

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 11.3.2015
Delivered on: 01.4.2015

CORAM

THE HON'BLE MR.JUSTICE V.RAMASUBRAMANIAN
AND
THE HON'BLE MR.JUSTICE P.R.SHIVAKUMAR

W.A.Nos.1857 of 2012 & 483 of 2014,
W.P.Nos.26555 of 2012, 5635 & 5676 of 2014,
MP. (MD) .No.1 of 2015 in Rev.A. (MD)SR.No.48566 of 2014
in W.A. (MD)No.36 of 2014 &
Cont.P.No.457 of 2015 & connected M.Ps.

S.Gethaapathy ... Appellant in
W.A.No.1857/12

M.Govindarajan ... Appellant in
W.A.No.483/14

P.Suresh
R.Senthil
R.Jegadesh
M.Govindarajan
G.Ramkumar
R.Kannan
Bharath
Senthil Kumar
S.Senthilkumar ... Petitioners in
W.P.No.26555/12

G.Balasubramanian ... Petitioner in
W.P.No.5635/14

M.Suresh ... Petitioner in
W.P.No.5676/14 &
Cont.P.No.456/15

K.Kannan ... Petitioner in
MP. (MD)1/2015 in
R.A. (MD) SR.
48566/2014

Vs.

The Secretary to Government
Home (Transport II-A) Department
Fort St. George
Chennai 600 009.

R1 in WA No.1857/
12 & in W.P.Nos.
26555/12, 5635 &
.. 5676/14

The Transport Commissioner
Transport Department
Ezhilagam, Chepauk
Chennai 600 005.

R2 in WA No.1857/
& in W.P.Nos.
26555/12 &
.. 5676/14

The Secretary
Tamil Nadu Public Service Commission
No.1, Greams Road
Thousand Lights
Chennai 600 006.

R3 in W.A.No.1857/
12, W.P.Nos.26555/
12, 5676/14, R2 in
WP No.5635/14, R1
.. in WA No.483/14

The Controller of Examinations
Tamil Nadu Public Service Commission
Frazer Bridge Road
VOC Nagar, Park Town
Chennai 600 003.

R4 in WP No.5676/
14 & R2 in WP No.
5635/14 & WA No.
483/14, Respdt. in
.. MP(MD).1/2015 in
R.A.(MD)SR.No.
48566/14

C.Balasubramanian
Chairman incharge
Tamil Nadu Public Service Commission
Frazer Bridge Road
VOC Nagar, Park Town
Chennai 600 003.

S.Vijayakumar
The Secretary
Tamil Nadu Public Service Commission
Frazer Bridge Road
VOC Nagar, Park Town
Chennai 600 003.

V.Shobana
The Controller of Examination
Tamil Nadu Public Service Commission
Frazer Bridge Road
VOC Nagar, Park Town
Chennai 600 003.

R1 to R3 in
.. Cont.P.No.457/15

W.A.No.1857 of 2012 filed under Clause XV of the Letters Patent
filed against the order dated 16.8.2012 made in W.P.No.22307 of
2012.

Writ Petition is filed under Article 226 of the Constitution of
India to India for the issuance of a Writ of Certiorarified Mandamus,
calling for the records relating to the second limb of Note (i), para
6 of the Notification No.24/2012, dated 25.6.2012 issued by the Tamil
Nadu Public Service Commission, Chennai, the 3rd respondent herein

for the post of Motor Vehicle Inspector Grade II in so far as restricting the candidates to write the written examination based on the diploma they possess, quash the same and direct the respondents herein to permit the petitioner herein to write the written examination in any one of the two notified subjects namely, Automobile Engineering or Mechanical Engineering which they choose to write irrespective of any one of the notified Diploma they possess as in the first limb of Note (i) of para 6 of the above notification and hitherto followed in the previous selections and consequently, permit him to sit for interview depending upon the eligibility marks in the written results.

W.A.No.483 of 2014 filed under Clause XV of the Letters Patent filed against the order dated 03.3.2014 made in W.P.No.5366 of 2014.

Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of certiorarified mandamus, calling for the records relating to the second limb of Notice (i) Para 6 of the Notification No.24 of 2012 dated 25.06.2012 issued by the Tamil Nadu Public Service Commission, Chennai, the 1st respondent herein for the post of Motor Vehicle Inspector Gr.II in so far as restricting the candidates to write the written examination based on the Diploma they possess and quash the same and consequently quash the Memorandum No.5020/APD-H/MVI, Grade - II/2012 dated 30.09.2013 and thereby directing the 2nd respondent to validate the answer sheet which was already invalidate under Memorandum No.5020/APD-H/MVI Grade-II/2012 dated 30.09.2013.

