

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED :26.02.2019

CORAM
THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.5319 of 2019
and
W.M.P.No.6044 of 2019

Madhan Kumar

..Petitioner

vs

1.The Secretary to Government
Home (Police-II) Department
Fort St.George, Chennai - 9.

2.The Member Secretary
Tamil Nadu Uniformed Service
Recruitment Board,
Egmore, Chennai - 8

..Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus, directing the respondents to select and appoint the petitioner under Persons Studied in Tamil Medium ((PSTM) as Sub - Inspector (Finger print) 2018 and in pursuance of the marks obtained by him and send him for training and grant him all consequential service and monetary benefits.

For Petitioner : Mr.K.Venkataramani, Senior Counsel
for Muthappan M

For Respondents: Mr.R.S.Selvam
Government Advocate for R1

Mr.V.Kathirvelu
Special Government Pleader for R2

O R D E R

The relief sought for in the present writ petition is for a direction to direct the respondents to select and appoint the petitioner under Persons Studied in Tamil Medium (PSTM) as Sub - Inspector (Finger print) 2018 and in pursuance of the marks obtained by him and send him for training and grant him all consequential service and monetary benefits.

2.The learned Senior counsel appearing on behalf of the writ petitioner contended that the writ petitioner is a Graduate in Science(Psychology), studied in Tamil Medium and belongs to

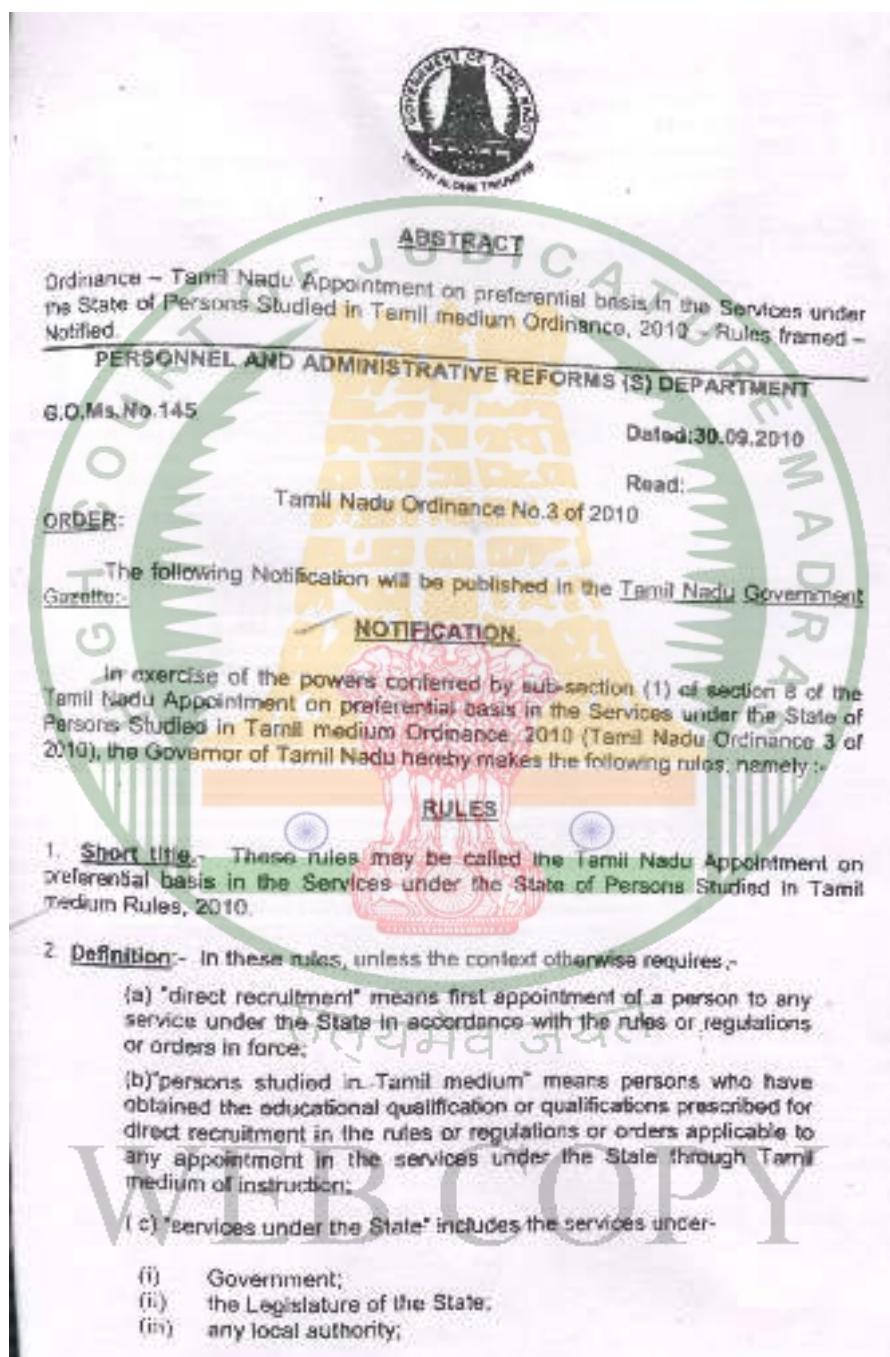
M.B.C community. The writ petitioner entered into Police Service as a Grade-II Police Constable through the Selection conducted by the Tamil Nadu Uniformed Service Recruitment Board(TNUSRB) and appointed into service on 01.02.2011 in the District Armed Reserve category-II. The petitioner had undergone training as Grade II Police Constable in Madurai City police recruit school for six months and thereafter, posted to serve in Chennai City Armed Reserve at Pudupet from July 2011. The 2nd respondent invited applications from open market as well as from the departmental candidates for selection and appointment to the Post of Sub - Inspector (Finger print) for the year 2018. The Notification was issued on 29.08.2018 for 202 vacancies, wherein 20% of the vacancies were earmarked for in-service candidates, who all are serving in the Police Department. The petitioner, who is fully qualified and eligible for appointment to the post, as a departmental candidate since he has completed 5 years of service as Grade II Police Constable in the Police Department. The petitioner had submitted his application to participate in the process of selection. Out of the 202 vacancies, 40 seats were earmarked for the the persons studied in Tamil Medium. 20% of the total seats namely 40 seats were earmarked for in-service candidates and out of that, 8 seats were earmarked studied in Tamil Medium for in-service candidates. Thus, the writ petitioner is eligible to avail the quota within the 8 seats already reserved as per the Recruitment Notification.

