

In the High Court of Judicature at Madras

Reserved on: 31.7.2015

Delivered on: 06.08.2015

Coram:

The Hon'ble Mr.Justice V.Ramasubramanian
and
The Hon'ble Mr.Justice T.Mathivanan

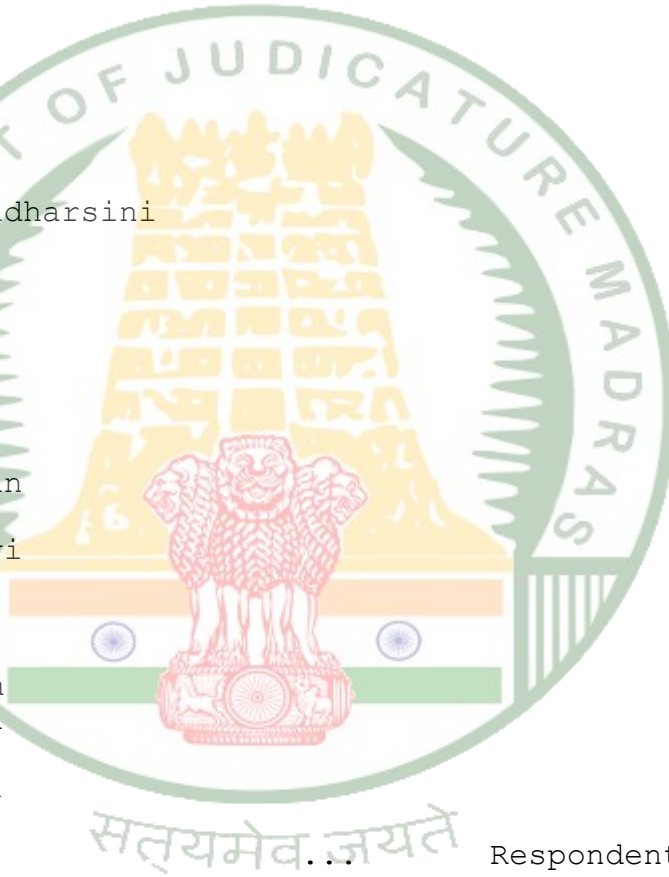
W.A.No.1621 of 2013 and W.P.No.19128 of 2014

C.Senthilkumar Appellant /Petitioner in both WA and WP

Versus

1. The Secretary
Tamil Nadu Public Service Commission
Frazer Bridge Road,
V.O.C. Nagar, Park Town,
Chennai - 600 003. Respondent-1 in W.A.
2. The Registrar,
Dr. Ambedkar Law University,
Poompozhi, No.5, Greenways Road,
Chennai - 600 028. Respondent 2 in W.A.& W.P
3. The Principal
The Government Law College,
Bharathiyar University Post,
Coimbatore - 641 046. Respondent-3 in W.A.
1. The Government of Tamilnadu
rep. by its Secretary, Home Department,
Fort St. George, Chennai- 600 008.
2. The Tamilnadu Public Service Commission,
Rep.by its Secretary, Frazer Bridge Road,
VOC Nagar, Park Town, Chennai - 600 003.
3. S.Mohamed Yousuf Navaz
4. K.Syed Mohammed Ghouse
5. M.Yasin Mubarak Ali
6. Ra.Mokhanapriya
7. S.Jayanthi
8. S.Prince Samuvel Raj
9. N.Elumalai
10. V.Shanmugasundaram
11. N.Maheswari

