

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.09.2020

CORAM :

THE HON'BLE MR.A.P.SAHI, CHIEF JUSTICE

AND

THE HON'BLE MR.JUSTICE SENTHILKUMAR RAMAMOORTHY

W.A.Nos.402 and 403 of 2020

- 1.S.Jeevana
- 2.K.Anandan
- 3.L.Kalavathi
- 4.S.Raja Shakul Hameed
- 5.R.Mani Bharathi
- 6.P.Ayyasamy
- 7.A.Mathumathi
- 8.K.T.Dharani
- 9.K.Renugadevi

... Appellants in
both appeals

Vs.

- 1.The State of Tamil Nadu,
rep. by its Secretary to Government,
Personnel and Administrative Reforms (S) Dept.,
Fort St. George,
Chennai - 600 009.
- 2.The Tamil Nadu Public Service Commission,
rep. by the Secretary,
TNPSC Road, V.O.C. Nagar,
Part Town, Chennai-600 003.

.. Respondents
in W.A.402/2020

- 1.The State of Tamil Nadu,
rep. by its Secretary to Government,
Personnel and Administrative Reforms (S) Dept.,
Fort St. George,
Chennai - 600 009.
- 2.The State of Tamil Nadu,
rep. by its Secretary to Government,
Forest Department,
Fort St. George, Chennai - 600 009.

3.The Tamil Nadu Public Service Commission,
rep. by the Secretary,
TNPSC Road, V.O.C. Nagar,
Part Town, Chennai-600 003.

.. Respondents
in W.A.403/2020

Prayer: Appeals filed under Clause 15 of the Letters Patent against the order dated 21.2.2020 passed in W.P.Nos.25877 and 28182 of 2019.

Prayer in WP No.25877 of 2019 : Writ Petition filed under Article 226 of the constitution of India for issuance of a writ of certiorarified mandamus, calling for the records relating to the Provisional Selection List dated 20.08.2019 published by the 2nd respondent comprising of 148 candidates selected for the post of Forest Apprentice pursuant to Notification NO.12 of 2018 dated 04.07.2018 and quash the same in so far as the said provisional selection list comprises of 29 non Tamil Medium (Non PSTM) candidates in lieu of 29 PSTM (Persons studied in Tamil Medium) candidates in violation of Act 40 of 2010 and consequently direct the 2nd respondent to select the petitioners for the post of Forest Apprentice against the 20 percentage reservation of vacancies on preferential allotment to persons studied in Tamil Medium (PSTM) as per Clause 12B of the Notification No.12/2018, dated 04/07/2018 as per the Distribution of Vacancies following the rule of reservation application to the recruitment of Forest Apprentice as set out in clause 2 of the Notification No.12/2018, dated 04.07.2018.

Prayer in WP No.28182 of 2019 : Writ Petition filed under Article 226 of the constitution of India for issuance of a writ of certiorarified mandamus, calling for the records relating to the Notification No.12/2018 dated 04.07.2018 issued by the 3rd respondent and quash the same in so far the column 3 in clause B of the Notification No.12 of 2018 dealing with Educational qualification in Notification No.12/2018 dated 04.07.2018 enables the 3rd Respondent contrary to the policy of the Sate Goverment in Act 40 of 2010 to give preference to candidates who have studied Bachelor degree in Forestry or its equivalent degree of any institution or University recognized by UGC in non Tamil Medium over the candidates who have studied Bachelors degree in any one of the other subjects specified in column 2 in Clause B of the Notification No.12/2018 dealing with Educational qualification in notification No.12/2018 dated 04/07/2018 in Tamil Medium for Direct recruitment even for the 20% of the vacancies in the post of Forest Apprentice when the said 20% of the vacancies should be allotted to candidates who have studies the prescribed subject in Tamil Medium on preterential basis as per the police of the State Government in Act 40 of 2010.

