

Case relating to operation of Reserve List:

Parties : The Secretary Tamil Nadu Public Service Commission Versus The Secretary to Government Dept. of Personnel & Admn. Reforms & Others

Court : High Court of Judicature at Madras

Case No : W.A. NO. 1466 OF 2008 AND W.A. NOS. 24 TO 27 OF 2009

Judges: THE HONOURABLE MR. JUSTICE S.J. MUKHOPADHAYA & THE HONOURABLE MR. JUSTICE V. DHANAPALAN

Appearing Advocates : For the Appellant: N.R. Chandran, SC for Ms. C.N.G. Ezhilarasi, Advocate. For the Respondents: R. Muthukumarasamy, SC, for K.G. Vasudevan for Abdul Salem for D. Sreenivasan, AGP.

Date of Judgment : 12-06-2009

Head Note :-

Constitution of India - Article 226 – Service - Tamil Nadu State and Subordinate Service Rules - Rule 10, 15-A - Whether the writ petitioners, whose names were appearing in the waiting list have to be considered for appointment against non-joining vacancies or vacancies due to death or vacancies caused due to resignation or cancellation of provisional selection - As per proviso to Rule 10 (1) (i), appointment by direct recruitment can be made of any person whose names have been sponsored by the TNPSC from its regular or reserved list of successful candidates - The reserved list (waiting list) is prepared and acted upon in case of non-joining of selected candidates or who join duty but leave subsequently or if the provisional selection of selected candidates is cancelled for any reason - Though rule 10 (a) (i) provides for allotment from reserved 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 leave or resign. This is also evident from the policy decision taken by the Government as communicated on 20th Feb., 2007 - In view of the aforesaid provisions of law and policy decision of the State Government, the TNPSC cannot object to the appointment of successful candidates whose names are appearing in the reserved list (waiting list) merely on the ground that the State Government has not deleted the name of candidates, who have not joined the post - If a person has not joined the post, that means such a person is not in the service of the State. Similarly if a person joins the

post and subsequently died, is also not in the service of the State. The question of deletion of their names from the record of the State does not arise nor such ground could be taken to oppose the appointment of those whose names are appearing in the reserved list (waiting list), if the life of the panel (reserved list) has not come to an end -The life of the panel has not come to an end. In the first set of case of Assistant Surgeon (Dental), the panel having prepared in 2007,

merely because another advertisement has been published after a few months in absence of any subsequent panel (select list), it cannot be stated that the life of the earlier panel has come to an end. Similar is the case of the petitioner of W.A. No.1466/08, who claims appointment as Commercial Tax Officer. The subsequent panel having not prepared, the earlier waiting list is in force and for the said reason if the State Government has made a requisition to forward the name of the petitioner, it was not open to the TNPSC to refuse to recommend such name - No merit in any of the appeals, therefore, interference with the impugned judgment (s) are uncalled for. All the writ appeals, accordingly, are dismissed.

Para 12 to 16

Cases Referred:

1. Gujarat State Dy. Xen Association –Vs- State of Gujarat 1994 SCC (L&S) 1159 :: (CDJ 1994 SC 569) :: 1994 (3) JT 559
2. Madan Lal & Ors. –Vs- State of J & K & Ors. AIR 1995 SC 1088
3. The Secretary, Tamil Nadu Public Service Commission –Vs- R.Nagarajan & Ors. 2008 (3) LW 222

Comparative Citation:

2009 (5) MLJ 727

Judgment :-

(W.A. No.1466 of 2008 filed against the order dated 22nd Aug., 2008 passed by learned single Judge in W.P. No.16721 of 2008.

W.A. Nos. 24 to 27 of 2009 filed against the order dated 25th July, 2008, passed by learned single Judge in W.P. Nos.19612 to 19615 of 2007.)

Common Judgment: (S.J. Mukhopadhaya, J.)

Though these cases were heard separately, but common question of law involved, they are disposed of by this common judgment.

2. The contesting respondents/writ petitioners (hereinafter referred to as 'writ petitioners') of each of the writ appeals preferred writ petitions for their appointment against non-joining vacancies out of the reserved list (waiting list) (hereinafter referred to as 'waiting list'). Learned single Judge having allowed the writ petitions by two separate judgments, the present appeals have been preferred by Tamil Nadu Public Service Commission (hereinafter referred to as TNPSC').

