



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED:06.06.2018

CORAM :

THE HONOURABLE MR.JUSTICE M.S.RAMESH

W.P(MD).No.10697 of 2018
and W.M.P(MD).No.9793 of 2018

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D.Dhivya

... Petitioner

Vs.

1. Tamil Nadu Public Service Commission,
Rep. by its Chairman,
Frazer Bridge Road, Park Town,
V.O.C.Nagar, Chennai - 600 003.
2. The Member Secretary,
Tamil Nadu Public Service Commission,
Frazer Bridge Road, Park Town,
V.O.C.Nagar, Chennai - 600 003.
3. Tamil Nadu Dr. Ambedkar Law University,
Rep. by its Registrar, Poompozhi, Chennai - 28.
4. The Principal,
Government Law College, Madurai.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for the issuance of a Writ of Mandamus for a direction, directing the Respondent No.4 to issue the PSTM (Person Studied in Tamil Medium) Certificate to the petitioner and consequently for a direction, directing the Respondent No.2 to consider the candidature of the petitioner under PSTM Category in the Direct Recruitment to the post of Civil Judge issued by the Respondent No.2 vide notification No.08/2018 dated 09.04.2018.

For Petitioner : Mr.T.Aswin Rajasimman for
Mr.T.Lajapathi Roy

For Respondents : Mr.B.Pugalendhi,
Additional Advocate General,
Assisted by Mr.J.Gunaseelan Muthiah,
Additional Government Pleader

ORDER

The petitioner has come forward with this writ petition seeking for issuance of a Writ of Mandamus, directing the fourth Respondent to issue PSTM (Person Studied in Tamil Medium) Certificate to him and consequently directing the second Respondent to consider his candidature under PSTM Category in the Direct Recruitment to the post of Civil Judge issued by the second Respondent vide notification No.08/2018 dated 09.04.2018.



2. Heard both sides.

3. The petitioner herein had joined B.L. Degree (Three years course) in the Government Law College, Madurai, Tamilnadu, during 2012 and completed the same in the year 2015.

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4. According to the learned counsel for the petitioner, during the course of study, the petitioner had undergone her medium of instruction in Tamil and had also written the examinations for all the three years in Tamil and hence she should be treated as a person who had studied in Tamil medium.

5. When the second respondent herein had published a notification calling for applications for Direct recruitment to the post of Civil Judges in Tamilnadu State Judicial Service, in which 20% of vacancies of the said post was reserved for the persons who had studied in Tamil medium, the petitioner herein had applied for a Certificate, certifying her as a "Person studied in Tamil Medium" (PSTM) through an application dated 05.05.2018. Since her request has not been acted upon by the fourth respondent till date, the present writ petition has been filed.

6. The learned Additional Advocate General countered the submissions made by the learned counsel for the petitioner and submitted that the petitioner herein was not entitled for PSTM Certificate. According to the learned Additional Advocate General, the petitioner herein, who had undergone the Law course during the year 2012-2015, could not have undergone the classes in Tamil medium as there was no intake of candidates for Tamil medium classes at all and consequently, no Tamil medium classes were conducted during the academic year 2012-2015.

7. The learned Additional Advocate General would further submit that the Transfer Certificate issued to the petitioner evidences her of having undergone the course in English medium. Furthermore, the petitioner herself in her application for the Civil Judges post had declared her medium of instruction as English medium. As such, in view of the Transfer Certificate issued in favour of the petitioner as well as the petitioner's own declaration in the application before the second respondent herein, the petitioner is not entitled to a PSTM certificate.