12. M.Suresh
13. P.Mekha
14. D.Indira Misial
15. S.Kaleeswari
16. M.Praveena
17. N.Sathiyapriya
18. V.Senthil Kumar
19. D.Kiraha Raj
20. K.S.Ramasamy
21. A.Jagitha Parveen
22. T.Duraimugunthan
23. C.Jaikumar
24. P.Muthukumar
25. T.Punitha
26. G.Selvam
27. E.Edwig
28. L.Maheswari
29. A.Mohan
30. N.Karthikapriyadharsini
31. G.Nirmala Devi
32. K.Mythiledevi
33. V.Ravi
34. C.Sridevi
35. S.Senthilkumar
36. T.Jayanthi
37. S.Revathy
38. R.Kolanchinathan
39. R.Suresh
40. M.Thavamaniselvi
41. R.Thangaraj
42. M.Cokkalingam
43. N.Murugeswari
44. M.Jothirathinam
45. V.Shanmugapriya
46. R.P.Vanitha
47. A.Umameshwari
48. B.Priyadarsini
49. C.Ashok



Respondents in W.P.

Writ Appeal filed under Clause 15 of Letters Patent against the order of Justice M.Jaichandran made in W.P.No.14880 of 2013 dated 19.07.2013.

WP.No.14880 of 2013: Petition presented to this court to issue a writ of Mandamus, directing the 1st respondent to appoint the petitioner as Assistant Public Prosecutor, Grade II in the Tamil Nadu General service 2010-2011 vide Regn.No.00201241 by direct recruitment duly called for in Notification No.6 of 2012, dated 02/04/2012, under preferential basis for having studied in Tamil Medium.

Writ Petition filed under Article 226 of the Constitution of India, praying for the issue of a writ of declaration declaring the order of the first respondent filling up 47 posts of Assistant Public Prosecutors Grade-II, vide GO.(4D) No.9, Home (Courts VI) Department dated 18.2.2014, by appointing the respondents 3 to 47, in continuance of the Selection List dated 3.4.2013 and the supplementary list dated 21.11.2013 for the selection of post of Assistant Public Prosecutors, Grade-II, (2010-2011), Post Code - 1797 as notified by the second respondent in Notification No.06/2012 is null and void as unconstitutional and consequently direct the respondents to revise the Selection list in accordance with the communal Roster, Preferential roster for women, Persons studied in Tamil Medium (PSTM) and other preferential quota applicable to the Selection as rules, orders in force and appoint the petitioner as Assistant Public Prosecutor, Grade-II.

For Appellant : Mr.R.Gandhi, Sr.Counsel for
Mr.S.Senthamilselvan.

For R-1 in Writ Appeal
& R.2 in Writ Petition : Ms.C.N.G.Niraimathi

For R-3 in Writ Appeal
& R-1 Writ Petition : Mrs.Srijayanthi, Spl.Govt.Pleader.

For Respondent-2 in
Writ Appeal : Mr.V.M.G.Ramakannan.

RR2 to 49 in WP : No Appearance

JUDGMENT

By a notification issued on 2.4.2012, the Tamil Nadu Public Service Commission invited applications from eligible candidates, for appointment to the post of Assistant Public Prosecutor, Grade-II. The total number of vacancies notified were 47. The selection was to be through a written examination in four Law Papers followed by viva voce.

2. It was indicated in para 4.B of the notification that 20% of the vacancies would be filled up on preferential basis by persons who studied the prescribed qualifications in Tamil Medium.

3. In response to the said advertisement, the appellant in the above appeal who is also the petitioner in the writ petition applied. He applied as a candidate who is entitled to the benefit of para 4.B of the notification.

4. The results of the written examination were published on 18.3.2013. It was found therein that 98 candidates including the appellant/ petitioner were successful in the written examination and

were shortlisted for interview. The appellant/petitioner attended the interview and thereafter a final mark list was released by the Public Service Commission.

5. It was found in the final mark list that the appellant/petitioner had secured 196.50 in total. However, the appellant/petitioner was not eventually selected for appointment, when a supplementary list was released on 21.11.2013.

