

Case relating to Operation of Reserve list:

Parties : Dr. D. Karal Versus The State of Tamil Nadu, rep.by its Secretary & Others

Court : High Court of Judicature at Madras

Case No : W.P.No.19612 of 2007 & M.P.No.2 of 2007 W.P.No.19613 of 2007 & M.P.No.2 of 2007 W.P.No.19614 of 2007 & M.P.No.2 of 2007 W.P.No.19615 of 2007 & M.P.No.2 of 2007

Judges: THE HONOURABLE MR. JUSTICE N. PAUL VASANTHAKUMAR

Appearing Advocates : For the Petitioner : Mr. Abdul Salem for An and Abdul & Vindo Associates, Advocate. For the Respondents: R1 & R3, E. Ranganayagi, Government Advocate, R2, A. Arul, TNPS.

Date of Judgment : 25-07-2008

Head Note :-

Constitution of India - Article 226 - To quash the advertisement No.104 dated 5.4.2007 and direct the respondents to appoint the petitioners, who are in the reserved list, in the vacancies arising for the post of Assistant Surgeon (Dental) 2003-2005 due to non-joining of the candidates - Whether the waiting list/reserve list candidates are having any right to demand posting, if the selected candidates fail to join duty for any reason - It is an admitted fact that the petitioners are placed in the reserve/waiting list. As per the statutory proviso to Rule 10(a)(i) of the State and Subordinate Service Rules, the reserve list candidates have a right to get appointed, if the selected candidates failed to join duty in time by one reason or the other. The rights of the reserve list candidates gets crystallized the moment the last date for reporting to duty of the selected candidates are over and the reserve list candidates are deemed to be selected in the resultant vacancies by operation of law and as such they will get an indefeasible right. It is the legal obligation of the respondents to issue appointment orders to the reserve list candidates. The non-communication of the vacancy position by the Department in time to the second respondent will not affect the accrued right of the reserve list candidates. If the respondents fail to discharge their statutory obligation, the petitioners have got every right to seek appointment on the basis of the availability of vacancies due to non-joining of the selected candidates. The petitioners' right to get selected cannot be allowed to be defeated by the inaction of the respondents. If the same is permitted, the respondents can defeat the rights of the reserve listed candidates though the selected candidates failed to join in time, which is to be treated as arbitrary and capricious and violative of Articles 14 and 16 of the Constitution of India. Thus, the second respondent is bound to release the petitioners' names for appointment in the vacant posts, which arose due to non-joining of the selected candidates - Having regard to the fact that the subsequent selection was allowed subject to the results of these writ petitions and four posts having been reserved in favour of the petitioners, the second respondent is directed to sent the names of the petitioners to the Government for appointment as Assistant Surgeon (Dental) within a period of two weeks from the date of receipt of copy of this order and the respondents 1 and 3 are directed to give postings to the petitioners within a period of four weeks thereafter.

Para 9 to 11

Cases Referred:

1. The Secretary, Tamil Nadu Public Service Commission v. R. Nagarajan & Others
2008 (3) LW 222 (Relied)
2. Miss Neelima Shangla v. State of Haryana and ors AIR 1987 SC 169

Comparative Citation:

2009 (1) MLJ 1259

Judgment :-

(Common Prayer: Writ Petitions filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified mandamus calling for the records of the second respondent in his proceedings in Advertisement No.104, dated 5.4.2007 and quash the same and consequently direct the respondents to appoint the petitioner specified in the Reserve List, for vacancies arising for the post of Assistant Surgeon (Dental), 2003-2005 due to non-joining of candidates in violation of G.O.Ms.No.221 dated 25.8.1998, communicated in Ref.No.20760/E6/4/07, dated 17.5.2007 of the third respondent.)

Common Order :

Prayer in these writ petitions are to quash the advertisement No.104 dated 5.4.2007 and direct the respondents to appoint the petitioners, who are in the reserved list, in the vacancies arising for the post of Assistant Surgeon (Dental) 2003-2005 due to non-joining of the candidates.

