

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on 11.12.2019	Delivered on 13.12.2019
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CORAM:

THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

W.P.No.34146 of 2019
and
WMP No.34758 of 2019

K.Jayabharathi .. Petitioner

.Vs.

1.State of Tamil Nadu,
Rep.by Principal Secretary to Government,
Home Department,
Fort St.George, Chennai 600 009.

2.The Director of Public Prosecution,
O/o.of the Directorate of Prosecution,
No.5, Kamaraj Salai, Chennai 600 005.

3.The Secretary,
Tamil Nadu Public Service Commission,
TNPSC Road, VOC Nagar,
Park Town, Chennai 600 003.

.. Respondents

PRAYER: Writ petition filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, directing the respondents to consider the petitioner (Registration No.250001180) for selection to the post of Assistant Public Prosecutor Grade-II under the Persons Studied in Tamil Medium (PSTM) category and consequently consider the petitioner for selection to the post of Assistant Public Prosecutor Grade-II based on merit in selection under the PSTM category.

For Petitioner : Mr.G.Sankaran

For R 1 & R 2 : Mr.S.Suresh Kumar
Government Advocate

For R 2 to R 4 : Mr.M.Devendran
Standing Counsel

O R D E R

This writ petition has been filed for issuance of a Writ of Mandamus, directing the respondents to consider the petitioner for selection to the post of Assistant Public Prosecutor, Grade-II, under the Persons studied in Tamil Medium [PSTM] category.

2.The case of the petitioner is that she belongs to the MBC community. She completed her five year B.L. course from The Tamil Nadu Dr.Ambedkar Law University, Chennai, during the year 1988-2003. She thereafter enrolled as an advocate before the Bar Council and she is practicing in the District Court at Cuddalore. It is the further case of the petitioner that the Tamil Nadu Public Service Commission had issued a notification on 03.10.2018, inviting applications from eligible candidates through online mode for direct recruitment to the post of Assistant Public Prosecutor, Grade-II. As per the notification, 46 vacancies had been notified to the said post. The petitioner applied online and she was issued with a call letter and she also wrote the preliminary examination. Based on the marks secured by her, the name of the petitioner was short listed and she was called to appear for the main examination.

3.In the meantime, the petitioner came to know that she had wrongly mentioned in the application, her medium of instruction for the B.L. course as English instead of Tamil. She therefore, made a representation to the TNPSC requesting to rectify this mistake and also informed that she is claiming to be considered for selection under the PSTM category. Since the representation was not considered, the present writ petition has been filed before this Court.

4.Mr.G.Sankaran, learned counsel appearing on behalf of the petitioner submitted that the medium of instruction of the petitioner right through was in Tamil and even in the application, against SSLC and HSC, the petitioner had mentioned the medium as Tamil and only insofar as B.L. is concerned, it was mentioned as English by mistake. The learned counsel submitted that the petitioner is not used to online applications and that she was dependent on someone else to fill up and send the application online, and therefore, the petitioner did not realise this mistake. Immediately, on coming to know of the said mistake the petitioner made a representation and made it clear to the TNPSC that she is claiming to be considered under the PSTM category and her medium of instruction right through was only Tamil. The learned counsel submitted that the mistake committed by the petitioner was not intentional and that the petitioner did not gain any undue advantage because of this mistake. Therefore, the learned counsel submitted, that

the TNPSC must be directed to consider the petitioner under the PSTM category.

5.Per contra, Mr.M.Devendran, learned Standing Counsel appearing on behalf of the TNPSC, submitted that any claim made after the submission of the online application will not be entertained and that this had been made clear in the notification itself. The learned counsel submitted that persons who are claiming reservation under the PSTM category must submit a certificate from the Board or University or from the Institution, certifying that the candidate had studied the course in Tamil medium. In the present case, the petitioner did not submit such a certificate and what was submitted was a certificate issued by the Controller of Examination of the University and this certificate cannot be considered to be valid. Therefore, the learned Standing Counsel submitted that the petitioner cannot be considered under the PSTM category. The learned Standing Counsel concluded his arguments by submitting that the petitioner has performed well during the selection and she has even attended the final interview and the results will be declared shortly. The learned Standing Counsel in order to substantiate his submissions, relied upon the judgment of the Hon'ble Supreme Court in The State of Tamil Nadu & Ors. Vs. G.Hemalathaa & Anr. made in Civil Appeal No.6669 of 2019 (Arising out of SLP (C) No.14093 of 2019) dated 28.08.2019.