W.P.No.26555 of 2012 filed under Article 226 of the Constitution of India praying for a writ of Certiorarified Mandamus calling for the records relating to the second limb of Note (i), para 6 of the notification No.24/2012 dated 25.6.2012 issued by the third respondent herein for recruitment to the post of Motor Vehicle Inspector Grade II insofar as it restricts the candidates to write the written examination based on the Diploma they possess and quash the same and consequently, cancel the written examination conducted by the third respondent held on 26.9.2012 and direct the third respondent herein to conduct a fresh written examination by permitting candidates to write any one of the two notified subjects namely Automobile Engineering or Mechanical Engineering irrespective of any one of the notified Diploma they possess.

W.P.No.5635 of 2014 filed under Article 226 of the Constitution of India praying for a writ of Certiorarified Mandamus calling for the records relating to the second limb of Note (i), para 6 of the notification No.24/2012 dated 25.6.2012 which read as (They should choose only the subject in which they have obtained the prescribed qualification) and the consequential Memorandum bearing No.5020/APD-H/MVI, Gr.II/2012 dated 30.9.2013 issued by the second respondent,

quash the same and direct the second respondent to consider the petitioner candidature and to value the answer sheet of the written examination in Automobile Engineering held on 26.8.2012 of the petitioner and publish the result.

W.P.No.5676 of 2014 filed under Article 226 of the Constitution of India praying for a writ of Certiorarified Mandamus calling for the records relating to (a) the second limb of Note (i), para 6 of the notification No.24/2012 dated 25.6.2012 issued by the third respondent herein for recruitment to the post of Motor Vehicle Inspector Grade II insofar as it restricting the candidates to write the written examination only in the Diploma they possess, and (b) Memorandum No.5020/APD-H/MVI, Gr.II/2012 dated 30.9.2013 issued by the fourth respondent, quash the same and direct the respondents herein to value the answer sheet of the written examination of the petitioner held on 26.8.2012 for the post of Motor Vehicle Inspector Grade II and consequently, select and call the petitioner for interview depending upon his eligibility in the written results.

MP.No.1 of 2015 in Rev A (MD) SR.No.48566/2014 is to condone the delay in representing the review application filed under Order XLVII, Rule 1 of CPC, to review the order dated 09.01.2014 made in W.A. (MD) No.36 of 2014.

Contempt Petition No.457 of 2015 filed against the alleged wilful disobedience of the order dated 28.02.2014 made in W.P.No.5676 of 2014.

For Appellant in
W.A.No.1857/12 : Mr.V.Selvaraj
For Mr.K.Raj Kumar
W.A.No.483/14 : Mr.C.Johnson
For Mr.K.Raj Kumar

For Petitioner in
W.P.No.26555/12 : Mr.N.Umapathi
W.P.No.5635/14 : Mr.U.Karunakaran
W.P.No.5676/14 : Mr.N.Rajan
For Mr.K.Raj Kumar

For Applicant in
MP.No.1 of 2015 in
Rev.A.SR48566/14 &
Cont.P.No.457/15 : Mr.K.Raj Kumar

For State : Mrs.A.Srijeyanthi, Spl.G.P.

For TNPSC : Mr.P.H.Arvind Pandian
Addl. Advocate General
Assisted by Mr.N.S.Nandakumar

COMMON JUDGMENT

V.RAMASUBRAMANIAN, J.

A Notification bearing No.24/2012 was published by the Tamil Nadu Public Service Commission on 25.6.2012, inviting applications for direct recruitment to 17 posts of Motor Vehicle Inspector Grade II in the Tamil Nadu Transport Subordinate Services. The educational qualifications prescribed as per paragraph 4(B) of the said Notification were (i) minimum general educational qualifications, and (ii) either a 3 year Diploma in Automobile Engineering or a 3 year Diploma in Mechanical Engineering. The candidates were also required to have (i) experience for a period of not less than one year in working on vehicles fitted with petrol engines and vehicles fitted with diesel engines on a full time basis in an automobile workshop, (ii) a driving license, and (iii) experience in driving heavy transport vehicles for a period of not less than six months. The Note below paragraph 4(B) stipulated that other things being equal, preference will be given to those, who possess Post Diploma in Automobile Engineering awarded by the State Board of Technical Education and Training.