3.The learned Senior counsel for the petitioner made a submission that the petitioner was not selected under the quota for Tamil Medium, despite the fact that he has secured 62.30 marks in the process of selection. The cut off mark prescribed for open market candidates under PSTM is 63.80 marks. If quota is provided proportionately in respect of the in-service candidates, the writ petitioner is eligible to be selected and appointed under PSTM preferential quota to the Post of Sub - Inspector (Finger print). In view of the fact that the opportunity was denied to the writ petitioner under the quota, the present writ petition is filed.

4.The learned Special Government Pleader appearing on behalf of the 2nd respondent states that the appointment on preferential basis in the services under the State of Persons Studied in Tamil Medium was granted in G.O.Ms.No.145, Personnel and Administrative Reforms Department dated 30.09.2010. As per the said Government order, the writ petitioner is not eligible to avail 20% of quota, allotted for Tamil Medium as the same has not applicable to the in-service candidates.

5.Let us now look into the very purpose and object of the policy decision taken by the Government in G.O.Ms.No.145, Personnel and Administrative Reforms Department dated 30.09.2010.

6.The said Government order was passed on the basis of an Ordinance namely the Tamil Nadu Appointment on Preferential Basis in the Services under the State of Persons, studied in Tamil Medium Ordinance, 2010. Pursuant to the Ordinance, the rules are framed and published in the Tamil Nadu Government Gazette and the same is reads as under:-



- (iv) any Corporation or company owned or controlled by the Government; and
- (v) any other authority in respect of which the State Legislature has power to make laws.

