

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on 11.02.2020	Delivered on 14.02.2020
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CORAM:

THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH
W.P.Nos.22670 of 2019 & 113 of 2020
and
WMP Nos.22149/2019 & 137/2020

A.Babu Prasanth ... Petitioner in Both WPs

.vs.

1.The Secretary,
Tamil Nadu Public Service Commission,
TNPSC Toad, V.O.C.Nagar,
Park Town,
Chennai-600 003.

2.The Controller of Examinations,
Tamil Nadu Public Service Commission,
TNPSC Road, V.O.C.Nagar,
Park Town,
Chennai 600 003.

3.Tmt.S.Selvakumari,
Headmistress,
Chennai Girls Higher Secondary School,
2-A, School Road, Perambur,
Chennai 600 011.

.Respondents
in W.P.No.22670/2019

1.The State of Tamil Nadu,
Rep.by its Principal Secretary to Government,
Revenue and Disaster Management Department,
Secretariat, Fort St.George,
Chennai 600 009.

2.The Secretary,
Tamil Nadu Public Service Commission,
TNPSC Toad, V.O.C.Nagar,
Park Town,
Chennai-600 003.

3.The Controller of Examinations,
Tamil Nadu Public Service Commission,
TNPSC Road, V.O.C.Nagar,
Park Town,
Chennai 600 003.

4.Tmt.S.Selvakumar,
Headmistress,
Chennai Girls Higher Secondary School,
2-A, School Road, Perambur,
Chennai 600 011.

5.Mr.S.Sathish Kumar,
(TNPSC Roll No.:010133011)
Probationary Deputy Collector,
Collectorate,
Thanjavur 613 010.

.. Respondents
in W.P.No.113/2020

Prayer in W.P.No.22670 of 2019 : Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, directing the respondents to validate the answer sheet for Paper-III Main Written Examination conducted by Respondent Tamil Nadu Public Service Commission on 15.10.2017 and to consider the Petitioner for selection to the post of Deputy Collector by allowing him to undergo the process of selection including interview based on the marks secured by the Petitioner in the Main Written Examination, in pursuant to the Notification No.19/2016 dated 09.11.2016 issued by the 1st Respondent, within a time frame to be fixed by this Court.

Prayer in W.P.No.113 of 2020 : Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the records relating to the impugned final selection list to the post of Deputy Collector in No. Nil dated 20.02.2019 issued by the 2nd respondent and to quash the same insofar as non-consideration of the petitioner for selection and consequently directing the respondents 1 to 3 to consider the petitioner for selection to the post of Deputy Collector by allowing him to undergo the process of interview based on the marks secured by him in the Written Examination in pursuant to Notification No.19/2016 dated 09.11.2016 issued by the 2nd respondent, by validating the answer sheet for Paper-III Main Written Examination held on 15.10.2017, with all consequential and other attendant benefits.

For Petitioner : Mr.R.Vidhuthalai
(both WPs) Senior Counsel
for Mr.G.Sankaran

For Respondents: Ms.C.N.G.Niraimathi
Standing counsel

[for R 1 & R 2 in W.P.No.22670/2019]

[for R 2 & R 3 in W.P.No.113/2020]

COMMON ORDER

The issue involved in both the Writ Petitions are common and therefore both the writ petitions are taken up together and this common judgment is passed.

2.The petitioner who had an excellent academic background, wrote the Group-I examination conducted by The Tamil Nadu Public Service Commission [hereinafter referred to as "TNPSC"] in the year 2012-2014. He secured the 30th rank and was selected to the post of Deputy Superintendent of Police [Category-I] and the petitioner is presently undergoing practical training. The petitioner wanted to make another attempt since he was aspiring for the post of Deputy Collector. The petitioner therefore, again wrote Group-I examination conducted during the year 2014-2015 and he once again became eligible for the post of DSP. Since the petitioner was already holding the post, he did not take up the offer.