2. The selection of candidates, as per Paragraph 8 of the Notification, was published in two successive stages, namely (i) written examination, and (ii) oral test. The scheme of the written examination, as indicated in Paragraph 6 of the Notification, was as follows:

(i) A single paper for a duration of three hours with a maximum of 200 questions either in automobile engineering or in mechanical engineering for a maximum of 300 marks;

(ii) In the written examination, candidates belonging to the reserved categories should secure a minimum of 102 marks out of 300 and candidates belonging to the Open Category will have to secure a minimum of 136 marks out of 300 to qualify for viva-voce.

3. The Note under Paragraph 6 of the Notification for direct recruitment dated 25.6.2012, which has given rise to a lot of controversy, requires re-production. Hence, it is re-produced as follows:

"Note:

(i) Candidates should specify in the application, the subject in which they wish to be examined. They should choose only the subject in which they have obtained the prescribed qualification."

4. The moment the above Notification was issued, a person by name S.Gethaapathy filed a writ petition in W.P.No.22307 of 2012 on the file of this Court, praying for quashing the second limb of Note (i) under Paragraph 6 of the Notification dated 25.6.2012, (which is shown underlined in bold letters above) on the ground that the right of the candidates to take the examination in a paper of their choice (automobile engineering or mechanical engineering) should not be

curtailed on the basis of the qualification that they have acquired.

5. The said writ petition was dismissed by a learned Judge at the stage of admission, by a final order dated 16.8.2012, on the ground that there was nothing wrong in the limitation prescribed in the second limb of Note (i) under Paragraph 6.

6. Challenging the said order of the learned Judge, the said S.Gethaapathy came up with the first writ appeal in W.A.No.1857 of 2012.

7. On 24.8.2012, notice was ordered in the said writ appeal. An interim direction was also issued directing the Public Service Commission to permit the appellant S.Gethaapathy to write the examination in a subject of his choice.

8. Since the examination was scheduled to be held on 26.8.2012 and also since the interim order passed by the Division Bench was on a Friday, namely 24.8.2012, the Public Service Commission faced a dilemma as to whether they should permit only the appellant in W.A.No.1857 of 2012 or all others similarly placed to take the examination in the subjects of their choice. It appears that the Public Service Commission decided to permit all candidates, who wanted to write the examinations in a subject of their choice, to do so. Accordingly, 71 candidates were permitted to take the examinations in the subject of their choice. But, unfortunately, the message did not percolate well downstream and hence, in some centres, some candidates did not either know about the option or failed to exercise the option.

9. Therefore, after the examination was over, a group of nine candidates filed a writ petition in W.P.No.26555 of 2012 challenging not only the second limb of Note (i) under Paragraph 6 of the Notification dated 25.6.2012, but also seeking a direction to cancel the examination already held on 26.9.2012 and to conduct an examination afresh.

10. In the said writ petition W.P.No.26555 of 2012, a learned Judge passed an interim order prohibiting the Public Service Commission from publishing the results of the written examination for a period of one week. It is not known whether the said order was extended after November, 2012.

11. But, in the meantime, the Public Service Commission started issuing a show cause notice dated 30.9.2013 to candidates, who had written the examination in the subject other than the one in which they had secured the educational qualification, proposing to invalidate their answer sheets. Upon receipt of such a show cause notice, three individuals by name M.Govindarajan, M.Suresh and G.Balasubramaniam filed writ petitions in W.P. Nos.5366, 5676 and 5635 of 2014 on the file of this Court challenging the show cause notice dated 30.9.2013. Two candidates, by name K.Kannan and Kaleecharan, went before the Madurai Bench and filed W.P.(MD) Nos.18623 of 2013 and 12078 of 2014, challenging the show cause notice.

12. The writ petition W.P.No.5676 of 2014 filed by M.Suresh came up for admission before a different learned Judge on 28.02.2014. At that time, the learned Standing Counsel for the Public Service Commission took notice and seemed to have given an undertaking not to publish the results till 05.3.2014. After recording the said undertaking, the learned Judge directed the matter to be listed along with the writ appeal. But, it was not done.

13. The writ petition filed by M.Govindarajan in W.P.No.5366 of 2014, challenging the second limb of Note (i) under Paragraph 6 of the recruitment Notification dated 25.6.2012 as well as the show cause notice dated 30.9.2013, was dismissed by a learned Judge by an order dated 03.3.2014. As against the said order, M.Govindarajan has come up with the appeal in W.A.No.483 of 2014 and the same was tagged along with the first writ appeal W.A.No.1857 of 2012.

