

THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 29.4.2015
Delivered on : 30.4.2015

CORAM

THE HONBLE MR.JUSTICE V.RAMASUBRAMANIAN
and
THE HON'BLE MR.JUSTICE T.MATHIVANAN

W.P.Nos.10069, 10076, 10185, 10189, 10410, 10514, 10539,
10546, 10557, 10581, 10583, 10624, 10625, 10637, 10679, 10724, 10768,
10931, 11045, 11071, 11078, 11079, 11094, 11305, 11307, 11638, 11699,
11722, 11826, 12588 to 12590, 12950 & 12963 of 2015
and all connected pending MPs

B.Yamunadevi	...Petitioner in W.P.No.10069/2015
P.G.Balaji	...Petitioner in W.P.No.10076/2015
Magameesmile	...Petitioner in W.P.No.10185/2015
S.Ramraj	...Petitioner in W.P.No.10189/2015
D.Grace Vinitha	...Petitioner in W.P.No.10410/2015
K.Prabhavathi	...Petitioner in W.P.No.10514/2015
D.Sathya	...Petitioner in W.P.No.10539/2015
P.Ramkumar	...Petitioner in W.P.No.10546/2015
R.Senthil Kumar	...Petitioner in W.P.No.10557/2015
S.Arun	...Petitioner in W.P.No.10581/2015

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C.D.Vivekanandan	...Petitioner in W.P.No.10583/2015
C.Ravichandran	...Petitioner in W.P.No.10624/2015
J.Rajesh Kumar	...Petitioner in W.P.No.10625/2015
S.Sankar	...Petitioner in W.P.No.10637/2015
T.Jeevanantham	...Petitioner in W.P.No.10679/2015
J.Vanaja V.Hariraman T.Ilangovan T.Senthil Kumar	...Petitioners in W.P.No.10724/2015
A.Ramakrishnan	...Petitioner in W.P.No.10768/2015
C.Rajangam C.Balakrishnan S.Murugesan	...Petitioners in W.P.No.10931/2015
S.Ravikumar	...Petitioner in W.P.No.11045/2015
A.Mohana	...Petitioner in W.P.No.11071/2015
R.Deepa	...Petitioner in W.P.No.11078/2015
P.R.Kavitha	...Petitioner in W.P.No.11079/2015
P.Muniraj	...Petitioner in W.P.No.11094/2015
S.Ramya	...Petitioner in W.P.No.11305/2015
A.V.Sathiya	...Petitioner in W.P.No.11307/2015

V.Maragatham

...Petitioner in
W.P.No.11638/2015

S.Sasikumar

...Petitioner in
W.P.No.11699/2015

V.Ranjith Kumar

...Petitioner in
W.P.No.11722/2015

J.Saravana Kumar

...Petitioner in
W.P.No.11826/2015

R.Anbuselvi

...Petitioner in
W.P.No.12588/2015

K.Gayathri

...Petitioner in
W.P.No.12589/2015

S.Shunmuga Priya

...Petitioner in
W.P.No.12590/2015

B.Vaishnavi

...Petitioner in
W.P.No.12950/2015

M.Vijaya

...Petitioner in
W.P.No.12963/2015

Vs

1.Tamil Nadu Public Service Commission

rep. by its Secretary, Frazer Bridge Road,
VOC Nagar, Park Town, Chennai-3.

...Respondent in
R1 in WP.Nos.10069, 10076,
10185, 10189, 10410,
10514, 10539, 10557,
10583, 10624,10637, 10724,
10931, 11045, 11071,
11078, 11079, 11094,
11638, 11826,12588 to 12590
12950 & 12963 of 2015

R2 in 10514/15, 10581,
10625/15, 11305, 11307 & 11699/15

2.The Tahsildar, Gudiyatham Taluk,
Vellore.

...Respondent in
R2 in WP.No.10076/15

3.Tamil Nadu Public Service Commission
rep. by its Controller of Examinations,
Frazer Bridge Road, VOC Nagar,
Park Town, Chennai-3.

...Respondent in
R3 in WP.Nos.10410,
11307/15 & 12590 of 2015

R2 in 11045/15, 11094,
11826, 12588 to 12590/15

4.The Registrar General, Madras High
Court, Chennai-104.

...Respondent in
R4 in WP.Nos.10410, 11307/15
R2 in W.P.10724 of 2015
R1 in W.P.No.10679/15

5.The State of Tamilnadu, rep.by its
Secretary to Government, Department
of Home, Fort.St.George, Chennai-9.

...R2 in W.P.No.10581/15
R1 in WP.No.10514,
10583 & 11305 of 2015 & 11307/15

6.Tamil Nadu Public Service Commission
rep. by its Chairman, Frazer Bridge Road,
VOC Nagar, Park Town, Chennai-3.

...Respondent in
R1 in WP.Nos.10546, 10625,
10768 & 11722 of 2015
R2 in W.P.10679/15

State of Tamil Nadu
Rep by its Principle Secretary
Department of Home Affaris
Secretariat, Fort St.Goerge,
Chennai - 600 009.