2. The brief facts necessary for disposal of these writ petitions are as follows:

(a) The petitioners have passed Bachelor of Dental Surgery from the Tamil Nadu Dr. MGR Medical University. On 15.9.2006, the second respondent issued an advertisement calling for applications from the degree holders in Dental Surgery for the post of Assistant Surgeon (Dental) in the Tamil Nadu Medical Service. As per the said advertisement, there were 39 vacancies in the post of Assistant Surgeon (Dental) for the year 2003-2005. Petitioners having satisfied with the qualification, based on their applications, they were permitted to appear in the written examination conducted on 10.12.2006.

(b) The second respondent thereafter released a list of 79 candidates for oral test, which was to be held on 25.1.2007. According to the petitioners, after the oral tests, a list of 39 candidates, including two candidates whose results were withheld, was published as they were selected and 11 candidates were placed in the reserve list for the post of Assistant Surgeon (Dental). Petitioners are among the reserve list candidates.

(c) Communication was issued by the second respondent on 20.2.2007 stating that the petitioner in W.P.No.19612 of 2007 was placed in the reserve list in the category of MBC/denotified community (General-1); petitioner in W.P.No.19613 of 2007 was placed in the reserve list in the category of Scheduled Caste (1); petitioner in W.P.No.19614 of 2007 was placed in the reserve list in the category of General Turn (2) and Backward Community (1); and the petitioner in W.P.NO.19615 of 2007 was placed in the reserve list in category of Backward Community (General) (2).

(d) The second respondent also published the reserve list in the newspapers by stating as follows:

"The candidates in the Reserve list from the respective categories will be considered for allotment in the place of the candidates in the select list who fail to join duty. The Reserve list is valid till the finalization of the select list of the subsequent recruitment to this post."

The communication dated 20.02.07 also stated that the reserve list will be in force until the drawal of next selection list for this post by Commission for selection of candidates therefrom against the vacancies caused due to any of the following reasons:

- (a) Non-joining of selected candidates.
- (b) Selected candidates who joined duty but left thereafter.
- (c) Cancellation of provisional selection of selected candidates for any reason."

As per the above statement by the second respondent, the reserve list candidates are to be considered in the respective categories for allotment, if the selected candidates in the said categories fail to join duty.

(e) The third respondent issued posting orders to the selected candidates on 3.4.2007 stating that no representation from the candidates would be entertained seeking joining time and they have to join duty within 30 days from the date of receipt of the posting orders, failing which their names will be recommended to the Government for removing from the approved list. Thus, according to the petitioners, 30 days time was given to the persons under Rule 21(a)(11) of the Special Rules for the Tamil Nadu Medical Services, which was issued in G.O.Ms.No.221 Health and Family Welfare Department, dated 28.5.1998.

(f) According to the petitioners, 14 selected candidates failed to join duty within the prescribed period of 30 days or thereafter. The third respondent through his proceedings dated 17.5.2007 informed the first respondent about the list of 14 candidates, who have failed to join duty due to their pursuing P.G. course. The respondents, failed to remove the names of the above said 14 candidates, who failed to join duty within the prescribed time and consequently failed to operate the reserve list.

(g) In the meanwhile, the second respondent issued fresh advertisement for selection of Assistant Surgeon (Dental) 2006 on 5.4.2007 for 16 vacancies through the impugned advertisement. The said issuance of the fresh advertisement when the petitioners, who are in the reserve list waiting to join duty in the post, is challenged by the petitioners in these writ petitions on the ground that the action of the respondents in not releasing the petitioners' names for appointment in spite of the availability of vacancies due to non-joining of the selected candidates, is illegal and by virtue of the new advertisement calling for fresh candidates their rights are affected.