3.The TNPSC again issued a Notification in the year 2016 inviting applications for direct recruitment to various posts including the post of Deputy Collector. The petitioner applied for the selection and he cleared the preliminary examination. Thereafter, the petitioner was called to appear for the main examination. The written examination was conducted on three days viz., 13, 14 and 15 of October 2017. The petitioner wrote the examinations on 13 and 14 of October 2017. During the IIIrd examination on 15.10.2017, the petitioner had struck out a few answers which were wrongly written without reference to the relevant page allotted to the question. While he struck off the answers, it is alleged that the Invigilator present in the examination hall instructed the petitioner to put his signature. The petitioner claims that he refused to do so on the ground that it will result in his disqualification. However, the Invigilator insisted the petitioner to sign on the page where he had struck out the answer and left with no other option, the petitioner had also put his short signature.

4.The petitioner had thereafter made representations to TNPSC and informed them that he was forced to put his signature due to the insistence of the Invigilator. However, there was no response for the representations. Ultimately, TNPSC published the provisional list of candidates short listed for the oral test and the name of the petitioner was not included in the selection list. Thereafter, the final results were also published by TNPSC on 20.02.2019. The petitioner having missed his opportunity in the present selection, has filed the above Writ Petitions before this Court.

5.W.P.No.22670/2019, has been filed for a direction to the TNPSC to validate the answer sheet of Paper-III written examination and to permit the petitioner to undergo the process of selection. W.P.No.113/2020 has been filed challenging the final selection list to the post of Deputy Collector and for permitting the petitioner to participate in the selection to the post of Deputy Collector.

6.The TNPSC has filed a counter affidavit in both the writ petitions. A stand has been taken in the counter affidavit to the effect that the Notification clearly provided that writing names or signing in the answer book is considered to be a valid ground for invalidation of the candidature and this is known to the petitioner who is taking up this examination for the third time. A further stand has been taken by the TNPSC to the effect that the petitioner is throwing the blame on the Invigilator only to wriggle out of the situation and to justify the violation that was committed by him by signing his name in the answer sheet. The conditions prescribed in the Notification cannot be diluted and the petitioner has to necessarily face the consequence for violating the condition.

7.This Court raised a query to the TNPSC to inform this Court as to whether any enquiry has been conducted after the representations were given by the petitioner and also provide with the details of the number of candidates who were disqualified on the same ground.

8.The learned Standing Counsel for TNPSC produced the statements/letters given by the Invigilator and the Chief Invigilator, who were present in the Centre, in a sealed cover. They have stated that the petitioner had struck out some of the pages in the answer book and he was also putting his full signature on the page which were struck off. On seeing the same, the Invigilator informed the petitioner that he should only put his short signature. Therefore, the petitioner had put his short signature in the papers which were struck off. The Chief Invigilator and the Invigilator have expressed their regret for what had happened in the examination hall. It is clear from the stand taken by them that they asked the petitioner to put his short signature since he had already struck down the pages and was also putting his full signature.

9.Insofar as the query raised by this Court regarding the number of cases where the candidates were disqualified, the following details were given in the counter affidavit and the same is extracted hereunder.

"13.It is submitted that totally 133 papers were invalidated. The details of which

are given below:

S.No .	Nature of Violations	Paper-I	Paper-II	Paper-III
1	Usage of Pencil violating instruction 22 (II) (1) (II)	13	6	1
2	Double colour Violating instruction 22 (II) (1) (I) & 22 (II) (1) (II)	19	12	11
3	Name/Signature/Reg.No. written Violating instruction 22 (II) (1) (III) & 22 (II) (1) (IV)	5	11	12
4	Religious symbol used Violating instruction 22 (II) (1) (IV)	2	1	-
5	Appeal to Examiners Violating instruction 22 (II) (1) (V)	4	-	-
6	Impertinent Remarks/Irrelevant matters/irrelevant Remarks Violating instruction 22 (II) (1) (VI)	11	9	6
7	Written partly in English and partly in Tamil Violating instruction 22 (II) (1) (VIII)	1	8	1
	Total	55	47	31

14. It is further submitted that Paper-III of the candidate Thiru.A. Babu Prasanth was invalidated for having violated the instruction 22 (II) (1) (IV). Similarly, the papers of 28 candidates were also invalidated for the same identical reason i.e., for mentioning their name, signature, Register Number in their answer scripts.

