further, if 8th rank person is accommodated in the place of 7th rank, the 8th women (MBC) quota is automatically vacant. As per the seniority list, she is the next available person in the reservation quota and her rank is 16 as per seniority list. Without considering the above aspects, the first respondent called for counselling to the post of Deputy Collector (MBC/DC)(G) is illegal and violating the provisions of law. He would submit that the petitioner sent a detailed representation dated 04.02.2019 to the first



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respondent and the same is still pending.

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4.The learned Standing Counsel appearing for the first respondent would submit that one Mr.Sathishkumar in rank No.7 is one among the candidates who was selected provisionally for the post of Deputy Collector under MBC/DC(G) category, but, had not joined duty in the said post. Hence, vacancy arose in MBC/DC(G) category. In order to fill up the said vacancy, second phase of counselling was conducted on 07.02.2019. He would submit that one Soundarya, rank No.8 was already selected for the post of Deputy Collector MBC/DC(W) category and hence, she was not called for the second phase of counselling held on 07.02.2019 for the post of Deputy Collector for the same recruitment. He would submit that once a turn is filled by merit, it is construed that the selection process for that particular turn had been completed and in the event of the candidate's failure to join duty, the said turn is deemed to lapse. Therefore, question of making selection for the same turn does not arise.

5.The learned Senior Counsel appearing for the third respondent would submit that as per rule of reservation and existing norms, the third respondent is meritorious person who has secured higher marks than the



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petitioner and therefore, the he has been selected provisionally to the post of Deputy Collector, which arose due to relinquishment of Mr.Sathishkumar. The first respondent has issued provisional selection order vide memorandum dated 07.02.2019 in favour of the third respondent. Despite the selection, he was not yet posted as Deputy Collector due to the interim order granted in this writ petition. The writ petitioner under misconception has stated in her affidavit in paragraph No.4. Once the MBC Woman vacant post is filled up, then the same cannot be disturbed by way of moving the MBC woman to General category as stated by the writ petitioner. The benefits of women reservation and the difference between horizontal and vertical reservation has been clearly explained by the Hon'ble First Division Bench of this Hon'ble Court in W.P.No.6201 of 2013, etc Batch dated 07.09.2022. The learned Senior Counsel has also relied upon the judgment of the Hon'ble Supreme Court reported in (2007) 8 SCC 785 in a case of Rajesh Kumar Daria Vs. Rajasthan Public Service Commission and Ors to show that method of implementing vertical (Social) reservation and horizontal (Special) reservation, in connection with women candidates.

6.This Court has considered the submissions made on either side



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and perused the available records.

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7.It is seen from the records that on 26.02.2019 this Court issued an interim order stating that further proceedings shall be kept in abeyance till 14.03.2019. Thereafter, the said interim order was extended periodically.

8.The first respondent/Tamil Nadu Public Service Commission had issued a notification to the selection of candidates for appointment by direct recruitment to the posts included Group-I services-2013-2014 & 2014-2015 against 74 vacancies. In notification No.09/2015 dated 10.07.2015 in Serial No.2-Distribution of Vacancids-vacancies will be filled in as follows according to rule of reservation of appointments:-

(For the post of Deputy Collector alone extracted hereunder)

S.No	Name of the post	G T (G)	G T (W)	G T (PS T M)	G T (W) (P S T M)	B C (G)	B C (W)	B C (T M)	B C (G)	B C (M)	B C (D)	B C (C/)	B C (C/)	B C (C/)	B C (C/)	B C (G)	SC (W)	S C (PS T M)	S C (C W) (P S T M)	Total
1.	Deputy Collector	3	1	1	-	3	1	1	1	-	2	-	1	1	1	2	-	1	1	19



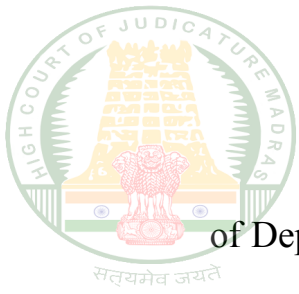
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It is not in dispute that the petitioner one among the candidates, who was selected provisionally to the post of Assistant Commissioner of Commercial Taxes in the above recruitment. Among 19 vacancies invited for the post of Deputy Collector in the above said recruitment, 2 vacancies were earmarked to MBC/DC(G), one vacancy was earmarked for MBC/DC (Women) and one vacancy was earmarked for MBC/DC(Ortho).

