

WA.(MD)No.1470 to 1474, 1479 & 2355 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 12.12.2024

DELIVERED ON : 21.01.2025

WEB COPY

CORAM
THE HONOURABLE MR.JUSTICE M.S. RAMESH
AND
THE HONOURABLE DR.JUSTICE A.D.MARIA CLETE

WA(MD)Nos.1470 to 1474, 1479 & 2355 of 2024
and
CMP.(MD)Nos.11458, 11465, 11467, 11468, 11477, 11500 & 16311 of 2024

WA.(MD)No.1470 of 2024

The Secretary,
Tamil Nadu Public Service Commission,
TNPSC Road, Broadway,
Chennai – 600 003.

... Appellant

Vs

1.R.Saravanan

2.N.Vengatesan

3.K.Esakki Muthu

4.State of Tamil Nadu,
Represented by its Deputy Secretary to Government,
Human Resources Management Department,
Secretariat, Chennai-600 009.

5.The Member Secretary,
Tamil Nadu Uniform Service Recruitment Board,
Old Commissioner Office Campus,
Egmore, Chennai-8.

... Respondents



PRAYER:- Writ Appeal filed under Clause 15 of Letters patent against the order of this Court dated 11.06.2024 in WP(MD)No.11995 of 2024.

WEB COPY

PRAYER in CMP.(MD)No.11458 of 2024:- Civil Miscellaneous Petition filed under Section 151 of the Code of Civil Procedure, to stay the operation of the order passed in W.P.(MD)No.11995 of 2024 dated 11.06.2024 pending disposal of this writ appeal.

WA.(MD)No.1471 of 2024

The Secretary,
Tamil Nadu Public Service Commission,
TNPSC Road, Broadway,
Chennai – 600 003.

... Appellant

Vs.

1.B.Selvam

2.State of Tamil Nadu,
Represented by its Deputy Secretary to Government,
Human Resources Management Department,
Secretariat,
Chennai-600 009.

3.M.Vijay Ananth

4.B.Muthuraj

... Respondents

(R3 is impleaded vide Court order, dated 12.12.2024 in C.M.P(MD)No.15630 of 2024 in W.A(MD)No.1471 of 2024)

(R4 is impleaded vide Court order, dated 12.12.2024 in C.M.P(MD)No.15651 of 2024 in W.A(MD)No.1471 of 2024)

PRAYER:- Writ Appeal filed under Clause 15 of Letters patent against the order of this Court dated 11.06.2024 in WP(MD)No.1425 of 2024.



PRAYER in CMP.(MD)No.11465 of 2024:- Civil Miscellaneous Petition filed under Section 151 of the Code of Civil Procedure, to stay the operation of the order passed in W.P.(MD)No.1425 of 2024 dated 11.06.2024 pending disposal of this writ appeal.

WA.(MD)No.1472 of 2024

The Secretary,
Tamil Nadu Public Service Commission,
TNPSC Road, Broadway,
Chennai – 600 003.

... Appellant

Vs.

1.R.Mahendran

2.State of Tamil Nadu,
Represented by its Deputy Secretary to Government,
Human Resources Management Department,
Secretariat, Chennai-600 009.

3.B.Muthuraj

4.M.Vijay Ananth

... Respondents

(R3 is impleaded vide Court order, dated 12.12.2024 in C.M.P(MD)No.15241 of 2024 in WA(MD)No.1472 of 2024)

(R4 is impleaded vide Court order, dated 12.12.2024 in C.M.P(MD)No.15240 of 2024 in WA(MD)No.1472 of 2024)

PRAYER:- Writ Appeal filed under Clause 15 of Letters patent against the order of this Court dated 11.06.2024 in WP(MD)No.1427 of 2024.

PRAYER in CMP.(MD)No.11467 of 2024:- Civil Miscellaneous Petition filed under Section 151 of the Code of Civil Procedure, to stay the operation of the



order passed in W.P.(MD)No.1427 of 2024 dated 11.06.2024 pending disposal of this writ appeal.

WA.(MD)No.1473 of 2024

The Secretary,
Tamil Nadu Public Service Commission,
TNPSC Road, Broadway,
Chennai – 600 003.

... Appellant

Vs.

1.V.Shankar

2.State of Tamil Nadu,
Represented by its Deputy Secretary to Government,
Human Resources Management Department,
Secretariat,
Chennai-600 009.

3.M.Vijay Ananth

4.B.Muthuraj

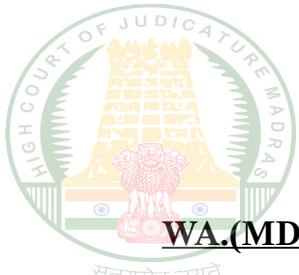
... Respondents

(R3 is impleaded vide Court order, dated 12.12.2024 in C.M.P(MD)No.15237 of 2024 in W.A(MD)No.1473 of 2024)

(R4 is impleaded vide Court order, dated 12.12.2024 in C.M.P(MD)No.15239 of 2024 in W.A(MD)No.1473 of 2024)

PRAYER:- Writ Appeal filed under Clause 15 of Letters patent against the order of this Court dated 11.06.2024 in WP(MD)No.14256 of 2024.

PRAYER in CMP.(MD)No.11468 of 2024:- Civil Miscellaneous Petition filed under Section 151 of the Code of Civil Procedure, to stay the operation of the order passed in W.P.(MD)No.1426 of 2024 dated 11.06.2024 pending disposal of this writ appeal.



