

(2012) 12 MAD CK 0004

In the Madras High Court

Case No : Writ Petition No. 8782 of 2010

A. Balamurugan

APPELLANT

Vs

Tamil Nadu Public Service Commission and Others

RESPONDENT

Date of Decision : 14-12-2012

Acts Referred:

Constitution of India, 1950 — Article 14, 15

Citation : (2013) LabIC 1114

Hon'ble Judges : V. Dhanapalan, J

Bench : Single Bench

Advocate : R. Vaigai and S. Meenakshi, for the Appellant; C.N.G. Niraimathi, P.S. Sivashanmuga Sundaram, A.G.P., S. Rajendran, K. Radhakrishnan and R. Sethuraman, for the Respondent

Final Decision : Dismissed

Judgement

V. Dhanapalan, J.—The petitioner has approached this Court for issuance of writ of certiorarified mandamus calling for the records relating

to the Notification No. 229 dated 17.2.2010 issued by the 1st respondent as published in the Tamil Daily Dinakaran (Trichy Edition) on

17.2.2010 and quash the same to the extent it has included one vacancy in the post of Assistant Geologist, which arose in the year 2009 due to S.

Sridharan leaving service and consequently, direct the respondents to appoint the petitioner as Assistant Geologist with effect from 2009 when S.

Sridharan left service, with continuity of the petitioner's previous service as Assistant in the Department of Medical and Rural Health Service, with

due seniority, arrears and all other consequential benefits. Brief facts of the case are as follow:--

(a) The petitioner has been working as an Assistant in the Department of Medical

and Rural Health Service, Government of Tamil Nadu since

2000. The 1st respondent of herein, published a notification on 18.6.2000 calling for applications to fill up 21 vacancies in the post of Assistant

Geologist in the 2nd respondent Department in the scale of pay of Rs. 6,500-200-11,100/-. The qualification prescribed in the notification was

M.Sc. Degree in Geology. The upper age limit fixed was 30 years and in service candidates were given 5 years age relaxation. Since the petitioner,

who belongs to a Backward Community and possess M.Sc. Degree in Geology, fulfilled all the eligibility criteria, he applied for the post on

23.6.2007 as an in service candidate. His application was accepted and he received a call letter to attend the written examination. He attended the

written examination on 23.9.2007 and was selected. By a letter dated 15.11.2007 of the 2nd respondent, petitioner was asked to attend an oral

test with all original certificates. He attended the oral test on 26.11.2007. A Provisional list was published, through a notification, on 29.1.2008 by

the 1st respondent in which the petitioner was placed in the Reserved List under the Backward Class Category as the 1st candidate. He also

received a letter from the 1st respondent dated 29.9.2008 informing that he was not selected for appointment but that his name has been included

in the Reserved Category of Backward Class. The letter also stated that,

The Reserve List will be in force until the drawal of next selection list for this post by the Commission, for selection of candidates therefrom, against

the vacancies caused due to any 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 for any reason.

(b) Out of 21 posts, one post was kept vacant as per the order of this Court made in W.P. No. 34182 of 2007 and the remaining 20 vacancies

were filled. Since all the selected candidates joined the service, petitioner did not get a chance for appointment. Since there was no communication

from the respondents, petitioner presumed that no vacancy had arisen. However, the 1st respondent published another Notification dated

17.2.2010 calling for applications to fill up 4 vacancies in the post of Assistant Geologist in the 2nd respondent department. After applying for the

second time also, on enquiry, petitioner came to know that one of the Backward Class Candidate by name S. Sridharan, who got selected in the previous selection list dated 29.1.2008 had left the office in 2009 and thereby a vacancy had arisen. According to the petitioner, when one of the selected candidate had resigned from service the candidates placed under the Reserved List in the notification dated 29.1.2008, should have been considered and he being the first candidate in the Reserved list, his name should have been considered for appointment after S. Sridharan resigned. Therefore, contending that the action of the respondents in including the vacancy caused by S. Sridharan leaving the post, while making a fresh notification on 17.2.2010 to fill up four vacancies is illegal and oppose to the Rules and the Notification dated 29.1.2008, he is before this Court in this Writ Petition.