The details are given as follows:-

S.No .	Name/Signature/Reg.No. written Violating Instruction 22 (II) (1) (III) & 22 (II) (1) (IV)	Paper-I	Paper-II	Paper-III	Total
1	Full Signature	3	6	6	15
2	Short Signature	-	3	4	7
3	Identical with that of the petitioner	2	1	-	3
4	Register Number revealed	-	1	-	1
5	Impertinent remarks along with name	-	-	1	1
6	Enclosed copy of hall ticket	-	-	1	1

10. The respondents have therefore submitted that whoever violated the conditions prescribed in the Notification, have been disqualified and that the petitioner has not been singled out. Therefore, the respondents have sought for the dismissal of the writ petitions.

11. Mr. R. Vidhuthalai, learned Senior Counsel appearing on behalf of the petitioner submitted that the Invigilator has been made as a party in the writ petition and she has not chosen to contest the writ petition and therefore the allegations made against her must be taken to be correct. The learned Senior Counsel further submitted that TNPSC is talking on behalf of the Invigilator and it was a one sided enquiry where the petitioner was not even called during enquiry and TNPSC has come to the conclusion by hearing one side of the story. The learned Senior Counsel submitted that the Invigilator was insisting that the petitioner put the short signature in the pages which were struck down. The petitioner was resisting the same since he knew that it will result in his disqualification. However, the Invigilator pressurized the petitioner and the petitioner did not want to get into a quarrel with the Invigilator and therefore was forced to put his short signature in the pages that had been struck off. The learned Senior Counsel by bringing to the notice of this Court, Clause VI of the General Instructions submitted that if the petitioner had entered into a quarrel of any kind with the Invigilator, the petitioner would have been subjected to severe action including criminal action. Therefore, the petitioner did not want to take a chance. The learned Senior Counsel submitted that the petitioner had raised this issue on the same day on which he had written the

examination and that itself shows that the petitioner was seriously representing his case to TNPSC not to disqualify him for a mistake committed by the Invigilator.

12.The learned Senior Counsel submitted that this Court must balance this Clause on the one hand and the Clause dealing with invalidation on the other and must direct the TNPSC to validate the paper, evaluate the same and assign marks to the petitioner. The learned Senior Counsel submitted that the petitioner has secured very high marks in the first two papers and that the petitioner has always had an outstanding academic career and the same must not be destroyed for the mistake committed by the Invigilator.

13.The learned Senior counsel further submitted that there has been a large scale disqualification that has taken place during the examination and the same requires a thorough enquiry and only the best candidates must be ultimately chosen and appointed as the Deputy Collector.

14.The learned Senior Counsel in order to substantiate his submissions relied upon the judgment of the Telangana High Court in W.A.Nos.1525 of 2018 Batch, dated 03.06.2019.

15.Per contra, the learned Standing Counsel appearing on behalf of the TNPSC, submitted that there are absolutely no merits in

the writ petition. The learned counsel submitted that the petitioner was well aware about the conditions stipulated in the Notification/Guidelines since this is the third time he is writing the examination and therefore, violation of the same will have to result in his disqualification. The learned counsel submitted that this Court cannot withdraw the condition and consider the case on sympathetic grounds. The learned counsel submitted that the instructions given to the candidates are mandatory and it has the force of law and therefore has to be strictly adhered to. To substantiate the said submission, the learned counsel relied upon the judgment of the Hon'ble Supreme Court in The State of Tamil Nadu & Ors .v. G.Hemalathaa & Another reported in [2019 (8) JT 416].

16.The learned Standing Counsel further submitted that the TNPSC had already conducted an enquiry of the Invigilators and steps are being taken to initiate action against them. The learned Standing Counsel further submitted that there is no requirement to give an opportunity to the petitioner during the enquiry conducted by TNPSC against the Invigilators and that there is no requirement to comply with the principles of natural justice in cases of this nature. In order to substantiate her submission, the learned counsel

relied upon the judgment of the Hon'ble Supreme Court in Karnataka Public Service Commission .v. B.M.Vijaya Shankar and Others reported in [(1992) 2 SCC 206].

