



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 08.10.2018

CORAM:

THE HONOURABLE MR.JUSTICE V.PARTHIBAN

W.P. (MD) No.19244 of 2018

A.B.Jeeva

... Petitioner

vs.

1.The Director of Legal Studies
Purasawakkam High Road
Opp. to Naidu Hall, Kilpauk
Chennai-600 010

2.The Registrar
The Tamil Nadu Dr.Ambedkar
Law University
Poompozhi
No.5, Dr.D.G.S.Dinakaran Salai
Chennai-600028

3.The Principal
Government Law College
Madurai-625 020

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of writ of certiorarified mandamus to call for the records relating to the impugned order passed by the 3rd respondent in Na.Ka.No.875/A4/2018, dated 14.08.2018 and quash the same, consequently direct the 3rd respondent to issue the Person Studied in Tamil Medium certificate (PSTM).

For Petitioner : Mr.M.Jegadeesh Pandian
for Ms.S.Prabha

For Respondents : Mr.B.Pugalendhi
Additional Advocate General
Assisted by Mr.A.Muthu Karuppan
Additional Government Pleader for R1 & R3

For Respondents
NO.2 : Mr.R.Parthiban

O R D E R

The petitioner has obtained B.A., B.L., Degree after having successfully completed the Integrated Law Degree Course in the Government Law College, Madurai / third respondent herein. He

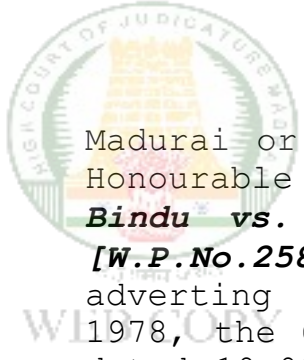


joined five years law degree course in the academic year 2012 - 2013 and successfully completed the course in 2017 - 2018. According to the petitioner, he has chosen Tamil language as medium of instruction in the law course undertaken by him. The petitioner had completed his schooling only in Tamil language and he was the first graduate in his family. According to the petitioner, he had written the University examinations only in Tamil language from the first semester till he completed the course successfully. According to the petitioner, the Lecturers also taught the subjects in Tamil language. The petitioner was on a hope that he would be issued a certificate to the effect that he is a student of Tamil medium, namely, Persons Studied in Tamil Medium (PSTM), which would entitle him to seek public employment in the State of Tamil Nadu against the quota reserved for such category. The Government of Tamil Nadu has enacted Tamil Medium Act, 2010 under which, the persons, who studied in Tamil medium, can claim appointment in the public service under the quota reserved for PSTM Candidates.

2. In the above circumstances, the petitioner, in order to take advantage of being studied the law course in Tamil medium had approached the third respondent for issuance of PSTM Certificate. In response to the petitioner's request, the third respondent passed an order, dated 14.08.2018, rejecting the petitioner's request on the ground that during the relevant time when the petitioner was admitted to the academic year 2012 - 2013, Tamil medium of instruction was discontinued and therefore, the claim of the petitioner cannot be acceded to. The order of the third respondent, dated 14.08.2018, is put to challenge in this writ petition.

3. The learned counsel appearing for the petitioner would vehemently contend that in the application form submitted by the petitioner seeking admission to the integrated law course, more particularly in Column No.12 in regard to whether the applicant wishes to join Tamil Medium Class, he had indicated his preference "Yes" for the academic year 2013 - 2014 and for the ensuing academic years also, he had indicated his preference "Yes" as evidenced from the typed set of documents filed in support of the writ petition. However, the request made by the petitioner was rejected by the third respondent on the ground that the Tamil medium of instruction has been discontinued during the relevant time, when he joined the law course in 2012 - 2013 and therefore, in the absence of Tamil medium course, the petitioner could not be given certificate certifying that he was studying law course in Tamil medium. Therefore, the petitioner is before this Court challenging the order passed by the third respondent, dated 14.08.2018.

4. The learned counsel appearing for the petitioner would further submit that the issue as to whether there was Tamil medium course during the relevant time in the Government Law College,



Madurai or not, had earlier come up for consideration before the Honourable Division Bench of this Court in the case of **T.Sergia Bindu vs. The Secretary to the Government and three others [W.P.No.25835 of 2012]**. The Honourable Division Bench, after advertng to various Government Orders, held that way back in 1978, the Government issued G.O.Ms.No.1492, Education Department, dated 10.08.1978, introducing Tamil medium of instruction in the Government Law College, Madurai, from the academic year 1978 - 1979 and the students, who studied in Tamil medium, were also given stipend. The learned counsel appearing for the petitioner would draw the specific findings of the Honourable Division Bench of this Court rendered in Paragraph Nos.12 to 18, which are extracted hereunder:

"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 10.08.1978;
- (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 30.09.2010.

13. The first Government Order viz., G.O.Ms.No.1492, Education Department dated 10.08.1978 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 College 01. Salaries" (D.P.G.277E, AGAE G104).