6.This Court has carefully considered the submissions made on either side and the materials available on record.

7.The petitioner is seeking claim to be considered for selection to the post of Assistant Public Prosecutor, Grade-II, under the PSTM category. According to the petitioner, she completed SSLC, HSC and B.L. course in Tamil medium. While applying online, the petitioner had mentioned against B.L. course as English instead of Tamil. On realising the mistake, the petitioner made a representation to the TNPSC and requested that the mistake be rectified and to consider the petitioner under the PSTM category.

8.The only issue that arises for consideration is as to whether the petitioner can be permitted to rectify the mistake made while filling the online application and whether TNPSC can be directed to consider the petitioner under the PSTM quota.

9.The petitioner has submitted a certificate that is said to have been issued by the Controller of Examination of The Tamil Nadu, Dr.Ambedkar Law University, Chennai, to the effect that her medium of instruction has Tamil. This certificate is not in consonance with the instructions given to the

applicants. The instructions make it clear that the certificate can be issued only by the Board or University or by the Institution and a Controller of Examination can never issue such a certificate.

10. Even otherwise, it has to be seen whether the petitioner has actually completed her B.L. course with Tamil as the medium of instruction. It is to be borne in mind that merely writing the examination in Tamil will not satisfy the requirement to bring a candidate under the PSTM category. The candidate must have compulsorily had the medium of instruction as Tamil during the entire course. If this minimum requirement is not satisfied, the candidate cannot claim preference/reservation under the PSTM category.

11. In order to decide this issue, it is important to take note of the full Bench Order of this Court in R.Boominathan .Vs. The Government of Tamil Nadu and Ors. made in W.P.Nos.27127 etc., of 2018/2019. The full Bench of this Court independently considered whether Tamil was offered as a medium of instruction in all the Law Colleges in Tamil Nadu, and the medium of instruction that is provided in The Tamil Nadu Dr. Ambedkar Law University, Chennai, was also independently considered. The relevant portions of the Order is extracted hereunder:

"14. Mr. S.R. Rajagopal, learned Additional Advocate General appearing for the Government would contend that among the Government Law Colleges in the State,, a separate section for Tamil Medium students of Three Year Law Course was conducted in Dr. Ambedkar Government Law College, Chennai from 1973-1974 to 2001-2002. Further, a separate section for Tamil Medium students of Five Year Law Course was conducted in Dr. Ambedkar Government Law College from 1997-1998 to 2001-2002. However, consequent to the introduction of Five Year B.A., B.L. (Honors) Course in Dr. Ambedkar Government Law College, Chennai from the academic year 2002-2003, admission to first year of Regular Three Year Law Course and Five Year Law Course was discontinued. However, admission to regular Three Year Law Course and Five Year Law Course was once again commenced from the academic year 2006-2007 as per G.O. (Ms) No.280, Law (LS) Department dated 14.11.2006 and a separate section for imparting Tamil medium for three years course again started at Law College, Chennai.

15. With respect to Government Law

College, Madurai, vide G.O. (Ms) No.1492, Education Department dated 10.08.1978, Tamil Medium course was introduced from 1978-1979 till 1993-1994. However, from 1994-1995, Tamil medium of instruction was discontinued due to lack of interest among the students in opting Tamil as medium of instructions. But, from 2013-2014, a separate section for Tamil Medium was once again started in Government Law College, Madurai and it is continuing as on date.

16. In so far as Government Law Colleges at Tiruchirapalli, Coimbatore, Tirunelveli and Chengalpattu, the learned Additional Advocate General would submit that till the academic year 2016-2017, there was no separate section for Tamil Medium. Thereafter, by virtue of G.O. Ms. No.33, Law (LS) Department dated 31.01.2017 sanction was accorded by the Government for introduction of Tamil as Medium of instructions from the academic year 2017-2018.

