



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON:	01.04.2021
DELIVERED ON:	07.07.2021

WEB COPY

CORAM:

THE HONOURABLE MR.JUSTICE M.S.RAMESH

W.P. (MD) No.3355 of 2020

and

W.M.P. (MD) No.2811 of 2020

Geerthigaa

... Petitioner

Vs.

Tamil Nadu Public Service
Commission
rep. by its Secretary,
Park Town, VOC Nagar,
Chennai-600 003.

... Respondent

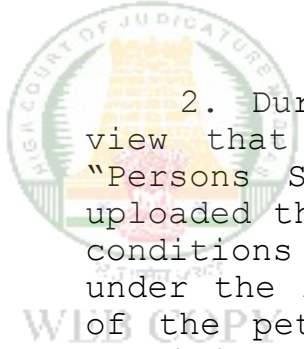
PRAYER: Petition filed under Article 226 of the Constitution of India to issue a Writ of Declaration, to declare the non-selection of the petitioner to the post in Combined Civil Service (Group Iv) during the counseling held on 19.02.2020 as illegal and consequently to direct the respondent to rectify the error in petitioner's online application pertaining to direct recruitment to the post in Combined Civil Service (Group IV) by way of changing the petitioner's community status as 'DNC' instead of 'BC' and consider the petitioner in the DNC category and permit the petitioner in Counseling which is held from 19.02.2020 in accordance with law within the time stipulated by this Court.

For Petitioner : Mr.R.Alagumani

For Respondent : Mr.Isaac Mohanlal, Sr. Counsel
for Mr.D.Sivaraman
Standing counsel for TNPSC

O R D E R

The petitioner had submitted On-line application to the Tamil Nadu Public Service Commission (TNPSC), pursuant to the recruitment notification No.19 of 2019 dated 14.06.2019 for the posts in Group-IV Services. The petitioner had taken part in the written examination. After publication of the results and based on the claim made in her On-line application, she was called upon to upload the documents between 05.12.2019 and 18.12.2019 to substantiate her claim made in the On-line application.



2. During the certificate verification, the TNPSC was of the view that the petitioner herein, had claimed reservation under "Persons Studied in Tamil Medium" (PSTM) category, but had not uploaded the PSTM Certificate. By placing reliance on the terms and conditions enumerated in the instructions to the candidates given under the recruitment notification dated 14.06.019, the candidature of the petitioner herein was rejected for non uploading of PSTM Certificate. The petitioner herein is aggrieved against her non selection in the present Writ Petition.

3. Heard the learned counsel for the parties.

4. The learned counsel for the petitioner submitted that based on the marks obtained in the written examination, the petitioner herein had qualified herself on merits in the open category. Just because the petitioner had mentioned her medium of instructions as 'Tamil' in her On-line application, she cannot be construed to have claimed reservation under PSTM category. On the other hand, the learned Senior counsel representing the learned Standing counsel for TNPSC, however, submitted that the uploading of the PSTM Certificate is mandatory as per the instructions given to the candidates in the recruitment notification and failure to adhere to the instructions, would result in summary rejection.

5. It is not in dispute that even if the petitioner had not been brought under the PSTM category, she would have qualified herself in the open category. The petitioner also claims that she had not sought for reservation under the PSTM category. In identical cases, this Court had dealt with the decision of the TNPSC in treating similarly placed candidates under PSTM category, only on the presumption that they had claimed reservation by referring to their medium of instructions as Tamil and this Court had allowed the Writ Petitions filed in **W.P.No.5812 of 2020 [M.Nisha V. The Secretary, TNPSC, Chennai and Another] & batch, dated 07.07.2021.** The relevant portion of the order reads as follows:

" 8. It is the case of all the petitioners herein that they had not claimed any special reservation under PSTM category and even without applying the reservation under PSTM category, they have qualified themselves in the open category for selection to the posts. This aspect has not been disputed by the learned Senior counsel appearing for the TNPSC.

9. The respondents are unable to substantiate as to on what basis, they had come to the conclusion that all these petitioners had claimed reservation under PSTM category. Merely because the On-line application provides for a column, calling upon the applicants to mention their medium of instructions, it cannot be construed as if these applicants had claimed reservation under the PSTM category. It is



reiterated that there is no column in the application, calling upon the candidates to exercise their option to claim reservation under PSTM category.