4. This order issues with the concurrence



of the Finance Department vide its J.O.No.87388/E1/78-1 dt.8.8.78.

(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 30.08.1978 (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."



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 25.03.2013, 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 25.03.2013 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 preferential right as 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 said Act, it is also made clear that it shall be deemed to have come into force on 7th Day of September, 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."

5. In the above decision, the Honourable Division Bench has held that the Tamil medium of instruction in the Government Law College, Madurai, was introduced as early as in the academic year 1978 - 1979 and no further instructions were issued or made available in support of the respondents' contention that the Tamil medium of instruction had been discontinued in 1990s. In the absence of such material to show about discontinuance of the Tamil medium of instruction, the Honourable Division Bench held that the candidature of the student, who studied Tamil medium, should be accepted. In the said circumstances, the Honourable Division Bench upheld the order of the learned Single Judge rendering a favourable decision in respect of the identical claim of another candidate. Thereafter, the issue came up for consideration before the another Division Bench of this Court in W.A.No.1621 of 2013 and the Honourable Division Bench of this Court, vide Judgment dated 31.07.2015, has held as follows:

"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."

6. In the above case, it was established by the sworn affidavit filed by the Principal, Government Law College, Coimbatore, that there was no Tamil medium of instruction in the College during the relevant time. In view of such categorical statement and assertion by the Principal of the College, the appeal came to be dismissed by the Honourable Division Bench as the appeal is being without any merits. However, the decision was rendered on the basis of the established fact that there was no Tamil medium of instruction in the Government Law College, Coimbatore. But, insofar as the present case on hand is concerned, the candidate, namely, the petitioner herein studied in the Government Law College, Madurai, and in the said Institution, Tamil medium of instruction was introduced as early as during the academic year 1978 - 1979 and therefore, the present case on hand stands on different footing. Further, the learned counsel appearing for the petitioner would submit that this Court has taken a decision in similar circumstances and passed orders in favour of the petitioner therein seeking PSTM Status. The learned counsel appearing for the petitioner drew the attention of this Court to Paragraph Nos.13 to 15 of the order dated 13.10.2017, passed in W.P.Nos.15381 & 21012 of 2013, which are extracted hereunder:

"13. It is relevant to point out here that such assertion made earlier by the authorities before the learned Division Bench and the learned single Judge of this Court as quoted above, had been disapproved and discountenanced in the face of the Government Orders providing for Tamil Medium course in legal education. Since no clinching materials have been



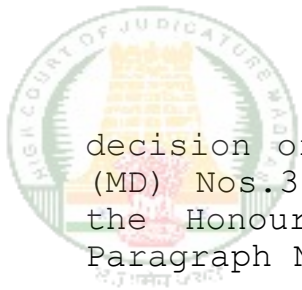
produced before this Court to disprove and to rebut the assertion of the petitioner and self-declaration made on oath, this Court is inclined to accept the version of the petitioner with reference to the above said G.Os., and also the observations made by the learned single Judge and learned Division Bench in W.P.(MD.)No.14452 of 2014 and W.P.No.25835 of 2012. In any event, the respondents were not able to disprove atleast the claim of the petitioner that she had written her examination in 5 year Law Degree course in Tamil since the burden of proof is shifted on the respondents once a categoric assertion has been made on behalf of the petitioner. If such burden is not discharged to the satisfaction of the Court, the benefit of doubt will always go to the petitioner for grant of relief.

14. In the instant case, de hors whether there was Tamil Medium course available during the subject period or not, the fact of the matter is that the petitioner admittedly had studied only in Tamil Medium and also claimed to have written examination of 5 year Law degree in Tamil. Such a claim having been not disputed unequivocally, this Court is more inclined to accept the claim of the petitioner.

15. In the light of the above discussion and narrative, this Court allow both the Writ Petitions. The impugned show cause notice in Ref.No.1769/OTD-C2/2012, dated 17.7.2013 is set aside. The 3rd respondent/TNPSC is directed to declare the final result of the provisional selection of the petitioner (Regn.No.00102110) to the post of Labour Officer and on such declaration, if the petitioner is selected, appoint her as Labour Officer in Tamil Nadu Labour Service 2011-2012 against quota reserved for PSTM with attendant benefits on the basis of her selection pursuant to the Notification 35/2012 dated 7.9.2012. This direction shall be complied with by the respondents within a period of three months from the date of receipt of copy of this order. No costs. Consequently, connected MPs are closed."

7. Therefore, the learned counsel appearing for the petitioner would submit that the petitioner has admittedly studied the law course in Tamil medium and in the absence of any contra material, this Court has to necessarily allow the writ petition.