6. Aggrieved by the deletion of his name from the select list, the appellant filed a writ petition in W.P.No.14880 of 2013 seeking a mandamus to direct the respondents to appoint him as Assistant Public Prosecutor on preferential basis, as he had studied the essential qualifications in Tamil Medium. But the said writ petition was dismissed by a learned Judge, on the ground that during the relevant point of time when the petitioner studied in the Coimbatore Government Law College, there was no Tamil Medium in the college. Aggrieved by the dismissal of his writ petition, the appellant has come up with the above appeal W.A.No.1621 of 2013. The appeal was admitted on 6.8.2013.

7. During the pendency of the appeal, the Government issued G.O. (4D) No.9, Home Department, dated 18.2.2014, appointing about 47 persons as Assistant Public Prosecutors. Therefore, challenging the said Government Order, the appellant has come up with the above writ petition W.P.No.19128 of 2014, impleading all the selected candidates as parties. Since the writ appeal and the writ petition arise out of a common cause, they are tagged together.

8. We have heard Mr.R.Gandhi, learned Senior Counsel for the appellant/petitioner, Ms.C.N.G.Niraimathi, learned counsel appearing for the Tamil Nadu Public Service Commission, Mrs.Srijayanthi, learned Special Government Pleader, appearing for the State of Tamil Nadu and the Government Law College and Mr.V.M.G.Ramakannan, learned counsel appearing for the University.

9. The main grievance of the appellant/petitioner is that despite his having studied all the subjects in the Government Law College, Coimbatore in Tamil Medium and despite his having written all examinations in all papers in Tamil language, the Public Service Commission did not treat him as a candidate who studied in Tamil Medium, solely on the basis of a statement made by the Principal of the Government Law College, Coimbatore that there was no Tamil Medium in the Law College at Coimbatore during the relevant point of time. Drawing our attention to various Government Orders and to two decisions of two different Division Benches of this Court, Mr.R.Gandhi, learned Senior Counsel appearing for the appellant raised two contentions namely (a) that the stand taken by the Principal of the Government Law College, Coimbatore was factually incorrect and (b) that in any event, the certificate issued by the Principal and the supporting affidavits filed by the students and the

Lecturers to establish that the appellant learnt all the subjects in Tamil and wrote the examinations in Tamil language and hence he should be considered as a candidate who studied in Tamil Medium.

10. We have carefully considered the submissions of the learned Senior Counsel for the appellant.

11. From the submissions made by the learned Senior Counsel, it is clear that two questions arise for our consideration namely (a) as to whether the appellant did in fact study the law degree in Tamil Medium and (b) as to whether the mere fact that classes were taken in Tamil and examinations were written in Tamil would make the appellant a student who underwent the degree course in Tamil Medium or not.

ISSUE-1:

12. It appears that way back in the year 1978, the Government issued an order in G.O.Ms.No.1492, Education Department, dated 10.8.1978, according sanction for the introduction of Tamil Medium in the Law College at Madurai from the academic year 1978-79. By the said order, the Director of Legal Studies was requested to start one section in Tamil Medium in the B.G.L. Course in Law College at Madurai. Even before the said order was passed, the Government had issued G.O.Ms.No.2480, Education, dated 24.11.1977, granting a stipend of Rs.180/- per month to those who studied Arts, Science and Law subjects in Tamil Medium. By another Government Order issued in G.O.Ms.No.144, Law Department, dated 28.6.1989, the said stipend was increased to Rs.400/- per month with effect from the academic year 1999-2000 for those who studied a 3 year or 5 year Law Degree in Tamil Medium.

13. But it is not clear as to whether, despite the accord of sanction by the Government, courses in Tamil Medium were actually started or not. In G.O.Ms.No.280, Law Department, dated 14.11.2006, it was indicated in para 4 that as per the report of the Director of Legal Studies, 321 students were admitted to a 3 year Law Degree in Dr.Ambedkar Government Law College, Chennai in Tamil Medium and that 241 students were admitted to a 5 year Law Degree in the same Law College in Tamil Medium. It was also indicated therein that there was only one section in Tamil and that when the Annual Permitted Intake of students was restricted to 80 from the academic year 2004-05, no student opted to join in the Tamil Medium. In paragraph 5 of the said Government Order it was further indicated that a separate section for those who wanted to study the Law Degree in Tamil Medium could be started after getting written request from the students. Accordingly, the Government gave permission, only under G.O.Ms.No.280 dated 14.11.2006 for starting a separate section in Tamil Medium.

