

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 04.02.2015

DATE OF DECISION: 10.02.2015

CORAM:

THE HON'BLE MR.JUSTICE SATISH K. AGNIHOTRI

AND

THE HON'BLE MR.JUSTICE M. VENUGOPAL

W.A. No.1715 of 2014 and M.P. No.1 of 2014

P. Veeramuthu

Appellant / Petitioner

vs.

1 The Secretary
Tamil Nadu Public Service Commission
Frazer Bridge Road
V.O.C. Nagar
Chennai 600 003

2 N. Sureshkumar (Roll No.00101014) Respondents/ Respondents

Writ Appeal preferred under Clause 15 of the Letters Patent against the order dated 16.12.2014 passed in W.P. No.30510 of 2013.

Writ petition is filed under Article 226 of the Constitution of India praying for issuance of writ of mandamus directing the respondent to appoint the petitioner as Assistant Public Prosecutor Grade II in view of his participation in the written examination and oral interview in pursuant to the notification NO.06/2012 dated 2.4.2012 in the Tamilnadu General Service 2010-2011 in the reservation post for PSTM and as per the G.O.Ms. NO.145 dated 30.9.2010 personnel and administrative Reforms (S) Department.

For appellant Mr. S.R. Rajagopal

For R1 Ms.C.N.G. Niraimathi

For R2 Mr. A.R. Nixon

JUDGMENT

SATISH K. AGNIHOTRI, J.

The instant writ appeal arises from the order dated 16.12.2014 passed in W.P. No.30510 of 2013.

2 The appellant/writ petitioner came up with the writ petition, seeking a writ of mandamus by way of a direction to the first respondent to appoint him as Assistant Public Prosecutor, Grade - II in view of his selection in the written examination as well as oral interview which was conducted pursuant to Notification No.06/2012 dated 02.04.2012 in the Tamil Nadu General Service 2010-2011 against the reservation for Persons Studied in Tamil Medium (for short "PSTM").

3 The facts in brief are that pursuant to the aforesaid Notification dated 02.04.2012 inviting applications for appointment on the post of Assistant Public Prosecutor, Grade II through online, the appellant/writ petitioner, who belongs to S.C. community, having requisite qualification for being considered under PSTM quota, made an application for preferential allotment under the said quota. Indisputably, the appellant/writ petitioner was also called for interview by notice dated 22.03.2013 and he also participated accordingly. After the conduct of written examination, oral test and certificate verification, the result of the selected candidates for appointment on the post of Assistant Public Prosecutor, Grade II was published on 03.04.2013, except for preferential appointment on the post in respect of PSTM candidates. In the final list, the appellant/writ petitioner was shown to have obtained 188.50 marks. No appointment order could be issued in favour of the appellant/writ petitioner. In the meantime, 8 more persons who did not qualify in the written test, were called for interview and after interview, out of 8 persons, 4 persons, viz., M/s. T. Duraimugunthan, N. Sureshkumar, A.Mohan and D. Indira Misial, were found qualified for appointment. The appellant/writ petitioner was not one of those successful candidates for appointment. Being aggrieved, the appellant/writ petitioner has come up with the instant writ petition.

4 Sri. S.R. Rajagopal, learned counsel for the appellant/writ petitioner would submit that the other 8 candidates who were called for interview subsequently after declaration of the results could not qualify in the written test and as such, their names did not figure in the list published, after written examination, on 18.03.2013. Thus, calling them for interview subsequently, without insisting on minimum benchmark in the written examination, itself is illegal and contrary to the well settled practice. Thus, this deserves to be quashed. It is

further contended that the appellant/writ petitioner has obtained more marks in the written examination as to qualify himself for the interview in the first round. The last contention of the learned counsel for the appellant/writ petitioner is that once the cut off marks in the written examination or interview has been fixed, the same cannot be altered or modified after publication of the result in order to accommodate some other less qualified persons.

5 On the other hand, Ms. C.N.G. Niraimathi, learned counsel appearing for the Tamil Nadu Public Service Commission (for short "TNPSC") would submit that there was a separate reservation for the persons who had studied in Tamil Medium and applied under PSTM category. As such, they were required to produce the requisite certificate before the oral test in view of the online submission of the applications. Initially, a notification for appointment was published for 47 vacancies which was thereafter increased to 50 vacancies, taking into account, 3 Backward Class (Muslim) vacancies carried forward from the previous year. The appellant/writ petitioner was admitted initially to the oral test against Scheduled Caste (General) category. The appellant/writ petitioner could not be selected against the Scheduled Caste (General) category as he obtained, in total 188.50 marks against the last candidate obtaining 216.00 marks. Reducing the cut off marks in written examination, 8 more persons were again called for interview against 4 vacancies under PSTM category. In the final selection, the appellant/writ petitioner obtained lesser marks than the last selected candidate in male category. Thus, he could not be appointed.

6 Initially, in the writ petition, the second respondent was not arrayed as a party respondent by the appellant/writ petitioner. However, subsequently, on the application of the second respondent, he was impleaded as a party respondent in the writ petition.