WA.(MD)No.1474 of 2024

The Secretary,
Tamil Nadu Public Service Commission,
TNPSC Road, Broadway,
Chennai – 600 003.

... Appellant

Vs.

1.G.Sundaram

2.State of Tamil Nadu,
Represented by its Deputy Secretary to Government,
Human Resources Management Department,
Secretariat,
Chennai-600 009.

3.M.Vijay Ananth

4.B.Muthuraj

... Respondents

*(R3 is impleaded vide Court order, dated 12.12.2024 in
C.M.P(MD)No.15243 of 2024 in WA(MD)No.1474 of 2024)*

*(R4 is impleaded vide Court order, dated 12.12.2024 in
C.M.P(MD)No.15244 of 2024 in WA(MD)No.1474 of 2024)*

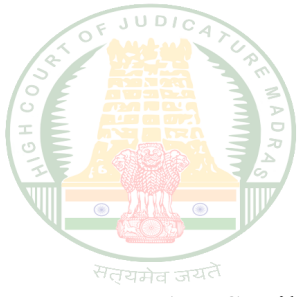
PRAYER :-Writ Appeal filed under Clause 15 of Letters patent against the order of this Court dated 11.06.2024 in WP(MD)No.11833 of 2024.

PRAYER in CMP.(MD)No.11477 of 2024:- Civil Miscellaneous Petition filed under Section 151 of the Code of Civil Procedure, to stay the operation of the order passed in W.P.(MD)No.11833 of 2024 dated 11.06.2024 pending disposal of this writ appeal.

WA.(MD)No.1479 of 2024

The Secretary,
Tamil Nadu Public Service Commission,
TNPSC Road, Broadway, Chennai – 600 003.

... Appellant



Vs

1.R.Sanil Kumar

2.K.Sudaresan

3.N.Pandian

4.V.Suresh Kumar

5.State of Tamil Nadu,
Represented by its Deputy Secretary to Government,
Human Resources Management Department,
Secretariat,
Chennai-600 009.

6.M.Vijay Ananth

7.B.Muthuraj

... Respondents

*(R6 is impleaded vide Court order, dated 12.12.2024 in
C.M.P(MD)No.15245 of 2024 in W.A(MD)No.1479 of 2024)*

*(R7 is impleaded vide Court order, dated 12.12.2024 in
C.M.P(MD)No.15246 of 2024 in W.A(MD)No.1479 of 2024)*

PRAYER:- Writ Appeal filed under Clause 15 of Letters patent against the order of this Court dated 11.06.2024 in WP(MD)No.2057 of 2024.

PRAYER in CMP.(MD)No.11500 of 2024:- Civil Miscellaneous Petition filed under Section 151 of the Code of Civil Procedure, to stay the operation of the order passed in W.P.(MD)No.2057 of 2024 dated 11.06.2024 pending disposal of this writ appeal.



WA.(MD)No.2355 of 2024

The Secretary,
Tamil Nadu Public Service Commission,
TNPSC Road, Broadway,
Chennai – 600 003.

... Appellant

Vs

1.K.Murugan

2.State of Tamil Nadu,
Represented by its Deputy Secretary to Government,
Human Resources Management Department,
Secretariat, Chennai-600 009.

3.The Member Secretary,
Tamil Nadu Uniformed Services Recruitment Board,
Old Commissioner of Police Office Campus,
Egmore, Chennai-600 008.

... Respondents

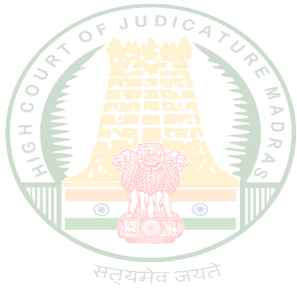
PRAYER:- Writ Appeal filed under Clause 15 of Letters patent against the order of this Court dated 24.07.2024 in WP(MD)No.16485 of 2024.

PRAYER in CMP.(MD)No.16311 of 2024:- Civil Miscellaneous Petition filed under Section 151 of the Code of Civil Procedure, to stay the operation of the order passed in W.P.(MD)No.16485 of 2024 dated 24.07.2024 pending disposal of this writ appeal.

For Appellant : Mr.P.Wilson,
(in all W.As.) Senior Counsel
for M/s.V.Panner Selvam,
Standing Counsel.

For Respondents : Mr.M.Ajmal Khan,
for M/s.Ajmal Associates,
for R1 to R3 in WA.(MD)No.1470 of 2024
for R1 in WA.(MD)Nos.1471 & 1473 of 2024

Mr.V.Thirumal
for R1 in WA.(MD)No.2355 of 2024



WEB COPY



Mr.SRA.Ramachandran,
Additional Government Pleader.
for R4 in WA.(MD)No.1470 of 2024
for R2 in WA.(MD)No.1471 to 1474 of 2024
for R2 to R3 in WA.(MD)No.2355 of 2024.

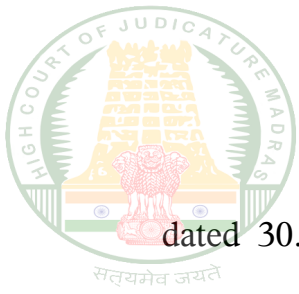
For Impleaded respondents : Mr.J.Lawrance

COMMON JUDGMENT

(Judgment of the Court was delivered by Dr.A.D.Maria Clete, J.)

