

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 08.11.2017

Delivered on: 22.11.2017

CORAM

THE HON'BLE MR.JUSTICE HULUVADI G.RAMESH
AND
THE HON'BLE MR.JUSTICE RMT.TEEKAA RAMAN

W.P.Nos.33987 to 33989 of 2015 and
M.P.Nos.1, 1 and 1 of 2015
and
W.P.No.13021 of 2016

W.P.Nos.33987 to 33989 of 2015:

P.Aruljothi ...Petitioner in W.P.No.33987/2015

- 1.N.Dess
- 2.K.Azhagesan
- 3.M.Sivakumar
- 4.Karthikeyan
- 5.Muthaiyan
- 6.P.Ambethkar
- 7.K.Selvamuthu
- 8.S.Krishnamurthy
- 9.D.Mohanraj
- 10.B.Rangarajan

.... Petitioners in W.P.No.33988/2015

- 1.Vengatesan, M.
- 2.Angappan, P.
- 3.Singaravelu, P.
- 4.Manokaran, R.
- 5.Manikkam, S.

.... Petitioners in W.P.No.33989/2015

-vs-

1. Union of India
represented by the Union Territory of Puducherry,
rep.by its Secretary, Department of Home,
Puducherry-605 001.
2. The Superintendent of Police (Headquarters),
Police Department, Puducherry-605 102.
3. The Inspector General of Police,
Puducherry.

4.S.Rajesh
5.S.Ramesh
6.D.Venkatesha Perumal
7.S.Velu
8.M.Murugan
9.A.Govindaraj
10.E.Punitharaja
11.B.Vibulkumar
12.Badugu Kanaka Rao
13.E.Prabu
14.K.Priya
15.M.Saranya
16.R.Akalya
17.S.Sathya
18.Jerome Jasmond
19.S.Balaji
20.M.Kumaravel
21.Muruganandam
22.V.Sivakumar
23.N.Santhose
24.M.Senthil Kumar
25.Jayagunathan
26.V.Shamala
27.P.Sivaprakash
28.M.Suresh
29.D.Murugan
30.G.Santhose
31.G.Kalaiyarajan
32.A.Zaguir Qussene
33.K.Rajasekar
34.M.Mohamad Sheck Alavudeen
35.U.Vijayakumar
36.A.Anusha Basha
37.S.Veeraputhiran
38.S.Nandhakumar
39.A.Shanmuga Sathiya
40.M.Illango
41.C.Mariya Francisca
42.B.Mali

43.Pramod Kayanadath .. Respondents 1 to 43 in W.P.Nos.
33987 to 33989 of 2015

44.The Registrar,
Central Administrative Tribunal,
Chennai Bench,
Chennai.

..44th respondent in W.P.Nos.
33987 and 33988 of 2015

44.Jaipremnath



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45.The Registrar,
Central Administration Tribunal,
Chennai Bench,
Chennai.

.. 44th and 45th respondents in
W.P.No.33989 of 2015

W.P.No.13021 of 2016:

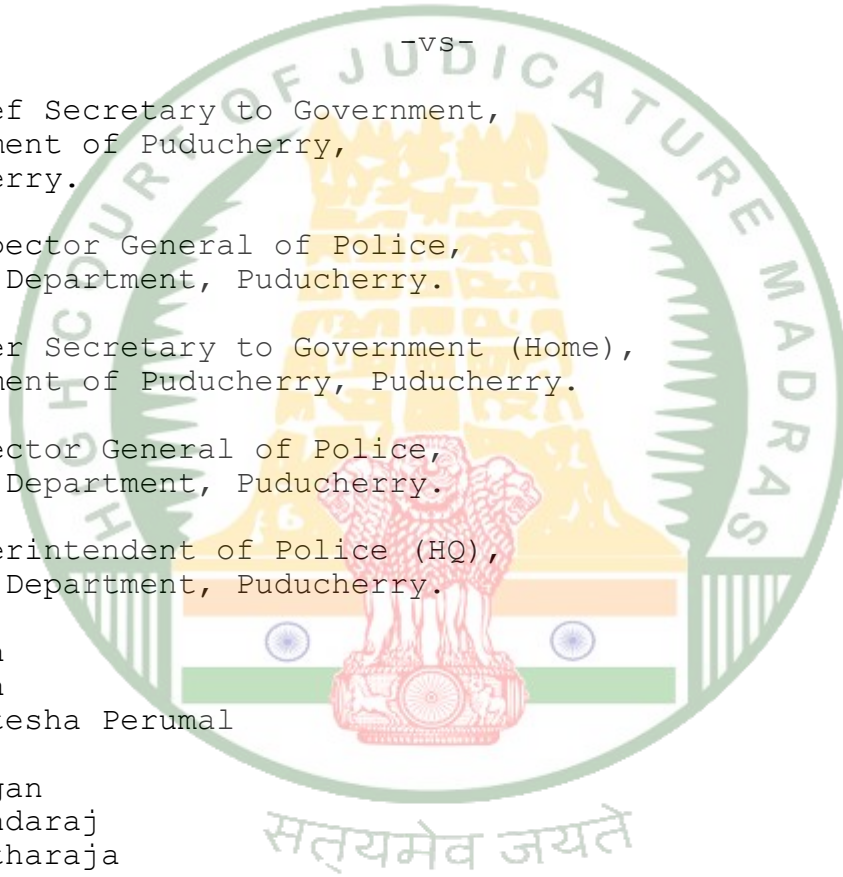
1.Archunan
2.Elamurugan
3.Babou

... Petitioners

-VS-

1.The Chief Secretary to Government,
Government of Puducherry,
Puducherry.
2.The Inspector General of Police,
Police Department, Puducherry.
3.The Under Secretary to Government (Home),
Government of Puducherry, Puducherry.
4.The Director General of Police,
Police Department, Puducherry.
5.The Superintendent of Police (HQ),
Police Department, Puducherry.