2. The Deputy Secretary of the Tamil Nadu Public Service Commission, 1st respondent herein, filed a counter-affidavit and stated that the Commission in its Notification/Advertisement No. 114 dated 18.6.2007 invited applications from candidates for filling up 21 vacancies in the Post of Assistant Geologist in Geology and Mining Department in Tamil Nadu Geology, and Mining Subordinate Service. The selection process consists of two stages viz. Competitive written examination and oral test and then the final selection was to be made, The written examination was conducted on 23.9.2007 and the Oral test was conducted on 26.11.2007. Thereafter, the list of selected candidates were drawn up. It is further stated that subsequently, the Commission had notified 4 vacancies in the post of Assistant Geologist in the Geology and Mining Department in its notification No. 229 dated 17.2.2010 for direct recruitment for the year 2009-2010. The written examination was conducted on 25.7.2010 and that selection process is in progress. As regards the earlier notification, it is stated that out of 21 vacancies notified, one vacancy was kept vacant as per the order of this Court in W.P. No. 34182 of 2007 filed by Thiru. R. Sathiyaseelan, and the remaining 20 posts came to be filled up by the selected candidates. It is further submitted that though all the 20 candidates initially joined the service initially, one candidate by name S. Sridharan, the 4th respondent herein, belonging to backward community, resigned his job later. His resignation was accepted and he was relieved from duty

with effect from 3.9.2008. Thereafter, the said Sridharan had filed a writ petition in W.P. No. 14605 of 2010 to consider his request for

withdrawal of his resignation and to reinstate him in the post of Assistant Geologist. As the said writ petition is pending, the question of substituting the petitioner in the place of S. Sridharan does not arise.

3. The Commissioner of Geology and Mining, the 2nd respondent herein, has filed a counter-affidavit inter alia contending that the vacancy that

arose by the resignation of S. Sridharan is already under challenge before this Court in W.P. No. 14605 of 2010. Further, the Government in G.O.

No. 2 (D) No. 90 Industries Department dated 5.12.2007 sanctioned a separate exploration wing in the office of the Commissioner of Geology

and Mining with headquarters at Chennai which consists of 9 posts, of which 4 posts relate to Assistant Geologists and to fill up these four posts

only a letter was sent on 29.9.2008 by the 2nd respondent to the 1st respondent. Therefore, the contention of the petitioner that the notification

issued on 17.2.2010 includes the vacancy caused due to the resignation of S. Sridharan is not correct. The 3rd and 4th respondents, private

parties, have individually filed their counter-affidavit reiterating their contentions.

4. The 3rd respondent has filed counter-affidavit, wherein, he has stated that the petitioner has challenged the Notification, dated 17.2.2010 of the

1st respondent, insofar as it relates to the alleged inclusion in the recruitment process of the vacant post of Assistant Geologist in the G and M

Department, which arose on resignation of one Mr. S. Sridharan on 1.9.2009. The 1st respondent/TNPSC called for applications for Assistant

Geologist in Geology and Mining Department, PWD (Ground Water Wing) and Industries and Commerce Department among other posts among

other Departments, vide Notification/Advertisement No. 299, dated 17.2.2010. The notified vacancies for the post of Assistant Geologists were 4

numbers in Geology and Mining Department; 4 numbers in Public Works Department and 1 post in Industries and Commerce Department. All

four vacancies in Public Works Department were meant for backlog vacancies for SC/ST.

5. According to the 3rd respondent, he applied for the post of Assistant Geologist in Geology and Mining Department, which comes under the

Tamil Nadu Geology and Mining Subordinate Service (Service Code.038 and Post

Code: 1863); he opted as 2nd preference to the post of

Assistant Geologist in Industries and Commerce Department, which comes under the Tamil Nadu Industries Subordinate Service (Service Code:

034 and Post Code: 1924). About 45 candidates (including the 3rd respondent) were called for Oral Test held on 20.7.2011 for all posts notified

vide advertisement No. 299, dated 17.2.2010. So far as the Assistant Geologist Posts in the aforesaid three Departments are concerned, marks

were published for 25 candidates alone. Among 25 candidates, 5 candidates have been selected, 3 candidates' results have been withheld and 6

candidates have been put under Reserve List. The 3rd respondent's Register number did not appear either in the Selection List or in the Withheld