8. At this juncture, the learned Additional Advocate General <https://hcservices.ecourts.gov.in/hcservices/> would submit that there was no material as such to show that the petitioner has studied the law course in Tamil medium. He would also rely on the recent



decision of the yet another Division Bench of this Court in W.A. (MD) Nos.347 of 2016 and 741 of 2018, dated 31.07.2018, wherein the Honourable Division Bench of this Court has observed in Paragraph No.17 as under:

"17. The settled position as per the aforesaid order is that the Tamil medium of instruction introduced in 1978 vide G.O.Ms.No.1492 dated 10.08.1978 continues to be available for the period 1978 till date. Substantial reliance is placed by the learned counsels for the first respondent in both the writ appeals on the decision of this Court in *Sergia Bindu's case (supra)*".

9. The Honourable Division Bench of this Court would further make observation in Paragraph No.36, which is extracted hereunder:

"36. Though we have categorically found and concluded that Tamil medium of instruction introduced in 1978 continues till date, we wish to make it clear that this does not lead to the conclusion that all or any claim to the PSTM certificate are liable to be accepted. A candidate would be eligible for a PSTM certificate only if the documents available clearly reflect the intention of the candidate to be admitted in the Tamil medium of instructions and to pursue the entire course in Tamil".

10. Therefore, he would submit that status of PSTM has to be granted only on the basis of the individual's claim, even assuming that there was Tamil medium of instruction in the College, wherein the petitioner was studying.

11. This Court has perused the materials and the pleadings placed on record and also examined the arguments advanced by the learned counsels on either side.

12. In fact, it is an admitted fact that the petitioner has indicated his preference to study the law course in Tamil medium as evidenced from the application itself. As rightly held by the Honourable Division Bench of this Court in ***Sergia Bindu's case*** (cited supra), the Tamil medium of instruction was introduced as early as during the academic year 1978 - 1979, in the Government Law College, Madurai / third respondent herein. In such view of the matter, it is not for the third respondent to refuse to issue PSTM certificate to the petitioner on the ground that for the academic year 2012 - 2013, there was no Tamil medium of instruction in the third respondent - College. On behalf of the respondents, no document has been produced to demonstrate that during the relevant point of time, there was no Tamil medium of instruction in the third respondent - College. When the State Authorities failed to produce any documents in support of their contention, this Court would naturally be inclined to accept the



claim of the petitioner, more particularly, when the claim is well supported by the petitioner's application forms, wherein against the relevant column, he has indicated his preference "Yes" to study the law course in Tamil medium. When that being the case, this Court has to presume that there was Tamil medium of instruction in the third respondent - College, during the relevant point of time. Any contravention would be unsupported by any materials and such contravention would only defeat the valuable right of the petitioner to get PSTM certificate, which would give him an edge in public employment, in view of the reservation earmarked for such candidate in pursuance of Tamil Medium Act, 2010.

13. The petitioner has also averred in his affidavit that he had completed his schooling only in Tamil language and also written the University Examinations only in Tamil language. Even assuming for a moment that Tamil medium of instruction was not in vogue during the academic year 2012 - 2013 and the very fact that the petitioner himself has written all his University examinations in Tamil language and also completed his entire Schooling in Tamil language would entitle him to be given a certificate as having studied in Tamil medium. The reason as set forth in the impugned order that there was no medium of Tamil for the academic year 2012 - 2013 has not been supported any material whatsoever and in the absence of any material, the petitioner is entitled for benefit of doubt. From the materials as disclosed, this Court is more inclined in favour of the petitioner and not in favour of the respondents. In fact, as per the decision of the Honourable Division Bench of this Court in **Sergia Bindu's** case (cited supra) as well as this Court's order dated 13.10.2017 in W.P.Nos.15381 & 21012 of 2013, the petitioner is entitled to succeed in the writ petition.

14. In such circumstances, the writ petition is allowed and the impugned order in Na.Ka.No.875/A4/2018, dated 14.08.2018, passed by the third respondent, is hereby set aside. The third respondent is directed to issue certificate to the petitioner certifying him as the Person Studied in Tamil Medium (PSTM). The third respondent is directed to pass appropriate orders in this regard within a period of two weeks from the date of receipt of a copy of this order. No costs.

Sd/-

Assistant Registrar (CO)

// True Copy //

Sub Assistant Registrar(CS-I)



To:

1.The Director of Legal Studies,
Purasawakkam High Road,
Opp. to Naidu Hall, Kilpauk,
Chennai-600 010.

2.The Registrar,
The Tamil Nadu Dr.Ambedkar
Law University,
Poompozhi,
No.5, Dr.D.G.S.Dinakaran Salai,
Chennai-600 028.

3.The Principal,
Government Law College,
Madurai-625 020.

+1 CC To MR.P.THAMILARASI, Advocate SR. NO.89371
+1 CC To MR.R.PARTHIBAN, Advocate SR. NO. 89347
+1 CC TO The Special Government Pleader SR.NO. 89533

W.P. (MD) No.19244 of 2018
08.10.2018

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