3. The question that arise for consideration in all these appeals is: -

“Whether the writ petitioners, whose names were appearing in the waiting list have to be considered for appointment against non-joining vacancies or vacancies due to death or vacancies caused due to resignation or cancellation of provisional selection.”

W.A. Nos. 24 to 27 of 2009:

4. The brief facts necessary for disposal of these cases are as follows:-

The petitioners, who passed Bachelor of Dental Surgery, applied pursuant to advertisement dated 15th Sept., 2006, published by the TNPSC for appointment to the post of Assistant Surgeon (Dental) in the Tamil Nadu Medical Service. As per the advertisement, 39 posts for the year 2003-2005 were to be filled up out of the same. The petitioners appeared in the written test held on 10th Dec., 2006 and having come out successful, were called for viva-voce test on 25th Jan., 2007. The TNPSC, thereafter, published the list of 39 successful candidates, including 2 candidates, whose results were withheld and 11 successful candidates were placed in the waiting list. The petitioners are amongst the waiting list candidates. The TNPSC, by their communication dated 20th Feb., 2007, shown the following position of petitioner in the waiting list :-

1) Dr. D.Karal- MBC Denotified Community - General Turn - 1

2) Dr. A.Senthil Kumar – SC - Turn - 1

3) Dr. T.Bhuvanewaran -General BC - Turn - 2

Turn – 1

4) Dr. G.J.Arun Chander - BC (General) - Turn - 2

5. In the notice by which reserved list (waiting list) was published in the newspaper on 20th Feb., 2007, the TNPSC informed the candidates as follows:-

“The candidates in the reserved list from the respective categories will be considered for allotment in the place of the candidates in the selected list, who fail to join duty. The reserved list is valid till the finalization of selected list of the subsequent recruitment to this post.”

By the said communique it was also informed that the selection of candidates therefrom will be made 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.”

6. The Director of Medical and Rural Health Services, Chennai, issued conditional posting orders to selected candidates on 3rd April, 2007 asking them to join duty within 30 days from the date of receipt of posting orders, failing which their names will be removed from the approved list. 14 selected candidates, however, failed to join duty within the prescribed period of 30 days, but inspite of the same, the names of the writ petitioners were not recommended.

W.A. No. 1466 of 2008:

7. Pursuant to advertisement published by TNPSC dated 27th Dec., 2000, the petitioner applied and appeared in the combined competitive examination held by TNPSC. Having come out successful, she was offered post of Deputy Registrar of Co-operative Societies vide memorandum dated 25th Aug., 2004. A waiting list was also published on 25th Aug., 2004 and the petitioner was informed that her name has been kept in the waiting list for the post of Commercial Tax Officer under the category of Scheduled Caste (General) at No.1 and Scheduled Caste (Women) at No.1.

According to the petitioner, one R.K.Sujatha, who was selected as Commercial Tax Officer under the Scheduled Caste (General) category joined the post and, subsequently, died on 30th Nov., 2006. Thus, a vacancy arose in the Scheduled Caste (General) category as well as Scheduled Caste (Women) and the petitioner being at No.1 in the waiting list in both the categories, she ought to have been appointed as Commercial Tax Officer against the said vacancy. Since she was not given appointment despite availability of the vacancy, she submitted final representation on 14th March, 2008, to which the Secretary, Commercial Taxes Department, Government of Tamil Nadu intimated by letter dated 1st April, 2008 informed that the matter has been forwarded to the TNPSC for necessary action. In spite of the same, TNPSC having not forwarded the name, the petitioner filed W.P. No.9481/08 before this Court for direction on respondents to appoint her as Commercial Tax Officer against the vacancy caused due to the death of R.K.Sujatha. This Court, vide order dated 17th April, 2008, directed the TNPSC to consider and dispose of the representation dated 14th March, 2008 on merit. The respondent, by letter dated 19th June, 2008, also accepted that a vacancy caused in the post of Commercial Tax Officer consequent upon the death of Smt.R.K.Sujatha as evident from letter and quoted hereunder:-“Commercial Taxes and Registration Department Secretariat, Chennai – 9 Letter No.6847-A/E1/2008-5 Dated : 19.6.2008 Aani –

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Thiruvalluvar Aandu – 2039

From

Dr. K.Arulmozhi,

I.A.S., Secretary to

Government To

The Secretary

Tamil Nadu Public Service Commission

Chennai- 2 (w.e.)