List or in the Reserve List, made for the post of Assistant Geologist in the Geology and Mining Department, but, appeared in the Reserve List for

the post of Assistant Geologist in Industries and Commerce Department, He would further submit that only one candidate's Register number

appears in the Select List and two candidates' Register numbers appear in the Withheld List and in all, three candidates' Register numbers alone

appear in the Provisional Select List pertaining to the post of Assistant Geologist in the Geology and Mining Department. The selection process for

the remaining one post has been kept in abeyance in compliance of the interim order passed by this Court in the above Writ Petition.

6. The 4th respondent has filed counter-affidavit, inter alia stating that due to delay and compulsion, he submitted the letter of resignation on

1.9.2009, which was accepted without giving the benefit of the statutory period of 3 months' notice as provided under Rule 4-A of the Tamil

Nadu State Subordinate Service Rules. After joining the post of Geologist Junior in the G.S.I., as his health was affected on 26.10.2009 and again

on 10.12.2009, the 4th respondent requested the Commissioner of Geology and Mining to permit him to cancel his resignation and reinstate him as

Assistant Geologist, since the acceptance of resignation was not in compliance with the provisions of Rule 41-A of the Tamil Nadu State

Subordinate Rules. His representation to the authorities was considered favourably by them. But, as there was delay in passing order for his

reinstatement in service as Assistant Geologist, he filed W.P. No. 14605 of 2010 before this Court for reinstatement by cancelling his resignation.

The said Writ Petition was disposed of on 12.7.2011 with a direction to the Secretary, Industries and Mining to pass order on his representation in accordance with law. For the second time, the 4th respondent appeared for selection of the post of Assistant Geologist conducted by the TNPSC in the year 2011 and he was successful in the selection and appointed as Assistant Geologist in the office of the Commissioner, Geology and Mining, Guindy.

7. With the above background of facts and pleadings, I have heard the learned counsel appearing for the respective parties and perused the documents made available on record.

8. Ms. R. Vaigai, learned counsel appearing for the petitioner submits that as per the amended Rules of Tamil Nadu State and Sub ordinate

Service Rules, hereinafter referred to as Rules, vide Rule 22(d)(b), when a candidate selected for appointment against a vacancy for a specific

category 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 should be appointed from the respective community and in accordance with the ranking from the Reserve list. She also submits that there

is a proviso in the said Rule which states that the Reserve list shall be operated even against the vacancies caused due to the fact that the

candidates have joined duty and left thereafter. She also brought to the attention of this Court the Memorandum No. 204/OTDB2/2007 dated

29.1.2008 of the Tamil Nadu Public Service Commission, Paragraph 3 of the said memorandum reads thus,

3. The Reserve List shall be in force until the drawal of next selection list for this post by the Commission, for selection of candidates therefrom,

against the vacancies caused due to any 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 for any reason.

It is her contention that the petitioner being listed as first candidate in the Reserve List and when there was a vacancy caused due to the resignation

of the 4th respondent, who joined duty but left thereafter, the petitioner's name should have been considered for appointment. According to her,

when the petitioner was placed in the reserve list, he has acquired a vested right to be appointed to that vacancy and he was waiting in that place

with a legitimate expectation and therefore, the action of the respondent in issuing the second notification, without appointing the petitioner first, is

per se arbitrary, illegal and unjust and is also in violation of Articles 14 and 15 of the Constitution of India.

9. Ms. C.N.G. Niraimathi, learned counsel appearing for the 1st respondent/T.N.P.S.C. submits that out of 21 posts, 20 posts were filled up

through the selection process held in 2007-2008 in which one S. Sridharan, the 4th respondent herein, was appointed; he belongs to backward

community; subsequently, he resigned to his job; his resignation was accepted and he was relieved from duty with effect from 3.3.2009; thereafter,

he filed a writ petition before this Court in W.P. No. 14605 of 2010 for a direction to the Principal Secretary to Government, Industries

Department of Government of Tamil Nadu to consider his request for withdrawal of his resignation and reinstatement to the post of Assistant

Geologist as per the letter of the Commissioner of Geology and Mining in letter No. 9541/PM1/2009 dated 11.1.2010 and therefore, the request

of the petitioner for appointment in the place of the said S. Sridharan is not feasible for consideration.