6.S.Rajesh
7.S.Ramesh
8.D.Venkatesha Perumal
9.S.Velu
10.M.Murugan
11.A.Govindaraj
12.E.Punitharaja
13.B.Vibulkumar
14.Badugu Kanaka Rao
15.E.Prabu
16.K.Priya
17.M.Saranya
18.R.Akalya
19.S.Sathya
20.Jerome Jasmond
21.S.Balaji
22.M.Kumaravel
23.Muruganandam
24.V.Sivakumar
25.N.Santhose



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26.M.Senthil Kumar
27.Jayagunathan
28.V.Shamala
29.P.Sivaprakash
30.M.Suresh
31.D.Murugan
32.G.Santhose
33.G.Kalaiyarajan
34.A.Zaguir Qussene
35.K.Rajasekar
36.M.Mohamad Sheck Alavudeen
37.U.Vijayakumar
38.A.Anusha Basha
39.S.Veeraputhiran
40.S.Nandhakumar
41.A.Shanmuga Sathiya
42.M.Illango
43.C.Mariya Francisca
44.B.Mali
45.Pramod Kayanadath

46.The Registrar,
Central Administrative Tribunal,
High Court Campus,
Chennai.

... Respondents

W.P.Nos.33987 and 33988 of 2015 filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorarified Mandamus calling for the records relating to the order of the 44th respondent in O.A.Nos.198 and 345 of 2011 dated 04.08.2015 and quash the same and consequently allow the said Original Application as prayed for in terms of various prayers contained in the said O.A.

W.P.No.33989 of 2015 filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorarified Mandamus calling for the records relating to the order of the 45th respondent in O.A.No.244 of 2012 dated 04.08.2015 and quash the same and consequently allow the said Original Application as prayed for in terms of various prayers contained in the said O.A.

W.P.No.13021 of 2016 filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorarified Mandamus calling for the records relating to the common impugned order dated 04.08.2015 passed by the 46th respondent, namely the Hon'ble Central Administrative Tribunal, Madras Bench in O.A.Nos.191, 198 & 345 of 2011 & 244 of 2012 and quash the same in respect of O.A.No.191 of 2011 alone and consequently direct the respondent Nos.1 to 3, ie., recruitment committee, to re-

conduct the written test by framing the question papers for the posts of Sub-Inspectors of Police, also in regional language (Tamil) by strictly adhering with the existing recruitment rules and Standing Order No.2/2002.

For Petitioners in
W.P.Nos.33987 and 33989
of 2015

:: Mr.Vijay Narayan,
Sr.Counsel for
Mr.Stalin Abhimanyu

For Petitioners in
W.P.No.33988 of 2015

:: Mr.N.G.R.Prasad for
Mr.M.Gnanasekar

For Petitioners in
W.P.No.13021 of 2016

:: Mr.AR.L.Sundaresan,
Sr.Counsel for
Mr.Prakash Adiapadam

For Respondents in
W.P.Nos.33987 to 33989
of 2015

:: Mr.Syed Mustafa,
Spl.GP (Pondy) for R1 to R3
Mr.V.Raghavachari for
Mr.P.R.Dhilipkumar for
R7, R9, R13, R14, R16, R17,
R20, R21, R27, R29, R30,
R32, R34, R35 and
R37 to R41

For Respondents in
W.P.No.13021 of 2016

:: Mr.Syed Mustafa, Spl.GP
(Pondy) for R1 to R5

Mr.V.Raghavachari for
Mr.P.R.Dhilipkumar for
R9, R11, R15, R16, R18,
R19, R22, R29, R31, R32,
R34, R36, R37, R39,
R40 and R41 to R43

COMMON ORDER

HULUVADI G.RAMESH, J.

These writ petitions have been filed against the order passed in O.A.Nos.198 of 2011, 345 of 2011, 244 of 2012 and 191 of 2011 respectively, dated 04.08.2015.

2.The facts of the case are as under:

The Government of Pondicherry had invited applications to fill up 41 vacancies for the post of Sub-Inspector in the Department of Police vide Notification bearing

No.8850/A2/Estt.I/Pol/2010 dated 18.11.2010. The method of selection prescribes three levels for selection, viz. Physical Fitness Test, Physical Efficiency Test and Written Test. The candidates passed in the first level will be allowed to participate in the second level and the candidates passed in the second level will be allowed to participate in the third level. The written examination was held on 06.02.2011. However, question paper supplied for the written examination was set up only in English language. The written test consisted of two parts, and it was conducted in the morning and afternoon sessions, the first part consisting Mathematics, Physical Science, Biology & Human Physiology and Reasoning & Ability and the second part consisting History, Geography, Constitution of India, General Knowledge & Current Event and General English. In the Notification it was stated that the questions would be of objective type and will be of graduate standard. According to the petitioners in all these writ petitions, as per the Recruitment Rules, the written test was to be conducted in accordance with the Standing Orders issued by the Government. According to the Standing Orders, it was mandatory to conduct the test both in English and Tamil, but the official respondents have conducted the test only in English, which had adversely affected the petitioners as they were not conversant with the various terminologies used in English in the objective type questions. According to the petitioners, failure to conduct the examination as per the standing orders and conducting the test only in English, are violative of Right to Equality under Article 14 of the Constitution of India, as the same had infringed their right to write the examination in the regional and official language. The petitioners in W.P.Nos.33987 to 33989 of 2015 have wrote the examination under protest without there being any other option at that point of time.

3.The case of the petitioners in W.P.No.13021 of 2016 is that they had studied in Tamil Medium throughout their school and college studies and that the official respondents have conducted the written examination only in English language contrary to the instructions given in the Standing Order No.2/2002. According to them, when they requested the supervising officer to provide them with the Tamil version of the question paper, some police persons entered the examination hall and forcibly arrested and removed them from the hall and that other candidates were also threatened that they would also be similarly arrested if they refuse to take part in the examination. Thus, their allegation is that framing of questions only in English amounts to denial of fair opportunity to them to take part in the selection and it is violative of the Fundamental Rights guaranteed under Article 16 of the Constitution of India.

4. With the above background, they filed the original applications before the Central Administrative Tribunal, Chennai Bench, Chennai, in O.A.Nos.198 of 2011, 345 of 2011, 244 of 2012 and 191 of 2011.