17. In the Colleges functioning at Vellore, Villupuram, Dharmapuri and Ramanathapuram, admittedly, there is no separate section in existence.

24. Even though the State had earmarked 20% of the vacancies in the services under the State, by direct recruitment, to be filled by appointing persons under PSTM category, as per the records made available to us, there are no Colleges in the State that imparts Tamil as Medium of Instruction, throughout. As per the counter affidavit filed by the Director of Legal Studies, Kilpauk, Chennai - 600 010, 11 Government Law Colleges are functioning in the State of Tamil Nadu where three and five year Law Courses are being imparted. That apart, two Private Law Colleges are functioning in the State namely Central Law College, Salem and Saraswathi Law College, Tindivanam and they are also offering Law Courses. However, these colleges are not imparting the curriculum in Tamil.

25. Intermittently, Dr.Ambedkar Government Law College, Chennai imparted Law Course in Tamil between 1973-1974 and 2001-2002 and thereafter, Law Course is not imparted in Tamil. Thereafter, Dr. Ambedkar Law College, Chennai re-commenced imparting law degree in Tamil Medium from 2006-2007. However, it did not

continue to impart law degree in Tamil due to various reasons, including lack of interest among the students to pursue law degree in Tamil.

26. From the counter of the Director of Legal Studies, Chennai, it is further revealed that the Government Law College, Madurai, which had imparted education in Tamil, has discontinued it from the year 1994-1995 and once again it started imparting law degree course in Tamil from 2013-2014 and it is imparting Law Degree in Tamil Medium till date.

27. Similarly, Government Law Colleges at Tiruchirapalli, Coimbatore, Tirunelveli and Chengalpattu imparts education in Tamil Medium to the students pursuing law degree.

28. However, there is no separate section for Tamil Medium at all available in Government Law Colleges at Vellore, Villupuram, Dharmapuri and Ramanathapuram.

29. Therefore, it is evident that Law degree is not imparted, rather pursued by the students in Tamil in the State continuously, but intermittently, whenever offered in some selected colleges depending upon the number of takers. However, the State Government has earmarked 20% of all vacancies in appointment in the services under the State, which are to be filled through direct recruitment, as preferential appointment, but only very few Colleges in the State are imparting education with Tamil as the medium of instruction. We are also not aware as to how many candidates have so far availed this concession in the State.

30. For the purpose of recognising a candidate, within the realm of selection to employment in government services, under PSTM category, a candidate should have studied in Tamil as medium of instruction. Therefore, in order to avail the benefit of reservation earmarked under PSTM category, a candidate has to furnish a certificate to the effect that he or she studied in Tamil as medium of instruction. Such certificate will be issued by the Head of the Institution/Registrar or Principal of the College, as has been contemplated under G.O. (Ms) No.145, Personnel and Administrative Reforms Department dated 30.09.2010, in the prescribed format, certifying that he or she studied the course in Tamil by

indicating the duration (academic year) during which the candidate pursued the course. It is this certificate which will form the basis for recognising a candidate for having studied in Tamil medium of instruction so as to enable him or her to get the benefit of reservation under PSTM category. It is needless to mention that merely because a candidate writes the academic examination or competitive examination in Tamil, it will not recognise such candidate to get the reservation under PSTM category. The requirement is that a Certificate issued by the Head of the Institution/Registrar or Principal of the college, in the prescribed format, certifying that he was imparted with the course in Tamil as medium of instruction, has to be furnished, so as to enable a person to get the benefits of reservation under PSTM category. In the absence of such a certificate, a candidate cannot be regarded or recognised as a preferential candidate, who can avail the benefit of reservation under PSTM category. In other words, if such a certificate is not produced, he or she cannot be recognised as a candidate, who can be extended the benefit of reservation under PSTM category. Therefore, we hold that compliance of the requirements contemplated under G.O. (Ms) No.145 dated 30.09.2010 to furnish a certificate issued by the Head of the institution/Principal or Registrar of the College, in the prescribed format, is a mandatory requirement to get the benefit of concession and/or reservation earmarked by the State under PSTM category. We therefore answer the reference made to us as follows:-