...Ist Respondent in W.P.No.10581/15, 10583/15

PETITIONS under Article 226 of the Constitution of India praying
for

(i) a Writ of Mandamus directing the respondent to permit the
petitioner to appear for the oral interview commencing from 15.4.2015
(WP. No.10069 of 2015);

(ii) a Writ of Mandamus directing the respondents to consider
the claim of the petitioner for appointment to the post of Civil
Judge on the basis of the community certificate of scheduled caste as
produced by the petitioner at the time of certificate verification on
11.3.2015 and to select and appoint the petitioner forthwith on
merits in the scheduled caste quota thereto (WP.No. 10076 of 2015);

(iii) a Writ of Mandamus directing the respondent to consider the claim of the petitioner for appointment to the post of Civil Judge on the basis of the merit by subjecting himself to oral test/interview and thereafter select and appoint the petitioner forthwith (WP.No.10185 of 2015);

(iv) a Writ of Mandamus directing the respondent to include the petitioner's name in the list of candidates selected for oral test as per representation dated 4.4.2015 (WP.No.10189 of 2015);

(v) a Writ of Certiorarified Mandamus to call for the records culminating in the Notification No.15/2014 dated 1.4.2015 made online by the second respondent in TNPSC Official Website in so far as non inclusion of the petitioner's name in the said list, quash the same and consequently direct the respondents 1 and 2 to include the petitioner in the list of candidates admitted to the oral test (interview) and call the petitioner for the said viva-voce/oral test (interview) scheduled from 15.4.2015 and select and appoint the petitioner to the post of Civil Judge in the Tamilnadu State Judicial Service, 2013-2014 (WP.No.10410 of 2015);

(vi) a Writ of Certiorarified Mandamus to call for the records relating to the impugned provisional list of candidates to the oral test dated 1.4.2015 issued by the second respondent in pursuance of Notification No.15/2014 dated 26.8.2014, quash the same and consequently direct the second respondent to include the petitioner's name in the list of candidates for the oral test for the post of Civil Judge in Tamilnadu State Judicial Service 2013-2014 by considering the petitioner's representation dated 4.4.2015 (WP.No. 10514 of 2015);

(vii) a Writ of Mandamus directing the respondent herein to include the petitioner's register number 010001124 in the list of candidates dated 1.4.2015 for appearance in the oral test commencing on 15.4.2015 to the post of Civil Judge in the Tamilnadu State Judicial Service 2013-2014 (WP. No.10539 of 2015);

(viii) a Writ of Mandamus directing the respondent to consider the petitioner for appointment to the post of Civil Judge in Tamilnadu Judicial Service pursuant to the Notification dated 26.8.2014 (WP.No.10546 of 2015);

(ix) a Writ of Mandamus directing the respondent to permit the petitioner to appear for the oral test (interview) to be held on 15.4.2015 for the post of Civil Judge in the Tamilnadu State Judicial Service 2013-2014 in pursuance of Notification No.15/2014 dated 26.8.2014 (WP.No.10557 of 2015);

(x) a Writ of Certiorarified Mandamus to call for the records of the impugned oral test list dated 1.4.2015 for selection of candidates for the post of Civil Judge (Junior Division), quash the same and consequently direct the second respondent to permit the petitioner to participate in the oral test (WP. Nos.10581 and 10583 of 2015);

(xi) a Writ of Mandamus directing the respondent to allow the petitioner (Register No.190002070) to participate in the viva voce

for selection and appointment to the post of Civil Judges as per Notification No.15/2014 dated 26.8.2014 issued by the respondent, after publication of results for the written examination conducted and to consider the petitioner for selection and appointment to the post of Civil Judge on merits by considering the representation submitted by the petitioner dated 7.4.2015 (WP.No.10624 of 2015);

(xii) a Writ of Mandamus directing the respondents to include the petitioner's name in the viva voce list in the capacity of eligible candidates for the post of Civil Judge Junior Division examination (2013-2014) by considering the petitioner's representation dated 4.4.2015 (WP.No.10625 of 2015);

(xiii) a Writ of Mandamus directing the respondents to consider the claim of the petitioner for appointment to the post of Civil Judge on the basis of the merit by subjecting himself to the oral test/interview and thereafter select and appoint the petitioner forthwith (WP.No.10637 of 2015);

(xiv) a Writ of Mandamus directing the second respondent to allow the petitioner to participate in the viva voce, which is scheduled to be held on 15.4.2015 in the selection process of Civil Judge (WP.No.10679 of 2015);

(xv) a Writ of Certiorarified Mandamus after calling for the concerned records relating to the order of the first respondent dated 1.4.2015 Ex.A., quash the same and direct the first respondent to call all the petitioners as per the list dated 20.2.2015 (Ex.B) for interview and then based on the total marks of the written examination and interview/oral test, apply the rule of reservation and issue appointment orders accordingly as per Notification No.15/2014 dated 26.8.2014 as Civil Judge and award cost (WP.No.10724 of 2015);