8. I have been given careful consideration to the submissions made by the respective counsels.

9. In an identical situation, when a writ petition was filed before this Court in W.P(MD).No.9396 of 2017, this Court had entertained the writ petition and directed the concerned authority to issue a PSTM certificate to the petitioner therein. While considering the issue in that writ petition, this Court had taken note of the statements made by the Principal of the Government Law College, Madurai, in his counter affidavit (the present counter



affidavit also filed by the same Principal) and observed that the Tamil medium of instruction was introduced in the Government Law College, Madurai, from the academic year 1978-1979 through G.O.Ms.No.1492, Education Department, dated 10.08.1978. Subsequently, there was no Government Order withdrawing or cancelling the earlier Government Order. This aspect was substantiated through a query raised by the petitioner therein under the Right to Information Act, wherein, the Principal of the Government Law College, Madurai, had acknowledged that the medium of instruction in Tamil was not cancelled through any Government Order. In such background this Court had observed in its Order dated 24.04.2018, passed in W.P.(MD). No.9396 of 2017 as follows:

"9. It is not in dispute that the Tamil Medium of instruction was introduced in the Government Law College, Madurai, from the academic year 1978-1979. The Government Order in G.O.Ms.No.1492, Education Department, dated 10.08.1978, had facilitated the Government Law College, Madurai, to start one separate section for the Tamil Medium students. The procedure for opting Tamil Medium of instruction is by way of requisition / application by the concerned student to the College and on receipt of such requisition / application, the College would admit the student in Tamil Medium of instruction. This aspect is also not in dispute. The petitioner had joined B.A. B.L. Integrated Course (Five Years) in the year 2012 and completed the course in the year 2017 and during the course of five years, he had written all his examinations in Tamil. This has not been controverted by the respondents. The main objection of the respondents seems to be that the Tamil Medium of instruction in the Government Law College, Madurai, came to be discontinued from the academic year 1994-1995 onwards in view of the lack of interest amongst the students in opting for Tamil Medium of instruction. Incidentally, the counter affidavit filed by the Principal, Government Law College, Madurai, states that the alleged discontinuance of Tamil Medium of instruction came to be re-commenced from the academic year 2013-2014 and a separate section for Tamil Medium students of three years and five years Law Courses was again started.

10. Insofar as the allegation that the Tamil Medium of instruction came to be discontinued from the academic year 1994-1995 is concerned, the petitioner herein had made a requisition, under the Right to Information Act, to the Director of Legal Studies, to which query, it was replied that there was no Government Order discontinuing the Tamil Medium of instruction. When this aspect came up for consideration before a Division Bench of this Court in *Serga Bindu's case* (cited supra), the Honourable Division Bench, while taking note of the fact that the Tamil Medium



of instruction was introduced in the Government Law College, Madurai, from the academic year 1978-1979, had given a finding that the College facilitated the students to undergo the course in Tamil Medium. The relevant portion of the said decision reads as follows:

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"12. The next important question arising for our consideration in this matter is that whether there is any Tamil medium course during the relevant point of time at the Government Law College, Madurai. It is pertinent to note that certain Government orders were brought to our notice, namely,

(i) G.O.Ms.No.1492, Education Department dated 10.8.1978;

(ii) G.O.Ms.No.280, Law (LS) Department dated 14.11.2006; and

(iii) G.O.Ms.No.145, Personnel and Administrative Reforms(S) Department, dated 30.9.2010.

13. The first Government Order viz., G.O.Ms.No.1492, Education Department dated 10.8.1978 reads hereunder:

"ORDER:

Sanction is recorded to the introduction of Tamil Medium in the Law College Madurai from the academic year 1978-79. To begin with, the Director of Legal Studies in requested to start one Section in Tamil medium in the I.B.G.L. Class in the Law College, Madurai.

2.The Government also sanction one post of Junior Professor in the scale of pay of Rs.1100-50-1600 with Dearness Allowance and other allowances at the rate admissible from time-to-time and one post of Part time Lecturer in the scale of pay of Rs.500-20-700-25-900 without allowances for a period of one year from the date of employment.

3.The expenditure is debitable to "277.Education-E.University and other Higher Education - ac. Government Colleges I.Non-Plan-AE. Law College-1.Salaries (D.P.G.277E, AGAEG104) .



4.This order issues with the concurrence of the Finance Department vide its J.O.No.87388/E1/78-1 dt.8.8.1978.

(By order of the Governor)
Sd/-.

Commissioner & Secretary to Government."

A reading of the above said Government Order makes it crystal clear that the Government introduces Tamil medium in the Law College, Madurai for the academic year 1978-79 and the Director of Legal Studies was requested to start one Section in Tamil medium in the first year B.G.L class in the Law College, Madurai.