14. Similarly, the writ petition W.P.(MD)No.18623 of 2013 filed by K.Kannan was dismissed by a learned Judge by an order dated 21.11.2013 at Madurai. As against the said order, he filed an appeal in W.A.(MD) No.36 of 2014. But, the same was also dismissed by a Division Bench at Madurai on 09.01.2014. As against the said order, K.Kannan filed an application for review, in Rev.A.(MD).SR.No.48566 of 2014. Though the review application appears to have been filed within the period of limitation, the applicant did not take care to rectify the defects and re-present the same for about eight months. Later, the applicant filed M.P.(MD)No.1 of 2015 for condoning the delay in re-presentation. At that stage, the papers in the said review application were also transferred to the Principal Bench to be tagged along with the two writ appeals W.A.Nos.1857 of 2012 and 483 of 2014 and the three writ petitions W.P.Nos.26555 of 2012 and 5635 & 5676 of 2014.

15. In the meantime, the interim order of injunction originally granted on 28.9.2012 in W.P.No.26555 of 2012 came to be vacated by a learned Judge by an order dated 06.6.2014.

16. However, complaining that the undertaking given on 28.02.2014 by the Standing Counsel for the Public Service Commission before the learned single Judge in W.P.No.5676 of 2014 was violated, the petitioner M.Suresh filed Contempt Petition No.457 of 2015. When this contempt petition was listed before the learned single Judge, he directed the same to be posted along with the batch in W.A.No.1857 of 2012.

17. Thus, we have on hand two writ appeals, three writ petitions, one contempt petition and one unnumbered review application, all arising out of the challenge to (1) the second limb of Note (i) under Paragraph 6 of the recruitment Notification dated 25.6.2012; and (2) the show cause notice dated 30.9.2013.

18. We have heard M/s. V.Selvaraj, K.Rajkumar, C.Johnson, N.Rajan, U.Karunakaran and N.Umapathi, learned counsel for the appellants, petitioners and applicant, Mr.P.H.Arvind Pandian, learned Additional Advocate General, assisted by Mr.N.S.Nandakumar, learned Standing Counsel for the Tamil Nadu Public Service Commission and

Mrs.A.Srijeyanthi, learned Special Government Pleader for the State.
Contempt Petition No.457 of 2015

19. Since the contempt petition could be disposed of without much ado, we shall take it up first.

20. The petitioner alleges violation of the undertaking given on 28.02.2014 in W.P.No.5676 of 2014. The order passed by the learned Judge reads as follows:

"Counsel for TNPSC submits that the TNPSC will not publish the result till 05.3.2014. The said undertaking is recorded. List along with W.A.No.1857 of 2014."

21. It is not the case of the petitioner in the contempt petition that the Service Commission violated the order any time before 05.3.2014. The only claim of the petitioner is that after the learned single Judge posted the contempt petition along with the writ appeals and the batch of cases, they came up for hearing on 29 occasions and that either the Bench asked the learned counsel for Public Service Commission not to publish the results or the learned counsel for the Public Service Commission agreed not to publish the results.

22. In other words, the alleged contempt does not arise out of the undertaking given before the learned Judge on 28.02.2014. It arises out of an oral direction allegedly given by the Bench or an oral undertaking allegedly given by the counsel.

23. But, unfortunately, no action for contempt can be initiated on the basis of such oral observations, directions or undertakings. As a matter of fact, the interim order of injunction originally granted in W.P.No.26555 of 2012 on 28.9.2012 was vacated on 06.6.2014. The petitioners in the writ petition have not filed any appeal against the said order. Therefore, apart from the fact that the oral undertaking recorded in W.P.No.5676 of 2014 on 28.02.2014 did not survive beyond 05.3.2014, there was also a considered order rejecting the prayer for injunction in one of the cases that form part of the batch. That order has attained finality. Therefore, the contempt petition is wholly misconceived.

24. In view of the above, contempt petition No.457 of 2015 is dismissed.

Writ Appeals and Writ Petitions

25. The contentions of all the learned counsel for the appellants and the petitioners, can be summarised into the following points:

(i) The prescription contained in the second limb of Note (i) under Paragraph 6 of the Notification dated 25.6.2012, allowing the candidates to write the written examination only in the paper, in which, they had secured a Diploma, has no rationale and has no nexus with the object sought to be achieved;

(ii) The prescription contained in the impugned portion of the notification was not there in the previous selections;

(iii) Such a prohibition was not even there when notifications for recruitment were issued in other Departments, such as Forest Department and Fisheries Department; and

(iv) When one of the qualifications prescribed is a working experience in an automobile workshop, the candidates cannot be prohibited from taking the examination in a subject of their choice.