(xvi) a Writ of Declaration to declare the action of the respondent in not allowing the petitioner to take part in the oral interview for the post of Civil Judge for the year 2013-2014 as illegal and against the recruitment notification and consequently direct the respondent to permit the petitioner to take part in the oral interview based on his selection in the written examination and subsequent certificate verification (WP.No.10768 of 2015);

(xvii) a Writ of Mandamus directing the respondent to consider the claim of the petitioners for appointment to the post of Civil Judge on the basis of the merit by subjecting themselves to the oral test/interview and thereafter select and appoint the petitioners forthwith (WP.No.10931 of 2015);

(xviii) a Writ of Mandamus directing the respondents to consider the claim of the petitioner for appointment of Civil Judge on the basis of the merit by subjecting himself to the oral test/interview and thereafter select and appoint the petitioner forthwith (WP.No.11045 of 2015);

(xix) a Writ of Mandamus directing the respondent to include the petitioner's name in the list of candidates selected for oral test to be held from 15.4.2015 (WP.No.11071 of 2015);

(xx) a Writ of Mandamus directing the respondent to consider the claim of the petitioner for appointment to the post of Civil Judge on the basis of the merit by subjecting herself to the oral test/interview and thereafter select and appoint the petitioner forthwith (WP.No.11078 of 2015);

(xxi) a Writ of Mandamus directing the respondent to consider the claim of the petitioner for appointment to the post of Civil Judge on the basis of the merit by subjecting herself to the oral test/interview and thereafter select and appoint the petitioner forthwith (WP.No.11079 of 2015);

(xxii) a Writ of Mandamus directing the respondents to consider the claim of the petitioner for appointment of Civil Judge on the basis of the merit by subjecting himself to the oral test/interview and thereafter select and appoint the petitioner forthwith (WP.No.11094 of 2015);

(xxiii) a Writ of Mandamus directing the respondents to consider the petitioner's claim for appointment to the post of Civil Judge on the basis of the merit by subjecting herself to the oral test/interview and thereafter select and appoint the petitioner forthwith (WP.No.11305 of 2015);

(xxiv) a Writ of Mandamus directing the respondents to publish the results of the written test held on 1.11.2014 and 2.11.2014 for selection to the post of Civil Judge 2013-2014 and forbear the respondents from conducting the oral test from 15.4.2015 without publishing the result of the said written exam (WP.No.11307 of 2015);

(xxv) a Writ of Certiorarified Mandamus to call for the records in impugned order dated 1.4.2015 issued by the respondent, quash the same and consequently direct the respondent to reserve one seat for Civil Judge post pending disposal of the writ petition (WP.No.11638 of 2015);

(xxvi) a Writ of Mandamus directing the respondent namely Tamilnadu Public Service Commission represented by its Secretary to consider and permit the petitioner to attend the oral test for the post of Civil Judge in the Tamilnadu State Judicial Service 2013-2014 (WP.No.11699 of 2014);

(xxvii) a Writ of Mandamus directing the respondent to call the petitioner for interview to the post of Civil Judge in Tamilnadu State Judicial Service 2013-2014 forthwith considering him as PSTM candidate (WP.No. 11722 of 2015);

(xxviii) a Writ of Declaration declaring that Rule 21(b) of Instructions to Candidates of Tamilnadu Public Service Commission is arbitrary, ultra vires of The Constitution being violative of Article 16(4) of The Constitution of India (WP.No.11826 of 2015);

(xxix) a Writ of Declaration declaring that Rule 21(b) of Instructions to Candidates of Tamilnadu Public Service Commission is arbitrary, ultra vires of The Constitution being violative of The Constitution of India (WP.Nos.12588 to 12590 of 2015);

(xxx) a Writ of Mandamus directing the respondent to consider the petitioner for selection to the post of Civil Judge under SCW

category by allowing her to participate in the oral test and to select the petitioner based on assessment of merit in pursuance of notification issued by the respondent in Notification No.15 of 2014 dated 26.8.2014 (WP.No.12950 of 2015); and

(xxxi) a Writ of Mandamus directing the respondent to consider the claim of the petitioner on the basis of merit ranking and that of the total marks of 249.75 obtained by her in any one of the vacant post of Civil Judge viz Blind/Deaf/Ortho falling under the physically handicapped category as per Statutory Rules forthwith pursuant to Notification No.15/2014 dated 26.8.2014 (WP.No.12963 of 2015).