For Appellants : Mrs.Nalini Chidambaram
Senior Counsel
for M/s.C.Uma

For Respondents : Mr.S.R.Rajagopal
Addl. Advocate General
assisted by
Mr.S.V.Vijaya Prasad
Spl. Government Pleader
for respondent No.1 in
both the appeals and
respondent No.2 in
W.A.No.403 of 2020

: Mr.Balamurali Krishnan
for respondent No.2
in W.A.No.402 of 2020
and respondent No.3
in W.A.No.403 of 2020

COMMON JUDGMENT

The Hon'ble Chief Justice

These two appeals arise out of a common judgment in two writ petitions that came to be filed by the appellants/petitioners claiming that since they have received their degrees while pursuing their educational career in Tamil medium, they were entitled to be given the benefit of appointment under 20% PSTM (Persons Studied in Tamil Medium) category, for which 20% posts in all public services are kept apart. They also contend that they were very much qualified and were eligible on merit, being possessed of the educational qualifications prescribed for the post in question, which was being unjustifiably denied by the respondents, hence, the said rights deserved to be enforced, but the learned Single Judge dismissed the writ petitions ignoring this mandate of law that requires offering of posts to the appellants under the 20% PSTM category.

2. The challenge raised was noted by us in our order dated 5.6.2020. Subsequently, the arguments were advanced on 18.8.2020, when the following order was passed:

"We have heard Mrs.Nalini Chidambaram, learned Senior Counsel for the appellants.

2. These appeals came to be instituted questioning the correctness of the judgment dated 25.02.2020 and came up before us on 05.06.2020, when the following order was passed:

"Heard Mrs.Nalini Chidambaram, learned Senior Counsel for the appellants as well as Mr.R.Udayakumar, learned Additional Government Pleader for the first respondent.

2. The contention raised by the learned Senior Counsel for the appellants is that Clauses (10) and (12) of the Notification No.12/2018, dated 4.7.2018 read with the educational qualifications prescribed in Clause 6(B) of the said notification, makes it clear that the second respondent has issued the notification while applying G.O. (Ms.) No.145, Personnel and Administrative Reforms (S) Department, dated 30.9.2010 and G.O. (Ms.) No.40, Personnel and Administrative Reforms (S) Department, dated 30.4.2014.

3. The dispute at hand is with regard to the post of Forest Apprentice, the minimum qualifications whereof are prescribed in Clause 6(B) of the Notification. The second column in the said clause enumerates the educational qualifications in sub-clause (a) as "must possess a Bachelor's degree in Forestry or its equivalent degree of any institution or University recognized by UGC." The alternative qualification after the word "OR" in sub-clause (b) entails Bachelor's Degree or its equivalent in any of the 15 subjects enumerated therein. Some of the appellants possess Bachelor's Degree in Botany or Chemistry or Physics and others possess the qualification of B.E. (Civil Engineering), and all of them obtained their qualifications through Tamil medium. It is on the strength of this that the appellants claim that they are entitled to 20% reservation under the Persons Studied in Tamil Medium (PSTM) category, which is reserved for all vacancies, including the present recruitment.

4. The contention of the learned Senior Counsel for the appellants is that the

qualification possessed by the appellants being an alternative qualification prescribed, they are not ineligible, but their eligibility is being excluded on the ground of absolute preference being given to candidates who possess a Bachelor's Degree in Forestry, which is the first qualification and which course is nowhere instructed in the vernacular language of Tamil. It is, therefore, her contention that the appellants being fully qualified under the alternative qualification, cannot be denied the benefit of reservation of 20% under the PSTM category on the ground of being excluded by way of absolute preference to those candidates who possess Bachelor's Degree in Forestry. Admittedly, the appellants do not possess that degree, but on the strength of the qualifications possessed by them, it is the contention that the rule of reservation of 20% cannot be avoided to the total exclusion of such candidates who possess the qualifications otherwise and the 20% rule should also be applied to the vacancies which are sought to be exclusively offered to the possessors of Bachelor's Degree in Forestry.

5. Learned Senior Counsel contends that such a prescription which is contained in Column (3) of Clause 6(B) read with the second paragraph of Clause (10) was assailed before the learned Single Judge as being ultra vires the provisions of the reservation and the same should have either been struck down or read harmoniously so as to extend the benefit of 20% reservation to the appellants under the PSTM category.

6. The learned Single Judge has dismissed the writ petitions recording that in view of the said provisions contained in the notification and the stand taken in the counter affidavit, the reservation under the PSTM category will apply only when candidates are considered under category (b), which is not the situation in the present case.

7. Learned Senior Counsel submits that there

was no reason to assume the same and from a copy of the counter affidavit filed on behalf of the respondent/Public Service Commission before the learned Single Judge, in paragraph 6 thereof, the assertion is that no candidate was available in the ranking list who had studied B.Sc. Forestry under Tamil Medium, as B.Sc. Forestry is being taught in English medium only.