7 The contention of Mr. A.R. Nixon, learned counsel for the second respondent is that the appellant/writ petitioner was not qualified to be considered under Advocate quota as he was working as a Librarian cum Information Assistant, Grade I in Anna Centenary Library. It was further submitted that the second respondent had obtained 191.50 marks as against 188.50 marks obtained by the appellant/writ petitioner. Thus, the appellant/writ petitioner was rightly rejected for appointment.

8 We have heard the learned counsel for the parties, perused the pleadings and also the documents appended thereto.

9 The Notification No.06/2012 dated 02.04.2012 was published inviting applications through online mode, whereunder,

the number of vacancies notified was 47. In the said Notification, under Clause 4, it is provided that as per G.O.Ms.No.145, Personnel and Administrative Reforms (S) Department dated 30.09.2010, 20% of vacancies in direct recruitment on preferential allotment basis shall be reserved to PSTM candidates. The said clause viz., Clause 4 of the Notification reads as under:

"4. GENERAL INFORMATION:

A The Rule of reservation of appointment is applicable to the post and distribution of vacancies will be as per the rules/orders in force.

B In G.O.Ms.No.145, Personnel and Administrative Reforms (S) Department dated 30.09.2010, the Government have issued orders to fill up 20% of all vacancies in direct recruitment on preferential basis to persons studied the prescribed qualification in Tamil Medium. The 20% reservation of vacancies on preferential allotment to Persons Studied in Tamil Medium (PSTM) will apply for this recruitment.

C The number of vacancies advertised is only approximate and is liable for modification including reduction with reference to vacancy position at any time before finalisation of selection.

D If no qualified and suitable woman candidates are available for selection against the vacancies reserved for them, those vacancies will be filled by male candidates belonging to the respective communal categories."

The written examination was in 2 parts. Part-A - Written Test containing 4 Law Papers for 100 marks each and Part-B - Oral Test for 60 marks. The minimum benchmark in the written test was 180 in the aggregate for other categories, 140 for Scheduled Castes, SC (A)s and Scheduled Tribes and 160 for Most Backward Classes/Denotified Communities and Backward Classes, (OBCM) and BCM. In the interview, the minimum cut off marks was 18. The relevant clause reads as under:

"5. SCHEME OF WRITTEN EXAMINATION AND VIVA VOCE:
(BACHELOR'S DEGREE STANDARD - DESCRIPTIVE TYPE)

Subject	Duration of Examination	Maximum Marks
Part-A - Written Test		
Paper I - Law I	3 hours	100
Paper II - Law II	3 hours	100

Subject	Duration of Examination	Maximum Marks
Part-A - Written Test		
Paper III - Law III	3 hours	100
Paper IV - Law IV	3 hours	100
Part-B-Oral Test (Interview)		60
Total	460	

Note:

i The minimum qualifying marks in Part A for admission to the Oral Test shall be as follows:

a) For Scheduled Castes, SC(A)s and Scheduled Tribes: 140 in the aggregate

b) For Most Backward Classes/Denotified Communities and Backward Classes, (OBCM) and BCM : 160 in the aggregate

c) For Others : 180 in the aggregate

ii. The minimum qualifying marks in Part B for a Pass for all shall be 18.

iii The question papers on Law-I, II, III and IV in the written examination will be set both in Tamil and English and the candidates will be given option of answering the paper wither in Tamil or English or partly in Tamil and partly in English.

iv The candidates who have not appeared for any of the papers in the written examination will not be considered for the selection even if they secure the minimum qualifying marks for selection.

v The syllabus for the post of Assistant Public Prosecutor, Grade II in the Tamil Nadu General Service is made available in the Commission's website www.tnpsc.gov.in and also published in the Tamil Nadu Public Service Commission Bulletin dated 01.11.2005 at pages 1268-1272 (Syllabus Code No.132.)"

10 On a perusal of records, it is seen that the provision for allotment of seats to PSTM to the extent of 20% was on the basis of preferential consideration. Thus, it was not a vertical reservation. It was a horizontal reservation. In case of

horizontal reservation, a common list categorywise has to be drawn and 20% of the total candidates must be chosen on preferential basis. Thus, the contention of the learned counsel for the TNPSC that for PSTM candidates, a separate cut off mark was fixed is unsustainable in the eye of law, as the same is not prescribed in the Notification. It is violative of the well settled principle that rule of selection process cannot be altered or modified midway.

11 It is a trite law that fixing the benchmark is permissible in law. (See Madhya Pradesh Public Service Commission vs. Navnit Kumar Potdar and another¹ and Yogesh Yadav vs. Union of India and Others². But, the Selection Committee has no power to change the selection process or scheme of selection midway and also to reduce the benchmark notified in the advertisement. (See Mohd. Sohrab Khan vs. Aligarh Muslim University and Others³-(Para 27) and A.P. Public Service Commission vs. B. Swapna⁴-(Para 14).