For Petitioners in

WP No.10069/15 : Mr.D.Sreenivasan
WP Nos.10076/15 : Mr.L.Chandrakumar
& 10185/15 : For Ms.N.R.Jasmine Padma
WP No.10189/15 : Mr.B.Ravi
WP No.10410/15 : Ms.Dakshayani Reddy
WP No.10514/15 : Mr.N.Manokaran
WP No.10539/15 : Mr.T.Murugamanickam
WP No.10546/15 : Mr.C.Vigneswaran
WP No.10557/15 : Mr.N.Ramesh
WP Nos.10581/15
& 10583/15 : Mr.R.Parthiban
WP No.10624/15 : Mr.G.Sankaran
WP No.10625/15 : Mr.S.Kumaresan
WP No.10637/15 : Mr.A.Thiyagarajan
WP No.10679/15 : Mr.K.Sasindran
WP No.10724/15 : Mr.NGR Prasad
For M/s.Row and Reddy
WP No.10768/15 : Mr.D.Muthukumar
WP No.10931/15 : Mr.AL.Ganthimathi
WP Nos.11045/15
& 11094/15 : Mr.N.Chinnaraj
WP No.11071/15 : Mr.V.Balamurugane
WP Nos.11078
& 11079/15 : Mr.W.M.Abdul Majeed
WP No.11305/15 : Mr.A.Malath Devapriyam
WP No.11307/15 : Mr.S.Selvathirumurugan
WP No.11638/15 : Mr.G.Ranganathan
WP No.11699/15 : Mr.V.Nicholas
WP No.11722/15 : Mr.V.Raghavachari
WP No.11826/15 : Mr.R.Jeyaratchakan
WP Nos.12588 to
12590/15 : Mr.R.Jeyaratchakan
WP No.12950/15 : Mr.G.Sankaran
WP No.12963/15 : Mr.L.Chandrakumar

For TNPSC : Mr.P.H.Arvind Pandian
Additional Advocate General
Assisted by Ms.CNG.Niraimathi
Standing Counsel
For High Court : Mr.Haja Mohideen Gisthi
For State : Mr.R.Ravichandran, Addl.G.P.

COMMON ORDER

V.RAMASUBRAMANIAN, J

Aggrieved by the failure of the Tamil Nadu Public Service Commission to call them for viva-voce, despite having passed the written examination, the petitioners have come up with these writ petitions praying for different reliefs.

2. We have heard the respective learned counsel for the petitioners, Mr.P.H.Arvind Pandian, learned Additional Advocate General, assisted by Ms.CNG.Niraimathi, learned counsel for the Tamil Nadu Public Service Commission, Mr.Haja Mohideen Gisthi, learned counsel appearing for the High Court and Mr.R.Ravichandran, learned Additional Government Pleader appearing for the State.

3. The Tamil Nadu Public Service Commission issued a notification bearing No.15/14 on 26.8.2014 inviting applications for recruitment of 162 Civil Judges (Junior Division). A corrigendum notification was issued on 19.9.2014, the contents of which are not relevant for dealing with the cases on hand.

4. It appears that a total of 9592 candidates applied. The applications of 9353 candidates were admitted. As per the Recruitment Rules, the candidates are required to take examination in four papers. Though hall tickets were issued to 9353 candidates, 2792 candidates absented. 6561 candidates appeared for the written examination. Out of them, only 6172 candidates appeared in all the four papers.

5. As per Annexure II to the Tamil Nadu State Judicial Service (Cadre and Recruitment) Rules, 2007, the process of recruitment comprises of two stages, one in the form of written examination and another in the form of viva-voce. As per paragraph 3 of Annexure II read with Rule 5 of the Recruitment Rules, candidates belonging to the Scheduled Caste and Scheduled Tribe, should secure 30% marks in each of the four papers to qualify for viva-voce. Similarly, candidates belonging to Backward Classes and Most Backward Classes should secure 35% marks in each of the four papers. Others should secure 40% marks in each of the 4 papers.

6. In terms of the notification issued by the Tamil Nadu Public Service Commission, written examination in four papers were conducted on 01.11.2014 and 02.11.2014, both in the morning and in the afternoon sessions. The answer papers were valued by District Judges, who had put in three years of service, as per paragraph 5(p) of Annexure II to the Recruitment Rules. After the valuation was over, it was found that a total of 810 candidates had secured the pass marks, as per the prescription contained in paragraph 3 of Annexure II to the Recruitment Rules.

7. Since the recruitment to the post is governed by Rule 10 of the Tamil Nadu State Judicial Service (Cadre and Recruitment) Rules, 2007, by which the rule of reservation contained in Rule 21(b) and 22 of the General Rules for the Tamil Nadu State and Subordinate Services apply, the recruitment was to follow the 200 Point Roster, as prescribed in Schedules III, III-A, IV and V of the General Rules. These Schedules as well as Rules 21(b) and 22 of the General Rules prescribe both horizontal as well as vertical reservations as well as internal reservations. The 200 Point roster itself is designed in Schedule III to the General Rules in such a manner that whenever a recruitment to 200 vacancies in a post takes place, the policy of reservation, both horizontal and vertical get implemented.

8. It is to be pointed out at this juncture that the 200 Point Roster was actually introduced for the first time under a Government Order G.O.Ms.No.55, P&AR Department dated 08.4.2009, with effect from 29.4.2009. As per the prescription contained in the said Government Order, any recruitment that takes place after the introduction of the 200 Point Roster, will have to start from Roster Point No.1. The first recruitment, after the introduction of the 200 Point Roster, took place in the year 2012. It was for the recruitment to 185 vacancies. But, only 178 posts were filled up. Therefore, the current recruitment to 162 vacancies was to commence from the 179th rotation in the first turn. After the first turn is completed, the second turn was to commence. In other words, the current recruitment to 162 vacancies, was actually towards filling up the vacancies against Roster Point Nos.179 to 200 in the first turn and from Roster Point Nos.1 to 140 in the second turn.