14. The second Government Order viz., G.O.Ms.No.280, Law (LS) Department dated 14.11.2006 reads that the incentive amount given to the students studying in Tamil medium was increased from Rs.180/- to Rs.400/- from the academic year 1999-2000. It is also stated in the same Government Order that there was increase in the students studying law course in Tamil for 3 years as well as for 5 years B.L.Degree course. It is also seen that in the said Government Order, a separate Section was started for the Tamil medium course.

15.A reading of the above said two Government Orders clearly shows that there was Tamil medium in 5 years B.L.Degree Course in Madurai Law College. The said Government Orders are very much in operation as on date, but the fact remains that the petitioner has not challenged the said Government orders.

16. The fourth respondent, namely, the Tamil Nadu Dr.Ambedkar Law University categorically stated in Para 5 of its counter as hereunder:

"5.The contents in G.O.Ms.No.280, Law (LS) Department, dated 14.11.2006 reveal instructions of Law through Tamil Medium up to 2001-2002 and revival of the same from the year 2006-2007 at Dr.Ambedkar Government Law College, Chennai. The Government of Tamil Nadu vide Government Order Ms.No.1492, Education Department, dated 30.8.1978 (submitted in annexure) extended the scheme to facilitate the students get instruction in Tamil Medium at Government Law College, Madurai also. The G.O.Ms.No.280, Law (LS) Department, dated 14.11.2006 (submitted in annexure) has been providing incentive to the



students joining the course. The Scheme devised by the Government has been implemented through the Director of Legal Studies. The University is not in receipt of any records pertaining to us."

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In the counter affidavit, it is also stated by the fourth respondent that the University does not issue any certificate indicating the medium of instruction to any candidate and the said submission substantiates the contention of the third respondent to the effect that she is not possessing any certificate to show that she had underwent B.L.Degree course in Tamil Language in Madurai Law College.

17. The learned counsel for the petitioner placed reliance on the information furnished to the queries made by the petitioner under the Right to Information Act and as per the reply given by the Public Information Officer and the Director of Legal Studies dated 25.3.2013, there is no Tamil medium in 5 years B.L.Degree course in Madurai Law College. As we have already pointed out that there is a Government Order even as early as in the year 1978 and thereafter in the year 2006 showing that there was Tamil Medium class in 5 years B.L.Degree course in Madurai Law College. The Public Information Officer and the Director of Legal Studies may not aware about the said Government Orders and the said Government Orders are very much in operation till date. It is also relevant to note that the perusal of the information furnished by the Public Information Officer and the Director of Legal studies dated 25.3.2013 reveals that as per question/information No.2, it is stated that in 5 years B.L.Degree course from 1986-87 to 1994-95, separate classes were conducted for Tamil medium and for question/information No.4, it is stated that in the University examinations, the students can write either in Tamil or English Language. Therefore, we have no hesitation to hold that the information furnished by The Public Information Officer and Director of Legal Studies cannot be stated to be a correct information and as such, it is futile to contend that there is no tamil medium in 5 years B.L.Degree Course in Madurai Law College.

18. We have already held that the third respondent had studied 5 Years B.L.Degree course in Madurai



Law College in Tamil medium and she had also written the examinations in Tamil and she is eligible and entitled to get the benefit of right as preferential per Act 40 of 2010, namely, The Tamil Nadu appointment on Preferential Basis in the services under the State of persons studied in Tamil Medium Act, 2010. The said Act provides preference in appointment in the services under the State to persons who have obtained the educational qualification prescribed for direct recruitment through Tamil medium instruction. In the above said Act, it is also made clear that it shall be deemed to have come into force on 7.9.2010. As per Section 5 of the Act, preferential basis appointments to persons studied in Tamil medium under Section 3 shall be made following the reservation as per the law in force. In view of the provisions of the Act 40 of 2010, the third respondent has been rightly selected and appointed on the basis of her eligibility and on the basis of reservation and preferential appointment, as she had studied 5 years B.L.Degree course in Tamil medium in Madurai Law College. We are unable to see any infirmity or illegality in respect of the selection and appointment of the third respondent."

The above observation of the Honourable Division Bench of this Court is self-explanatory.