14. What is reflected by the Government Orders referred to above is the fact that sanction had been accorded, way back in 1978. It took a long time for the commencement of Tamil Medium section to become a reality. But unfortunately, the history of the Dr.Ambedkar

Government Law College, Chennai as reflected in wikipedia shows as though Tamil was made as a Medium of instruction in Law as part of a Government policy from the academic year 1973-74. Therefore, despite this information furnished in the wikipedia going contrary to the actual Government Orders, the appellant relies upon this information to show that he studied in Tamil Medium. The information furnished in wikipedia and the Government Orders according sanction for starting a separate section in Tamil Medium, are not sufficient to hold that there was in fact a Tamil Medium section in Government Law College, Coimbatore and that the petitioner joined the same.

15. The appellant has not produced any Government Order by which a Tamil Medium section was started in Government Law College, Coimbatore. The Principal of the Government Law College, Coimbatore has sworn to a counter affidavit before the learned Judge, making it clear that during the academic years 2003-2004 to 2005-2006, there was no Tamil Medium in the Government Law College. Paragraph 2 of the counter affidavit filed by the Principal of the Government Law College, Coimbatore which was extracted even by the learned Judge, reads as follows:-

"2. With reference to the averments made by the petitioner in the affidavit, I respectfully submit that the petitioner herein, Thiru.C.Senthilkumar was a student of the 3 year Law Course in the Government Law College, Coimbatore from the academic year 2003-2004 to 2005-2006. It is further submitted that there is no Tamil medium in the Government Law College, Coimbatore since its inception and therefore, Thiru.C.Senthilkumar, the petitioner herein has not studied Tamil medium in the Government Law College, Coimbatore."

16. In the absence of any Government Order indicating that a separate section in Tamil Medium was actually started in Government Law College, Coimbatore, it is not possible to discard the counter affidavit filed by the Principal of the Government Law College, Coimbatore. After all the Principal of the Government Law College, Coimbatore has nothing against the appellant. Therefore, the learned Judge was right in deciding the writ petition on the basis of the counter affidavit filed by the Principal of the Government Law College, Coimbatore.

ISSUE-2:

17. The second contention of the appellant is that classes were taken in all subjects only in Tamil and that he also wrote all examinations only in Tamil and that therefore, he should be taken to be a person who studied in Tamil Medium.

18. But unfortunately, the said contention goes contrary to the very Government Order by which reservation was created for persons who studied in Tamil Medium.

19. A direction to reserve 20% of the vacancies in all posts, for persons who studied in Tamil Medium, was issued under an Ordinance known as Tamil Nadu Appointment on Preferential Basis in the Services under the State of Persons Studied in Tamil Medium Ordinance, 2010. In exercise of the powers conferred by Section 8(1) of the Ordinance, the Governor issued a set of Rules in G.O.Ms.No.145 P & AR Department, dated 30.9.2010. The expression "persons studied in Tamil Medium" was defined in Section 2(b) as follows:-

"(b) "persons studied in Tamil medium" means who have obtained the educational qualification or qualifications prescribed for direct recruitment in the rules or regulations or orders applicable to any appointment in the services under the State through Tamil medium of instruction."

20. Therefore, it is clear that only those who obtained the educational qualifications through Tamil Medium of instruction are entitled to the benefit of this reservation which is actually horizontal in nature. Merely because the teachers take classes in Tamil and merely because the examinations are written in Tamil, a person cannot claim to have studied in Tamil Medium. The standard of teaching has fallen to such an extent today that one may even teach English in Tamil. If so done, the person who studied English in such a manner cannot claim that he studied English Literature itself in Tamil Medium.