(i) A person who studied the Course in Tamil or had written the University or Competitive examination in Tamil will not ipso facto recognise or qualify him or her to claim reservation under Persons Studied in Tamil Medium (PSTM) category

(ii) Even though a person opted for Tamil as Medium of Instructions in the Colleges or studied the Courses in Tamil or written examinations in Tamil, in the absence of a certificate issued by the Registrar/Principal or Head of the Institution in the prescribed format stating that he or she pursued the education in Tamil as Medium of Instruction throughout, he or

she cannot be placed on par with PSTM Candidates for the purpose of claiming reservation under the preference quota

(iii) Tamil, as Medium of Instruction, is not in vogue in certain colleges, or rather to say, Law Degrees are not imparted in Tamil as a Medium of Instructions. Only in few colleges, Law Degrees are imparted in Tamil as Medium of Instructions and in some other colleges, it is being imparted intermittently. Only if a student pursued the entire Course in Tamil and obtained a Certificate to that effect from the head of the institution/Registrar or Principal of the College, will he or she be declared as the one who is eligible to claim preference in public employment under PSTM category. As on date, Law Colleges at Chennai, Madurai, Coimbatore, Tiruchirapalli, Tirunelveli and Chengalpattu are imparting the courses in Tamil as medium of instruction, as could be evident from G.O. Ms. No.33, Law (LS) Department dated 31.01.2017 as well as the counter affidavit filed by Director of Legal Studies, Chennai".

12.It is clear from the above Order that the Tamil Nadu Dr.Ambedkar Law University, Chennai, offered law course in Tamil only during the academic years 1973-1974 and 2001-2002. It was again offered from 2006-2007. It did not continue due to lack of interest among the students to pursue law degree in Tamil. The full Bench also found that as on date, Law Colleges at Chennai, Madurai, Coimbatore, etc., are offering courses with Tamil as a medium of instruction by virtue of G.O.Ms.No.33, dated 31.01.2017.

13.In the present case, the petitioner had pursued her B.L. Degree course for the period 1998-2003. From the above findings of the full Bench, it is clear that the petitioner could not have undergone the course with Tamil as the medium of instruction. If Tamil is not the medium of instruction during the entire course, no one can issue a certificate to the petitioner that she completed B.L. Degree with Tamil as the medium of instruction. Consequently, the petitioner cannot claim any reservation under the PSTM category. In view of the factual finding as to the dis-entitlement of the petitioner to claim consideration under the PSTM category, there is no requirement to go into the other issues that have been raised by the learned Standing Counsel appearing on behalf of the TNPSC.

14.In the result, the relief as sought for by the petitioner cannot be granted by this Court and the petitioner will not be entitled to be considered for selection under the

PSTM category. However, it was informed to this Court that the petitioner has performed well even as a general candidate and that she has also attended the final interview. Therefore, if the petitioner satisfies the requirements of a candidate as a General Turn or General Turn(W) or MBC/DC(G) or MBC/DC(W), she can be considered for appointment to the post of Assistant Public Prosecutor, Grade-II.

This writ petition is disposed of accordingly. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

KP

To

- 1.The Principal Secretary to Government,
Home Department, State of Tamil Nadu,
Fort St.George, Chennai 600 009.
- 2.The Director of Public Prosecution,
O/o.of the Directorate of Prosecution,
No.5, Kamaraj Salai, Chennai 600 005.
- 3.The Secretary,
Tamil Nadu Public Service Commission,
TNPSC Road, VOC Nagar,
Park Town, Chennai 600 003.

+1cc to Mr.G.Sankaran, Advocate, S.R.No. 104263
+2cc to Mr.M.Devandran, Advocate, S.R.No. 103909 & 104576
+1cc to the Government Pleader, S.R.No. 104539

W.P.No.34146 of 2019

BS(CO)
GN(30/01/2020)

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