5. Before the Tribunal, it was argued on behalf of the petitioners in W.P.Nos.33987 to 33989 of 2015 that as per the Recruitment Rules, the written test was to be conducted in accordance with the Standing Orders issued by the Inspector General of Police. According to the Standing Orders, it was mandatory to conduct the test both in English and Tamil, but the official respondents have conducted the test only in English, which had adversely affected them as they were not conversant with the various terminologies used in English in the objective type questions. It was submitted that as per the Recruitment Rules for the Post of Sub-Inspector, the written test should be conducted as prescribed, through the Standing Orders issued by the Inspector General of Police with the approval of the Government. As on the date of selection, Standing Order No.2/2002 dated 29.07.2002 alone was in force as per which the questions in the written test ought to have been set in English or Tamil, whereas the authorities conducted the test only in English thereby denying the opportunity to the applicants to write the examination in regional language, thus affecting their Fundamental Right and it is violative of Right to Equality under Article 14 of the Constitution of India. It was also submitted that there is no further Notification which supersedes Standing Order No.2/2002. It was also submitted that the Notification did not specifically state that the written test would be conducted only in English and as a result, the applicants were taken aback when they were given the question paper set in English without providing them the Tamil Version of the question papers. Since they were left with no other option at that point of time, they had written the examination under protest.

6. Similarly it was argued before the Tribunal on behalf of the petitioners in W.P.No.13021 of 2016 that they had studied in Tamil Medium throughout their school and college studies and that the official respondents have conducted the written examination only in English language contrary to the instructions given in the Standing Order No.2/2002. It was submitted that when they requested the supervising officer to provide them with the Tamil version of the question paper, some police persons entered the examination hall and forcibly arrested and removed them from the hall and that other candidates were also threatened that they would also be similarly arrested if they refuse to take part in the examination. Alleging that framing of questions only in English amounted to denial of fair opportunity to them to take part in the selection and it is violative of the Fundamental Rights guaranteed under Article 16 of the Constitution of India, it was

also submitted that the action of the official respondents in framing the question papers only in English without there being any reference to that effect in the Notification dated 18.11.2010, is a serious lapse on their part.

7.It was submitted on behalf of the official respondents before the Tribunal that candidates selected for the post of Sub-Inspector have to work anywhere in the Union Territory of Puducherry and hence they should possess English knowledge as required. Further, the basic qualification for the post of Sub-Inspector is a graduate degree and thus a conscious decision has been taken to have the written examination in English. It was submitted that only in the Standing Orders, the medium of written test is given as English and Tamil and that Section 4 of the Puducherry Official Languages Act, 1965 provides for use of English language for all or any of the official purposes of the Union Territory since different languages are spoken in different parts of the Union Territory of Puducherry. Further, it was submitted that it is the administrative decision of the Police Establishment Board, being a forum headed by the Director General of Police and comprising of the senior-most officers of the Police Department as members.

8.After hearing the parties, the Tribunal observed that even though the original applications were filed in the years 2011 and 2012, the adjudication was delayed in the light of the interlocutory miscellaneous applications which warranted adjudication. In respect of the question of limitation, the applicants were allowed to implead the selected candidates and also to amend the cause title. Having noted that the written test consists of 200 marks, with Part-I and Part-II each 100 marks, and that the selection will be based on the marks obtained in the written test and there will be no interview, it was observed that the Notification was silent on the medium of written test.

9.The Tribunal has noted that the question that arises for consideration is whether the action of the official respondents in conducting the written test for selection to the post of Sub-Inspector of Police only in English, contrary to the prevailing Standing Orders, is legally sustainable and whether the applicants are entitled to any relief as they have been denied the opportunity of writing the examination in Tamil as provided for in the standing orders. The Tribunal observed that the Standing Order No.2/2002 dated 29.07.2002 has not been superseded by any further orders and as such the same could be taken to be in force currently; as per the standing orders, the written test would be set in English and Tamil. Even though the Police Establishment Board noted that the question paper was prepared in Tamil and English as per the standing orders during the previous recruitment, it felt that giving the question paper in Tamil language alone would cause disparity since the

candidates from Mahe and Yanam, whose languages are Malayalam and Telugu respectively, would be put to disadvantage. The Board also felt that in the present days, the complaints are received in e-mails which is normally in English and hence the police officers should understand such complaints. Keeping in view of the fact that the minimum qualification for the post of Sub-Inspector was graduate degree, the Board decided that English could be the common language for the candidates of all the four regions of the Union Territory of Pondicherry. Taking note of Section 3 of the Puducherry Official Languages Act, 1965 which stipulates that Tamil language shall be the language to be used for all official purposes of the Union Territory and also provides for use of Malayalam language in Mahe and Telugu language in Yanam and also Section 4 which stipulates that English language may be used for all or any of the official purposes, and that Section 4 would supersede the standing order, which only has the character of administrative instructions, and also relying upon the judgment of the Hon'ble Supreme Court in 2009 (5) SCC 515 in the case of K.A.Nagamani v. Indian Airlines, in which it is stated that statutory rules which are made under the provisions of any enactment and regulations, subject to parliamentary approval, stand on entirely different footing and that the administrative rules are always considered and have repeatedly been held to be rules of administrative practice, and also the judgment of this Court in W.P.No.13522 of 2002 dated 10.09.2014 in Puduvai Kalai Ilakia Peru Mandram v. Government of Union Territory of Pondicherry, the Tribunal observed that the Official Languages Act of Puducherry empowers the administration to conduct any official business in English in the light of the fact that different languages are spoken in various regions of the Union Territory of Pondicherry. Thus, the Tribunal held that the argument that the Police Establishment Board does not have any jurisdiction in so far as the recruitment process is concerned, does not hold water, but observed that if the decision taken by the Board had been notified in the form of standing orders with the approval of the Government, there would not have been any ambiguity or scope for such grievance. It was also held that the rationale behind the Board's decision to hold the written test in English for Sub-Inspector recruitment was to provide a level playing field for all the candidates appearing for selection from different regions of the Union Territory of Puducherry, since a functional knowledge of English was also considered as an essential requirement for effectively discharging the duties in the post of Sub-Inspector.