9. Applying the 200 Point Roster, the Tamil Nadu Public Service Commission had arrived at the distribution of vacancies as follows:

Com	Category	Distribution of vacancies
GT	General	27
	General-PSTM	7
	(General) Partially Blind -C/f.	2
	Women	10
	Women-PSTM	4
	(Women) Partially Blind	1
BC	General	23
	General-PSTM	5
	(General) Partially Deaf	1
	Women	10
	Women-PSTM	2
BCM	General	4
	Women	2
MBC/DC	General	16
	General-PSTM	4
	(General) Ortho C/f.	1
	(General) Partially Deaf C/f.	1
	(General) Partially Deaf	1
	Women	7
	Women-PSTM	2
SC-A	General	2
	(General) Ortho	1
	Women	2
SC	General	13
	General-PSTM	3
	Women	5
	Women-PSTM	2
ST	General C/F.	3
	General	1
Total		162

10. As we have stated earlier, 810 persons had secured the minimum pass mark as stipulated in paragraph 3 of Annexure II to the Recruitment Rules. But, the recruitment was only for filling up 162 vacancies. Paragraph 5(u) of Annexure II to the Recruitment Rules stipulates that candidates for viva-voce will be shortlisted in the ratio of 1:2 or 1:3, as specified in the instructions issued to the candidates appearing for the examination. In accordance with paragraph 5(u) of Annexure II to the Recruitment rules, the Tamil Nadu Public Service Commission had prescribed in paragraph 21(b) of the instructions to the candidates that the number of the candidates to be admitted to the oral test will be two times the number of vacancies for which recruitment had to be made against the reservation groups, based on the marks obtained by the candidates in the written examination. In other words, the Public Service Commission made it clear in the notification that the candidates will be called in the ratio of 1:2.

11. As a consequence of Instruction No.21(b) issued by the Tamil Nadu Public Service Commission in accordance with paragraph 5(u) of Annexure II to the Recruitment Rules, the Tamil Nadu Public Service Commission invited only 314 candidates for viva-voce, though 810 candidates had passed the examination. In order to have a buffer, the Public Service Commission actually called 590 candidates for certificate verification. To put it differently, 810 candidates out of 6172 candidates had passed the examination. Out of these 810 candidates, 590 were called for certificate verification. Out of them, only 314 were called for interview.

12. Either aggrieved by the fact that they were not called for certificate verification despite having passed the written examination or aggrieved by the fact they were not called for interview despite having been invited for certificate verification, the petitioners have come up before this Court. While the majority of the petitioners have sought only a writ of Mandamus to direct the Public Service Commission to invite them for interview or to consider their claim for selection, one or two candidates have chosen to challenge Instruction No.21(b) of the notification issued by the Tamil Nadu Public Service Commission. A few candidates have chosen to challenge the list published by the Public Service Commission on 01.4.2005, containing the registration numbers of 314 candidates called for interview. One candidate has come up with a prayer to direct the Public Service Commission to publish the results of the written examination. That writ petition has actually become infructuous, in view of the fact that pursuant to the interim order passed by us on 24.4.2015, the marks secured by all the 6172 candidates who appeared in all the four papers, have already been published in the website of the Public Service Commission.

13. As a consequence, we are now left with two types of writ petitions, one seeking a mere Mandamus to direct the respondents to call them for viva-voce and another challenging the Instruction No.21 (b). Since it is easy to deal with the second type of writ petitions, we shall take them up first.

14. The challenge to Instruction No.21(b) of the notification issued by the Tamil Nadu Public Service Commission is on the main ground that as per column No.2 against Entry No.9 of the Schedule under Rule 5 of the Tamil Nadu State Judicial Service (Cadre and Recruitment) Rules, 2007, selection to the post of Civil Judge is to be on the basis of written examination and viva-voce. Therefore, the contention of the petitioners who challenge Instruction No.21(b) of the notification is that the Public Service Commission is not entitled to divide a wholesome process of selection into two Parts and introduce a filter point in between. Their contention is that Instruction No.21(b) issued by the Tamil Nadu Public Service Commission is contrary to the statutory prescription.

15. But, the said contention has no basis. Instruction No.21(b) is actually the product of paragraph 5(u) of the Annexure II to the Recruitment Rules. We have also indicated that as per paragraph 5(u) of Annexure II to the Recruitment Rules, which forms part and parcel of the Recruitment Rules, candidates are liable to be shortlisted in the ratio of 1:2 or 1:3 as specified in the instructions issued to the candidates appearing for the examination. Annexure II is part and parcel of the Recruitment Rules issued in exercise of the powers conferred by the proviso to Article 309 of the Constitution. Therefore, the challenge to Instruction 21(b), without a challenge to the statutory rule, has no basis. Hence, the writ petitions challenging Instruction No.21(b) are liable to be dismissed.