The appellants in these writ appeals assail the Common Order of the learned Single Judge dated 11.06.2024 in WP(MD)Nos.11995, 11833, 2057, and 1425 to 1427 of 2024. Since these appeals involve common questions of law and facts, they have been heard together and are being disposed of by this common judgment. The learned Single Judge, in the impugned order, directed the appellants to consider the respondents' entitlement to appointment under the Ex-serviceman category for Group II A posts, as notified in Notification No.3 of 2022 dated 23.02.2022, based on merit and to permit their participation in the ensuing stages of the selection process.

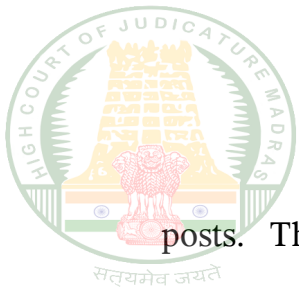
2. The respondents/writ petitioners, all ex-servicemen, had applied for various positions notified by the Tamil Nadu Public Service Commission (TNPSC) under separate notifications. These included Group II A posts under Notification No.3/2022 dated 23.02.2022, Group IV services under Notification No.7/2022



dated 30.03.2022, and technical posts such as Field Surveyor, Draftsman, and Surveyor-cum-Assistant Draughtsman under Notification No.2/2022 dated 30.06.2022.

3. The results for Notification No.2/2022 were declared on 15.02.2023, followed by the results for Group IV services under Notification No.7/2022 on 24.03.2023. The respondents successfully secured posts under these notifications and subsequently joined the respective services. However, the results for Group II A services under Notification No.3/2022 were published much later, on 08.04.2024, wherein the respondents were also found to have been selected. Considering their prior appointments, this situation has given rise to competing claims regarding the respondents' eligibility for participation in the subsequent stages of the selection process for Group II A posts.

4. It is not in dispute that the respondents/writ petitioners qualify as ex-servicemen within the meaning of Section 3(j) of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016. There is also no controversy regarding the sequence of events: the notifications for Group II and II A services were issued earlier than the Group IV notification, but the results for Group IV services were published earlier. Consequently, the respondents, having been selected under the ex-serviceman category for Group IV services, joined those



posts. The question arose as to whether the respondents, appointed to Group IV services under the ex-serviceman category, are eligible to claim the ex-serviceman concession for recruitment to Group II-A services.

5. The appellants, representing the Tamil Nadu Public Service Commission (TNPSC), strongly contended that the respondents were precluded from claiming the ex-serviceman concession a second time. According to the appellants, the first proviso to Section 3(j) of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016 explicitly bars ex-servicemen, who have already been recruited to any service, from claiming the benefit of the concession for subsequent recruitments. The stand of the appellant was challenged by the respondents/writ petitioners. The learned Single Judge found merit in the respondents' challenge and permitted their participation, leading to the present appeals. The learned counsel appearing for the impleaded respondents/ex-servicemen, who had participated in the Group II/IIA examination, made submissions that were nearly identical to the arguments advanced by the appellants, effectively aligning themselves with the appellants' position.

6. The central question for adjudication thus narrows to the interpretation and application of the restriction imposed by the first proviso to Section 3(j) of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016, which reads



as follows:

WEB COPY

"Provided that in all cases, an ex-serviceman once recruited to a post in any service or class or category, cannot claim the concession of being called an ex- serviceman for his further recruitment."

The interpretation of this proviso is pivotal to resolving the present dispute. In the instant case, it is undisputed that the respondents had submitted their applications for Group II A services under Notification No.3/2022 and claimed the ex-serviceman concession well before their recruitment to Group IV services under Notification No.7/2022. Thus, the claims presently under challenge pertain to applications made and rights asserted before their recruitment to Group IV services. The temporal sequence of events is critical to adjudicating the applicability of the proviso.

7. A plain reading of the proviso reveals that it prohibits an ex- serviceman who is already recruited in any of the posts to claim concession in further recruitment but the proviso does not prohibit an ex-serviceman who is not recruited to (apply) claim concession for more than one post. The proviso, therefore, creates a temporal restriction, barring '*once recruited*' ex-servicemen from invoking the concession for subsequent recruitment, but leaving unrecruited individuals free to assert the concession for multiple posts or categories. This distinction is crucial and serves to protect the rights of individuals who applied in



good faith to multiple posts before their recruitment under a specific notification.

In this case, the respondents claimed concession as ex-servicemen before they were recruited, now they are pursuing their claim which was made before their recruitment in the Group IV service. The proviso prohibits claiming any concession after recruitment but does not prohibit pursuing the claim already made at the time the ex-servicemen were not recruited. Further, the eligibility of an applicant to avail of the ex-serviceman concession must be assessed as of the date of the relevant advertisement or notification. The rights of a candidate are crystallized on that date, and subsequent developments, such as recruitment to another post under a later notification, cannot retroactively negate those rights. To hold otherwise would not only be contrary to the text of the proviso but would also undermine the reasonable expectations of candidates who rely on the advertised terms to participate in multiple recruitment processes.

8. The respondents' claims for Group II A services, therefore, must be examined in light of their eligibility on the date of Notification No.3/2022. Their subsequent recruitment to Group IV services under Notification No.7/2022 cannot extinguish their pre-existing right to claim the ex-serviceman concession for a higher post, especially when the application for Group II A services was duly submitted before their recruitment to Group IV services.