10.The Tribunal has also observed that since there is no evidence to show the existence of any protest on the part of the applicants in respect of O.A.Nos.198 of 2011, 345 of 2011 and 244 of 2012 and they had subjected themselves to the written test and selection process, they are clearly estopped from raising the objections on having becoming unsuccessful in the

selection. In respect of the petitioners in O.A.No.191 of 2011, the Tribunal relied upon the decision of the Hon'ble Supreme Court in Dhananjay Malik & Ors. v. State of Uttaranchal & Ors, reported in (2008) 4 SCC 171, wherein a Constitutional Bench decision of the Hon'ble Supreme Court in Sant Ram Sharma v. State of Rajasthan (AIR 1967 SC 1910) was referred, in which it is stated that the Government cannot amend or supersede statutory rules by administrative instructions, but if the rules are silent on any particular point, the Government can fill up the gaps and supplement the rules and issue instructions not inconsistent with the rules already framed. The said ruling has been reiterated by a three Judge Bench of the Hon'ble Supreme Court in the case of Union of India v. K.P.Joseph, reported in (1973) 1 SCC 194. Based on these decisions, the Tribunal observed that the Police Establishment Board, being the highest body in the Police Department had taken a conscious decision to hold the written test in English and hence a common level playing field has been given for all the competing candidates and these petitioners cannot be said to have suffered any special or additional handicap, given the fact that they had also completed the graduate degree course and are expected to have the same degree of English knowledge as that of the private respondents many of whom were similarly placed. Stating so, the Tribunal held that omission on the part of the official respondents to notify the latest decision taken by the Board, cannot be said to have prejudiced the interest of the applicants.

11.Finally, the Tribunal dismissed the original applications observing that the official respondents are required to follow a consistent approach and take a considered decision regarding the question of medium of written test for recruitment of different categories of officers and staff so as to ensure level playing field for candidates from different regions of the Territory in tune with Sections 3 and 4 of the Puducherry Official Languages Act, 1965 and notify the same as required under the relevant Recruitment Rules so as to reduce the scope for any last minute dispute concerning the selection process.

12.Challenging the common order passed by the Tribunal, the present writ petitions have been filed.

13.Mr.Vijay Narayan, learned Senior Counsel appearing for the petitioners in W.P.Nos.33987 and 33989 of 2015, has submitted that the petitioners in these writ petitions were selected in both the physical tests held between 28.01.2011 to 02.02.2011 and hence they were permitted to participate in the third and final level of selection. A hall ticket was issued to them on 03.02.2011 to write the written test on 06.02.2011. He submitted that in the Notification it is stated that the questions would be of objective type and will be in graduate

standard. When they entered the examination hall, they were shocked and surprised to receive the question paper which was only in English language and there was no Tamil version. Immediately, they enquired for the Tamil Version of the question paper, for which a reply was given by the Hall Supervisor that there was no Tamil version. Since most of the petitioners being in-service candidates, and the Hall Supervisor being a Superior officer in the Department, they were left with no other option but to write the test with protest, with an intention to challenge the selection process itself. The learned senior counsel further submitted that had the petitioners knew that the examination was going to be conducted only in English before they entered the examination hall, they would have challenged the same without participating in the examination, as it is not only against the Standing Orders and Recruitment Rules, but also against the usual practice being adopted for several years. He also submitted that since the results were published on the very next day, i.e., on 07.02.2011, there was no opportunity to challenge the examination prior to the publication of the provisional selection. He specifically emphasised the point that all public recruitment examinations are being conducted in both English and the concerned regional language, i.e., Tamil language in Puducherry and Karaikal, Telegu language in Yanam region and Malayalam language in Mahe region. He further submitted that even though the examination in question was conducted only in English, the said change was not even notified in the Notification.

14. In addition to the above contentions, which are also applicable to the petitioners in W.P.No.33988 of 2015, Mr.N.G.R.Prasad, learned counsel for the petitioners in W.P.No.33988 of 2015 has submitted that immediately after the examination, on 08.02.2011, the petitioners gave a representation to the Government requesting to cancel the provisional selection selecting 40 persons based on the written test held on 06.02.2011, since the examination was conducted without there being a regional language question paper, which is contrary to the selection process as per the Government Standing Orders and past practice. He further submitted that the petitioners have become unsuccessful in the written test only with a very little mark difference and had they been given the question paper in Tamil, they would have succeeded in the examination with flying colours.

15. Mr.N.G.R.Prasad, the learned counsel for the petitioners in W.P.No.33988 of 2015 has further submitted that the Police Establishment Board which is said to have decided to hold the examination in English language, shall decide the matters pertaining only to transfers, postings, promotions and other service related matters and not otherwise. He submitted that the Government of Puducherry constituted the Police Establishment