17.The learned Senior Counsel further submitted that more than 4250 candidates participated in the examination and out of this, 133 papers were invalidated for various reasons that have been explained in the counter affidavit. The learned Standing Counsel concluded her arguments by submitting that the petitioner had improved his case at every stage and he is trying to throw the blame on the Invigilator. That apart, the selection is now complete and the postings have also been given and the petitioner waited till the final selection list was published and thereafter approached this Court and therefore, the writ petitions are also liable to be dismissed on the ground of delay.

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

19.The short issue that requires consideration of this Court is as to whether the act of the petitioner in putting his short signature in the answer sheet has to necessarily end up in his disqualification.

20.The Hon'ble Supreme Court in The State of Tamil Nadu & Ors .v. G.Hemalathaa & Another, referred supra has held as follows:

7. We have given our anxious consideration to the submissions made by the learned Senior Counsel for the Respondent. The Instructions issued by the Commission are mandatory, having the force of law and they have to be strictly complied with. Strict adherence to the terms and conditions of the Instructions is of paramount importance. The High Court in exercise of powers under Article 226 of the Constitution cannot modify/relax the Instructions issued by the Commission. *M.Vennila v.Tamil Nadu Public Service Commission*, (2006) 3 Mad.LJ 376.

8. The High Court after summoning and perusing the answer sheet of the Respondent was convinced that there was infraction of the Instructions. However, the High Court granted the relief to the Respondent on a sympathetic consideration on humanitarian ground. The judgments cited by the learned Senior Counsel for the Respondent in *Taherakhatoon (D) By LRs v. Salambin Mohammad2 and Chandra Singh and Others v. State of Rajasthan and Another3* in support of her arguments that we should not

entertain this appeal in the absence of any substantial questions of law are not applicable to the facts of this case.

9. In spite of the finding that there was no adherence to the Instructions, the High Court granted the relief, ignoring the mandatory nature of the Instructions. It cannot be said that such exercise of discretion should be affirmed by us, especially when such direction is in the teeth of the Instructions which are binding on the candidates taking the examinations.

10. In her persuasive appeal, Ms. Mohana sought to persuade us to dismiss the appeal which would enable the Respondent to compete in the selection to the post of Civil Judge. It is a well-known adage that, hard cases make bad law. In *Umesh Chandra Shukla v. Union of India* (1985) 3 SCC 721 Venkataramiah, J., held that:

"13.... exercise of such power of moderation is likely to create a feeling of distrust in the process of selection to public appointments which is intended to be fair and impartial. It may also result in the violation of the principle of equality and may lead to arbitrariness. The cases pointed out by the High Court are no doubt hard cases, but hard cases cannot be allowed to make bad law. In the circumstances, we lean in favour of a strict construction of the Rules and hold that the High Court had no such power under the Rules.

11. Roberts, CJ. in *Caperton v. A.T. Massey* 556 U.S.868 (2009) held that:

"Extreme cases often test the bounds of established legal principles. There is a cost to yielding to

the desire to correct the extreme case, rather than adhering to the legal principle. That cost has been demonstrated so often that it is captured in a legal aphorism: "Hard cases make bad law."

12. After giving a thoughtful consideration, we are afraid that we cannot

approve the judgment of the High Court as any order in favour of the candidate who has violated the mandatory Instructions would be laying down bad law. The other submission made by Ms. Mohana that an order can be passed by us under Article 142 of the Constitution which shall not be treated as a precedent also does not appeal to us.

21. It is clear from the above judgment that the Hon'ble Supreme Court has laid down the law to the effect that the instructions issued by the Service Commission are mandatory and it has the force of law and it must be strictly complied with. The Hon'ble Supreme Court has also cautioned High Courts not to exercise its powers under Article 226 of the Constitution of India and modify/relax the instructions issued by the Service Commission. The Hon'ble Supreme Court has further held that even in extreme cases, such discretion must not be exercised.