26. Mr.V.Selvaraj, learned counsel for the appellant in one of the appeals, raised two additional contentions. They are:

(i) When the Special Rules for the Tamil Nadu Transport Subordinate Service do not prescribe minimum marks to be secured in the written examination, it is not open to the Public Service Commission to stipulate in Paragraph 6 of the Notification, a minimum qualifying mark of 102 for the reserved categories and 136 for the open categories, out of a maximum of 300 marks; and

(ii) As per G.O.Ms.No.603, P&AR Department, dated 12.6.1985, the posts in the State and Subordinate Services, for which, selection is to be made by the Public Service Commission, were classified into Technical and Non-technical posts. The posts in the Tamil Nadu Transport Subordinate Service were included under the category of Technical posts and the Government Order prescribed that selection to such posts shall be only on the basis of an oral test. Therefore, the Notification prescribing a two tier selection process is contrary to the Government Order.

27. But, we are of the considered view that both the above contentions are liable to be rejected outright, for a variety of reasons. The reasons are:

(i) What was challenged in all the writ petitions was only the second limb of Note (i) under Paragraph 6 of the Notification dated 25.6.2012. The appellants/petitioners did not challenge either the conduct of the written examination or the prescription of minimum marks in the written examination. Their only challenge was to the prohibition for writing the examination in a subject of their choice. Therefore, the petitioners/appellants cannot be allowed to mount a different horse at this distance of time.

(ii) When the number of candidates, who participate in a selection for 17 posts, is so large, it is not possible to conduct an oral test. As a matter of fact, even the Courts have started looking down upon the efficacy of oral test and have prescribed a ceiling limit upon the maximum marks that could be awarded in an interview. Therefore, written examination is the best method of avoiding arbitrary exercise of power and the prescription of minimum marks for a pass in the written examination is the best method of shortlisting candidates. In Praveen Singh v. State of Punjab [2000 (8) SCC 633], the Supreme Court observed that there is always a room for suspicion for the common appointments, if the oral interview is taken up as the only criterion. The Supreme Court held that when 4500 candidates applied for 40 posts of Block Development Officers, interview cannot be said to be a satisfactory method of selection, though, however, it may be a part thereof.

(iii) We are conscious of the fact that in a few decisions, such as *Durgacharan Misra v. State of Orissa* [(1987) 5 Administrative Tribunals Cases 148], the Supreme Court has taken a view that the prescription of qualifying marks in the written examination, by the Public Service Commission, without there being a provision in the Statutory Rules, is not permissible. But, in the case on hand, the appellants/petitioners, did not make a challenge to Paragraph 6 of the Notification in entirety. They chose to target only the second limb of Note (i) under paragraph 6. Not stopping at that, they even went beyond and wrote the written examination either after obtaining an interim order from this Court or after the Public Service Commission permitted them to write the examination in a subject of their choice. After having voluntarily taken part in the examination, it is not open to them to challenge the very Notification, pursuant to which, they have taken the examination. As a matter of fact, these two additional contentions are raised by the learned counsel for the appellant in W.A.No.1857 of 2012. The original prayer of this appellant in his writ petition W.P.No.22307 of 2012 was only to quash the second limb of Note (i) under Paragraph 6 of the Notification and to give a consequential direction to permit him to write the written examination in any one of the subjects of his choice. If, therefore, his main writ petition had actually been allowed by the learned Judge, he would have written the examination subject to the minimum qualifying marks prescribed therein. But, his writ petition was dismissed at the admission stage and in the writ appeal, he himself voluntarily secured an interim order permitting him to write the exam. Therefore, it is not open to him now to turn around and argue that the very holding of the written examination was illegal or that the prescription of a pass mark in the written examination was illegal. He is actually approbating and reprobating and hence, both the additional contentions urged by Mr.V.Selvaraj, learned counsel for one of the appellants are bound to be rejected.

28. Having disposed of the additional innovations made by the learned counsel for the appellants, let us now take up the main contentions.

29. The first contention of the appellants/petitioners is that the prescription contained in the impugned part of the Notification has no rationale or nexus with the object sought to be achieved. In order to test this contention, it is necessary to take a look at Note (i) under Paragraph 6 of the Notification dated 25.6.2012. In the first limb of Note (i), it is stated that the candidates should specify in the application, the subject, in which, they wish to be examined. In the second limb, the applicants are ordained only to choose the subject, in which, they have obtained the prescribed qualification. In other words, a person, who holds a Diploma in Mechanical Engineering, is ordained by the impugned Note, to take the examination only in Mechanical Engineering and a person, who holds a Diploma in Automobile Engineering, is ordained to write the paper in Automobile Engineering.