9. A situation analogous to the present case was addressed by the Hon'ble Supreme Court in ***Vijay Kumar Mishra and Another v. High Court of Judicature at Patna and Others, AIR 2016 SC 3698***. The case revolved around the interpretation of Article 233(2) of the Constitution of India, which prohibits the appointment of individuals already in the service of the Union or a State as District Judges through direct recruitment. In that case, the petitioners, who were practising Advocates, applied for the post of District Judge under Advertisement No.1/2005. The cut-off date for eligibility was 05.02.2015, by which the petitioners met all the prescribed criteria. They successfully cleared the preliminary and main examinations and were awaiting their results. However, in the interim, the petitioners were selected for and joined the Subordinate Judicial Service of the State of Bihar in August 2015. The results for the District Judge Entry Level (Direct from Bar) main examination were declared on 22.01.2016, where the petitioners were found qualified, and they subsequently received call letters for the interview.

10. The High Court declined to issue the petitioners a No Objection Certificate (NOC) to attend the interview, invoking the prohibition under Article 233(2). It took the position that the bar under Article 233(2) extended to individuals in service from the date of application through the date of appointment. The High Court advised the petitioners to resign from their posts in the



Subordinate Judicial Service if they wished to proceed with the interview.

Aggrieved by this stance, the petitioners challenged the High Court's decision, arguing that their eligibility for the District Judge post ought to be determined as of the date of their application.

11. The Supreme Court, in its judgment, negated the view of the High Court. His Lordship Justice **Abhay Manohar Sapre**, writing separately, provided significant clarity in paragraphs 9 and 10 of his judgment:

9) *"Mr. Ranjit Kumar, Solicitor General of India appearing for the respondent (High Court), however, contended that the word 'appointed' occurring in Article 233(2) of the Constitution should necessarily include the entire selection process starting from the date of applying by the person concerned till the date of his appointment. It was his submission that if any such person is found to be in service of Union or State, as the case may be, on the date when he has applied then such person would suffer disqualification prescribed in clause (2) of Article 233 and would neither be eligible to apply nor be eligible for appointment to the post of District Judge.*

10) *This submission though look attractive is not acceptable. Neither the text of Article nor the words occurring in Article 233(2) suggest such an interpretation. Indeed, if his argument is accepted, it would be against the spirit of Article 233(2). My learned Brother, for rejecting this argument, has narrated the consequences which*



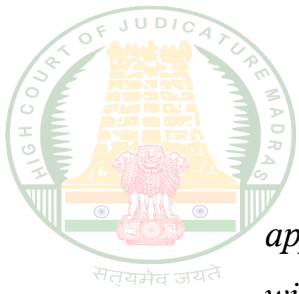
are likely to arise in the event of accepting such an argument, and I agree with what he has narrated. "

WEB COPY

12. The Apex Court has unequivocally held that eligibility must be assessed as of the cut-off date for applications, and subsequent events—such as joining another service—cannot retrospectively disqualify a candidate. This principle squarely applies to the present case. The eligibility of the respondents to claim the ex-serviceman concession must be judged as on the date of their application for Group II services. Their later recruitment to Group IV services cannot obliterate their rightful claims under Group II-A services. In this instance, the writ petitioners had not been recruited to any post as of the date they submitted their applications for Group II services; their recruitment to Group IV services occurred only subsequently.

13. This position finds further support in the judgment of the Hon'ble Supreme Court in *Ashok Kumar Sharma & Others V. Chander Shekhar & Another*, decided on 10 March 1997 (*AIR 1997 SC 700: 1997 (4) SCC 18*). In that case, a three-judge bench reiterated the well-established principle that the eligibility of a candidate must be determined as of the date prescribed for filing applications. The Court, while addressing this issue, observed:

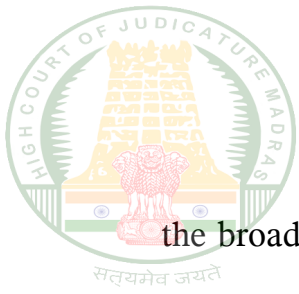
"... the proposition that where applications are called for prescribing a particular date as the last date for filing the



applications, the eligibility of the candidates shall have to be judged with reference to that date and that date alone, is a well-established one. A person who acquires the prescribed qualification subsequent to such prescribed date cannot be considered at all. An advertisement or notification issued/published calling for applications constitutes a representation to the public and the authority issuing it is bound by such representation. It cannot act contrary to it .."

The judgment underscores that candidates who attain the required qualifications after the prescribed cut-off date cannot claim eligibility. The respondents have also drawn strength from authoritative rulings such as ***Ashok Kumar Sonkar v. Union of India, (2007) 4 SCC 54***, and ***Rakesh Kumar Sharma v. State, (2013) 11 SCC 58***, which consistently emphasize that eligibility must be determined strictly as on the date specified in the recruitment notification or application process.