16. Now, let us come to the next category of cases. These are cases where the prayer is only for inviting the writ petitioners to the viva-voce. Such a prayer is made by the petitioners on the basis of various legal arguments advanced by them. We shall deal with each of those arguments at present.

17. The main plank of the argument of some of the writ petitioners is that if the candidates are shortlisted for viva-voce in the ratio of 1:2, those candidates who have passed the written examination are deprived of the chance of participating in the interview and scoring a higher mark. When the entire process of selection is of a composite nature comprising of two stages, the relative merits of the candidates, according to the petitioners, can be decided only by allowing the candidates who had passed the written examinations to participate in the viva-voce also.

18. But, unfortunately for the petitioners, the prescription contained in column No.2 against Entry No.9 in the Schedule under Rule 5 of the Recruitment Rules, is subject to Rule 5(u) of the Annexure II to the Recruitment Rules. Therefore, the correct way of reading the statutory prescription is to say that the process of recruitment comprises of two stages, subject however to the restriction contained in Rule 5(u) of Annexure II. Hence, all candidates who had passed through the outpost, do not automatically get a pass to enter into the next stage of selection, unless they satisfy the other statutory prescription in Rule 5(u). Hence, the first contention deserves to be rejected.

19. The next contention of the petitioners is that in view of the distribution of vacancies as between various categories including those who come within the categories for which horizontal and internal reservations are provided, the shortlisting of candidates for viva-voce had taken place after the application of the rule of reservation. This, according to the petitioners, is contrary to the law laid down by a learned Judge of this Court in *Ranjith Kumar v. Secretary* [2013 (1) LLN 203 (Mad.)], the relevant portion of which has also been upheld by a Division Bench in *Secretary, TNPSC v. T.Maheswaran* [(2014) 6 MLJ 513].

20. In paragraph 29 of his decision in *Ranjith Kumar, S.Nagamuthu, J.*, held that there was no controversy in applying the communal roster at the time of final selection. The controversy that arose in the case before the learned Judge was as to whether the Roster Points could be used for shortlisting the candidates even for the purpose of oral test. In paragraph 29 of the report, the learned Judge held, after taking note of another judgment of this Court in *K.R.Shanthi v. Secretary* [2012 (2) LLN 367] that the question of applying the roster to follow the rule of reservation will arise only at the time of final selection and not for shortlisting the candidates for the purpose of oral test.

21. When the said decision of the learned Judge was taken up on appeal before the Division Bench along with a few other cases, a Division Bench of this Court confirmed the findings rendered in paragraph 29 of the order of the learned Judge. Therefore, it is contended that the Public Service Commission committed a blunder in shortlisting 314 candidates out of 810 candidates after applying the rule of reservation, even before the stage of viva-voce.

22. We have carefully considered the above submission. A careful look at the judgment of the learned Judge in *Ranjith Kumar* would show that no controversy was raised before the learned Judge about the application of the communal roster at the time of final selection. The controversy that was raised before the learned Judge was as to whether shortlisting of candidates could be done on the

basis of Roster Points, even for the purpose of oral test. Though the learned Judge observed towards the end of paragraph 29 that the question of applying the roster to apply the rule of reservation will arise only at the time of final selection, the Division Bench seems to have opined in paragraph 28 that the findings recorded by the learned Judge on the question of applying the roster to the rule of reservation at the time of final selection was not sustainable. It would be useful to extract the relevant portion of paragraph 28 of the decision of the Division Bench as follows:

"28. In the light of para 22(b) of Instructions etc., to candidates coupled with the reservation policy followed in this State and various Government Orders issued in view of Rule 21(c), 22(c) and 35(a) read with Schedules III and IV of the Tamil Nadu State and Subordinate Service Rules and by taking into consideration the submission made by the learned Senior Counsel appearing for the appellant/TNPSC that it is preparing selection list as per the communal roster prescribed under the Tamil Nadu State and Subordinate Services Rules based on the vacancies furnished by Heads of Department/Government and the adoption of 200 point roster based on marks secured by each candidates in written examination and viva voce, it cannot be faulted with and therefore, the findings rendered by the learned Judge that the question of applying the roster to the rule of reservation will arise only at the time of final selection and not for shortlisting the candidates for the purpose of oral test is unsustainable and also the findings in respect of the adoption of 100 point communal roster. "

23. However, in paragraph 34, the Division Bench dismissed two writ appeals confirming the findings recorded in paragraph 29 of the order dated 04.01.2013. The facts out of which W.A.Nos.420 and 421 of 2013 arose are not known. Therefore, in the light of the clear findings recorded in paragraph 28 of the report of the decision of the Division Bench, we do not think that the objection of the petitioners can be sustained.

24. In any case, the Public Service Commission has not applied either the roster or the rule of reservation at the stage of selection. They have called the candidates in the ratio of 1:2 from all categories. This is not to be taken as the application of the rule of reservation at the stage of viva-voce.