11. When the facility of introducing Tamil Medium of instruction for the students was done through a Government Order in G.O.Ms.No.1492, Education Department, dated 10.08.1978, the respondents may not be justified in making a statement in the counter affidavit that the Tamil Medium of instruction was discontinued without obtaining a separate Government Order discontinuing the facility that was extended through a Government Order. In the absence of any Government Order annulling or discontinuing the benefit extended therein, it cannot be said that the Tamil Medium of instruction as such was discontinued. What follows is that the Tamil Medium of instruction is deemed to have continued from the academic year 1978-1979 onwards without any discontinuance.

12. Since it is seen that the Government had not passed any order discontinuing the Tamil Medium of instruction in the Government Law College, Madurai, the yardstick that could be adopted to determine whether a person had undergone Tamil Medium of instruction or not is the Medium in which that student had written his / her final examinations. It is needless to point out that if a



student had undergone his / her classes in English Medium of instruction, it would be a great difficulty for him / her to write the examinations in Tamil. If a student had written his / her final examinations in Tamil, it can only be presumed that he / she had studied the course materials in Tamil and that there would also be a presumption that such a student had underwent Tamil Medium of instruction.

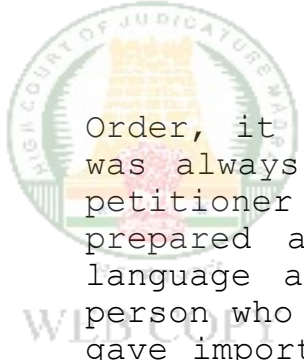
13. When the petitioner's claim that he had written the examinations in Tamil is not disputed and also taking note of the fact that the petitioner was a participant of State Level Essay Competition on Consumer Awareness in Tamil to which the eligibility criteria is that the participant should be from the Tamil Medium of instruction, it can only be safely held that the petitioner is a person, who had pursued his Law Degree in Tamil Medium and as such, he would be entitled to grant of P.S.T.M.Certificate."

10.The above order is self explanatory. Even in the instant case, the question to determine whether a person has undergone Tamil medium of instruction or not, it is the medium in which the student had written her final examinations. At this juncture, the learned counsel for the petitioner submitted that the petitioner herein had written all her exams in Tamil language and that in her representation dated 07.05.2018 to the fourth respondent herein, she had specifically stated that she had written all her examinations for three years in Tamil language. In paragraph No.3 of the affidavit, the petitioner has specifically made a statement that she had written all the examinations in Tamil language and that the classes were also conducted in Tamil medium.

11.The learned Additional Advocate General further submitted that much credence should not be given to the statement of the petitioner, since the answer sheets pertaining to the examinations written by the petitioner are not available for scrutiny. According to him, the answer sheets have been destroyed by the concerned Authority after one year from the date of the examinations in accordance with their norms. Apart from the statement of the learned Additional Advocate General, there is no material before this Court to show that the petitioner had not written her examinations in Tamil language.

12.It is the specific case of the petitioner before this Court as well as in the representation that she had written her examinations in Tamil language. The non-availability of the answer sheets cannot be put against the petitioner herein, particularly, when her entire case is based on the fact that she had written her examinations in Tamil language.

13.When the Government Law College, Madurai, had introduced Tamil medium of instruction in the year 1978-1979 and the same was not cancelled in the subsequent years through a separate Government



Order, it can only be assumed that the Tamil medium of instruction was always available in the Government Law College, Madurai. The petitioner having written her examinations in Tamil ought to have prepared and studied her course through the materials in Tamil language alone. The very object of recognizing a candidate as a person who studied in Tamil medium is to encourage such persons, who gave importance to the language by studying the course in Tamil and ultimately writing the examinations also in Tamil language. Even otherwise, without admitting that there was no Tamil medium of instruction during the year 2012-2015, in view of the fact that classes were not been conducted in Tamil, it cannot be said that the petitioner herein should be deprived of PSTM Certificate, which is because the classes were not conducted in Tamil.

14.This Court could only appreciate such candidates, who were not taught in Tamil, but opted to write in Tamil by studying materials in Tamil language and such students ought to be duly recognized by issuing PSTM Certificate. The very object of extending reservation for PSTM Certificate is also to the same effect.