14. The proviso to Section 3(j) of the Act does not explicitly define the critical date, i.e., whether on the date of application or even as on the date of appointment, by which an ex-serviceman must not have been recruited to a post in any service or clause or category, to claim the concession. This ambiguity has created the present conflict, leaving room for interpretation. If the legislature had unequivocally stated that an ex-serviceman recruited to a post at any point during the pendency of an application would be disqualified from claiming the concession, the petitioners would have no claim. However, in the absence of such explicit language, the interpretation of the proviso must be guided by its purpose,



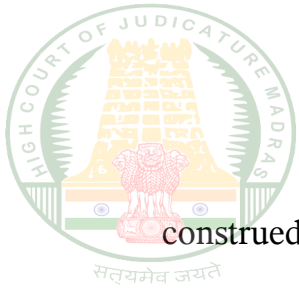
the broader legislative intent, and the principles of statutory construction. In this

exercise, we draw inspiration from the observations made by Lord Denning vide

his decision in **Seaford Court Estates Ltd v Asher** [1949] 2 KB 481 as under:-

“Whenever a statute comes up for consideration it must be remembered that it is not within human powers to foresee the manifold sets of facts which may arise, and, even if it were, it is not possible to provide for them in terms free from all ambiguity. The English language is not an instrument of mathematical precision. Our literature would be much the poorer if it were. This is where the draftsmen of Acts of Parliament have often been unfairly criticized. A judge, believing himself to be fettered by the supposed rule that he must look to the language and nothing else, laments that the draftsmen have not provided for this or that, or have been guilty of some or other ambiguity. It would certainly save the judges trouble if Acts of Parliament were drafted with divine prescience and perfect clarity. In the absence of it, when a defect appears a judge cannot simply fold his hands and blame the draftsman. He must set to work on the constructive task of finding the intention of Parliament, and he must do this not only from the language of the statute, but also from a consideration of the social conditions which gave rise to it, and of the mischief which it was passed to remedy, and then he must supplement the written word so as to give "force and life" to the intention of the legislature.”

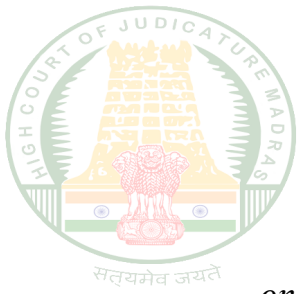
15. In interpreting statutes, particularly those aimed at extending, benefits or concessions, Courts have consistently applied the principle that laws should be



construed to benefit the individuals they are designed to protect, except in fiscal matters. This approach aligns with the overarching purpose of the proviso to Section 3(j), which seeks to prevent ex-servicemen already employed or recruited from repeatedly availing the same concession, thus ensuring equitable distribution of opportunities among all eligible individuals. However, this does not imply that candidates should be penalized for circumstances beyond their control, especially procedural delays for which they bear no responsibility.

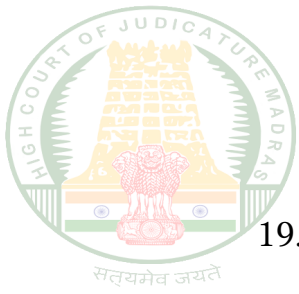
16. In the present case, the appellants attribute the delay in publishing the Group II results to the multi-stage recruitment process involving preliminary written examinations, main examinations, and oral tests. While such procedural delays may be justified by the complexity of the selection process, they cannot be allowed to prejudice innocent candidates. The writ petitioners submitted their applications for Group II A services in good faith and were eligible at the time of application. The subsequent delay in publishing the results, compounded by their recruitment to Group IV services in the interim, cannot extinguish the rights they had acquired under the earlier application.

17. The Hon'ble Supreme Court in *Vjay Kumar Mishra and Another v. High Court of Judicature at Patna* underscored the importance of interpreting statutes in a manner consistent with their purpose and intent. It observed:



"13) It is a settled principle of the rule of interpretation that one must have regard to the subject and the object for which the Act is enacted. To interpret a Statute in a reasonable manner, the Court must place itself in a chair of reasonable legislator/author. So done, the rules of purposive construction have to be resorted to so that the object of the Act is fulfilled. Similarly, it is also a recognized rule of interpretation of Statutes that expressions used therein should ordinarily be understood in the sense in which they best harmonize with the object of the Statute and which effectuate the object of the legislature."

18. In light of these principles, the proviso to Section 3(j) should be interpreted as applying only to ex-servicemen who were already recruited as of the date of their application. It does not extend to individuals who had not been recruited at the time of application but were subsequently recruited before the results were published. Such an interpretation ensures that eligibility and concessions are assessed based on the date of application, safeguarding the rights of deserving candidates against procedural delays. The respondents applied for multiple posts simultaneously and in good faith, with claims for higher positions predating their recruitment to Group IV services. Extending the restriction to invalidate such claims would lead to retrospective disqualification, contrary to the proviso's purpose. Therefore, the respondents' claims under the earlier notification must stand.



19. It is also pertinent to note that while the judgment in **Vijay Kumar**

Mishra was overruled by a three-member Bench of the Supreme Court in **Dheeraj**

Mor v. High Court of Delhi (AIR 2020 SC 1084), the overruling was confined to

the distinction between "selection" and "appointment" in the context of eligibility

for judicial posts. The Supreme Court clarified:

"37. As a result of the above discussion, it is held that Vijay Kumar Mishra (supra), to the extent that it is contrary to Ashok Kumar Sharma (supra), as regards participation in the selection process, of candidates who are members of the judicial service, for appointment to the post of District Judge, from amongst the quota earmarked for advocates with seven years practice, was wrongly decided. To that extent, Vijay Kumar Mishra (supra) is hereby overruled "

The overruling, therefore, does not affect the principles of statutory interpretation enunciated in **Vijay Kumar Mishra**, which remain relevant for the present case.