Board and that when Recruitment Rules and Standing Orders point out to do the selection process in a particular manner, the same has to be done only in that manner and any deviation from that process is illegal. Thus, he submitted that the so-called decision of the Police Establishment Board to conduct the examination only in English, that too without bringing necessary amendments in the existing Rules is void ab initio. He further emphasised the point that as per Section 3 of the Puducherry Official Languages Act, 1965, the Tamil language shall, subject to the provisions of Section 34 of the Government of Union Territories Act, 1963 (Central Act 20 of 1963), be the language to be used for all or any of the official purposes of the Union Territory, and different dates may be appointed for different official purposes or for different areas in the Union territory, provided that the Administrator may, by like notification direct that in the case of Mahe areas, the Malayalam language, and in the case of Yanam area, the Telugu language may be used for such official purposes and subject to such conditions as may be specified in such notification. He further pointed out to Section 4 of the Puducherry Official Languages Act, 1965, in which it is stated that notwithstanding anything contained in Section 3, as from the commencement of this Act, the English language may be used for all or any of the official purposes of the Union Territory. Stating so, he submitted that Tamil shall be the official language and only because of the same, emphasis was given in the Standing Orders for the question paper to be in both Tamil and English languages and hence the administrative decision of the Police Establishment Board is illegal. It is his submission that had the Government of Puducherry published the medium of language as English in their Notification dated 18.11.2010, the petitioners are estopped from challenging the selection process, but on the contrary the Notification is silent about the language of the written test. In the case on hand, since the petitioners came to know that the mode of selection process, i.e., conducting written test only in English, only after participating in the selection process, the principle of estoppel does not arise and the Standing Order No.2/2002 dated 29.07.2002, supersedes all standing orders issued in this regard previously. It is submitted that the decision of holding the examination in English language ought to have been published either in the form of a Standing Order or any other Notification, superseding the Standing Order No.2/2002 and that the Government of Puducherry has miserably failed to publish any Notification from 2002 to 2011, i.e., until the date of the examination. The learned counsel also submitted that nowhere in the Recruitment Rules the power has been given to the Police Establishment Board to decide the language of the examination. He further submitted that as per proceedings of the Joint Secretary to Government of Puducherry in G.O.Ms.No.61, Home Department, Government of Puducherry dated 20.10.2008, the Director General of Police was appointed as the Chairman of the

Police Establishment Board, but however, as per the minutes of the Board meeting held on 06.01.2011, the Deputy Inspector General of Police has signed as the Chairman of the Board, when the fact remains that no gazette publication has been published so far appointing the Deputy Inspector General of Police as the Chairman of the Police Establishment Board. Therefore, according to the learned counsel, the so-called decision of conducting the written examination only in English by the Police Establishment Board is illegal.

16.Mr.Vijay Narayan, learned Senior Advocate appearing for the petitioners in W.P.Nos.33987 and 33989 of 2015, has relied upon the judgment of the Hon'ble Supreme Court in S.Sethuraman v. R.Venkataraman and others, reported in (2007) 6 SCC 382, to fortify his contention that the principle of estoppel does not arise in the present case, since the petitioners came to know the mode of selection process, ie., conducting written test only in English, only after participating in the selection process. He also relied upon the judgment of the Hon'ble Supreme Court in Rajkumar and others v. Shakti Raj and others, reported in (1997) 9 SCC 527 in support of his contention that where the procedure of selection suffers from glaring irregularities, the candidates appearing for selection and remaining unsuccessful, are not barred from questioning the selection and accordingly the principle of estoppel is not applicable in such case.

17.Mr.N.G.R.Prasad, the learned counsel for the petitioners in W.P.No.33988 of 2015, relied upon the decision of the Hon'ble Supreme Court in Bhupendra Nath Hazarika v. State of Assam, reported in (2013) 2 SCC 516, in support of his contention with regard to relaxation of any rule, that there has to be a proper foundation for exercise of such power and such power cannot be exercised arbitrarily, otherwise it cannot withstand scrutiny of Article 14 of the Constitution of India. Further it was held in that judgment that the State, as model employer, is required to act fairly giving due regard to rules framed by it and that the legitimate aspirations of regularly appointed employees should not be guillotined and situations not created where hopes end in despair; rather atmosphere of trust should prevail where employees are absolutely sure that their trust would not be betrayed and they would be treated with dignity and fairness. He also relied upon the decision of the Hon'ble Supreme Court in Mohan Lal Aggrawal v. B.P.Mishra, reported in 2002-I-LLJ-463 wherein it was held that a person participating in selection process but not without demur, not to have acquired in it, as policy was such that he forfeited right to promotion permanently if he did not participate.

18.In view of all these reasons, the learned senior counsel appearing for the petitioners in W.P.Nos.33987 and 33989 of 2015 and the learned counsel for the petitioner in W.P.No.33988 of

2015, prayed for quashing the order passed by the Tribunal.

19.The facts in respect of the above writ petitions in W.P.Nos.33987 to 33989 of 2015 are applicable to the petitioners in W.P.No.13021 of 2016, but it is the specific case of the petitioners in W.P.No.13021 of 2016 that when they registered their protest and asked for the Tamil version of the question paper, they have been forcibly removed from the examination hall and arrested. But this contention has been rejected by the learned Special Government Pleader (Pondy) by stating that they were not arrested, but they were detained till the examination was over, as the usual practice followed is that the candidates will not be allowed to go out of the examination hall till the examination is over.

20.The submissions of Mr.AR.L.Sundaresan, learned senior counsel appearing for the petitioners in W.P.No.13021 of 2016, also lies in the same footing as that of the petitioners in the other writ petitions. But the specific case of the petitioners in W.P.No.13021 of 2016 is that as soon as they saw the question paper, they were shocked on knowing that it was framed only in English. They requested the officers present in the examination hall to provide Tamil version, but some of the police persons entered into the examination hall and forcibly removed the petitioners and put them in a dark room, where they were detained unlawfully for nearly 1 hour and 40 minutes. The said police persons also threatened other candidates by saying that they would also be similarly arrested if they refuse to take part in the written examination. Immediately after release, the petitioners went to Post Office and sent telegrams to all the official respondent and the Hon'ble Lieutenant Governor of Puducherry. Stating so, he prayed for quashing the order passed by the Tribunal and to consequently direct the recruitment committee to re-conduct the written test by framing the question papers for the post of Sub-Inspector of Police also in regional language (Tamil) by strictly adhering to the existing recruitment rules and Standing Order No.2/2002.