10. In all recruitment processes held by the Government or other Governmental bodies and where the rule of reservation is made applicable, irrespective of whether it is horizontal or vertical reservation, the recruiting authority cannot subject the candidates to the rule of reservation, just because they qualify themselves for such reservations. The method of recruitment adopted by the recruitment authorities ratifies this proposition, since the first stage of evaluating the On-line applications is on the merits in the open category for all the applicants universally and irrespective of whether they had qualified themselves for any horizontal or vertical reservation, their candidature was short listed in the open category on merits. For instance, a candidate may belong to Most Backward Caste or Scheduled Caste or Scheduled Tribe community and when he/she qualifies themselves in the open category, their candidature cannot be considered under the communal reservation. It is needless to point out the right for employment is a fundamental right as guaranteed under the Constitution of India and depriving such an opportunity would also be violative of Article 14 of the Constitution of India. This proposition has been reiterated by the Hon'ble Supreme Court in the case of **Ritesh R. Sah Vs. Dr.Y.L.Yamul & Others** reported in **1996 (3) SCC 253**.

11. In the instant case, when the petitioners have qualified themselves in the open category itself, there was no justification on the part of the TNPSC to treat them as candidates claiming reservation under PSTM category and insisting for production of a PSTM Certificate. Hence, the proper course that ought to have been adopted by TNPSC is to straight away to include the names of the candidates who had qualified themselves in the open merit category and ought not to have resorted to demand supporting testimonials for any kind of reservation which the candidates may or may not claim. In these circumstances, the reason assigned the reason assigned by the TNPSC for rejection of the petitioners' candidature is unjust and illegal."

6. Since the petitioner herein, is similarly placed as that of the candidates in the aforesaid Writ Petitions, the reason for rejection of her candidature on the ground that she had not uploaded the PSTM Certificate, cannot be sustained.



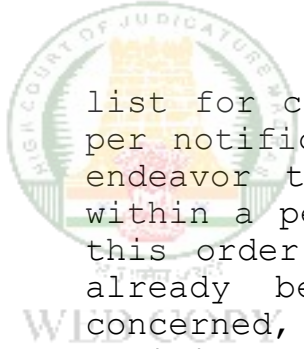
7. The learned Senior counsel for the TNPSC further submitted that, based on the interim order granted in the aforesaid Writ Petition, the petitioner was permitted to participate in the counselling process in Combined Civil Services Examination-IV (Group-IV) Recruitment 2018-2019 and 2019-2020 conducted by the Tamil Nadu Public Service Commission (TNPSC). However, the petitioner herein had belatedly approached the TNPSC to participate in the counselling process, by which time, the vacancies were already filled up and therefore her candidature is not feasible for selection. The dates on which this petitioner had approached the TNPSC reads as follows:-

SL. No.	WP (MD) No.	Date of Interim Order	Date when the Petitioner approached the Commission for counseling	Date when the Vacancies were filled up
1	3355/2020 S.Geerthiga	26.02.2020	04.03.2020	02.03.2020

Hence, the learned Senior counsel submitted that there are no vacancies for selection, since the petitioner had belatedly approached the Commission for counseling.

8. I am not in agreement with this submission. Firstly, when the interim orders were passed by this Court on 26.02.2020 in the case of the petitioner herein, there was no date stipulated by this Court for the petitioner to participate in the counseling on a particular date. Furthermore, the interim orders does not stipulate an outer time limit also. The interim orders of this Court evidences that the TNPSC was represented by their counsels when the orders were passed. It is not disputed that, pursuant to the interim orders of this Court, the petitioners herein had approached TNPSC for counselling. In all fairness, the TNPSC ought to have sought prior permission to fill up the vacancies or in the alternate, ought to have brought to the notice of this Court immediately of the fact that they have filled up the vacancies on the date prior when the petitioner herein had approached them for counseling. These mistakes on the part of the TNPSC cannot be put against the petitioner and thereby deprive her from the selection process. As such, the rejection of the petitioner's candidature on this ground also, cannot be sustained.

9. In the result, the above Writ Petition stands allowed. Consequently, the action of the TNPSC in rejecting the petitioner's candidature on the ground that she had not uploaded the PSTM Certificates relied upon by them in her On-line application, is declared as illegal. As a result, there shall be a direction to the TNPSC to include the name of the petitioner herein in the selection



list for counseling to the posts included in Group-IV Services, as per notification No.19 of 2019 dated 14.06.2019. The TNPSC shall endeavor to include the name of the petitioner herein, atleast, within a period of two weeks from the date of receipt of a copy of this order. In case, the TNPSC is of the view that the post has already been filled up insofar as the petitioner herein is concerned, one supernumerary post shall be created for this petitioner and her name shall be accordingly considered for inclusion in the selection process.

10. In fine, the Writ Petition stands allowed. Consequently, the connected Miscellaneous Petition is closed. There shall be no orders as to costs.

Sd/-

Assistant Registrar (AE)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

DP

To

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

+1 CC to M/s.R.ALAGUMANI, Advocate (SR-21778[F] dated 08/07/2021)

W.P. (MD) No.3355 of 2020
and
WMP. (MD) No2811 of 2020
07.07.2021

RC (16.07.2021) 5P-3C