8. The counter affidavit should have further clarified as to the challenge raised to the applicability of 20% reservation and the counter affidavit filed on behalf of the State does not respond to the same. In such a situation, let the State file a response to the aforesaid issue having been advanced on behalf of the appellants by the date fixed.

9. Learned counsel for the respondent/Public Service Commission may also be served a copy of the papers, who may also file a response to the same.

List on 27.7.2020."

3. The matter was directed to come up showing the names of learned counsel for the Tamil Nadu Public Service Commission as well as learned Government Pleader for the Forest Department. Today, we have heard them also.

4. The principal argument advanced is that once a law relating to preferential reservation is in place securing seats in respect of the selection relating to the post of Forest Apprentice, viz., the reservation for those who have pursued their educational carrier in Tamil Medium, then the reservation extended by a statutory provision on preferential basis to such candidates is compulsory and cannot be obviated in the manner in which it has been done in the selections, which have been held pursuant to the Notification No.12 of 2018.

5. The ground raised is that a statutory mandate which has taken the shape of Act No.40 of 2010 cannot be nullified by modifying the same either through any subordinate rules or even by a notification issued by the Tamil Nadu Public

Service Commission, which has to comply with the said provisions. It is submitted that under the notification dated 04.07.2018, particularly, clause 12(B), there is a specific recital that 20% reservation of vacancies on preferential allotment to PSTM candidates will apply for the said recruitment and hence any deviation therefrom would be impermissible in law by giving an absolute preference to the applicants possessed with Degree qualification. It is urged that this runs counter to the provisions of Act No.40 of 2010 and even the own declaration of the Tamil Nadu Public Service Commission by carving out an exception in favour of those candidates possessing a Bachelor Degree in Forestry.

6. The Tamil Nadu Public Service Commission and the Forest Department appear to have been taking a stand that there is no Degree of Forestry being awarded to students taught in Tamil, as no such course in Tamil Nadu is in vogue. They, however, contend that the Bachelor Degree in Forestry is the main qualification prescribed for the post of Forest Apprentice and therefore, to exclude it for 20% of the seats in favour of those possessing an alternative qualification in the PSTM category would be virtually excluding the candidates possessing Bachelor Degree in Forestry from consideration against the 20% seats. This according to them may not be permissible, whereas on the other hand, learned Senior Counsel for the appellants contends that any prescription made in the advertisement or notification issued has to be read harmoniously or if it offends, the same can be struck down in order to ensure that 20% of the seats are made available to those candidates having pursued their studies in Tamil Medium.

7. The matter could have proceeded with the entire material, which is placed before us including the provisions that have been pointed out, particularly, clause 10 of the selection procedure, where the Degree qualified candidates have been given an absolute preference, but we find that this contest between the appellants and the State before the learned Single Judge proceeded on the basis of a very peculiar counter-affidavit filed by the Personnel and Administrative Reforms Department, which pleaded that it should be deleted from the array of parties and should be absolved of the

responsibility of taking a stand in the light of the submissions that have been raised and more particularly that the said Department was unnecessarily impleaded in the proceedings.

8. We further find that the State of Tamil Nadu, through the Secretary to Government, Forest Department was impleaded as second respondent in W.P.No.28182 of 2019, but no counter-affidavit was filed on behalf of the said Department in the proceedings before the learned Single Judge. A counter-affidavit was filed on behalf of the Tamil Nadu Public Service Commission defending the advertisement and also the preference in favour of the candidates possessed with Degree qualification in Forestry.

9. The learned Single Judge, in the absence of any effective counter-affidavit on behalf of the State, as is evident from the circumstances narrated above, proceeded to hold that since a specialized knowledge in Forestry appears to be evident from the advertisement and since there is no such Degree being provided in the Tamil language, therefore, the notification has to be interpreted on the basis of the plain language used therein and consequently, dismissed the writ petitions. The learned Single Judge further held that the candidates possessed of an alternative qualification do have or may have other avenues of employment, but the candidates possessed of a specific Degree qualification in Forestry have only the present avenue available and hence, to exclude 20% of the seats entirely from being available to such candidates will not be appropriate.

