

Madras High Court

N.Kanthimathi vs The Secretary To Government on 17 August, 2011

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 17/08/2011

CORAM

THE HONOURABLE MR.JUSTICE S.MANIKUMAR

W.P.(MD) No.8877 of 2011

and

M.P.(MD).No.1 of 2011

N.Kanthimathi

... Petitioner

Vs.

1.The Secretary to Government,
Hindu Religious and Charitable
Endowments Administration
Department, Secretariat,
Fort St. George, Chennai - 600 009.

2.The Commissioner,
Hindu Religious and Charitable
Endowments Administration
Department, Nungambakkam,
Chennai - 600 034.

3.The Secretary,
Tamil Nadu Public Service
Commission, NO.1, Greaves
Road, (Commercial Tax Building
Annexe), Chennai - 600 006.

... Respondents

Petitions filed under Article 226 of the Constitution of India praying for a Writ of Mandamus, to direct the third respondent to select the petitioner to the post of Executive Officer Grade IV in Tamil Nadu Hindu Religious and Charitable Endowments Administration Department by operating the reserve list 2008-2009 and consequently, direct the respondents 1 & 2 to appoint the petitioner to the post of Executive Officer Grade IV in the Tamil Nadu Hindu Religious and Charitable Endowments Administration Department in the Tamil Nadu Hindu Religious and Charitable Endowments Subordinate Service included in Group VIII Service, 2008-2009.

!For petitioner

.. Mr.T.Selvan

^For respondents 1 and 2 .. Mr.B.Pugalenthii,
Special Government Pleader
For 3rd respondent .. Mr.S.P.Maharajan

: ORDER

Mandamus sought for in this writ petition is for a direction to the Secretary, Tamil Nadu Public Service Commission, Chennai, to select the petitioner for the post of Executive Officer Grade IV in Tamil Nadu Hindu Religious and Charitable Endowments Administration Department by operating the reserve list and for a consequential direction, directing the respondents 1 & 2 to appoint the petitioner to the said post.

2.It is the case of the petitioner that pursuant to the notification for filling up of 47 vacancies of the Executive Officers Grade-IV posts in Tamil Nadu Hindu Religious and Charitable Endowments Administration Department, for the year 2008-2009, the petitioner completed two stages of selection viz., written examination and oral test, successfully with registration No.02602095. A provisional list was published on 02.06.2010, wherein 40 candidates were selected and results of seven candidates were withheld. Though the petitioner was not included in the list of selected candidates, she was placed in the reserved list, at serial No.1 in three categories viz., General Turn (Women), Backward Class (other than BC Muslims) (Women) & Backward Class (other than BC Muslim) (DW).

3.According to the petitioner, the candidates placed in the reserve list would be considered for selection against the vacancies caused in the respective categories, due to any one of the following reasons; (i) Non joining of selected candidates; (ii) selected candidates who joined duty, but left thereafter; (iii) cancellation of provisional selection of the selected candidates. It is her further submission that the reserved list, which is prepared by the Tamil Nadu Public Service Commission, would be valid till the drawal of the next selection list for the said post, by the Commission. It is her further contention that when she sought for the following informations under the Right to Information Act, (i) as to how many candidates were selected for the post; (ii) as to how many persons left, after joining the post; (iii) as to how many post are vacant subsequently; and (iv) as to the position of the petitioner, reply was given by the Commissioner to the petitioner that ten posts are vacant due to non joining, by the selected candidates. The petitioner, after receiving the information under the Right to Information Act, made a representation, dated 01.07.2011, to the Tamil Nadu Public Service Commission, to select and appoint her, to the post of the Executive Officer (Grade IV) by operating the reserve list of the Tamil Nadu Hindu Religious and Charitable Endowments Subordinate Service, conducted for the year 2008-2009. It is her further contention that the Commissioner, Hindu Religious and Charitable Endowments Administration Department, Chennai, the second respondent herein, by his proceedings, dated 19.07.2011, has also informed the petitioner about the vacancies, in each category. According to the petitioner, since her name figures at serial No.1 in three categories viz., General Turn (Women), Backward Class (other than BC Muslims) (Women) & Backward Class (other than BC Muslim) (DW), she is eligible to be accommodated as against the vacancies. Though several representations have been made to the Commission, no steps have been taken to operate the reserve list as per the regulations. Hence, the

petitioner has come forward with the present writ petition, for the relief stated supra.