22. In the present case, the petitioner had qualified for the main examination which consisted of three papers. The written examinations were held on 13.10.2017, 14.10.2017 and 15.10.2017. The petitioner had also written the first two papers and he appeared for the third examination on 15.10.2017. The TNPSC had brought in a new procedure wherein, the candidates will have to write the answers for the relevant questions only in the correct page allotted for the question. This process of pagination was introduced for the first time. It is the case of the petitioner that he had written some answers without reference to the relevant page allotted to the question and therefore, he had to strike out the page in order to write the answer in the correct page allotted for the question. It is the case of the petitioner that the Invigilator insisted the petitioner to put his short signature since no blame should fall on the Invigilator that it was struck down later by someone else. The petitioner is said to have resisted the same and the Invigilator has insisted that he put his short signature. Ultimately, the petitioner had put the short signature on the pages of the answer sheet which was struck down by him.

23. The learned Senior Counsel appearing on behalf of the petitioner submitted that even though this is the third occasion the petitioner was writing the examination, this concept of pagination was introduced for the first time only in the year 2017-2018 and therefore, it was new even for the petitioner.

24. The petitioner has been making representations to TNPSC right from the day of the examination about the fact

that he had put the signature only on the insistence of the Invigilator.

25. It is brought to the notice of this Court that in two other papers that was written by the petitioner, he had secured very high marks and therefore, the petitioner was confident that he will secure high marks in the third examination as well and that he will get the post of Deputy Collector.

26. Based on the representations made by the petitioner, TNPSC had conducted an enquiry. Both the Invigilator and the Chief Invigilator have accepted the fact that the petitioner was made to put the short signature since he was in the process of putting his full signature. The Invigilators are supposed to know the instructions thoroughly and they should actually guide the candidates correctly. It is not known as to why the Invigilator asked the petitioner to put his short signature when as per the instructions, a candidate is not supposed to put his signature in the answer sheet. Therefore, what becomes clear from the explanation given by the Invigilator is that the Invigilator had also asked the petitioner to put his short signature. Of course, the Chief Invigilator and Invigilator have regretted for this.

27. According to the petitioner, he was not able to resist the Invigilator after a particular point of time since it would have resulted in a quarrel and the same would have also resulted in severe action being taken against the petitioner. This is also provided in the instructions given to candidates.

28. The next question is whether the petitioner should also be given an opportunity at the time of enquiry conducted by TNPSC on the Invigilator and the Chief Invigilator.

29. The Hon'ble Supreme Court has dealt with this issue in Karnataka Public Service Commission case, referred supra. The relevant portions of the judgment is extracted hereunder:

2. Power and authority of the Commission to hold examinations, regulate its working and functioning, take action against erring candidates guilty of misconduct are all provided for by the rules and instructions issued in exercise of power conferred by the statutes. The claim of the candidates that they did not vest any right in the Commission to take such action was negated by the

Tribunal. But it faulted in inferring that no penalty was provided for breach of instructions requiring a candidate not to write his roll number inside the answer book. Relevant clause (1) of the Instructions to Candidates is extracted below:

"Before commencing your answers please write your register number and other particulars in the space provided above. Do not write your name or register number or sign anywhere in the answer book or on any loose sheets, such as precis sheets, maps, graph papers, etc."

It is not disputed and it was found, even, by the Tribunal that it was printed on the first page of, every, answer book. Its observance was mandatory and its disregard was punishable as is clear from instructions (xii) and (xiii) of General Instructions to the candidates which are extracted below:

"(xii) The candidates must abide by such instructions as may be specified on the cover of the answer book or any further instructions which may be given by the Supervisor/Invigilator of the examination.

(xiii) If the candidates fail to do so or indulge in disorderly or improper conduct, they will render themselves liable to expulsion from examination and/or such other punishment as the Commission may deem fit to impose."

Is the expression, 'such other punishment as the Commission may deem fit to impose' vague and thus arbitrary? We do not think so. Read with clause (xii) it presents no difficulty. It provides action for breach of that which is, clearly, specified. It cannot be characterised as vague. And then any capricious exercise of power can always be assailed. More important than this is that provisions attempting to infuse discipline in competitive examinations to be conducted by the Commission cannot be construed with same yardstick as a provision in penal statutes. Moreover the Commission did not impose any penalty on the candidates. Their examination was not cancelled nor they were debarred from taking any examination conducted by the Commission for that year or any year, in

future. Their marks in papers, other than those in which they were found to have acted in disregard of instructions were declared. The only action taken was that those answer books in which roll numbers had been written inside were not subjected to evaluation. In our opinion there was nothing, basically, wrong in it. The Commission did not treat it as misconduct. The action could not be termed as arbitrary. Nor it was abuse of power which could be corrected by judicial review.