In Krishna Chandra Sahu (Dr.) vs. State of Orissa⁵, the Supreme Court held as under:

"30. The Selection Committee does not even have the inherent jurisdiction to lay down the norms for selection nor can such power be assumed by necessary implication."

12 Thus, even if candidates under PSTM candidates were not available, the cut off marks could not have been reduced in written examination for them. Horizontal reservation cuts across vertical reservation which is also called as "interlocking reservation", meaning thereby, there is no separate reservation, but, they have their share of reservation within the vertical reservation.

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¹ (1994) 6 SCC 293

² (2013) 14 SCC 623

³ (2009) 4 SCC 555

⁴ (2005) 4 SCC 154

⁵ (1995) 6 SCC 1

13 There is no dispute that the other selected candidates for appointment, viz., M/s.N.Elumalai, S. Senthilkumar and S.Balasubramanian did not secure the minimum benchmarks as their names/roll numbers did not find place in the list of successful candidates in the written examination. The contention of the TNPSC that written test results of the PSTM candidates were not published, has no basis as the cut off mark is one and the same for all the candidates, including PSTM candidates, depending on their categories on vertical reservation basis. It appears that they had not obtained minimum qualifying marks of 140 in aggregate in Scheduled Caste category. The act of TNPSC in reducing the cut off marks for them and calling upon them for interview subsequently, after declaration of the final results on 03.04.2013, is not acceptable and impermissible. To this extent, the contention of the learned counsel for the appellant/writ petitioner that if they could not qualify in the written examination by not obtaining minimum cut off marks, they were ineligible for interview and after obtaining marks in interview, they could not have been placed above the appellant/writ petitioner, merits acceptance. Thus, the process of selection is certainly not in accordance with the Notification and Selection Scheme.

14 However, in the facts of the case, when the appellant/writ petitioner has not chosen to implead 3 other candidates as respondents, who had been selected under PSTM category after having obtained more marks in totality of the written examination and interview taken together, no relief can be granted to the appellant/writ petitioner, as the candidates who were interviewed and selected ultimately have not been impleaded as party respondents. No order to their prejudice can be passed at the instance of the appellant/writ petitioner. Ultimately, in the final tally, the appellant/writ petitioner had obtained lesser marks than the last candidate selected under PSTM category.

15 Resultantly, for the reasons and analysis as aforestated, the writ appeal is dismissed. No costs. Connected Miscellaneous Petition is closed.

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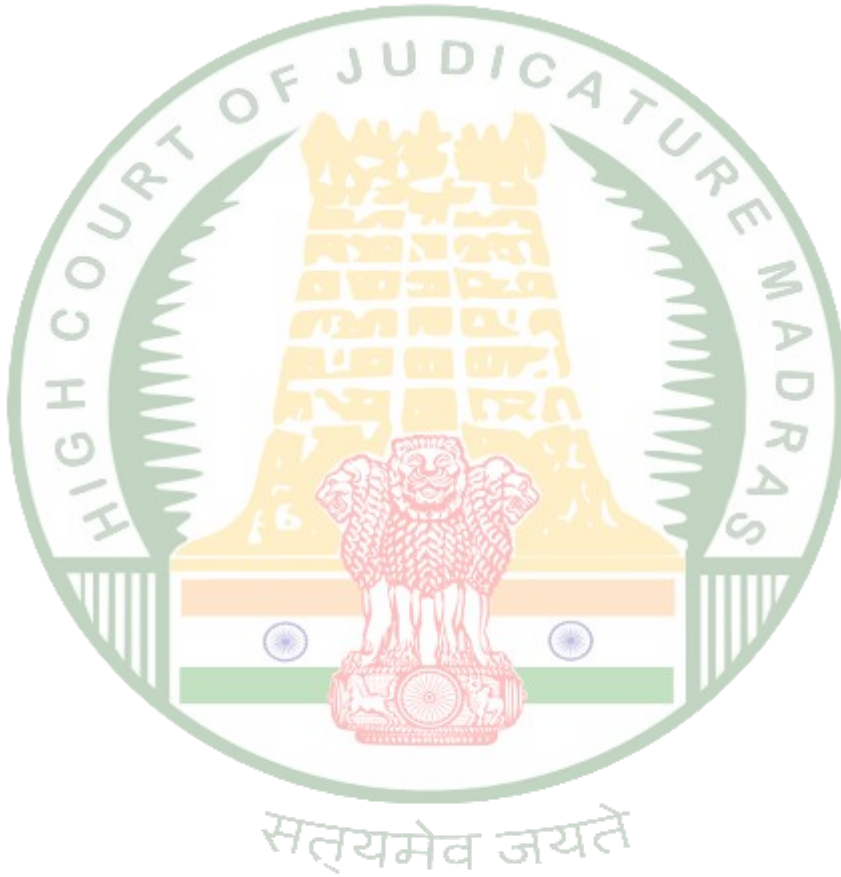
To

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2 ccs t Mr.A.R. Nixon, Advocate, sR. 6912
1 cc to M/s. S.R. Rajagopal, Advocat, Sr. 6917

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