3. The second respondent filed counter affidavit by stating that merely placing the petitioners' names in the reserve list will not confer any right to them for eventual appointment to the posts and the reserve list is valid only upto the drawal of the regular list for subsequent appointment as provided in Sub-Rule 2(15A), Part-I of the Tamil Nadu State and Subordinate Service Rules. It is further stated that the reserve list can be operated by the Commission only on receipt of necessary proposal from the Government for removal of the names of the selected candidates, who have not joined duty and in the instant cases, no such proposal was received from the Government for removal of the names of the candidates, who have not joined duty within the prescribed time and for allotment of candidates from the reserve list in the vacancies. The Commission also addressed the Government and sought for details regarding the candidates, who have not joined duty by letter dated 15.6.2007 and no reply was received from the Government and based on the estimated vacancies furnished by the Government on 14.11.2006 for the year 2006, a separate notification was issued on 4.4.2007 inviting applications for 16 vacancies and according to the second respondent since the subsequent selection list was drawn, the validity of the earlier reserve list got vanished and therefore the writ petitioners cannot pray for issuing writ of mandamus.

4. Heard the learned counsel for the petitioner as well as respondents.

5. The question arises for determination in these writ petitions is whether the waiting list/reserve list candidates are having any right to demand posting, if the selected candidates fail to join duty for any reason.

6. From the records it is found that these writ petitions were filed on 6.6.2007 and this Court in M.P.No.2 of 2007 in the respective writ petitions, passed an interim order on 7.6.2007 to keep one post each for the petitioners as vacant. The subsequent notification for 16 vacancies was issued on 4.4.2007 for the year 2006, for which written test was conducted after filing of these writ petitions. Similarly, oral test was conducted on 6.9.2007. Therefore, the subsequent list having been prepared only after filing of these writ petitions that too after reserving one post each to the petitioners herein as vacant, the said subsequent selection cannot be put against the writ petitioners herein to non suite them.

7. In fact, the first respondent, through letter No.224367/B1/07-10, dated 19.11.2007, taking note of the interim order passed by this Court and after receiving information from the Government Pleader, ordered to appoint the petitioners on adhoc basis as Assistant Surgeon (Dental), subject to the result in the writ petitions and the candidates in the reserve list of the selection made previously, who have moved the High Court, can also be considered on similar line. However, no order of appointment was given to the petitioners in spite of clearance given by the first respondent.

8. The contention of the learned counsel for the respondents that due to the subsequent notification and selection, petitioners cannot claim any right based on their placement in the earlier reserve list even though there were 14 vacancies available, cannot be accepted in view of the filing of the writ petitions and obtaining interim orders before the selection was made. It is also to be noted that the subsequent selection list published on 21.9.2007 also clearly states that the selection/placement of the reserve list is provisional subject to the final outcome of the writ petitions relating to the said recruitment pending on the file of this Court/Madurai Bench of Madras High Court. Hence the respondents are aware of the pendency of these writ petitions and the direction of this Court to keep one post to each of the writ petitioners herein.

9. The learned counsels appearing for the respondents are also not justified in contending that merely because the petitioners' names were included in the reserve list, the same will not confer any right to them. It is an admitted fact that the petitioners are placed in the reserve/waiting list. As per the statutory proviso to Rule 10(a)(i) of the State and Subordinate Service Rules, the reserve list candidates have a right to get appointed, if the selected candidates failed to join duty in time by one reason or the other. The rights of the reserve list candidates gets crystallized the moment the last date for reporting to duty of the selected candidates are over and the reserve list candidates are deemed to be selected in the resultant vacancies by operation of law and as such they will get an indefeasible right. It is the legal obligation of the respondents to issue appointment orders to the reserve list candidates. The non-communication of the vacancy position by the Department in time to the second respondent will not affect the accrued right of the reserve list candidates. If the respondents fail to discharge their statutory obligation, the petitioners have got every right to seek appointment on the basis of the availability of vacancies due to non-joining of the selected candidates. The petitioners' right to get selected cannot be allowed to be defeated by the inaction of the respondents. If the same is permitted, the respondents can defeat the rights of the reserve listed candidates though the selected candidates failed to join in time, which is to be treated as arbitrary and capricious and violative of Articles 14 and 16 of the Constitution of India. Thus, the second respondent is bound to release the petitioners' names for appointment in the vacant posts, which arose due to non-joining of the selected candidates.