21.Mr.Syed Mustafa, learned Special Government Pleader (Pondy) appearing for the respondents 1 to 3 in W.P.Nos.33987 to 33989 of 2015 and respondents 1 to 5 in W.P.No.13021 of 2016, has submitted that the candidates selected for the post of Sub-Inspector have to work anywhere in the Union Territory of Puducherry and hence they should possess English knowledge as required. Further, the basic qualification for the post of Sub-Inspector is a graduate degree and thus a conscious decision has been taken to conduct the written examination in English. It was submitted that only in the Standing Orders, the medium of written test is given as English and Tamil and that Section 4 of the Puducherry Official Languages Act, 1965 provides for use of English language for all or any of the official purposes of the Union Territory since different languages are spoken in

different parts of the Union Territory of Puducherry. In this regard, he referred to the judgment of this Court in W.P.No.13522 of 2002 dated 10.09.2014. He further submitted that the Police Establishment Board which was established as per the directions of the Hon'ble Supreme Court in Prakash Singh and others v. Union of India and others, reported in (2006) 8 SCC 1, is the highest body in the Police Department headed by the Director General of Police. The Board took the decision in good faith to conduct the written examination in English keeping in view the peculiar situation in the Union Territory and also in view of the fact that knowledge of English is essential to function effectively in the post of Sub-Inspector which is transferable anywhere in the Union Territory. Further, he submitted that if the selection is interfered at this stage, it would cause greater prejudice to the selected candidates. Stating so, he prayed for dismissal of these writ petitions.

22. In support of his contention that a conscious decision has been taken to conduct the written examination in English giving overriding effect, the learned Special Government Pleader (Pondy), referred to the decision of the Hon'ble Supreme Court in (2014) 13 SCC 100, in State (NCT of Delhi) v. Narender, wherein it is stated that it is well settled that a non obstante clause is a legislative device to give effect to the enacting part of the section in case of conflict over the provisions mentioned in the non obstante clause. In this connection, he also relied upon the decision of the Hon'ble Supreme Court in Iridium India Telecom Ltd. v. Motorola Inc., reported in (2005) 2 SCC 145. The decision of the Hon'ble Supreme Court in Dhananjay Malik & Ors. v. State of Uttaranchal & Ors, reported in (2008) 4 SCC 171, has also been relied upon, wherein a Constitutional Bench decision of the Hon'ble Supreme Court in Sant Ram Sharma v. State of Rajasthan (AIR 1967 SC 1910) was referred, in which it is stated that the Government cannot amend or supersede statutory rules by administrative instructions, but if the rules are silent on any particular point, the Government can fill up the gaps and supplement the rules and issue instructions not inconsistent with the rules already framed. The said judgment has also been relied upon in fortification of his contention that if the petitioners had thought that the advertisement and selection process were not in accordance with the Rules, they could have challenged the advertisement and selection process without participating in the selection process. He also relied upon the judgment of the Hon'ble Supreme Court in 2009 (5) SCC 515 in the case of K.A.Nagamani v. Indian Airlines, in which it is stated that statutory rules which are made under the provisions of any enactment and regulations, subject to parliamentary approval, stand on entirely different footing and that the administrative rules are always considered and have repeatedly been held to be rules of administrative practice, and also the order of this

Court in W.P.No.13522 of 2002 dated 10.09.2014 in Pudukkottai Kalai Ilakia Peru Mandram v. Government of Union Territory of Pondicherry, to state that the Official Languages Act of Puducherry empowers the administration to conduct any official business in English in the light of the fact that different languages are spoken in various regions of the Union Territory of Pondicherry.

23.The private respondents in the present writ petitions are the selected candidates. Not all of them have been represented by a counsel. Mr.V.Raghavachari, learned counsel appearing for respondents 7, 9, 13, 14, 16, 17, 20, 21, 27, 29, 30, 32, 34, 35 and 37 to 41 in W.P.Nos.33987 to 33989 of 2015 and for respondents 9, 11, 15, 16, 18, 19, 22, 29, 31, 32, 34, 36, 37, 39, 40 and 41 to 43 in W.P.No.13021 of 2016, has argued the matter in the similar lines, as argued by the learned Special Government Pleader and prayed this Court not to interfere with the impugned order, as both on law and facts, the petitioners are not entitled for the relief prayed for and further that if the selection is interfered at this stage, it would cause greater prejudice to the selected candidates.

24.Mr.V.Raghavachari, learned counsel appearing for respondents 7, 9, 13, 14, 16, 17, 20, 21, 27, 29, 30, 32, 34, 35 and 37 to 41 in W.P.Nos.33987 to 33989 of 2015 and for respondents 9, 11, 15, 16, 18, 19, 22, 29, 31, 32, 34, 36, 37, 39, 40 and 41 to 43 in W.P.No.13021 of 2016, has relied upon the decision of a learned single Judge of this Court in R.Gnanasekar v. Tamil Nadu Public Service Commission, reported in 1993 SCC OnLine Mad 157, wherein an earlier decision of the Hon'ble Supreme Court in Lila Dhar v. State of Rajasthan, reported in (1981) 4 SCC 159 has been referred to, wherein it has been stated that there cannot be any rule of thumb regarding the precise weight to be given in the matter of recruitment. It must vary from service to service according to the requirements of the service, the minimum qualifications prescribed, the age group from which the selection is to be made and also other factors and it is a matter for determination by experts. After referring to the above judgment, the learned single Judge has held as follows:

"I am of the view, that the reasons stated by the respondent against the claim of the petitioner for changing the medium of language in the examination for the optional subject - "National Security" - have got to be accepted, and it is not arbitrary. The decision of the respondent to change the medium of language in the competitive examination for the optional subject - "National Security" - cannot be said to be erroneous or unreasonable or it will amount to subjectwise discrimination."

The learned counsel relied upon the decision of the High Court of Allahabad in U.P.Urdu Development Organisation and another v. State of Uttar Pradesh and another, reported in MANU/UP/1512/2002 : 2002 5 AW C3519All to state that the petitioners have no fundamental right to insist upon question papers to be provided in a particular language. He also relied upon the decision of the Hon'ble Supreme Court in Secretary, State of Karnataka and others v. Umadevi and others, reported in (2006) 4 SCC 1 and applying the said judgment to the facts of the present case, he submitted that wide powers under Article 226 of the Constitution are not intended to be used for issuance of directions staying the regular recruitment process, as such directions will defeat the concept of social justice, equal opportunity for all and the constitutional scheme of public employment. He also relied upon the decision of the Hon'ble Supreme Court in Ashok Kumar and another v. State of Bihar and others, reported in (2017) 4 SCC 357, to stress the point that a person who consciously takes part in selection process cannot thereafter turn around and challenge the method of selection and its outcome.