4. When the matter came up for hearing, on instructions from the Under Secretary, Tamil Nadu Public Service Commission, Mr.S.P.Maharajan, learned counsel submitted that in the examination conducted by the Commission for recruitment to the post of Executive Officer, Group IV, in the Tamil Nadu Hindu Religious and Charitable Endowment Administration Department, in Tamil Nadu Hindu Religious and Charitable Endowments Subordinate Service, for the year 2008-2009, the petitioner did not reach the zone of consideration for the above said post. However, she was placed in the reserve list against serial No.1 in three categories viz., General Turn (Women), Backward Class (other than BC Muslims) (Women) & Backward Class (other than BC Muslim) (DW), drawn from the above recruitment. He further submitted that necessary action is being taken to allot suitable candidates from the reserve list and the relevant file has been submitted to the Commission, for its order in the matter. The submission of the learned counsel for the Tamil Nadu Public Service Commission, based on the letter No.4321/LCD-C1/2011, dated nil.08.2011, is placed on record.

5. Heard the learned counsel for the parties and perused the materials available on record.

6. As the commission itself has now admitted that the petitioner has been placed in the reserve list against serial No.1 in General Turn (Women), Backward Class (other than BC Muslims) (Women) & Backward Class (other than BC Muslim) (DW), categories, this Court deems it fit not to refer to the other details, stated supra. Suffice to consider as to whether the petitioner has made out a case for issuance of mandamus.

7. The contention of the petitioner that there are ten vacancies in the post of Executive Officer (Grade IV) is fortified by the proceedings in R.C.No.34114/10/L4/dated 10.01.2011, addressed to the Secretary to Tamil Nadu Public Service Commission, wherein the Commissioner, Hindu Religious and Charitable Endowment Department, Chennai, has requested the Tamil Nadu Public Service Commission to allot suitable candidates for the post of Grade IV, Executive Officer in the Tamil Nadu Hindu Religious and Charitable Endowments Subordinate Service, for the year 2008-2009. Perusal of the letter, dated 10.01.2011, shows that in the examination conducted by the Commission, some of them, who had been selected for Grade IV, Executive Officer posts, were also selected for Grade III posts and that they have joined in Grade III posts and consequently, there are ten vacancies in Grade IV, in various communal categories. The details of the vacancies in the communal categories mentioned in the letter, dated 10.01.2011, of the Commissioner of the Hindu Religious and Charitable Endowments Department, are as follows;

S. No.	Rotation	Round	Name Thiru/Tmt./ Selvi	Date of Birth and Educational qualification	The date of joining in Grade III Executive Officer pos the department
1	2nd round	SC (A) (W) (DW)	M.Sudha	16.5.83 B.A.	1.7.10 FN
2	3rd round	MBC/DC	M.Maadu	15.4.74	1.7.10 FN

B.Sc.

3	13th round	MBC/DC	P.Sivaraj	2.6.83 B.Com.,	1.7.10	FN
4	16th round	SC	G.Prakash	25.2.83 B.A., M.A., M.L.,	1.7.10	FN
5	18th round	BC (OBCM) (W)	M.Banumathi	2.10.81 M.Sc., B.Sc.	1.7.10	FN
6	19th round	GT (W)	P.Janaki	16.7.81 M.Sc., B.Sc.	1.7.10	FN
7	24th round	BC (OBCM)	T.Maruthachalam	10.4.76 M.Com., B.Com.,	1.7.10	FN
8	34th round	BC (OBCM)	K.Bharathiraja	19.3.1981 M.L.,	1.7.10	FN
9	42th round	SC	G.Kaniraj	11.6.79 M.L.,	1.7.10	FN
10	43rd round	MBC/DE (W)	M.Amirtha	3.5.79 BPT., MA.,	1.7.10	FN

8.While forwarding the above said details, the Commissioner, Hindu Religious and Charitable Endowment, Chennai, has also requested the Tamil Nadu Public Service Commission, to delete the above said persons from the list of selected candidates for the post of Grade IV Executive Officers, and consequently, select persons from the reserve list and forward the same. Women vacancies are also mentioned in the letter, dated 10.01.2011, in General Turn (Women) and Backward Class (other than BC Muslim) (Women). In such circumstances, when a request has been made by the appointing authority, it is obligatory on the part of the Commission to forward the names from the reserve list.