30. We do not know how the above prescription is assailed. It is a matter of common sense and logic that a person, who holds a diploma in a subject, will be more competent (if he had actually studied and passed) in his own subject than in a different subject. If the State considers that a diploma holder in Mechanical Engineering will be more competent in Mechanical Engineering than in Automobile Engineering and a diploma holder in Automobile Engineering will be more competent in Automobile Engineering than in Mechanical Engineering, the said perception cannot be said to be arbitrary, unjustified or illegal.

31. The rationale behind the prescription is that the Government wants to test the knowledge and competence of a person in the subject, in which, he had secured a diploma. The object of the State is to select the best of candidates for appointment. The prescription aims at getting the best of candidates in the respective subjects. Therefore, the prescription has a nexus with the object sought to be achieved. Hence, the first contention is liable to be rejected.

32. The second contention of the appellants/petitioners is that the prohibition contained in the second limb of Note (i) of Paragraph 6 of the Notification was not there in the previous selections. The appellants/ petitioners have produced the Notification dated 31.3.2009 to show that there was no such restriction in the selection for the years 2006-2008 for the very same post.

33. But, we do not think that the same could be a ground for upsetting the prescription in the impugned Notification. When there is no prohibition under the Statutory Rules for such a prescription, it is not open to the appellants/petitioners to insist that the same pattern has to be followed. As a matter of fact, one of the contentions of the appellants is that this prescription has no sanction under the Statutory Rules. If this is so, even the prescription in the previous Notification dated 31.3.2009 also had no sanction under the Statutory Rules. Therefore, the proper approach should be to hold that when there is no prohibition under the Statutory Rules, it is open to the respondents to make such a prescription.

34. Relying upon the decision of the Supreme Court in Union of India v. Alok Kumar [2010 (5) SCC 349], it is contended by Mr.U. Karunakaran, learned counsel for one of the writ petitioners that a practice adopted for a considerable time, which is not violative of the Constitution or otherwise bad in law or against public policy, can be termed good in law as well. In paragraph 66 of the report, the Supreme Court pointed out that it is a settled principle of law that practice adopted and followed in the past and within the knowledge of public at large, can legitimately be treated as good practice acceptable in law.

35. But, at the outset, this petitioner has not been able to point out that the practice of allowing persons to write the examination in any one of the subjects of their choice, had been in vogue for a considerable length of time. By just producing a

Notification for recruitment issued in the year 2009, the petitioner cannot contend that it was a long standing practice. There is nothing on record to show that there was such a long standing practice. Therefore, there is no merit in the said contention.

36. The third contention of the appellants/petitioners is that for direct recruitment to posts in other departments, the candidates have the option to write the examination in a paper of their choice. The petitioners have produced a Notification dated 02.5.2012 issued by the Public Service Commission for appointment to the post of Assistant Conservator of Forests. In the said Notification, it is stated that the candidates are required to write one paper in General Knowledge and General Tamil and English compulsorily and two papers in optional subjects selected from out of about 12 subjects. The educational qualification prescribed for the post is a bachelor's degree in any one of the subjects namely Forestry, Botany, Zoology, Physics, Chemistry, Mathematics, Statistics, Geology, Agriculture, Horticulture, Forest Economics, Mechanical Engineering, Civil Engineering and Chemical Engineering. But, the Notification does not restrict the choice of optional subjects only to the subject, in which, the candidates had taken a degree. Similarly, in a Notification dated 02.7.2012 issued for recruitment to the posts of Inspector of Fisheries and Research Assistant, candidates are required to write a written examination either in Zoology or in Fisheries Science, but there was no restriction regarding the choice of the subject. Therefore, the third contention is that the prescription contained in the impugned Notification is illegal.

37. But, we are unable to agree with the above contention for at least two reasons. They are:-

(i) The post of Motor Vehicles Inspector Grade II is not merely a post in the Civil Services of the State, governed exclusively by the Statutory Rules issued in exercise of the Proviso to Article 309 of The Constitution. It is a post, which is statutorily controlled by the Motor Vehicles Act, 1988 and the Central Motor Vehicles Rules. As a matter of fact, by a Notification issued in S.O.443 (E) dated 12.6.1989, in exercise of the powers conferred by Section 213 of the Motor Vehicles Act, 1988, the Central Government prescribed the minimum qualification for persons to be appointed as Motor Vehicles Inspectors. The prescription of (i) minimum general qualification; (ii) a diploma either in Automobile Engineering or in Mechanical Engineering of a duration of three years; (iii) working experience of at least one year in a reputed automobile workshop; and (iv) possession of a valid driving licence, were all introduced only by the said Notification. Therefore, the State Government also amended the Service Rules issued under the Proviso to Article 309. Hence, there cannot be a comparison of the post of Motor Vehicles Inspector Grade II with any other post in the State, including the post in Fisheries or Forests.