3. Such instructions are issued to ensure fairness in the examination. In the fast deteriorating standards of honesty and morality in the society the insistence by the Commission that no attempt should be made of identification of the candidate by writing his roll number anywhere is in the larger public interest. It is well known that the first page of the answer book on which roll number is written is removed and a fictitious code number is provided to rule out any effort of any approach to the examiner. Not that a candidate who has written his roll number would have approached the examiner. He may have committed a bona fide mistake. But that is not material. What was attempted to be achieved by the instruction was to minimise any possibility or chance of any abuse. Larger public interest demands insistence of observance of instruction rather than its breach.

4. Was natural justice violated? Natural justice is a concept which has succeeded in keeping the arbitrary action within limits and preserving the rule of law. But with all the religious rigidity with which it should be observed, since it is ultimately weighed in balance of fairness, the courts have been circumspect in extending it to situations where it would cause more injustice than justice. Even though the procedure of affording hearing is as important as decision on merits yet urgency of the matter, or public interest at times require flexibility in application of the rule as the circumstances of the case and the nature of the matter required to be dealt may serve interest of justice better by denying opportunity of hearing and permitting the person concerned to challenge the order itself on merits not for

lack of hearing to establish bona fide or innocence but for being otherwise arbitrary or against rules. Present is a case which, in our opinion, can safely be placed in a category where natural justice before taking any action stood excluded as it did not involve any misconduct or punishment.

5. Competitive examinations are required to be conducted by the Commission for public service in strict secrecy to get the best brain. Public interest requires no compromise on it. Any violation of it should be visited strictly. Absence of any expectation of hearing in matters which do not affect any interest and call for immediate action, such as the present one, where it would have delayed declaration of list of other candidates which would have been more unfair and unjust are rare but well recognised exceptions to the rule of natural justice. It cannot be equated with where a student is found copying in the examination or an inference arises against him for copying due to similarity in answers of number of other candidates or he is charged with misconduct or misbehaviour. Direction not to write roll number was clear and explicit. It was printed on the first page of every answer book. Once it was violated the issue of bona fide and honest mistake did not arise. Its consequences, even if not provided did not make any difference in law. The action could not be characterised as arbitrary. It was not denial of equal opportunity. The reverse may be true. The Tribunal appears to have been swayed by principles applied by this Court where an examinee is found copying or using unfair means in the examination. But in doing so the Tribunal ignored a vital distinction that there may be cases where the right of hearing may be excluded by the very nature of the power or absence of any expectation that the hearing shall be afforded. Rule of hearing has been construed strictly in academic disciplines. It should be construed more strictly in such cases where an examiner is competing for Civil Service post. The very nature of the competition requires that it should be fair, aboveboard and must infuse confidence. If this is ignored then, as stated earlier, it is not only against public interest but it also erodes the social sense

of equality. The Tribunal in issuing directions approached the matter technically and has attempted to make out much where it would have been better part of discretion to refuse to interfere. The Tribunal completely misdirected itself in this regard. In our opinion its order cannot be maintained.

30. It is clear from the above judgment that in cases of this nature involving examinations conducted by the Service Commission, natural justice principle before taking any action, stood excluded as it did not involve any misconduct or punishment. In view of this judgment, it is clear that the Service Commission need not call the petitioner for the enquiry and it is enough if the complaint given by the petitioner has been acted upon and an enquiry was conducted with the Invigilator and the Chief Invigilator.

31. It is seen from the counter affidavit filed by the TNPSC that 133 papers were invalidated for various violations and there are also cases where candidates had put their full signature or short signature and consequently their papers were also invalidated.

32. At this juncture, it is necessary to consider the judgment cited by the learned Senior Counsel which was passed by the Telangana High Court.