25. Heard the learned counsel on either side and perused the materials available on record carefully.

26. There are three categories of candidates involved in the present writ petitions. Some persons have participated in the written examination, some persons have participated in the written examination with protest and some persons have protested and had not participated in the written examination. Section 3 of the Puducherry Official Languages Act, 1965 stipulates that Tamil language shall be the language to be used for all official purposes of the Union Territory. It is also seen that during the previous years, the question papers were set in both English and Tamil languages. But in the present case, the question paper was set only in English language. Further it is seen that it was not indicated in the Notification that the questions will be set only in English. It was argued on behalf of the petitioners in these writ petitions that non-indication as regards the language in which the question paper would be set, in the Notification, is violative of Articles 14 and 16 of the Constitution of India. It was also argued that with regard to the post of Deputy Tahsildar, the question papers would be set in three languages. It is also submitted that relating to recruitment in the Revenue Department, the question paper would be set in two languages and in respect of Assistant Superintendent of Prisons, the question paper would be set in four languages. In such circumstances, the method adopted in the present case to conduct the examination only in English language, without there being a regional language, would amount to denying the opportunity of employment and also it amounts to violative of Article 16 of the

Constitution of India. It is also submitted that had the examination been conducted in Tamil, which is the mother tongue, the candidates would have secured more marks.

27. Per contra, it is the submission of the learned Special Government Pleader (Pondy) appearing for the respondents 1 to 3 in W.P.Nos.33987 to 33989 of 2015 and respondents 1 to 5 in W.P.No.13021 of 2016, that the candidates selected for the post of Sub-Inspector have to work anywhere in the Union Territory of Puducherry and hence they should possess English knowledge as required. Further, the basic qualification for the post of Sub-Inspector is a graduate degree and thus a conscious decision has been taken to have the written examination in English. It was submitted that only in the Standing Orders, the medium of written test is given as English and Tamil and that Section 4 of the Puducherry Official Languages Act, 1965 provides for use of English language for all or any of the official purposes of the Union Territory since different languages are spoken in different parts of the Union Territory of Puducherry. He further submitted that the Police Establishment Board which was established as per the directions of the Hon'ble Supreme Court in Prakash Singh and others v. Union of India [(2006) 8 SCC 1], is the highest body in the Police Department headed by the Director General of Police. The Board took the decision in good faith to conduct the written examination in English keeping in view the peculiar situation in the Union Territory and also in view of the fact that knowledge of English is essential to function effectively in the post of Sub-Inspector which is transferable anywhere in the Union Territory.

28. It appears that some of the candidates were able to answer the questions in Tamil only, as they have studied in Tamil Medium throughout their studies. More so, Section 3 of the Puducherry Official Languages Act, 1965 stipulates that Tamil language shall be the language to be used for all official purposes of the Union Territory. It is also seen that during the previous years, the question papers were set in both English and Tamil. But in the present case, the question paper was set only in English language, which deprived opportunity to the candidates who intended to answer the questions in their mother tongue, i.e., the language prescribed at the time of schooling. Thus effective participation of the candidates who intended to answer the questions only in Tamil, has not been achieved. The three candidates, who are the petitioners in W.P.No.13021 of 2016 have not attended the written test. They have refused to answer on the ground that the question paper was not set in Tamil. As Tamil language was also declared as official language, though there is irregularity as regards the conduct of examination by conducting it only in English language, there is no illegality, as Section 4 of the Puducherry Official Languages Act, 1965 provides for use of English language for all or any of

the official purposes of the Union Territory since different languages are spoken in different parts of the Union Territory of Puducherry.

29.As regards Union of Pondicherry is concerned, special features are involved. The persons residing in Puducherry and Karaikkal areas speak Tamil. Besides, there are two other regions, viz. Mahe and Yanam areas. The people living in Mahe area which lies in the border of Kerala State, speaks Malayalam and the persons living in Yanam area which is almost merged with Andhra Pradesh, speaks Telugu. Since different languages are spoken in different parts of the Union Territory of Puducherry, Section 4 of the Puducherry Official Languages Act, 1965 has been framed which provides for use of English language for all or any of the official purposes of the Union Territory.

30.In the decision of the Hon'ble Supreme Court in (2006) 8 SCC 1 in Prakash Singh and others v. Union of India and others, the Hon'ble Supreme Court formulated measures to insulate police machinery from political / executive interference, to make it more efficient and effective and to strengthen and preserve the rule of law. In this regard, detailed directions have been issued by the Supreme Court based on recommendations of National Police Commission and other commissions and committees set up thereafter in respect of police reform. This was also intended to set right the inaction or gaps committed on the side of the Executive or Legislative. In the said decision, the Hon'ble Supreme Court directed that there shall be a Police Establishment Board in each State which shall decide all transfers, postings, promotions and other service related matters of officers of and below the rank of Deputy Superintendent of Police. It was observed that the Board shall also be authorised to make appropriate recommendations to the State Government regarding the postings and transfers of officers of and above the rank of Superintendent of Police and the Government is expected to give due weightage to these recommendations. It shall also function as a forum of appeal or disposing of representations from officers of the rank of Superintendent of Police and above regarding their promotions / transfers / disciplinary proceedings or their being subjected to illegal or irregular orders and generally reviewing the functioning of the police in the State.

31.As per the Standing Orders issued earlier, Tamil and English languages were prescribed for setting up of question paper. Taking into consideration the regional disparity and taking into consideration of the fact that conducting the examination in Tamil language in addition to English, gives advantage only to the Tamil speaking regions like Pondicherry and Karaikkal, and there is clear discrimination against candidates belonging to Mahe and Yanam areas, and specifically

taking note of the fact that the minimum qualification for the post of Sub Inspector is graduate and the graduates are expected to possess sufficient knowledge in English to understand question papers, the question paper was decided to be conducted only in English language, rather on bilingual language as it was conducted earlier, by the Police Establishment Board and the same is found to be in consonance with Section 4 of the Puducherry Official Languages Act, 1965. More so, such decision is approved by the Chief Secretary.