20. The reservation of posts for ex-servicemen by the Central and State Governments reflects a recognition of the sacrifices made by individuals in service of the nation. The concessions granted to them must be applied reasonably and in a manner that does not penalize candidates for procedural or administrative delays. Accepting employment in a lower post due to immediate availability should not render an individual ineligible to claim the concession for a higher post, especially



when the disqualification is not expressly provided for and when there is no fault on the part of the applicant.

21. In a similar context, the five-member Full Bench of the Punjab & Haryana High Court in ***Harbhajan Singh Advocate v. State of Punjab and Another (1977) 2 S.L.R. 180*** observed:

“6. In the view that we have taken, it is unnecessary for us to go into the question of the vires of R. 3 (ii) (cc) (i) (b). We, would, however, like to add that the rule does appear to our mind to be unreasonable. These rules prescribing a quota of reservation for released Armed Forces Personnel are in force for a limited period only. If during that period a person is otherwise eligible for appointment, we see no justice in excluding him from appointment on the ground that he accepted some other employment in the meanwhile. It looks as if a person belonging to the category of released Armed Forces Personnel accepts an inferior post he does so on pain of losing eligibility to a superior post. If no Superior post is readily available immediately on his release from the Armed Forces he must wait till such post becomes available and it may never become available. In the meanwhile, he is precluded from accepting an inferior post even to keep his body and soul together. Surely, that is not how we repay our debt to those that readily shed their blood for us.”



WEB COPY

22. The above observation aptly underscores the unreasonable consequences of precluding an individual from advancing to a higher post merely because they accepted a lower post out of necessity. This reasoning is particularly relevant in cases involving ex-servicemen, for whom such concessions are intended as a measure of gratitude for their service to the nation. Penalizing them for availing of a lower post to meet immediate financial needs runs counter to the spirit of reservation and the object of the rules.

23. The practice of simultaneously applying for multiple posts under reservation policies and initially joining a lower post due to earlier publication of results, followed by properly transitioning to a higher post upon subsequent selection, does not amount to availing double benefits. The Punjab & Haryana High Court, in ***Tejinder Singh v. Punjab State Power Corporation Ltd. and Others*** (decided on 9 May 2017), addressed a similar issue and held:

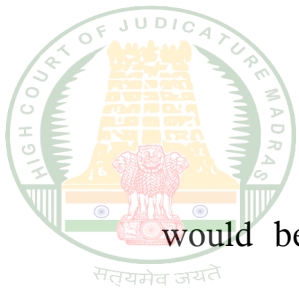
"9. Admittedly, the post of Assistant Engineers and Junior Engineers came to be filled up pursuant to the advertisement issued in the year 2009. A vacancy arose thereafter at roster point 87 in the same advertisement for filling up post of Assistant Engineer. There were certain candidates like the petitioner, who had applied for both the posts, i.e under advertisement CRA 263 and in advertisement CRA 264 and on not making the cut against a higher post, accepted the post of Junior Engineer. If the vacancy at roster point 87 for the



WEB COPY

post of Assistant Engineer had been made available to such candidates, the same would have been accepted at the very outset. As per the rules, the benefit of reservation of being a Ward of ex-servicemen can be availed of only once in life. Acceptance of a lower post was only on account of the fact that the candidates did not have the merit to be selected against a higher post and would be in need of a job. It is on account of necessity that a person would accept a lower post, therefore, it is the opinion of this court that having availed of reservation while accepting the post of Junior Engineer, the respondents cannot deny appointment to a candidate who would otherwise have been in the zone of consideration for appointment to the post of Assistant Engineer, if such vacancy had been made available at that particular time. Such candidates should not suffer for no fault of theirs, only on account of having accepted a lower post at that time. It has also to be kept in mind that the vacancy that arose in the year 2014 pertained to the same advertisement and not a fresh vacancy that arose, therefore it would not amount to taking a double benefit."

24. The rationale articulated in **Tejinder Singh** is directly applicable to the present case. The acceptance of a lower post by the writ petitioners was not a matter of choice but one of necessity, given the earlier publication of results for Group IV services. Their subsequent selection for Group II A services represents an opportunity for upward mobility based on merit and reservation policies. This does not constitute double benefits but rather reflects a procedural and merit-based progression within the same framework of eligibility. Denying such a transition

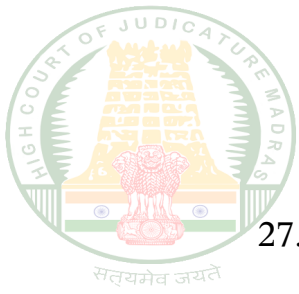


would be inequitable and inconsistent with the very purpose of reservation policies.

WEB COPY

25. The judgments cited above collectively emphasize the need for a balanced interpretation of statutory provisions and reservation rules, ensuring that procedural or administrative delays do not unfairly penalize eligible candidates who act in good faith.

26. The appellants relied on the judgment of the Delhi High Court in ***Kavinder Singh Vohra v. Lok Sabha Secretariat and Another, 2024 SCC OnLine Del 4888***. In that case, the petitioner, an ex-serviceman, retired on 31.07.2013 and was reemployed as Deputy Research Officer on 14.11.2014. While the appointment offer categorized the post as temporary, the employer later clarified through a certificate that the post was permanent, attributing the earlier classification to a typographical error. The petitioner subsequently resigned from this post on 31.05.2015 and applied for the position of Security Assistant Grade-11 (Technical) in February 2016, claiming the ex-serviceman concession. The Court held that the petitioner was not entitled to the concession a second time, as he had already availed of it for his earlier appointment.