9.The learned Standing Counsel appearing for the first respondent draws attention of this Court to the counter filed by the first respondent wherein it has been stated that the candidates were called for counselling as per their rank order. The Deputy Collector posts were filled up in phase-1 counselling based on the option of the candidates. The details are mentioned in paragraph No.7 of the counter is extracted hereunder:-

<i>S.No.</i>	<i>Vacancy</i>	<i>Name of the candidate Thiru/Tmt/Selvi.</i>	<i>Rank No. and Mark</i>
<i>1.</i>	<i>MBC/DC(G)(1/2)</i>	<i>P.Jagatheeswaran</i>	<i>6 & 643.50</i>
<i>2.</i>	<i>MBC/DC(G)(2/2)</i>	<i>E.Satheeskumar</i>	<i>7 & 642.00</i>
<i>3.</i>	<i>MBC/DC(W)(1/1)</i>	<i>R.Soundarya</i>	<i>8 & 640.50</i>
<i>4.</i>	<i>MBC/DC(Ortho)(1/1)</i>	<i>M.Muthulaluvan</i>	<i>140 & 449.50</i>

10.It is not in dispute that Mr.Sathishkumar, (rank No.7, mark 642) is one among the candidates who was selected provisionally for the post



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of Deputy Collector under MBC/DC(G) category. But, he had not joined duty in the said post. Hence, vacancy arose in MBC/DC(G) category. In order to fill up the said vacancy, second phase counselling has been called for. In paragraph Nos.9 & 11 of the counter filed by the first respondent read as follows:-

9.Since Tmt/Selvi R.Soundarya (Rank No.8, Mark640.50) was already selected for the post of Deputy Collector under MBC/DC (W) category, hence, she was not called for the second phase of counselling held on 07.02.2019 for the post of Deputy Collector (MBC/DC(G) category) for the same recruitment.

10. ...

11.Therefore, the list of candidates called for the second phase of counselling to the post of Deputy Collector against MBC/DC(G) which was held on 07.02.2019 is furnished below:-

List of next eligible 5 candidates available in the

Ranking List under MBC/DC (G) category

S.No.	Rank No.	Mark	Reg.No.	Name of the candidate Thiru/Tmt/Selvi.
1	15	623.50	001012125	Ganesh.B
2	16	617.00	001034278	Selva Priya.C
3	17	615.00	001069057	Ravi Abi Raam.R
4	32	601.00	001059063	Karthikeyan.A
5	39	597.00	001081096	Nappinnai.K



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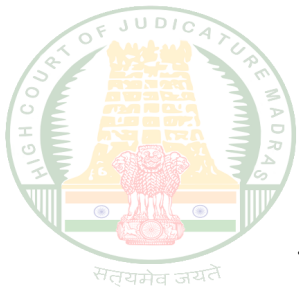
11. At this juncture, it is relevant to refer Section 27(f) of the Tamil

Nadu Government Servants (Conditions of Service) Act, 2016, which

reads as follows:-

27(f). If qualified and suitable candidates belonging to any of the Backward Classes, Backward Class Muslims including the Most Backward Classes and Denotified Communities are not available for selection for appointment by recruitment by transfer or by promotion in the turns allotted to them, the turns so allotted shall lapse and the selection for appointment for the vacancies shall be made by the next turn in the order of rotation:

Provided that if qualified and suitable candidates belonging to any of the Scheduled Castes and Scheduled Tribes are not available for selection for appointment by recruitment by transfer or by promotion in the turns allotted to them in the cycle, the turns so allotted to them shall not lapse and the number of candidates to be selected in that recruitment shall be reduced by the number of candidates belonging to Scheduled Castes and Scheduled Tribes not available for selection against the turn allotted to them. The unfilled vacancies reserved for the Scheduled Castes and Scheduled Tribes to be filled by recruitment by transfer or by promotion shall be carried over to four consecutive recruitment years, namely, year of recruitment plus three subsequent recruitment years. The selection for appointment to the vacancies in the next recruitment shall be made first



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for the carried over turns and then the normal rotation shall be followed. If qualified and suitable candidates belonging to any of the Scheduled Castes and Scheduled Tribes are not available for selection for appointment by recruitment by transfer or by promotion even thereafter, the vacancies reserved for those categories shall first be dereserved by obtaining the orders of the Government before filling them by candidates in the next turn in the order of rotation:

Provided further that the normal number of vacancies reserved for the candidates belonging to the Scheduled Castes and Scheduled Tribes and the carried forward vacancies as specified in the first proviso shall not exceed fifty per cent of the total number of vacancies for a particular recruitment. If there be two vacancies only, one of them shall be treated as a reserved vacancy. If there be one vacancy only, it shall be treated as unreserved. The surplus of the fifty per cent shall be carried forward to the subsequent recruitment, subject to the condition that the vacancies carried forward do not become time barred due to their continued existence for more than three years. Selection for appointment to the earliest carried forward vacancies shall be made first:

Provided also that in the case of selection for appointment by direct recruitment, with effect on and from the 1st April 1989, there shall be a ban on dereservation of vacancies reserved for the candidates belonging to any of the Scheduled Castes and Scheduled Tribes, Most Backward



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Classes and Denotified Communities to be appointed by direct recruitment. But, the above ban on dereservation of vacancies shall not be applicable to the vacancies reserved for the Backward Classes (other than Most Backward Classes and Denotified Communities), Backward Class Muslims and, therefore, if qualified and suitable candidates belonging to any of the Backward Classes (other than Most Backward Classes and Denotified Communities), Backward Class Muslims are not available for appointment, the turn so allotted to them shall lapse and the vacancy shall be filled by the next turn in the order of rotation. If sufficient number of qualified and suitable candidates belonging to any of the Scheduled Castes and Scheduled Tribes, Most Backward Classes and Denotified Communities are not available for selection for appointment for the vacancies reserved for them by direct recruitment in the first attempt of recruitment, then, a second attempt shall be made for selection of the candidates belonging to the respective communities by direct recruitment in the same recruitment year or as early as possible before the next direct recruitment for selection of candidates against such vacancies. If the required number of candidates belonging to such communities are not available even then, the vacancies for which selection could not be made shall remain unfilled until the next recruitment year treating them as “backlog” vacancies. In the subsequent year, when direct recruitment is made for the vacancies of that year, namely, the current vacancies, the “backlog”



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vacancies shall also be announced for direct recruitment, keeping the vacancies of the particular recruitment year, namely, the current year vacancies and the “backlog” vacancies as two distinct groups as illustrated in Schedule-IX. The selection for appointment for the next direct recruitment shall be made first for the “backlog” vacancies and then the normal rotation shall be followed:

Provided also that, in exceptional cases, for posts in Groups A and B for which suitable candidates belonging to the Scheduled Castes, Scheduled Tribes, Most Backward Classes or Denotified Communities are not available against the respective reserved vacancies and the non-filling up of posts causes hardship for running the administration, the Government may grant exemption from carrying forward of such vacancies and the procedure therefor shall be as specified in Schedule-IX:

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:

Provided also that the candidates appointed from the reserve list shall be placed below all the candidates



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appointed from the regular list in the same order in which the vacancies have arisen:

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.

12.It is pertinent to mention that once the turn is filled by merit, it is construed that the selection process for the particular turn had been completed and in the event of candidate's failure to join duty, the said turn deemed to lapse. Therefore, the question of making selection for the said turn does not arise. The Hon'ble First Division Bench has clearly explains the difference between horizontal and vertical reservation vide common order dated 07.09.2022 (cited supra), in paragraph No.41, which is reads as follows:

“41.The difference between horizontal and vertical reservation is that while arranging horizontal reservation, there would be counting of heads finding place in the list of vertical reservation and even in the list of Open Category, if it pertains to reservation for female open category, while it would be not so for giving vertical reservation”.

13.It is also pertinent to mention that a candidate from ranking



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list for that particular category viz., BC/MBC/DC/SC/ST is selected and he/she is placed below the last selected candidate as per Section 27(f) of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016. There is no rule provided in the said act to recast the selection list / seniority list of the candidates selected by the Commission. Similarly, there is no provision in the said Act to rearrange the selection list already drawn as and when candidates are selected supplementally from the ranking list by way of counselling. It is pertinent to mention that the intention of the rules is not to disturb the selection list once drawn as per the rule of reservation and arranged in the order in which appointments are to be made as provided under the rule of reservation of appointments.

14. In view of the above discussions, this Court is of the view that there is no merits in this writ petition and the same is liable to be dismissed. Accordingly, this writ petition is dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

22.04.2025

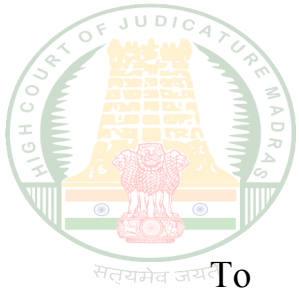
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To
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1. The Secretary,
Tamil Nadu Public Service Commission (TNPSC),
TNPSC Road, Chennai-1.
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