Sir,

Sub: Public Services - Commercial Taxes Department -Tamil Nadu Commercial Taxes Service - W.P. No.9481/2008 and M.P. No.1/2008 filed by Tmt.B.Subashini -Appointment as Commercial Tax Officer from reserve list - Vacancy caused in the post of Commercial Tax Officer - Informed - Regarding.

Ref : 1. Commissioner of Commercial Taxes letter No.CP2/15244/2008, dated 7.5.2008.
2. Government Letter No.6847-A/E1/2008-3 dated 12.5.2008.
3. Representation from Tmt. B.Subashini, dated 23.5.2008

I am directed to invite attention to the reference cited and to enclose a copy of the representation received from Tmt. B.Subashini.

2. In the representation tird cited, Tmt..Subashini has represented that the Tamil Nadu Public Service Commission in its letter dated 14.5.2008 has informed her that it has not received the report of the Government in regard to vacancy pertaining to Tmt.R.K.Sujatha till date. Hence, the individual has requested that a report on vacancy pertaining to Tmt.R.K.Sujatha be notified specifically to the Tamil Nadu Public Service Commission by the Government.

3. In this connection, I am to state that the Commissioner of Commercial Taxes in the letter first cited and the Government in their letter second cited had already brought to the notice of the Commission the vacancy caused in the post of Commercial Tax Officer consequent on the death of Tmt.R.K.Sujatha. A copy of the death certificate was also forwarded to the Commission with the Government letter cited so as to proceed further in the light of the direction of the High Court, Madras, dated 17.4.2008.

Yours faithfully,

for Secretary to Government

Copy to :

The Commissioner of Commercial Taxes, Chennai - 5."

Inspite of the aforesaid letter, order of appointment having not issued, the petitioner preferred writ petition, which was allowed by learned single Judge.

Common stand of the petitioners:

8. According to the petitioners, the waiting list remained valid until regular list is drawn up subsequently. In both the sets of cases, name of petitioners having appeared in the waiting list,

subsequent panel having not prepared, it was incumbent on the part of the authorities to fill up the non-joining vacancies or the vacancies caused due to the death of selected candidates out of those whose names were appearing in the reserved list (waiting list).

Common stand of the TNPSC:

9. According to counsel for TNPSC, mere appearance of names of candidates in the waiting list will not confer any right on them for eventual appointment to the post and the waiting list is valid only up to the drawal of the regular list for subsequent appointment. The waiting list can be operated by the Commission only on receipt of necessary proposal from the Government for removal of the names of selected candidates, who have not joined duty and in the case of appointment to the post of Assistant Surgeon (Dental) no such proposal was received from the Government for allotment of candidates from the waiting list. The Commission also addressed the Government and sought for details regarding the candidates, who had not joined the post of Assistant Surgeon (Dental) by letter dated 15th June, 2007, but no reply was received. In the meantime, a separate notification was issued on 4th April, 2007, inviting application for 16 vacancies to the post of Assistant Surgeon (Dental). Thereafter, steps were taken for the purpose of subsequent selection list. So far as the case of the appellant, B.Subashini, of W.A. No.1466/08 is concerned, learned counsel for TNPSC submitted that the petitioner had no right to be appointed out of the waiting list.

10. We have heard the parties and perused the record. It will be evident that the State of Tamil Nadu from Health and Family Welfare Department, taking note of interim order passed by this Court in the case of Dr.D.Karal and others, vide letter No.224367/B1/07-10 dated 19th Nov., 2007, ordered to appoint the petitioner, Dr.D.Karal, Dr.A.Senthil Kumar, Dr.J.Bhuvaneshwaran and Dr.G.J.Arun Chander on adhoc basis as Assistant Surgeon (Dental) subject to the result of the writ petitions as also in respect of other candidates of the waiting list, however, no order of appointment has been issued.

11. The question relating to right of a candidate to claim appointment out of waiting list fell for consideration before Supreme Court and other Courts from time to time. In Gujarat State Dy. Xen Association –Vs- State of Gujarat (1994 SCC (L&S) 1159 :: CDJ 1994 SC 569 :: 1994 (3) JT 559), the Supreme Court held as follows :-

"8. A candidate in the waiting list in the order of merit has a right to claim that he may be appointed if one or the other selected candidate does not join. But once the selected candidates join and no vacancy arises due to resignation, etc., or for any other reason within the period the list is to operate under the rules or within reasonable period where no specific period is provided then candidate from the waiting list has no right to claim appointment to any future vacancy which may arise unless the selection was held for it. He has no vested right except to the

limited extent, indicated above, or when the appointing authority acts arbitrarily and makes appointment from the waiting list by picking and choosing for extraneous reasons.