21. Mr.R.Gandhi, learned Senior Counsel for the appellant relied upon an unreported decision of a Division Bench of this Court in W.P.No.25835/2012 dated 18.4.2013 in T.Sergia Bindu vs. Secretary to Government Home (Courts-I) Department, Government of Tamil Nadu. But we do not know how the said decision is of any assistance to the appellant. The said case arose out of a challenge to the selection of a particular candidate under the quota reserved for persons who studied in Tamil Medium. The Public Service Commission had accepted the claim made by the selected candidate who have studied a 5 year Law Degree in Tamil Medium in Madurai Law College. This claim was accepted by the Government as well as the Public Service Commission, but a third party questioned it. therefore, the third party's claim was rejected by the Division Bench.

22. But in the case on hand, the very Principal of the College where the appellant studied, has sworn to an affidavit clearly indicating that there was no Tamil Medium section in that college during the relevant point of time. The statement in the affidavit filed by the Principal of the Government College was also confirmed by a letter bearing RC.No.1999/A3/2013, dated 9.7.2013 sent by the Director of Legal Studies. Therefore, the supporting affidavits of the Lecturers and the co-students cannot be of any assistance to the appellant. We are actually surprised that the Lecturers of the College, instead of indicating whether there was a Tamil Medium

section or not, had chosen to swear to supporting affidavits to the effect that they taught the subjects in Tamil.

23. Reliance is also placed upon the decision of an another Division Bench in P.Veeramuthu vs. Secretary, Tamil Nadu Public Service Commission in W.A.No.1715 of 2014 dated 10.2.2015. But we do not know how the said decision is of any assistance to the appellant. The said decision arose out of the lowering of cut-off marks by the Tamil Nadu Public Service Commission in respect of persons who studied in Tamil Medium. Therefore, after pointing out that allotment of seats to persons who studied in Tamil Medium was an horizontal reservation, which cuts across vertical reservation resulting in another locking reservation, the Bench held that two different cut-off marks cannot be prescribed, one for those who studied in Tamil Medium and another for those who studied in the other medium. This decision was not on the point as to whether a person who writes examinations in Tamil and who is taught some of the subjects also in Tamil could be considered as a person who studied in Tamil Medium or not.

24. As we have indicated earlier, persons who joined a course of study by specifically opting for Tamil as the Medium of instruction form a distinct and separate class by themselves. It is only for them that the Government had provided two incentives, one in the form of monthly stipend and another in the form of horizontal reservations. Both these benefits cannot be claimed or availed by students who joined in English Medium but who are taught all subjects in Tamil and who wrote the examinations in Tamil on account of various deficiencies. Hence, we are of the considered view that there are no merits in the writ appeal. Hence, it is dismissed. As a consequence, the writ petition is also devoid of merits and is dismissed. There will be no order as to costs.

Sd/-

Asst.Registrar (CO)

/true copy/

Sub Asst. Registrar

gr.

To

1. The Secretary, Tamil Nadu Public Service Commission
Frazer Bridge Road, V.O.C. Nagar, Park Town,
Chennai - 600 003.
2. The Registrar, Dr. Ambedkar Law University,
Poompozhil, No.5, Greenways Road, Chennai - 600 028.

3. The Principal, The Government Law College,
Bharathiyar University Post, Coimbatore - 641 046.

4. The Secretary to Government of Tamilnadu
Home Department, Fort St. George, Chennai- 600 008.

+1 cc to Mr.M.Muthupandian, Advocate, sr.40707

+1 cc to Mr.S.Senthamilselvan, Advocate, sr.40900

+2 ccs to Govt.Pleader, sr.40934, 40935.

W.A.No.1621 of 2013 and
W.P.No.19128 of 2014

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kra 9/9



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