25. As a matter of fact, the Public Service Commission could have done two things. The first is that they could have arranged all

the 810 candidates who had passed the written examination in the order of merit and invited only the first 324 candidates for viva-voce. If they had done so, some of the reserved categories would have been left out of the race. Then, the purpose behind the rule of reservation would have got defeated and Rules 21(b) and 22 of the General Rules would have been rendered a dead letter. The second alternative for the Public Service Commission was to call twice number of candidate in each category. This would ensure that the rule of reservation is not defeated. The Public Service Commission has chosen to follow the second alternative. Therefore, the contention that the Public Service Commission had applied the rule of reservation even before interview, is not well founded. Hence, it is rejected.

26. One argument advanced by one of the learned counsel for the petitioners is that his client has studied the Degree in Law in English Medium, but he wrote the exams only in Tamil. Therefore, he claimed that his client should have been considered under the category "persons who studied in Tamil Medium", for which an internal reservation of 20% is made by virtue of G.O.Ms.No.145, P&AR Department, dated 30.9.2010.

27. But, the above argument is to be stated only to be rejected. A reservation on the basis of medium of instruction does not arise out of a constitutional mandate. It arises out of a State Policy. Therefore, a person claiming the benefit of such a reservation should fulfill the essential requirement prescribed under the very notification that confers the benefit of reservation. There is no dispute about the fact that the Government Order which provides for reservation for persons who studied in Tamil Medium, clearly stipulates that candidates should have studied the essential qualification required for the post, with Tamil as the medium of instruction. A person who does not fulfill the condition prescribed in the very order conferring the benefit, cannot seek the benefit. Hence, the said argument is to be rejected.

28. Before parting, we also wish to record one important fact. As a matter of policy, the Tamil Nadu Public Service Commission does not disclose the marks secured by candidates in the written examinations, till the completion of the process of viva-voce. This is for the simple reason that neither the candidates called for interview, nor the Members of the Interviewing Committee are supposed to know the marks secured by them in the written examination. If neither the candidates called for viva-voce, nor the Interviewing Committee is made aware of the marks secured by the candidates in the written examination, the chances of manipulating the results in the interview get completely eliminated. Therefore, the Public Service Commission did not declare the marks secured by the candidates (either shortlisted or not shortlisted) till the completion of the

viva-voce.

29. The viva-voce was completed by 21.4.2015. Thereafter, pursuant to an interim order passed by us on 24.4.2015, without making it a precedent for all times to follow, the Public Service Commission published in their website, the marks secured by all the 6172 candidates who had taken part in the written examinations. The marks secured by those candidates who attended the viva-voce were also hosted in the net. After seeing the results, most of the learned counsel appearing for the petitioners, threw their hands up. This was for the simple reason that all the writ petitioners without exception had secured lower marks in the written examination than those who had been called for viva-voce in the category to which each of them belong. For instance, the cut-off mark for the candidates belonging to Backward Class was 212. Almost all Backward Class candidates, except those who claim an additional reservation on the basis of being a women or physically challenged or having studied in Tamil Medium, who have come up before us, have secured lesser than the last person of the category to which they belong. This can be seen from the following table.

Com	Category	Cut Off Marks
GT	General	240.00
	General-PSTM	157.00
	General-PSTM (Substituted by Non-PSTM)	238.00
	(General) Partially Blind -C/f. (Substituted by Ortho)	210.00
	Women	229.00
	Women-PSTM (Substitution)	225.00
BC	General	215.00
	General-PSTM (Substitution)	212.00
	Women	198.00
	Women-PSTM (Substitution)	195.00
BCM	General	193.00
	Women	174.00

Com	Category	Cut Off Marks
MBC/DC	General	216.00
	General-PSTM (Substitution)	211.00
	(General) Ortho C/f.	204.00
	(General) Partially Deaf C/f. (Substituted by Ortho)	185.00
	Women	198.00
	Women-PSTM (Substitution)	194.00
SC-A	General	188.00
	(General) Ortho (Substituted by SC Ortho)	139.00
	Women (Substituted by SC-A Male)	183.00
SC	General	211.50
	General-PSTM (Substitution)	206.00
	Women	191.00
	Women-PSTM (Substitution)	184.00
ST	General C/F.	137.00

30. None of the writ petitioners claim to have secured more marks than the marks secured by the candidates called for viva voce, with the exception of only one candidate. One candidate belonging to the Scheduled Caste has secured 184 marks in the written examination. The last candidate who was called for viva-voce from among Scheduled Caste had also secured 184.

31. But, the reason for the writ petitioner who belongs to the Scheduled Caste and who had secured 184 marks not being called for viva-voce was that there were five persons belonging to the same category who had secured the same cut-off mark. Therefore, as per the Rules in force, the Public Service Commission had called for viva-voce, the candidates who is the oldest among those five. This, in our considered view, is fair and proper. It is also in accordance with the Rules of Procedure framed by the Public Service Commission.