10. The said findings have been assailed questioning the judgment of the learned Single Judge on the grounds referred to above and also contending that there cannot be an "absolute preference" in favour of such Degree qualified candidates so as to exclude or make redundant the provision of 20% reservation of the seats available in respect of the selection in question.

11. It has been pointed out by learned counsel for the respondent Tamil Nadu Public Service Commission that the selections have already been held and appointments have already been made pursuant to the said selections.

12. The question of considering the impact of these consequences may arise after we are apprised of the stand to be taken by the State Government in order to explain the status of the rules visa-vis Act 40 of 2010 in the light of the arguments that had been advanced on behalf of the appellants.

13. In this background, we find it necessary that learned counsel for the Forest Department may be granted time to file a counteraffidavit to answer the aforesaid propositions.

14. Let a counter-affidavit be filed by respondent No.2 in W.A.No.403 of 2020 within a period of two weeks, as the same respondent is required to answer the contentions raised in both the appeals. A copy of the counter-affidavit shall also be served on learned counsel appearing in W.A.No.402 of 2020 as well.

List on 07.09.2020."

3. Smt. Nalini Chidambaram, learned Senior Counsel, urges that the respondents are bound by their own terms of advertisement, where they have clearly professed to apply the provision of 20% benefit as extended by a State Act viz., The Tamil Nadu Appointment on Preferential Basis in the Services under the State of Persons Studied in Tamil Medium Act, 2010 (for brevity, "Act 40 of 2010"). For this, she has invited the attention of the Court to Notification No.12 of 2018, dated 4.7.2018, published by the Tamil Nadu Public Service Commission for appointment to the post of Forest Apprentice against 148 regular vacancies and 10 Scheduled Caste shortfall vacancies. All the appellants are applicants under the said notification against the 148 vacancies and she contends that under Clause 12 (B), the advertisement categorically professes to apply 20% "reservation" of vacancies to be filled up on preferential allotment to the PSTM candidates. Clause 12(B) of the advertisement is extracted herein under:

"12.GENERAL INFORMATION

A.

B. In G.O.(Ms) No.145, Personnel and Administrative Reforms (S) Department, dated 30.09.2010, and G.O. (Ms) No.40, Personnel and Administrative Reforms (S) Department, dated 30.04.2014 the Government have issued orders to fill up 20% of all vacancies in direct recruitment on preferential basis to persons who studied the prescribed qualification in Tamil Medium. The 20% reservation of vacancies on

preferential allotment to Persons Studied in Tamil Medium (PSTM) will apply for this recruitment (Applicants claiming this reservation should have studied the prescribed qualification for the post in Tamil Medium and should have the certificate for the same. Having written the examinations in Tamil language alone will not qualify for claiming this reservation). If the applicants with PSTM Certificate are not available for selection for appointment against reserved turn, such turn shall be filled up by eligible Non-PSTM applicants but belonging to the respective communal category. The PSTM certificate shall be produced / uploaded by the applicant in the prescribed format / proforma available in the Commission's website at 'www.tnpsc.gov.in' which shall be obtained from the Head of the Institution."

4. She points out that this provision in the advertisement is clearly in tune with the provisions of Act 40 of 2010. We may gainfully extract Sections 2(e), 3, 5 and 6 of the said Act.

"2(e) "preferential vacancies" means such vacancies available for persons studied in Tamil medium under sub-section (1) of section 3;

3. (1) Notwithstanding anything contained in any law for the time being in force and subject to section 5, twenty per cent of all vacancies in 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.

(2) Selection for appointment under sub-section (1) shall be made in such manner as may be prescribed.

(3) Nothing contained in sub-section (1) shall apply in the case of appointment to the posts in the services under the State for which the educational qualification prescribed in the rules or regulations or orders applicable to the post is a degree or diploma or any academic distinction in a language.

5. Preferential basis appointments to persons studied in Tamil medium under section 3 shall be made following the reservation as per law in force.

6. Notwithstanding anything contained in section 3, where adequate number of qualified and suitable persons studied in Tamil medium are not available for appointment in the preferential vacancies, such unfilled vacancies shall be filled up with persons

studied in other mediums within the respective category."