9.In Secretary, T.N.P.S.C., v. R.Nagarajan reported in 2008 (6) MLJ 1259 (Mad-NOC) = 2008 (3) LW 222 and Dr.D.Karal v. State of T.N., reported in 2009 (1) MLJ 1259. In R.Nagarajan's case (stated supra), TNPSC has invited applications for the post of Additional Public Prosecutor. Respondents therein were placed in the reserve list. When three candidates joined and subsequently left, the question came up for consideration before the learned Single Judge, was whether the persons in the reserve list should be appointed. The learned single Judge has directed the State and TNPSC to appoint the petitioners therein in the reserve list for those vacancies. The State did not appeal, but TNPSC appealed. The Division Bench, after considering the submissions made on either side, held that, "Though Rule 10(a)(i) of the T.N. State and Subordinate Service Rules, provides for allotment from the 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. No doubt a candidate has indefeasible right to be appointed to the post, but when the petitioners had been placed in the reserve list, it is a fallacy to claim that they cannot be appointed in the resultant vacancies. If the stand taken by the Commission is to be accepted, 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. A meaningful interpretation of the rule would subserve the interest of the public. The subsequent amendment to the rule would also confirm this interpretation. The Appointing Authority, the State has not preferred any appeal but the Service Commission has. The duty of the Public Service Commission is only to make available to the State a complete list of qualified candidates arranged in order of merit. It is for the State to make appointments accordingly."

10. In Dr.D.Karal's case (cited supra), the question came up for consideration again was that whether the waiting list/reserve list candidates are having any right to demand posting, if the selected candidates failed to join duty for any reason. In the above case, selection was made for the post of Assistant Surgeon (Dental) for the year 2003-05. Out of 39 vacancies notified, 14 vacancies were not filled up, on account of non-joining of candidates within the prescribed period of 30 days. A fresh advertisement for selection of Assistant Surgeon (Dental) was made on 05.04.2007, for 16 vacancies. The fresh advertisement was challenged by the writ petitioner therein, contending inter alia that when the reserve list was drawn, the same ought to have been operated by TNPSC. Per contra, the Commission by filing a counter affidavit, contended that mere inclusion in the reserve list would not confer any right to the selected candidates for appointment to the posts and the reserve list could be operated until the drawal of regular list. Considering the rival submissions, the learned single Judge, at Paragraph 9, held as follows: "9. The learned counsels appearing for the respondents are also not justified in contending that merely because the petitioner's 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 get crystalised the moment the last date for reporting to duty of the selected 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."

The decision made in Secretary, T.N.P.S.C., v. R.Nagarajan reported in 2008 (6) MLJ 1259 (Mad-NOC) has been relied.

11.Facts of this case are squarely applicable to the decisions of this Court in Secretary, T.N.P.S.C., v. R.Nagarajan reported in 2008 (6) MLJ 1259 (Mad-NOC) = 2008 (3) LW 222 and Dr.D.Karal v. State of T.N., reported in 2009 (1) MLJ 1259.

12.In such circumstances, a mandamus is issued to the Tamil Nadu Public Service Commission to release the reserve list, insofar as the petitioner is concerned, within a period of four weeks from the date of receipt of a copy of this order and on receipt of the communication from the Commission, the Commissioner of Hindu Religious and Charitable Endowment Department, Chennai, the second respondent herein, shall issue necessary appointment orders to the petitioner, immediately, subject to satisfying other requirements under the recruitment rules.

13.In the result, the Writ Petition is allowed. No costs. Consequently, connected Miscellaneous Petition is also closed.

gcg To

1.The Secretary to Government, Hindu Religious and Charitable Endowments Administration Department, Secretariat, Fort St. George, Chennai - 600 009.

2.The Commissioner, Hindu Religious and Charitable Endowments Administration Department, Nungambakkam, Chennai - 600 034.

3.The Secretary, Tamil Nadu Public Service Commission, NO.1, Greaves Road, (Commercial Tax Building Annexe), Chennai - 600 006.