(ii) In any case, the post of Motor Vehicles Inspector Grade II is a specialised post. Even in the recruitment to some posts in All

India Services, candidates are permitted to write the main written examination in optional subjects of their choice. But, after appointment, they discharge duties that are generally administrative in nature. Many of the duties actually become non technical and hence, it is possible to allow people to write the examinations in optional subjects of their choice in so far as those non technical and administrative posts are concerned. But, the same logic cannot be applied to the post of Motor Vehicles Inspector. Hence, the third contention deserves to be rejected.

38. The fourth contention is that when one of the qualifications prescribed for recruitment is a working experience in an automobile workshop, there can be no prohibition for permitting the candidates to take the examination in a subject of their choice.

39. We are unable to sustain the above contention. In fact, the Note below the Table in Paragraph 4(B) of the Notification dated 25.6.2012 makes it clear that other things being equal, preference will be given to those, who possess Post Diploma in Automobile Engineering awarded by the State Board of Technical Education and Training. We do now know how the prescription of working experience of one year in an automobile workshop would change the complexion of the game in the light of the Note in Paragraph 4(B). Therefore, the fourth contention is also rejected.

40. Heavy reliance is placed upon the judgment of the Supreme Court in *Inder Prakash Gupta v. State of J&K* [2004 (6) SCC 786] for the proposition that being a creature of The Constitution, a Public Service Commission should scrupulously follow the Statutory Rules and that it cannot deviate from the same.

41. But, a careful look at the said decision would show that what the Supreme Court was concerned with in the said case was the validity of Rule 51 of the J&K Public Service Commission (Conduct of Business and Practice) Rules 1980, which provided 100 marks for viva voce as against 40 marks for other criteria. This rule was found by the Supreme Court to be in conflict with the Statutory Rules issued under Section 124 of the Jammu & Kashmir Constitution, which is in pari materia with Article 309 of The Constitution. Therefore, the Supreme Court held in paragraph 28 of the report, relying upon the decision in *State of Punjab v. Manjit Singh* [2003 (11) SCC 559] that the Service Commission was obliged to scrupulously follow the Statutory Rules operating in the field. But, in the same paragraph, S.B.Sinha, J, speaking for the Bench, observed 'it may be that for certain purposes, for example, for the purpose of shortlisting, it can lay down its own procedure'. The Court further held that the Commission cannot take any action, which would per se be violative of the Statutory Rules or makes the same inoperative for all intent and purport.

42. In the case on hand, the impugned prescription is not demonstrated to be contrary to any particular rule framed in terms of the Proviso to Article 309 of The Constitution. Where there is no conflict, the rule of procedure cannot be said to be contrary to law,

unless it offends common sense or is arbitrary or unfair.

43. As a matter of fact, a question arose in Andhra Pradesh P.S.C. v. Balaji Badhavath [2009 (5) SCC 1] as to whether the shortlisting of candidates by the Andhra Pradesh Public Service Commission for taking the main examination for Group I Services in the State of Andhra Pradesh in the ratio of 1 : 50 to the total number of vacancies on the basis of performance in the preliminary examination, was correct or not. While upholding the right of Andhra Pradesh Public Service Commission, the Supreme Court made a very important observation, which will clinch the issue on hand. In paragraph 23 of the report, the Supreme Court observed as follows :

"The appellant Commission, which has been constituted in terms of Article 315 of The Constitution, is bound to conduct the examination for appointment to the Services of the State in terms of the Rules framed by the State. It is, however, free to evolve procedure for conduct of examination."

44. The only restriction imposed by the Supreme Court in that case was that while conducting the examination in a fair and transparent manner, they should follow known principles of fair play. Again, in paragraph 25 of the report, the Supreme Court held as follows :

"How the Commission would judge the merit of the candidate is its function. Unless the procedure adopted by it is held to be arbitrary or against the known principles of fair play, the Superior Courts would not ordinarily interfere therewith."

45. Therefore, the Public Service Commission is granted a leverage to formulate the procedure for judging the merit of the candidates. The said procedure, as pointed out by the Supreme Court in paragraph 25 of its decision in Andhra Pradesh P.S.C., is not shown to be arbitrary or against the known principles of fair play. Hence, the challenge to the second limb of Note (ii) under paragraph 6 of the notification dated 25.6.2012 is bound to fail.