5. Her contention is that all the appellants are entitled to the benefit of the said category, as they are possessed of the alternative equivalent Bachelors Degree qualification in the subjects that are referred to in the Special Rules for the Tamil Nadu Forest Subordinate Service Rules framed under Article 309 of the Constitution of India, where the educational qualifications upon amendment is as follows:

"NOTIFICATION

In exercise of the powers conferred by the proviso to Article 309 of the Constitution of India, the Governor of Tamil Nadu hereby makes the following amendment to the Special Rules for the Tamil Nadu Forest Subordinate Service (Section 12 of Part III-B, in Volume III of the Tamil Nadu Services Manual, 1970.

2. The amendments hereby made shall be come into force with effect on and from the 29th February, 2016.

AMENDMENT

In the said Special Rules in the Rule 5, in the table in Column (3) against the entry "Forest Apprentices" in column (1) thereof, for item (1) the following item shall be substituted namely:

"(1) (a) Must possess a Bachelors Degree in Forestry or its equivalent degree of any recognized university.

(or)

(b) Must possess a Bachelors degree or its equivalent degree of any recognized university in any one of the following subjects:

- (1) Agriculture
- (2) Animal Husbandry
- (3) Botany
- (4) Chemistry
- (5) Computer Applications/Computer Science
- (6) Engineering (All Engineering subjects including Agricultural Engineering)
- (7) Environmental Science
- (8) Geology
- (9) Horticulture
- (10) Marine Biology
- (11) Mathematics
- (12) Physics
- (13) Statistics
- (14) Veterinary Science

(15)Wildlife biology

(16)Zoology

provided that if candidates with the qualification referred to in Item (a) are not available for selection, candidates with qualification referred to in item (b) will be considered for selection".

(BY ORDER OF THE GOVERNOR)

HANS RAJ VERMA

PRINCIPAL SECRETARY TO GOVERNMENT"

6. It is the contention of Smt Nalini Chidambaram that the alternative qualification of Bachelor's Degree in any of the subjects contained in Clause 1 (b) is equivalent to the Bachelor's Degree in Forestry and therefore, the provisions of Act 40 of 2010 have to be given effect to, inasmuch as all the appellants having pursued their studies in Tamil qualify as the PSTM candidates entitled to be offered the benefit against 20% of the vacancies at par with those who possess the Bachelor's Degree in Forestry.

7. Her contention is that by including the impugned provisions in the advertisement, the Tamil Nadu Public Service Commission has introduced an absolute preferential qualification in favour of the candidates possessing Bachelor's Degree in Forestry as contained in Clause 6(B) of the advertisement read with the provision made under Clause 10. Her contention is that such an absolute preference in favour of those candidates who possess a Bachelor's Degree in Forestry has excluded the appellants who do not possess such a degree, because a course for Degree in Forestry is not taught in the Tamil language throughout the State. Her contention therefore is that the alternative qualifications as prescribed by using the word "OR", in the Rules are an available benefit and do not create any embargo for consideration. The absolute preference for B.Sc. In Forestry candidates has been erroneously introduced through the advertisement in spite of the fact that it is not contained in the Rule. It is for this reason, she contends that Clause 6(B) (3) and the provision under Clause 10 be either struck down or read harmoniously to give effect to the 20% allocation of seats to the PSTM category.

8. Her submission is that a mandate of clear legislative intention through a law validly passed by the legislature of extending benefit of appointment against 20% vacancies to PSTM category candidates cannot be avoided that too even by way of introducing an additional qualification not prescribed under the Rules. She submits that the impugned provisions of

advertisement overreach the statutory provisions and therefore, they are either liable to be struck down or read down that can be done by harmoniously construing the aforesaid provisions.

9. She further submits that the respondents appear to be playing fraud on the appellants and also on the selection process by mentioning 20% benefit in Clause 12(B) on the one hand and at the same time, extending absolute preference to the Bachelor's of Forestry candidates as per Clause 6(B)(3) and Clause 10.

10. Her third contention is that the candidates possessed of Bachelor's Degree in Forestry have not even challenged the provision made for 20% benefit either under Act 40 of 2010 or even under Clause 12(B) of the impugned advertisement.

11. Smt. Chidambaram has further submitted that a strange counter-affidavit was filed on behalf of the Personnel and Administrative Department, Government of Tamil Nadu seeking to keep itself away from the proceedings as if it had got nothing to do with the challenge raised. She, however, submits that the response made by the Forestry Department is unacceptable for all the foregoing reasons, as the equivalent qualification of the appellants still remains intact, that could not be successfully disputed by the respondents.