15.In regard to, the submissions of the learned Additional Advocate General that the Transfer Certificate evidences the petitioner of having taken her medium of instruction is concerned, it is the common knowledge that the statements given in the Transfer Certificate are being filled only by the College Authorities. In the counter affidavit filed earlier by the Principal of the Government Law College, Madurai, in W.P.(MD).No.9396 of 2017, there was a specific statement that from the academic year 2014-2015, separate section for Tamil medium classes for three years and five years law courses were started and conducted in the Government Law College, Madurai. Further, it is also not in dispute that the medium of instruction in Tamil was introduced in the year 1978-1979. The petitioner herein would not have had any choice, but to accept the Transfer Certificate as such since at that point of time no prejudice would have been caused to her, on account of the fact that the medium of instruction came to be referred as English. The reservations for persons under PSTM came to be introduced only in the year 2010 onwards and as such no serious prejudice could have been anticipated by the petitioner, if her medium of instruction is referred to as English in the Transfer Certificate issued in 2015. The reservation of 20% for PSTM came to be introduced in the notification for the Civil Judges post in the year 2018.

16.The noble object of the Government is to encourage the persons who studied in Tamil medium. In the light of the above observations, the persons, who had studied their course materials in Tamil and written their exams in Tamil, could only be deemed to have undergone the course in Tamil medium and as such this petitioner herein would also be deemed to have studied her B.L. Degree in Tamil medium.



17.The learned Additional Advocate General also submitted that for a person, who had undergone Tamil medium of instruction, is entitled for Scholarship and that since the petitioner has not availed the scholarship, it is established that she had not undergone the course in Tamil. I am unable to agree with the submissions made by the learned Additional Advocate General. Just because the petitioner had waived her right to avail a scholarship, it cannot be presumed that the person had not undergone the course itself. It is always well within discretion of the petitioner herein to avail the scholarship or waive the scholarship and there cannot be a presumption that because the petitioner undergone Tamil medium of instruction, she is bound to receive her scholarship. As such, I do not find any merits in this ground.

18.Insofar as the objections of the learned Additional Advocate General that the petitioner herein had declared her medium of instruction to be in English in her application before the Second respondent herein is concerned, I am unable to comprehend as to how the petitioner can give any other language in medium of instruction while her Transfer Certificate shows her medium of instruction to be in English. As pointed out by the learned counsel for the petitioner in her application, if the petitioner declared her medium of instruction to be in Tamil language, it would be contrary to the Transfer Certificate issued by the fourth respondent herein and as such, her application itself may be subjected for rejection. As a matter of fact, the petitioner had also given a subsequent representation to the second respondent herein requesting them to treat her medium of instruction as Tamil on 05.05.2018 and the same is pending. In view of the representation made, it cannot be said that the petitioner had wilfully suppressed or given a wrong information in her application.

19.For all the foregoing reasons, I am of the view that the petitioner is a person who has studied in Tamil medium and consequently is entitled for a PSTM Certificate.

20.In the result, the writ petition stands allowed and the Principal, Government Law College, Madurai/fourth respondent herein is directed to issue Persons Studied in Tamil Medium (PSTM) Certificate to the petitioner within a period of one week from the date of receipt of a copy of this Order. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (Crl.Side)

/True Copy/

Sub Assistant Registrar



To

1. The Chairman,
Tamil Nadu Public Service Commission,
Frazer Bridge Road, Park Town,
V.O.C.Nagar, Chennai - 600 003.
2. The Member Secretary,
Tamil Nadu Public Service Commission,
Frazer Bridge Road, Park Town,
V.O.C.Nagar, Chennai - 600 003.
3. The Registrar,
Tamil Nadu Dr. Ambedkar Law University,
Poompozhi, Chennai - 28.
4. The Principal,
Government Law College, Madurai.

+1CC to Mr.T.Lajapathi Roy, Advocate, SR.No.67088
+1CC to Mr.D.Sivaraman, Advocate, SR.No.67440
+1CC to the Special Government Pleader SR.Nos. 67255,67139

W.P (MD) .No.10697 of 2018
and
W.M.P (MD) .No.9793 of 2018
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