32. In the absence of any glaring or patent illegality being alleged against the process of selection or award of marks, the person who consciously takes part in the selection process cannot thereafter turn around and challenge the method of selection and its outcome. This principle has been enunciated in the decision of the Hon'ble Supreme Court in Ashok Kumar and another v. State of Bihar and others, reported in (2017) 4 SCC 357. Further, in the decision of this Court in R.Gnanasekar v. Tamil Nadu Public Service Commission, reported in 1993 SCC OnLine Mad 157, which has been relied upon by the learned counsel for the private respondents, an earlier decision of the Hon'ble Supreme Court in Lila Dhar v. State of Rajasthan, reported in (1981) 4 SCC 159 has been referred to, wherein it has been stated that there cannot be any rule of thumb regarding the precise weight to be given in the matter of recruitment; that it must vary from service to service according to the requirements of the service, the minimum qualifications prescribed, the age group from which the selection is to be made, the body to which the task of holding the interview test is proposed to be entrusted and a host of other factors and it is a matter for determination by experts and it is a matter for research. It was also held that it is not for the Courts to pronounce upon it unless exaggerated weight has been given with proven or obvious oblique motives. Finally, it was held in Ashok Kumar's case that the statutory body should have been more careful in causing its advertisements pertaining to appointments in the newspapers; because of some negligence on the part of the statutory body in the matter of publication of its Notification, unnecessarily, it has resulted in filing the writ petitions therein.

33. In the above stated circumstances, while not interfering with the selection process in question, we hereby observe that the State shall not give room for any such dilemma failing to notify properly about the language in which the questions would be asked, or any other aspects, in the Notification, as stated supra, to provide fair opportunity by strictly complying with Section 3 of the Puducherry Official Languages Act, 1965 and to set up the questions papers both in English and Tamil languages, and also to avoid criticism in future. Further, it is seen that in W.P.No.3755 of 2011 which was filed by the petitioner in

W.P.No.33987 of 2015 to vacate the interim order granted in O.A.No.198 of 2011, a direction was given by a Division Bench of this Court on 25.02.2011 to keep one post of Sub-Inspector of Police vacant and accordingly, one post is kept vacant and out of 41 posts, only 40 posts have been filled up as of now. The said one post which is kept vacant shall be carried forward and be filled up by notifying the same in the subsequent Notification, subject to the rule of reservation, in accordance with law.

34.The writ petitions are disposed of accordingly. Consequently, the connected miscellaneous petitions are closed. No costs.

s/d-

Assistant Registrar(CS-V)

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Sub-Assistant Registrar

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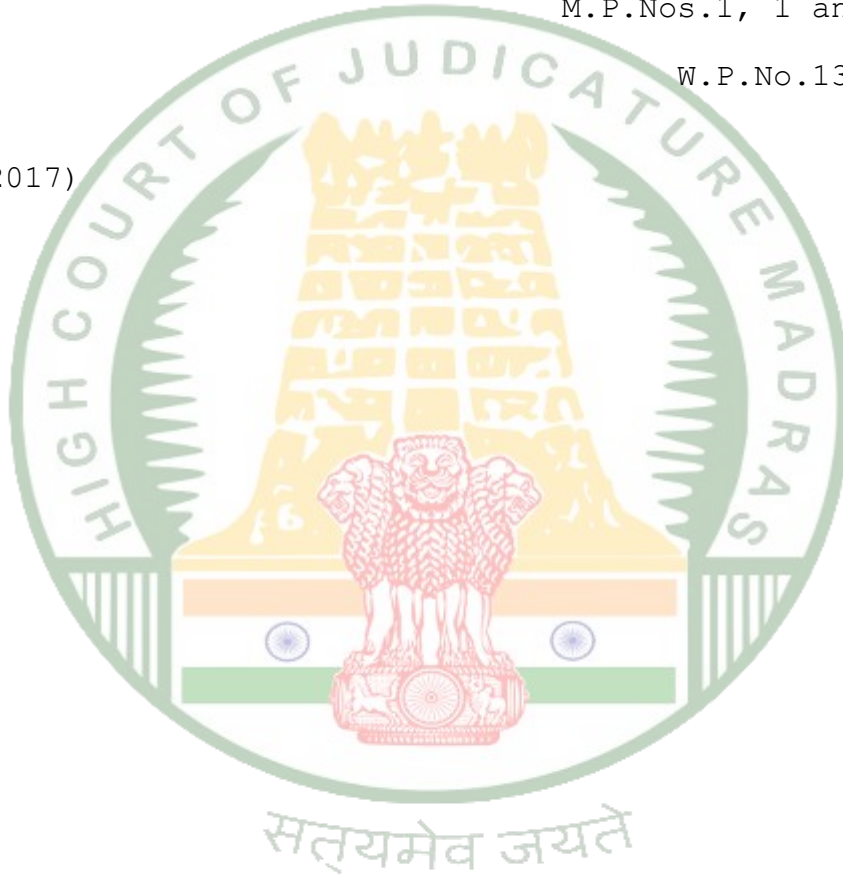
To

1. The Chief Secretary to Government,
Government of Puducherry, Puducherry.
2. The Secretary,
Union Territory of Puducherry,
Department of Home, Puducherry-605 001.
3. The Superintendent of Police (Headquarters),
Police Department, Puducherry-605 102.
4. The Inspector General of Police,
Police Department, Puducherry.
5. The Under Secretary to Government (Home),
Government of Puducherry, Puducherry.
6. The Director General of Police,
Police Department, Puducherry.

+1 CC to Ms.M. Gnanasekar, Advocate sr 83039.
+1 Cc to Ms. Prakash Adipadam, Advocate sr 83476.
+1 Cc to Ms.P.R. Dhilip Kumar, Advocate sr 83369.
+1 CC to Govt. Pleader sr 83168.

W.P.Nos.33987 to 33989 of 2015
and
M.P.Nos.1, 1 and 1 of 2015
and
W.P.No.13021 of 2016

DK (CO)
SP(05/12/2017)



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