12. She therefore submits that the entire selection process is vitiated and this aspect of the matter has not been appreciated by the learned Single Judge in correct perspective who has erroneously come to the conclusion that there is an absolute preference in favour of the Bachelor in Forestry qualified candidates and has further been influenced by the fact that the Bachelor in Forestry candidates do not have any other avenue, whereas the candidates like the appellants possessed of general nature of qualifications can always get employment elsewhere. It is urged that such a presumption is not correct, inasmuch as those possessed of a Bachelor's Degree in Forestry have large avenues of applying in the State services as well as the Central services. Consequently, the judgment being based on a wrong assumption, is liable to be set aside.

13. Shri S.R.Rajagopal, learned Additional Advocate General for the respondent State with the aid of the common counter-affidavit filed in these appeals has urged that a preference is not a reservation. He submits that the appellants cannot claim their consideration against 20% vacancies, as they have no such vested right. It is urged that the harmonious construction as suggested by the learned counsel for the appellants can be arrived at without creating any absurdity if the procedure adopted by the respondents is accepted. He submits that once the seats are filled up with the candidates possessing Bachelor

of Forestry Degree, then there would be no necessity of going to the second category of equivalent qualifications. He submits that the amended Rule 5 makes it amply clear that it is only after exhausting the candidates possessed of the Degree of Bachelor in Forestry, appointment can be offered to those possessed of general category degrees. It is at that stage that they can be given preference, but they cannot be given preference over and above the candidates possessed of a Bachelor in Forestry Degree. He further submits that the validity of Rule 5 has not been challenged that makes such a prescription.

14. Responding to the said submissions, in rejoinder, Smt. Chidambaram contends that there is no necessity to challenge the validity of Rule 5, as the respondents themselves through the advertisement have professed to apply the 20% benefit which has to be harmoniously construed by applying it as against the vacancies available and contained in the advertisement.

15. She has then invited the attention of the Court to some judgments to urge that a Court has to make an effort to reconcile as far as possible to give effect to a legislative intent and therefore, one section of the Rules cannot be adopted in order to defeat the purpose of an enactment. The judgments relied on are as follows:

- (i) Krishan Kumar v. State of Rajasthan and others, (1991) 4 SCC 258, Paragraph (11).
- (ii) Anwar Hasan Khan v. Mohd. Shafi and others, (2001) 8 SCC 540, (Paragraph (8)).
- (iii) Commissioner of Income Tax v. Hindustan Bulk Carriers, (2003) 3 SCC 57, Paragraph (21).
- (iv) Central Bureau of Investigation and others v. Keshub Mahindra and others, (2011) 6 SCC 216, Paragraph (11).

16. We have considered the submissions raised and at the out set, we may clarify that the judgments cited at the bar with regard to the rules of harmonious construction lay down the law, with which there is no quarrel. The Court is obliged to give full effect to the law and to avoid any violation thereof by using the tool of harmonious construction.

17. However, in the present case, it is evident that the vires of Rule 5 extracted herein above has not been challenged. The proviso at the end of the Rule quoted above makes it more than clear that the candidates possessed of the qualification referred to in item (a) viz., those possessed of Bachelors Degree in Forestry have to be appointed, and if they are not

available for selection, then only the candidates with the qualifications referred to in item (b) will be considered for selection. In our considered opinion, this is a Special Rule relating to qualification pertaining to the post in question known as "The Tamil Nadu Forest Subordinate Service Rules". These Special Rules, therefore, would govern the process of selection and it is for this reason that the advertisement has used the phrase "absolute preference" for Forestry degree qualified candidates. It is true that the word "absolute" has not been used in the Rule and has been included in the advertisement. Nonetheless, the inclusion of the word "absolute" will not in any way alter the intent of the Rule referred to above, which categorically requires that candidates with qualifications as against item (a) will be the first choice and it is only after the non-availability of the candidates of the said category that the candidates possessed of the qualifications at item (b) will be considered.