3. **Manner of selection for appointment.**- Twenty percent of all vacancies in the appointment in the services under the State which are to be filled through direct recruitment shall be set apart on preferential basis to persons studied in Tamil medium as illustrated below:-

ILLUSTRATION

Out of 200 seats, 40 seats shall be set apart on preferential basis to persons studied in Tamil medium, in their respective category, in the following manner:-

General Turn	19	31	48	65	81	100	115	131
	148	165	181	200				
Backward Classes (Other than Backward Classes Muslims)	18	38	58	74	94	114	134	149
	170	190	199					
Most Backward Classes/ De-notified Communities	23	46	73	96	123	146	173	196
Scheduled Castes	26	62	92	126	162	192		
Backward Classes Muslims	188							
Scheduled Caste Arunthathians	166							
Scheduled Tribes	150							

(BY ORDER OF THE GOVERNOR)

K. N. VENKATARAMANAN
SECRETARY TO GOVERNMENT

7. Rule 2 provides Definition. Rule 2(a) enumerates that "direct recruitment" means first appointment of a person to any service under the State in accordance with the rules or regulations or orders in force. Rule 2(b) defines "persons studied in Tamil Medium".

8. It is an admitted fact that the said rules are already published in the Tamil Nadu Government Gazette and the same is in force as of now. Subsequent to the Ordinance, the Tamil Nadu appointment on preferential basis in the service under the State of Persons studied in Tamil Medium Rules 2010 was issued in the Tamil Nadu Government Gazette and accordingly, the definition was provided by stating that the "direct recruitment" means

first appointment of a persons to any service.

9.The definition enumerated in the Rules are to be interpreted constructively and pragmatically and more specifically, in consonance with the Constitutional principles. The quota in such special categories cannot exceed the limits, so as to deprive or infringe the rights of all other eligible candidates from various other categories, from participating in the selection process and also, the rules of reservation in respect of other communities/categories. Thus, fixing of quota must have a rationale and it is not as if, such quotas can be provided in perpetuity even for selection on in-service candidates.

10.In the present case on hand, the writ petitioner is already serving as Grade II Constable. He is an in-service candidate. Thus, his appointment to the Post of Sub - Inspector (Finger print) cannot be construed as a "first appointment" in the Department. Undoubtedly, it is a direct recruitment. However, such direct recruitment of in-service candidate cannot be interpreted as a first appointment in view of the fact that if such an interpretation is given, the same will defeat the very Principles, Philosophies and Ethos of the Constitution in respect of providing quotas and reservations to various categories.

11.For instance, a fresh candidate at the time of appointing to any service is availing some quota or other and thereafter, for direct recruitment of in-service candidate, once again, he cannot avail the similar quota or otherwise. Such a system would create an imbalance in respect of providing the preferential quota to these kind of categories. Thus, the same will amounts to quota within a quota. Thus, a pragmatic approach in such matters of selection are of paramount importance. Constructive interpretation is to be followed, while interpreting the letter and spirit as well as the intention of the Rules. The language employed in Rule 2(a) is that "direct recruitment" means "first appointment". First appointment means a candidate, who is unemployed, entering into any service from open market. Therefore, the claim set out in the present writ petition that the PSTM quota should be provided to the in-service candidates, who all are already in service, cannot be accepted and in the event of considering all such cases, the principles enunciated will be defeated.

12.Under these circumstances, it is made clear that as per the said Rule, the "direct Recruitment" means first appointment of a person to any service and the definition unambiguously portrays that any unemployed person, entering into a service at first instance through open competitive process. This being the possible interpretation and which is to be adopted by the

competent authorities, this Court is of an opinion that there is no scope for any second interpretation of providing such a quota to the in-service candidates, who all are already in service.

13.Thus, the procedure adopted by the department is undoubtedly in consonance with the principles and in accordance with the rules namely Tamil Nadu Appointment on preferential basis in the Service under the State of Persons in Tamil Medium Rules 2010.

14.Thus, there is no infirmity in the process of selection and the writ petitioner has not made out any acceptable legal ground for the purpose of considering his claim for grant of quota under PSTM category.

15.Accordingly, the writ petition stands dismissed. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

kak

To

1.The Secretary to Government
Home(Police-II)Department
Fort St.George, Chennai - 9.

2.The Member Secretary
Tamil Nadu Uniformed Service
Recruitment Board,
Egmore, Chennai - 8

+1cc to Mr.M.Muthappan, Advocate, S.R.No.17969
+2ccs to the Government Pleader, S.R.No.18216 & 18276

W.P.No.5319 of 2019

VSN II(CO)

RRS (24/04/2019)