27. However, the factual matrix of *Kavinder Singh Vohra* is markedly different from the present case. In that instance, the petitioner had clearly availed of the ex-serviceman benefit before applying for the subsequent post, making his second claim untenable. In contrast, the writ petitioners in the present case applied for multiple posts simultaneously, asserting their claims prior to any recruitment. Therefore, the ruling in *Kavinder Singh Vohra* does not assist the appellants and has no bearing on the current dispute.

28. The appellants also relied on the judgment of the Karnataka High Court in *Union of India and Ors v. Naveen P. N., MANU/KA/8887/2019*. In that case, the applicant, an ex-serviceman, retired from the Indian Navy on 31.08.2014 and applied for the post of Engineer (Marine) under Group 'B' Gazetted posts on 21.11.2014. Before the results for this position were published, he was selected for and joined as Junior Engineer (Naval Quality Assurance) on 18.08.2015. The Department argued that his civil service employment as of 18.08.2015 disqualified him from continuing to claim ex-serviceman status under Rule 2 of the Ex-serviceman (Re-employment in Central Civil Services and Posts) Rules, 1979.

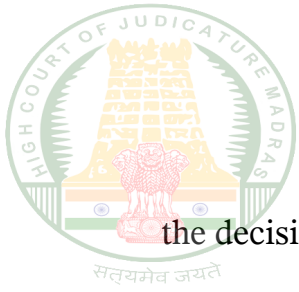
29. The Karnataka High Court, however, noted that the Central Government had addressed such issues through an Official Memorandum dated 14.08.2014, which clarified that ex-servicemen who applied for multiple posts before joining



any civil employment could continue to claim reservation benefits for subsequent employment. Paragraph 4 of this memorandum, as cited in Paragraph 11 of the judgment, stated:

"4. The matter has, therefore, been considered in consultation with Department of Ex-servicemen, Ministry of Defence. It has now been decided that if an ex-serviceman applies for various vacancies before joining any civil employment, he/she can avail of the benefit of reservation as ex-serviceman for any subsequent employment. However, to avail of this benefit, an ex-serviceman as soon as he/she joins any civil employment, should give self-declaration/undertaking to the concerned employer about the date-wise details of application for various vacancies for which he/she had applied for before joining the initial civil employment. Further, this benefit would be available only in respect of vacancies which are filled on direct recruitment and wherever reservation is applicable to the ex-servicemen. "

30. In ***Union of India and Ors, v. Naveen P.N.***, the applicant's failure to submit the mandatory self-declaration to the employer, as required under the Official Memorandum dated 14.08.2014, prompted the Court to draw an adverse inference against him. Moreover, the Court clarified that concessions or preferences for ex-servicemen apply only in cases of direct recruitment and in that case, the recruitment process was entirely reserved for ex-servicemen on a re-employment basis. Given these facts, the applicant's plea was rightly rejected, and

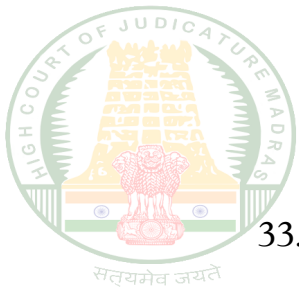


the decision does not lend any support to the appellant's case in the present matter.

WEB COPY

31. In the present case, there is no specific Act or Rule mandating candidates joining a civil post to submit a self-declaration to the employer about applications submitted before their appointment. However, the Central Government, through its memorandum dated 14.08,2014, amended the relevant rules to explicitly permit ex-servicemen to apply for multiple vacancies before securing civil employment. This amendment further enabled ex-servicemen to accept a higher post even after joining a lower one, should such an opportunity arise, as is evident in the case of the writ petitioners.

32. Despite more than a decade has passed since the issuance of this memorandum, the appellants and the State Government have shown complete inertia in amending the relevant provisions to align with its clarifications. This indifference has left candidates like the writ petitioners in a perpetual state of uncertainty. The absence of clear rules has not only forced them into unwarranted litigation but has also deprived them of the opportunity to join higher posts, even when selected on merit. Such administrative inaction, which imposes undue hardship on deserving individuals without any fault on their part, is neither reasonable nor justifiable.



WA.(MD)No.1470 to 1474, 1479 & 2355 of 2024

33. The appellants also relied on the decision of a Learned Single Judge of this Court in ***M. Leelavathy v. The Secretary & Controller of Examinations, TNPSC, W.P. No.657 of 2018***, decided on 09.06.2022. In that case, the petitioner challenged the retrospective application of G.O.Ms.No.89 (Personnel and Administrative Reforms) dated 12.08.2015 to an examination conducted on 26.07.2015. The Court upheld the G.O., noting that it explicitly provided for retrospective effect.

34. However, the judgment in ***M.Leelavathy*** is limited to the issue of retrospective application of a government order and does not address the broader issues of simultaneous applications, procedural delays, or the interpretation of Section 3(j) of the Act. As such, it offers no meaningful guidance for resolving the present dispute, which turns on distinct factual and legal considerations.