9. A waiting list prepared in an examination conducted by the Commission does not furnish a source or recruitment. It is operative only for the contingency that if any of the selected candidates does not join then the person from the waiting list may be pushed up and be appointed in the vacancy so caused or if there is some extreme exigency the Government may as a matter of policy decision pick up persons in order of merit from the waiting list. But the view taken by the High Court that since the vacancies have not been worked out properly, therefore, the candidates from the waiting list were liable to be appointed does not appear to be sound. This practice may result in depriving those candidates who become eligible for competing for the vacancies available in future. If the waiting list in one examination was to operate as an infinite stock for appointments, there is a danger that the State Government may resort to the device of not holding an examination for years together and pick up candidates from the waiting list as and when required. The constitutional discipline requires that this Court should not permit such improper exercise of power which may result in creating a vested interest and perpetrate waiting list for the candidates of one examination at the cost of the entire set of fresh candidates either from the open or even from service."

In the case of Madan Lal & Ors. –Vs- State of J & K & Ors. (AIR 1995 SC 1088), having noticed relevant rule, the Supreme Court observed that the life of a selection list gets exhausted the moment all vacancies are filled up or after the expiry of one year, whichever is earlier. That was a case in which the rule stipulated the life of a panel for a period of one year. Therefore, it will be evident that the persons, whose names are appearing in the waiting list, though may not have any vested right to be appointed, but have a limited right to claim appointment against the post, which were advertised pursuant to which waiting list prepared and in case of non-joining of candidates or such advertised post falls vacant because of other circumstances.

12. The cases in hand are governed by the Tamil Nadu State and Subordinate Service Rules. Rule 15-A defines 'reserved list' as quoted hereunder: -

"15-A Reserve List – 'Reserve list' shall mean 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."

As per proviso to Rule 10 (1) (i), appointment by direct recruitment can be made of any person whose names have been sponsored by the TNPSC from its regular or reserved list of successful candidates.

13. It is not in dispute that the reserved list (waiting list) is prepared and acted upon in case of non-joining of selected candidates or who join duty but leave subsequently or if the provisional

selection of selected candidates is cancelled for any reason.

14. Similar matter fell for consideration before a Division Bench of this Court in *The Secretary, Tamil Nadu Public Service Commission –Vs- R.Nagarajan & Ors.* (2008 (3) LW 222). Having noticed rule 10 (a) (i) aforesaid, the Division Bench held that meaningful interpretation of rule 10 (a) (i) would sub-serve the interest of the public. Though rule 10 (a) (i) provides for allotment from reserved 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 leave or resign. This is also evident from the policy decision taken by the Government as communicated on 20th Feb., 2007 and noticed above.

15. In view of the aforesaid provisions of law and policy decision of the State Government, the TNPSC cannot object to the appointment of successful candidates whose names are appearing in the reserved list (waiting list) merely on the ground that the State Government has not deleted the name of candidates, who have not joined the post.

If a person has not joined the post, that means such a person is not in the service of the State. Similarly if a person joins the post and subsequently died, is also not in the service of the State. The question of deletion of their names from the record of the State does not arise nor such ground could be taken to oppose the appointment of those whose names are appearing in the reserved list (waiting list), if the life of the panel (reserved list) has not come to an end.

16. In both sets of cases, it is not in dispute that the life of the panel has not come to an end. In the first set of case of Assistant Surgeon (Dental), the panel having prepared in 2007, merely because another advertisement has been published after a few months in absence of any subsequent panel (select list), it cannot be stated that the life of the earlier panel has come to an end. Similar is the case of the petitioner of W.A. No.1466/08, who claims appointment as Commercial Tax Officer. The subsequent panel having not prepared, the earlier waiting list is in force and for the said reason if the State Government has made a requisition to forward the name of the petitioner, it was not open to the TNPSC to refuse to recommend such name.

We find no merit in any of the appeals, therefore, interference with the impugned judgment (s) are uncalled for. All the writ appeals, accordingly, are dismissed. But in the facts and circumstances there shall be no order as to costs.