33. The Division Bench of the Telangana High Court in G. Rekha .v. Mr. Ramachandra Reddy & 14 Others, referred supra was considering a case where the Service Commission had goofed-up in the conduct of the examination and the same became a subject matter of challenge. While considering the case, the Division Bench of the Telangana High Court had taken note of the fact that there was large scale violation. While considering the same, the Division Bench also took into consideration a situation where mistakes were committed due to wrong handling by the Invigilators. The relevant portions of the judgment is extracted hereunder:

"61. In fact, we must bear in mind (i) the distinction between cases where candidates commit a breach of instructions, wholly due to their own faults and cases where mistakes happen due to the wrong administrative handling by the invigilators; and (ii) the distinction between cases where candidates, guilty of committing mistakes, come to Court and seek reliefs and cases where the Public Service Commissions take a call whether to disqualify those candidates or to evaluate their answer sheets.

62. In the cases on hand, the invigilators in some of the examination centres were at fault. Secondly, in the cases on hand, the Public Service Commission had taken a decision not to disqualify these candidates but to evaluate their answer sheets.

63. While Courts have no power to direct the Experts Bodies, like the Public Service Commission, to evaluate the answer sheets of candidates who committed mistakes, the same thing cannot be said about the Public Service Commission, as they have the power to undo any damage. The parameters for testing whether the answer sheets of a candidate should be evaluated despite the mistakes committed by him, are completely different from the parameters for testing whether a policy decision taken by the Public Service Commission to do complete justice, is correct or not. In the case on hand, we have had an example of both these types. Immediately after the conclusion of the written VRS, J&PKR, J W.A.No.1525 of 2018 & Batch examinations in November, 2016, a few candidates came to this Court and filed W.P.No.3862 of 2017 seeking a direction to the Public Service Commission to evaluate their answer sheets, despite the mistakes committed by them. This Court rejected their request, without even being aware of the constitution of a Technical Committee and the report submitted by them. But, later the Public Service Commission took a policy decision, not arbitrarily but on the basis of a report of the Technical Committee, examined by a Sub-Committee of the Public Service Commission. This Technical Committee comprised of outside Experts in the field of Education, who were not members of the Public Service Commission. Therefore, the parameters for testing the grievance aired in W.P.No.3862 of 2017 were completely different from the parameters for testing the correctness of the policy decision taken by the Public Service Commission on the basis of the report of the Technical Committee. Hence, the decisions relied upon by the respondents, which refused relief to candidates, who approached the Courts after being guilty of mal-practices, are not of any assistance to the respondents."

34. The Division Bench of the Telangana High Court has held that the mistake that has happened due to wrong administrative handling by the Invigilators should not be put against the candidates. The Division Bench drew a distinction between cases where the candidates commit a mistake and cases where the mistake happened due to wrong administrative handling by the Invigilators. In the later cases, the Division Bench has held that the Public Service Commission should take a call and handle the situation and must evaluate the answer sheets where the mistakes had happened due to the Invigilator.

35. In the present case, the petitioner has sought for a detailed enquiry with regard to all the disqualifications that has happened in order to see if the wrong guidance given by the Invigilators has resulted in invalidation of the papers. This Court does not want to go through the process as suggested by the petitioner since no one else has approached this Court making similar complaints. Therefore, this Court instead of conducting a roving enquiry, wants to confine itself to the case of the petitioner.

36. The only reason why a stipulation is made in the instructions to the effect that a candidate should not put his signature in the answer sheet, is only to ensure that there is no identity in the answer sheet when it reaches the hands of the concerned invigilator who corrects the paper. The instructions make it clear that any such marks in the answer sheet will result in invalidation of the paper. This must be followed strictly to ensure that secrecy is maintained with regard to the candidate when the paper reaches the person, who evaluates the answer sheet. In the present case, due to the fiasco, the signature of the petitioner is found in the answer sheet and today there is a clear identity for the answer sheet. If this was the result of the mistake committed by the petitioner, this Court would have straightaway dismissed this writ petition without any further discussion. However, it is found that the mistake has happened due to the wrong handling of the situation by the Invigilator. The Invigilator in the examination hall should not have asked the petitioner to put his short signature in the answer sheet. It looks very artificial on the part of the Invigilator to take a stand that she saw the petitioner putting his full signature and therefore she insisted the petitioner put the short signature. The Invigilator was aware of the fact that no signature must be put in the answer sheet and if the petitioner had really put his full signature in the pages that was struck out by him, the Invigilator should have left it as it is since, anyway, the paper will be invalidated. The Invigilator has made such a statement in the enquiry only to wriggle out of the situation. The petitioner had been complaining about this to the TNPSC right from the day of the examination and