46. One additional argument raised by some of the learned counsel is that it is only one candidate who secured an interim order from this Court directing the Public Service Commission to permit him to write the examination in a subject of his choice. Based upon the said interim order, about which the other people were not aware of, the invigilators in the examination halls allowed about 71 candidates to write the examination in a paper of their choice. Therefore, it is contended by the learned counsel for some of those persons that after having allowed them to write the examination in a paper of their choice, it is not open to the Public Service Commission to reject their answer papers.

47. We have carefully considered the above submission. In short, the petitioners/appellants pleaded estoppel/acquiescence.

48. But, we do not think that there can be any estoppel or acquiescence. When the notification dated 25.6.2012 made it very

clear that the candidates should take the examination in a paper in which they had secured the prescribed qualification, these persons ought not to have taken a chance and that too, at the last minute at the examination centre, to write the examination in a different subject. Till these petitioners/appellants went to the examination centres, they were not communicated with any order permitting them to take the examination in a subject of their choice. Therefore, if they had chosen to follow the oral instructions of the invigilators in the examination hall, contrary to the conditions stipulated in the notification, they have taken a calculated risk and they have done so at their own peril. Hence, these candidates cannot plead estoppel or acquiescence. The invigilators were not the agents of the Public Service Commission, to permit any candidate to act contrary to the condition stipulated in the notification. Therefore, this argument cannot be sustained.

49. In fact, the Public Service Commission could have avoided all these complications by simply stipulating in the advertisement that the written examinations will be held in the papers in which the candidates have secured the basic educational qualification. The Public Service Commission may take note of this for future guidance.

50. Therefore, in fine, we do not find any illegality in the impugned portion of the Notification for recruitment and the writ appeals and the writ petitions are liable to be dismissed. As a matter of fact, we do not know whose battle, the appellant in W.A.No.1857 of 2012 is seeking to fight. As per the Notification dated 25.6.2012 for recruitment, there is no upper age limit for candidates belonging to the reserved categories. The date of birth of the appellant in W.A.No.1857 of 2012, as indicated in his application, was 14.7.1957. If the appellant actually succeeds, he would retire in July 2015. We do not know whether he is fighting a proxy litigation, that has actually put the entire selection process on hold for the past nearly three years. It was one act of indulgence shown by this Court in favour of S.Gethaapathy, the appellant in W.A.No.1857 of 2012, permitting him to write the written examination, at the time of admission of the appeal that has actually given rise to a series of litigation, paralysing the process of selection. Therefore, at least the writ appeal W.A.No.1857 of 2012, in our considered view, should be dismissed with heavy costs. But, we are refraining from imposing costs, only due to the fact that there are other players, who have contributed to this state of affairs.

51. In the result, the writ appeals and the writ petitions are dismissed. In so far as the petition to condone the delay in representation in Review Application (MD)SR.No.48566 of 2014 is concerned, the same is also liable to be dismissed, in view of the fact that even if the review application is numbered, it deserves only the same fate as the writ appeals and the writ petitions.

Therefore, MP.(MD) No.1 of 2015 in Rev.A.(MD) SR.No.48566 of 2014 is dismissed. Consequently, all connected pending MPs are also dismissed. No costs.

Sd/-
Asst.Registrar (CS V)

/true copy/

Sub Asst. Registrar

kpl/RS

To

- 1.The Secretary to Government, Home (Transport II-A) Department
Fort St. George, Chennai 600 009.
- 2.The Transport Commissioner, Transport Department,
Ezhilagam, Chepauk
Chennai 600 005.
- 3.The Secretary,
Tamil Nadu Public Service Commission,
No.1, Greaves Road,
Thousand Lights, Chennai 600 006.
- 4.The Controller of Examinations,
Tamil Nadu Public Service Commission,
Frazer Bridge Road, VOC Nagar,
Park Town, Chennai 600 003.

3 ccs to M/s.K. Rajkumar, Advocate, S.r 18595, 18594, 18596
2 ccs to M/s. N.S. Nandakumar, advocate, Sr. 18428
1 cc to Dr.M. Devendran, advocate, S. 18430
1 cc to Government Pleader, sr. 18512

order in W.A.Nos.
1857 of 2012 & 483 of 2014, W.P.
Nos.26555 of 2012, 5635 & 5676
of 2014, MP(MD).No.1 of 2015 in
Rev.A.(MD) SR.No.48566/2014
in W.A.(MD)No.36 of 2014 &
Cont.P.No.457 of 2015.

MP (CO)
kk 30/4