35. The appellants placed reliance on the judgment in ***All India Ex-servicemen Bank Employees Federation v. State Bank of India, 2013 SCC OnLine DEL 1553***. That case dealt with the applicability of a government notification granting age relaxation to ex-servicemen for promotions within Groups 'C' and 'D'. The Court held that ex-servicemen employed in banks were not entitled to age relaxation for internal promotions. However, the factual context of that case is entirely unrelated to the present dispute, which concerns the eligibility



to claim the ex-serviceman concession for multiple posts before recruitment. The reliance on this judgment by the appellants is therefore misplaced.

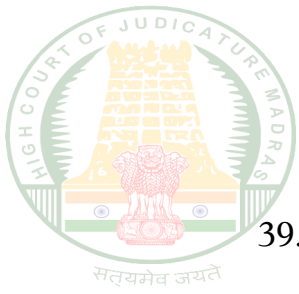
36. The appellants also cited a series of cases, including *T.N. v. Hemalathaa*, (2020) 19 SCC 430, *M. Vennila v. TN. Public Service Commission*, 2006 SCC OnLine Mad 465, *Bedanga Talukdar v. Saifudin Khan and Others*, (2011) 12 SCC 85, and *Tej Prakash Pathak & Ors v. Rajasthan High Court & Ors*, 2024 SCC OnLine SC 3184, to argue that the instructions contained in the TNPSC notification are mandatory and must be adhered to strictly. They emphasized the provision in the TNPSC notification stating that "an Ex-serviceman once recruited to a post in any class or service or category cannot claim the concession of being called as an ex-serviceman for his further recruitment." While there is no dispute over the legal position regarding the mandatory nature of recruitment notifications and procedures, the issue in the present case is not one of procedural compliance but of interpretation. Specifically, whether the bar under Section 3(j) of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016, applies to claims made before recruitment remains ambiguous. The TNPSC notification merely replicates the statutory language of Section 3(j) but fails to address the nuances of candidates applying for multiple posts simultaneously and claiming the concession before their recruitment to a lower post.



WEB COPY

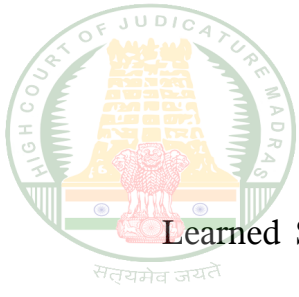
37. As discussed earlier, the Central Government's Official Memorandum dated 14.08.2014 provides a clear framework for such situations. It explicitly allows ex-servicemen to apply for multiple vacancies before joining civil employment and permits them to avail themselves of reservations for subsequent employment, provided they submit a self-declaration listing the posts for which they had applied. This progressive clarification ensures that candidates are not penalized for procedural delays or administrative ambiguities, aligning with the principles of justice and fairness.

38. The TNPSC notification, however, does not address whether the bar under Section 3(j) applies to candidates who had already submitted applications and claimed the concession before their recruitment. The ambiguity in the notification creates unnecessary hardship for ex-servicemen candidates, forcing them into a cruel dilemma: whether to decline a lower post with immediate prospects or forego the opportunity for a higher post with uncertain outcomes. Such situations are especially unjust in cases where delays in publishing results, over which the candidates have no control, exacerbate the issue. The appellants failed to account for these adverse consequences, leaving candidates in a state of avoidable confusion.



39. The respondents/writ petitioners have argued that the application of Section 3(r) of the Tamil Nadu Government Servants (Condition of Service) Act, 2016, would offer relief in their situation. However, this argument lacks merit. Section 3(r) is a deeming provision that specifies the circumstances under which individuals are considered "not in service" for direct recruitment. It applies to those recruited through direct recruitment who have not completed five years of service or who belong to Scheduled Castes, Scheduled Tribes, or Backward Classes, thereby enabling them to apply for other posts without being classified as "in service." However, the entitlement to apply under Section 3(r) is fundamentally distinct from the entitlement to avail of the ex-serviceman concession under Section 3(j). Section 3(j) is a specific and benevolent provision crafted to acknowledge the unique contributions of ex-servicemen and to extend opportunities for their transition into civil employment. This concession is carefully tailored to apply only under certain circumstances and within defined timeframes, underscoring its special nature and targeted application.

40. It is concluded that Section 3(r) of the Act is not applicable to the facts. The bar under the proviso to Section 3(j) does not apply for the writ petitioners, as they had already claimed or applied for the concession before joining the Group IV post. The bar is relevant only for claims made after joining the civil post, as discussed above. Therefore, there is no basis to interfere with the findings of the



Learned Single Judge. Consequently, all the Writ Appeals are dismissed, along with the connected CMPs for stay. Considering the facts and circumstances of the case, there shall be no order as to costs.

[M.S.R.,J] [A.D.M.C.,J]
21.01.2025

NCC : Yes/No

Index : Yes/No

gns

To

1.The Deputy Secretary to Government,
Human Resources Management Department,
Secretariat, Chennai-600 009.

2.The Member Secretary,
Tamil Nadu Uniform Service Recruitment Board,
Old Commissioner Office Campus,
Egmore, Chennai-8.



WEB COPY

VERDICTUM.IN



WA.(MD)No.1470 to 1474, 1479 & 2355 of 2024

**M.S.RAMESH,J
AND
A.D.MARIA CLETE, J.**

gns

Pre-Delivery Order made in
WA(MD) Nos.1470 to 1474,
1479 & 2355 of 2024

Date :21.01.2025