therefore it is not as if the petitioner all of a sudden came up with such a complaint.

37. It is seen from records that the petitioner has had an excellent track record in academics and in fact he appeared for Group-I examinations on the first two occasions and he was selected as DSP. The petitioner was aiming to become a Deputy Collector and therefore he made another attempt and came upto the main examination. It is also brought to the notice of this Court that the petitioner has secured 575 marks out of 900 in both the papers which he had written on 13.10.2017 and 14.10.2017. Therefore, there was no requirement for the petitioner to resort to any short cut method by making his identity in the third paper written by him. Therefore, in the considered view of this Court, TNPSC should have fairly taken a decision in the present case and sent the paper of the petitioner for evaluation. However, the same was not done and now the entire selection process is over and it is stated that the appointment have also been made and the entire 29 posts of Deputy Collector has been filled up. If the petitioner had approached this Court before the oral interview, some safeguard could have been given to ensure that the petitioner participates in the selection process. That stage has now crossed and this Court cannot direct TNPSC to now consider the selection of the petitioner. If that is done, the petitioner has to be accommodated in one of the sanctioned post and that will result in removing one of the candidate who has already been selected, in order to accommodate the petitioner. This would mean that the concerned candidate must be given an opportunity before any such adverse orders are passed. It will be beyond the powers of the TNPSC to create one more post in order to accommodate the petitioner.

38. This is an extreme case where the Court has been caught up in a very delicate position. On the one hand, the Court finds that the petitioner deserves to be considered for selection and on the other hand, this Court is not able to give any positive relief to the petitioner due to the peculiar facts and circumstances of the case. However, this Court cannot express its helplessness and deprive the petitioner of an opportunity to be considered for selection.

39. The State Government is the 1st respondent in the present writ petition. It is left to the State Government to see if any additional post of Deputy Collector can be created or is available to accommodate the petitioner, if in case he secures sufficient marks in Paper-III, and the petitioner also gets through the oral interview. This extreme relief is contemplated taking into account the sheer merit of the petitioner and the marks secured by him in the other two papers. Ultimately, the State must not loose the chance of

getting the services of a meritorious candidate as a Deputy Collector. The 1st respondent shall examine the same and pass orders within a period of two weeks from today. If the post can be created, the same shall be intimated to TNPSC and in the event the petitioner secures the required marks, he shall be sent for oral interview and if the petitioner comes out successfully, the petitioner can be accommodated in the post of Deputy Collector. This process shall be completed within a period of four weeks after TNPSC receives the instructions from the State Government.

40.The relief that has been given in the present case cannot be cited as a precedent in any case since it was given after considering the peculiar facts and circumstances of the present case and after considering the merits in favour of the petitioner.

Both the Writ Petitions are disposed of accordingly. No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

KP
To

1.The State of Tamil Nadu,
Rep.by its Principal Secretary to Government,
Revenue and Disaster Management Department,
Secretariat, Fort St.George,
Chennai 600 009.

2.The Secretary,
Tamil Nadu Public Service Commission,
TNPSC Toad, V.O.C.Nagar,
Park Town,
Chennai-600 003.

3.The Controller of Examinations,
Tamil Nadu Public Service Commission,
TNPSC Road, V.O.C.Nagar,
Park Town,
Chennai 600 003.

+1cc to M/s.CNG.Niraimathi, Advocate SR.12169
+1cc to M/a.G.Saravanan, Advocate SR.12821

W.P.Nos.22670/2019 & 113 /2020

RSV(CO)
CB(06/03/2020)