10. Similar issue was considered by a Division Bench of this Court in the decision reported in 2008 (3) LW 222 (The Secretary, Tamil Nadu Public Service Commission v. R. Nagarajan & Others). In paragraphs 12 to 16, the Division Bench considered the operation of reserve list in respect of selection of Assistant Public Prosecutors, even after the subsequent selection, which was ordered subject to the pendency of the earlier writ petition. Paragraphs 12 to 16 of the said decision are extracted hereunder:

"12. Though 10(a)(i) provides for allotment from reserve list for the vacancy in the place of those who have not joined duty, it cannot be strictly interpreted so as to exclude resultant vacancies caused due to candidates joined and subsequently left/resigned. The very purpose of Subordinate Service Rules is to sub-serve the interest of the public and the process of selection. No doubt a candidate has indefeasible right to be appointed for the post, but when the Writ Petitioners have been placed in the reserve list, it is a fallacy to argue that they cannot be appointed in the resultant vacancies. We are of the view that if such interpretation is to be adopted, the expression "such reserve list will be in force until the drawal of next selected list by the commission", would defeat the intention of the Legislature. We are of the view that a meaningful interpretation of rule 10(a)(i) would sub-serve the interest of the public. In fact, having noticed the anomaly, the Government has issued amendment to rule 2 of Part I and Rules 10(a)(i)(i) and 22(d) under Part II of the General Rules for the Tamil Nadu State and Subordinate Services to the effect 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". The learned Counsel for the Commission has submitted that the above amendment has only prospective effect and it cannot be applicable to the Writ Petitioners.

13. Three candidates have joined and left only to join as Civil Judges [Junior Division]. The other candidate Sathasivam has resigned from service. Having regard to the facts and circumstances of the case, the learned Judges allowed the Writ Petitions, directing appointment of Writ Petitioners when there were resultant vacancies.

14. It is to be noted that Appointing Authority viz., Government has not preferred any appeal. As held in AIR 1987 SC 169 [Miss Neelima Shangla v. State of Haryana and ors.], duty of Public Service Commission is only to make available to the Government a complete list of qualified candidates arranged in order of merit. It is the Government who strictly appoints in the order in which they have been placed by the Commission as a result of the examination. When there are resultant vacancies, TNPSC cannot contend that the selected list prepared in 2002 got expired. In fact, while issuing notification inviting applications for 44 vacancies of Additional Public Prosecutor Grade II, it was notified that "the recruitment of the posts is subject to the result of various cases filed in the High Court Madras, which are still pending". Having said so, the appellant is not justified in contending that at present there is no vacancy. This is all the more so, when the Government and TNPSC had taken time in the contempt proceedings for

implementing the order.

15. As a result of our above discussion, we find no reason to interfere with the directions issued in the Writ Petitions and these writ appeals have no merits and are liable to be dismissed.

16. In the result, we confirm the order directing appointment of the Writ Petitioners and the writ appeals are dismissed. Consequently, M.P.No.2/2007 is also dismissed. No costs. We further direct the appellant Commission to include the names of the Writ Petitioners in 1998-2002 list of candidates selected for appointment as Additional Public Prosecutor Grade II in the Tamil Nadu General Services. The appellant and the second respondent are directed to comply with the directions of the learned single Judge within four weeks from the date of receipt of a copy of this Judgment."

11. In the light of my above findings and on the basis of the above Judgment of the Division Bench of this Court and having regard to the fact that the subsequent selection was allowed subject to the results of these writ petitions and four posts having been reserved in favour of the petitioners, the second respondent is directed to send the names of the petitioners to the Government for appointment as Assistant Surgeon (Dental) within a period of two weeks from the date of receipt of copy of this order and the respondents 1 and 3 are directed to give postings to the petitioners within a period of four weeks thereafter.

The writ petitions are ordered on the above terms. No costs. Connected miscellaneous petitions are closed.