10. Mr. P.S. Sivashanmuga Sundaram, learned Additional Government Pleader appearing for the 2nd respondent, reiterating the contentions

raised in the counter-affidavit, would submit that as long as the second notification was issued for four posts of Assistant Geologist which arose

subsequent to the sanctioning of a separate Exploration Wing in the Office of the Commissioner of Geology and Mining with headquarters at

Chennai under Part II Scheme, the petitioner cannot stake his claim based on the fact that his name finds a place in the Reserve List.

11. Similarly, learned counsel appearing for the 3rd and 4th respondents, while reiterating the contentions raised in their respective counter-

affidavits, would plead that, while considering the claim of the writ petitioner, the present position of the 3rd and 4th respondents should not be

affected in any manner.

12. The undisputed facts are that a notification calling for applications to fill up 21 posts of Assistant Geologists in the 2nd respondent department

was published on 18.6.2007. As an eligible candidate, the petitioner applied for the same as an inservice candidate. In the written examination he

was selected and attended the oral test on 26.11.2007, in the provisional list published on 29.1.2008, he was placed in the Reserve List under the

Backward Class category as 1st candidate. He received a letter from the 1st respondent dated 29.9.2008 informing that he was not selected for

appointment but that his name had been included in the Reserved Category of Backward Class. The letter also stated that,

The Reserve List will be in force until the drawal of next selection list for this post by the Commission, for selection of candidates therefrom, against

the vacancies caused due to any 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 for any reason.

As there was no further communication from the respondents, the petitioner presumed that no vacancy had arisen after the initial appointment.

However, the 1st respondent published another Notification dated 17.2.2010 calling for applications to fill up 4 vacancies in the post of Assistant

Geologist in the 2nd respondent department. After applying for the second time also, on enquiry, petitioner came to know that one of the

Backward Class Candidate by name S. Sridharan, the 4th respondent herein, who got selected in the previous selection list dated 29.1.2008 had

left the office in 2009 and thereby a vacancy had arisen. According to the petitioner, when he was placed as the first candidate in the Reserve List

published on 29.1.2008, he was under the legitimate expectation that if any vacancy arises in future due to any contingencies as stated in the said

notification itself, he will be appointed. But the respondents had not considered his name for appointment when a backward community candidate

S. Sridharan, who was appointed earlier had subsequently resigned and, therefore, he seeks for a direction to quash the second notification dated

17.2.2010 and consequently, appoint him in that post.

13. As pointed out by the learned counsel for the 1st and 2nd respondents, it is true that the said S. Sridharan had filed a writ petition before this

Court seeking for a direction to consider his representation for withdrawal of his resignation and to reinstate him in the post of Assistant Geologist.

For the sake of completion of pleadings, it must be stated here that the writ petition filed by the said Sridharan in W.P. No. 14605 of 2010 was disposed of by this Court on 12.7.2011 with a direction to, the Secretary to Government, Industries Department, Government of Tamil Nadu, to consider and dispose of his representations dated 10.12.2009 and 13.3.2010, after affording him an opportunity, within a period of eight weeks from the date of receipt of a copy of that order. During the course of hearing, the learned counsel for the 4th respondent reports that the representation of the 4th respondent has been rejected. It is also pleaded by the 4th respondent that for the second time, he appeared for selection for the post of Assistant Geologist conducted by the TNPSC in the year, 2011 and he was successful in the selection and appointed as Assistant Geologist in the office of the Commissioner, Geology and Mining, Guindy and at present, he is working in the said post.

14. The amended Rule 22(d)(b) of Tamil Nadu State and Subordinate Service Rules, reads as under:--

Provided also that when a candidate is selected for appointment against a vacancy for Scheduled Castes, Scheduled Tribes, Most Backward

Classes/Denotified Communities, Backward Classes 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 should be appointed from the respective community and in accordance

with the ranking from the Reserve list:

Provided also that the candidates appointed from the Reserve List shall be placed below the candidates 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 future.