18. In the instant case what has to be seen is the impact of the proviso to Rule 5 as indicated above, where the first choice of selecting candidates possessed with B.Sc. Forestry qualification is a matter of prescription and not mere preference. The nature of this prescription to rank the B.Sc. Forestry qualified candidates as a first choice cannot be said to be arbitrary, keeping in view the nature of post which is that of a Forest Apprentice. It is no doubt true that equivalent qualifications are mentioned, but the proviso to the Rule gives an option to the employer to have a B.Sc. Forestry qualified candidate as the first choice. This is not to prohibit or exclude candidates having equivalent qualifications, inasmuch as they can still be offered appointment in the event there are no candidates available with B.Sc. in Forestry degrees. This, in our opinion, is neither arbitrary nor discriminatory, as the B.Sc. in Forestry qualified candidates are classified as candidates of first choice, which classification has a rational nexus to the nature of employment. The word "OR" occurring in the qualification column in Rule 5 has to be read with the proviso that establishes the intention of a first choice of candidates possessed of the B.Sc. Degree qualification and thereafter the candidates possessed of the alternative qualifications. The candidates possessed of educational qualifications specified in (a) and (b) prescribed in Rule 5, even though are treated equal, yet a priority of choice in selection is specified through the proviso thereunder. Thus even though the academic qualifications are equally positioned, the rule authorises the State to select candidates possessed of B.Sc. In Forestry Degree by way of a first choice.

19. The PSTM category candidates with equivalent qualifications are not excluded from consideration and where the language of the statute is clear, a rule of preference cannot

override the Special Rules for selection which hold the field and which has not been challenged.

20. The aforesaid construction, as interpreted by us, does not violate the harmonious construction principle, as the post for which selections are being held, being posts relating to the Forest Department, deserve candidates who are possessed of the Degree in Forestry. To provide for an alternative qualification therefore does not eliminate the status of preference of the appellants who are possessed of alternative qualifications.

21. We may further add that Clause 6(B)(3) and Clause 10 of the advertisement are in consonance and in tune with the letter and intent of the proviso to Rule 5 of the Special Rules and consequently, cannot be declared to be either ultra vires or be struck down more so when the parent Rules have not been challenged.

22. Learned counsel for the Tamil Nadu Public Service Commission has conceded that the word "reservation" used in Clause 12(B) is erroneous, as 20% of the benefit is by way of preference which is also the argument of the learned Additional Advocate General. We accept the submission of the learned Additional Advocate General that preference is not reservation in the context of the present Rules, where Rule 5 of the Tamil Nadu Forest Subordinate Service Rules will prevail in matters of selection and appointment.

23. The word "prefer" means to place before or to have greater value. It is a priority, where a claim ranks first for settlement. This, in service law, has been interpreted by the Supreme Court in a couple cases, reference be had to the judgment in the case of Secretary, A.P. Public Service Commission, Y.V.V.R.Srinivasulu and others, (2003) 5 SCC 341, where it was held that the enforcement of a preferential clause in selection will mean only that other things being equal, those with the additional qualification can be preferred. This was followed by the Apex Court in the case of G.Jayalal v. Union of India and others, (2013) 7 SCC 150, wherein in paragraph (15), the Court reiterated the view expressed in the judgment referred to above.

24. The line of decisions of the Apex Court lay down the ratio as follows:

- (i) In Sher Singh v. Union of India, (1984) 1 SCC 107, the Apex Court examined the provisions of Section 47(1) of the Motor Vehicles Act, 1939 providing for preference to the State Transport Undertaking by grant of permit and explained the

meaning of 'preference' as under:

"7. The expression 'preference' amongst others means prior right, advantage, precedence etc. But how would it be possible to give precedence one over the other. It signifies that other things being equal, one will have preference over the others. Preference in this context would mean that other things generally appearing to be qualitatively and quantitatively equal though not with mathematical accuracy, statutory provision will tilt the balance in favour of the Undertaking."

(ii) In Government of Andhra Pradesh v. P.Dilip Kumar, (1993) 2 SCC 310, the Apex Court held as under:

"13. The matter may be looked at from another viewpoint. The word 'preference' as understood in ordinary parlance means preferring or choosing as more desirable, favouring or conferring a prior right. What then is the purpose and object sought to be achieved by the insertion of the preference clause in the rule? There is no doubt that preference was sought to be granted under Note 1 to post-graduates in the larger interest of the administration. How would the interest of the administration be served by granting preference to post-graduates? It is obvious that it was thought that on account of their higher mental equipment the quality of performance that the State will receive from highly qualified engineers would be better and of a high order. In other words the State considered it necessary to strengthen the engineering service by recruiting post-graduates to the extent available so that the State may benefit from their higher educational qualifications and better performance. If this was the objective surely it would not be realised unless post-graduates are treated as a class and given preference en bloc over the graduates.