32. Therefore, in fine, we find no merits in any of the writ petitions. Hence, all of them are dismissed. No Costs. Consequently, connected M.Ps. are also dismissed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

kpl/RS

To

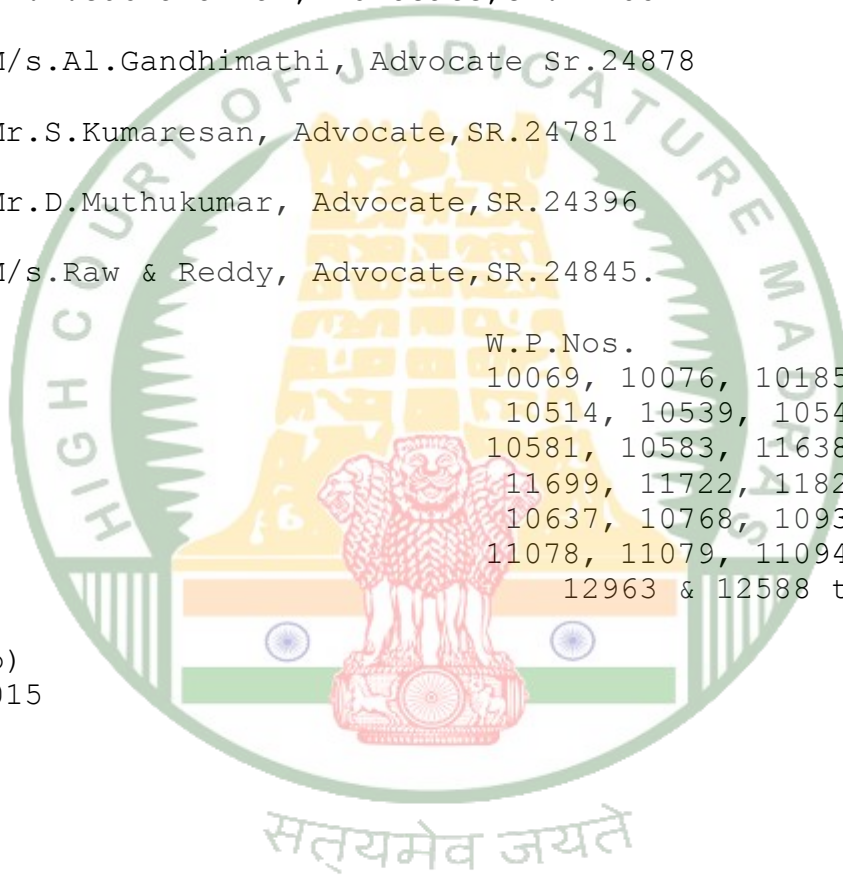
- 1.The Secretary,
Tamil Nadu Public Service Commission
Frazer Bridge Road,
VOC Nagar, Park Town, Chennai-3.
 - 2.The Tahsildar, Gudiyatham Taluk,
Vellore.
 3. The Controller of Examinations,
Tamil Nadu Public Service Commission
Frazer Bridge Road, VOC Nagar,
Park Town, Chennai-3.
 - 4.The Registrar General, Madras High
Court, Chennai-104.
 - 5.The Chairman,
Tamil Nadu Public Service Commission
Frazer Bridge Road,
VOC Nagar, Park Town, Chennai-3.
 - 6.The Principle Secretary to Government,
Department of Home Affairs, Secretariat,
Fort.St.George, Chennai-9.
 - 7.The Section Officer, Legal Cell, High Court, Madras-104.
- +2 cc to Government Pleader,SR.248/01, 24803
- +2 cc to Mr.K.M.Abdul Majeed, Advocate,SR.24439, 24440
- +4 cc to Mr.S.Haja Mohideen Gisthi, Advocate,SR.24627 to 24630
- +2 cc to Mr.G.Sankaran, Advocate,SR.24634, 24635.

+2 cc to Mr.L.Chandrakumar, Advocate,SR.24571
+1 cc to Mr.V.Nicholas, Advocate,SR.24844
+1 cc to Mr.V.Balamurugan, Advocate,SR.24893
+1 cc to Mr.V.Raghavachari, Advocate,SR.24778
+1 cc to Mr.L.S.M.Hasan Fizal, Advocate,SR.24677
+1 cc to Mr.R.Subramanian, Advocate,SR.24785
+1 cc to M/s.Al.Gandhimathi, Advocate Sr.24878
+1 cc to Mr.S.Kumaresan, Advocate,SR.24781
+1 cc to Mr.D.Muthukumar, Advocate,SR.24396
+1 cc to M/s.Raw & Reddy, Advocate,SR.24845.

W.P.Nos.

10069, 10076, 10185, 10189, 10410,
10514, 10539, 10546, 10624, 10679,
10581, 10583, 11638, 11305, 11307,
11699, 11722, 11826, 10557, 10625,
10637, 10768, 10931, 11045, 11071,
11078, 11079, 11094, 10724, 12950,
12963 & 12588 to 12590 of 2015

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