15. From a reading of the aforesaid Rule and its provisions, it is crystal clear that if a candidate selected for appointment against a specific category

does not join duty, another candidate shall be appointed from the respective community according to the ranking from the Reserve list. The Rule

also further provides that the reserve list shall be operated even against the vacancies which had arisen due to the fact that a candidate who had

joined duty and left thereafter.

16. The fact that the Reserve List/Provisional list published on 29.1.2008 was in existence till 17.2.2010, the date on which the second notification

was issued, is evident from the Memorandum No. 204/OTDB2/2007 dated 29.1.2008 of the Tamil Nadu Public Service Commission. Paragraph

3 of the said memorandum reads thus:--

3. The Reserve List shall be in force until the drawal of next selection list for this post by the Commission, for selection of candidates therefrom,

against the vacancies caused due to any 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 for any reason.

17. A rule of law prevails in selection of candidates for appointment and after the selection is over, the method has to be adopted for making their

appointment. The writ petitioner, who was qualified, had gone through the process of selection and come out successful. However, he found his

name placed in the reserve list only in the selection process which took place in the year 2007-2008. Thereafter, the candidate waited with a

legitimate expectation that in a case of any selected candidate not joining duty or leaves the job after joining duty or in case of cancellation of

prevailing selection, that vacancy shall be filled up by him and he would get a chance of appointment. Here is a case where he has been selected

and kept as a first candidate in the reserve list. Fortunately to the petitioner, there was a vacancy which arose due to the resignation of the 4th

respondent. Though certain developments have taken place on his withdrawal, the fact remains that this petition is not against anybody's interest.

The vacancy which was available due to the candidate, who joined duty and left thereafter is to be considered only for the first person who is kept

in the reserve list. Accordingly, this petitioner being the first person listed in the reserve list, should be considered for appointment.

18. It is a settled legal principle that a person who bases his claim on the doctrine of legitimate expectation has to satisfy that he has relied on the

said representation and the denial of that expectation has worked out to his detriment. Therefore, it is the duty of the Court to examine whether the

decision taken by the authority is arbitrary, unreasonable or in gross abuse of power or in violation of principles of natural justice. But a claim

based on mere legitimate expectation without anything more cannot ipso facto give a right to invoke these principles. Mere reasonable or legitimate

expectation of a citizen may not per se be a distinct enforceable right. But failure to consider and give due weight to it may render the decision

arbitrary, and that is how the requirement of due consideration of a legitimate expectation forms part of the principles of non-arbitrariness, a

necessary concomitant of the rule of law. Every legitimate expectation is a relevant factor requiring due consideration in a fair decision making

process. The doctrine of legitimate expectation is not a straight jacket formula, so also a protection right, but it is based upon various factors and it

can be invoked sparingly. It can be invoked where there is an irreparable loss to the party and public interest does not suffer. In other words,

though a right based upon the legitimate expectation is not a legal right, when the expectation is legitimate, reasonable, logical and valid and a

certain degree of fairness is required from the other persons; the doctrine of legitimate expectation can be invoked. Also, it can be invoked if the

decision of the administrative authority affects the person by depriving him of some benefit or advantage. The said doctrinal principle would

definitely be applicable to the person who, after fulfilling all the eligible requirements, got his name placed as the first candidate in the reserve list,

who is none other than the petitioner herein. Moreso, there is a specific provision both in law as well as in the Memorandum No. 204/OTD

B2/2007 dated 29.1.2008 of the Tamil Nadu Public Service Commission to the effect that how the candidates in the Reserve List have to be

exhausted. In the light of the above stated factual matrix and the legal principles, in the considered opinion of this Court, the claim of the petitioner

has to be considered favourably. As the petitioner has challenged the notification to the extent it has included one vacancy in the post of Assistant

Geologist, which arose in the year 2009 due to the resignation of the 4th respondent, only to that extent the notification is interfered with.

Accordingly, this writ petition is allowed to such an extent with a direction to the respondents to consider the claim of the petitioner positively and

proceed further in appointing him as an Assistant Geologist in the Department of Medical and Rural Health Service with effect from the date when

the vacancy arose. Connected miscellaneous petitions are closed. There shall be no order as to the costs.