15. It is true that notwithstanding the preference rule it is always open to the recruiting agency to prescribe a minimum

eligibility qualification with a view to demarcating and narrowing down the field of choice with the ultimate objective of permitting candidates with higher qualifications to enter the zone of consideration. It was, therefore, held that screening a candidate out of consideration at the threshold of the process of selection is neither illegal nor unconstitutional if a legitimate field demarcating the choice by reference to some rationale formula is carved out. Thus the challenge based on Articles 14/16 of the Constitution was repelled."

(iii) In *Secretary (Health), Department of Health and F.W. v. Anita Puri*, (1996) 6 SCC 282, the question raised before the Apex Court was answered as follows:

"7. When an advertisement stipulates a particular qualification as the minimum qualification for the post and further stipulates that preference should be given for higher qualification, the only meaning it conveys is that some additional weightage has to be given to the higher qualified candidates. But by no stretch of imagination it can be construed to mean that a higher qualified person automatically is entitled to be selected and appointed. In adjudging the suitability of person for the post, the expert body like Public Service Commission in the absence of any statutory criteria has the discretion of evolving its mode of evaluation of merit and selection of the candidate. The competence and merit of a candidate is adjudged not on the basis of the qualification he possesses but also taking into account the other necessary factors like career of the candidate throughout his educational curriculum, experience in any field in which the selection is going to be held, his general aptitude for the job to be ascertained in course of interview, extracurricular activities like sports and other allied subjects, personality of the candidate as assessed in the interview and all other germane factors which the expert body evolves for assessing the suitability of the

candidate for the post for which the selection is going to be held."

(iv) In *Executive Officer v. E.Tirupalu*, (1996) 8 SCC 253, the Apex Court held that where rules provide for preference to a particular class of candidates, that preference under the Rules cannot be applied irrespective of the merit of candidates, the inmates have to be given appointment. It means that the merit of the candidates being equal, preference would be given to the inmates of the class which is to be given preferential right and it certainly does not mean an automatic appointment without considering the cases of other candidates. Therefore, even if the rules provide for preferential right, candidates having such subjects would have preferential right only when they complete with other candidates and are found on equal footings, otherwise not.

(v) In *State of Uttar Pradesh v. Om Prakash*, AIR 2006 SC 3080, after considering the earlier judgments on the issue, the Apex Court held that the word "preference" would mean that when the claims of all candidates who are eligible and who possess the requisite educational qualification prescribed in the advertisement are taken for consideration and when one or more of them are found equally positioned, then only the additional qualification may be taken as a tilting factor, in favour of the candidates vis-a-vis others in the merit list prepared by the Commission.

25. In the instant case selective preference for PSTM Category is available against 20% seats as per Act No.40 of 2010 but that cannot override the specific rule of selection as observed above. The preferential rule cannot be given effect to amongst the (a) category candidates because unfortunately the course of B.Sc. in Forestry is not taught in the Tamil Medium in any institution. Thus it is only when the candidates of (a) category qualification are exhausted, that the rule of preference for PSTM candidates can be pressed into service due to this peculiar situation.

26. Having held so, it is not necessary for us to delve into any other argument advanced and we therefore uphold the ultimate view taken by the learned Single Judge, subject to what has been said herein above.

27. The appeals, accordingly, fail and are hereby dismissed. No costs. Consequently, C.M.P.Nos.6444 and 6447 of 2020 are closed.

Sd/-
Assistant Registrar (CS-III)

//True copy//

Sub Assistant Registrar

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To

1.The Secretary to Government,
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Chennai - 600 009.

2.The Secretary to Government,
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3.The Secretary,
Tamil Nadu Public Service Commission,
TNPSC Road, V.O.C. Nagar,
Part Town, Chennai-600 003.

+2cc to Mr.N.Balamurali Krishnan, Advocate SR.No.31610, 31611

+1cc to M/s.C.Uma, Advocate SR.No.31569

+1cc to Special Government Pleader (Forest) SR.No.31549

W.A.Nos.402 and 403 of 2020

EV (CO)
GMY (22/10/2020)

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