



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date of Reserving the Judgment	Date of Pronouncing the Judgment
16.07.2021	27.07.2021

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CORAM:

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM
and
THE HONOURABLE MRS.JUSTICE S.ANANTHI

W.A. (MD) No.457 of 2021
and
C.M.P. (MD) Nos.1889 & 1890 of 2021

Pravin Kumar ... Appellant/Petitioner

-vs-

1.The State of Tamil Nadu
Rep.by its Principal Secretary
Home Department
Secretariat, Chennai-600 009

2.The Chairman
Tamil Nadu Uniform Service Recruitment Board
Old Commissioner of Police Office Campus
Egmore, Chennai-600 008

3.The Member Secretary
Tamil Nadu Uniform Services Recruitment Board
Old Commissioner of Police Office Campus
Egmore, Chennai-600 008

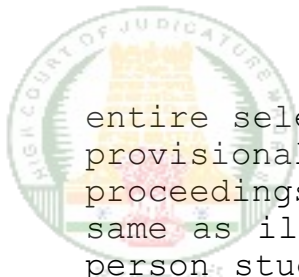
4.The Director General of Police
O/o.The Director General of Police
Dr.Radhakrishnan Salai
Chennai-600 004

... Respondents/Respondents

Writ Appeal filed under Clause 15 of Letters Patent to set aside the order, dated 19.02.2021, passed in W.P.(MD) No.3307 of 2021, on the file of this Court.

Prayer in WP(MD). 3307 of 2021 :

Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, to call for the records relating to the impugned notification issued by the third respondent vide notification No.2/2019 dated 08.03.2019 in so far as the applying the PSTM reservation after completion of the



entire selection process is concerned and the consequential impugned provisional selection list passed by the second respondent vide his proceedings RC.No.860/R2/TNUSRB/2019 dated 01.12.2020 and quash the same as illegal and consequently to direct the respondents to apply person studied with Tamil Medium-(PSTM) reservation at the stage of Viva Voce strictly in term of the G.O.Ms.No.145, Personnel and Administration Reforms(s) Department dated 30.09.2010 and consequently to consider the petitioner's candidature for appointment to the post of Sub Inspector of Police under PSTM category.

For Appellant : Mr.Henry Tiphagne
for Mr.R.Karunanidhi

For Respondents : Mr.Veera Kathiravan
Senior Counsel for State Government
for Mr.A.K.Manickam, Government Counsel

J U D G M E N T

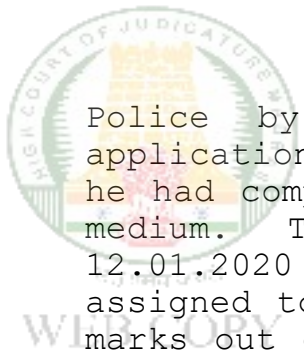
T.S.SIVAGNANAM, J.

This writ appeal by the writ petitioner is directed against the order, dated 19.02.2021 in W.P.(MD) No.3307 of 2021.

2. The appellant sought for issuance of a writ of certiorarified mandamus to quash the Notification issued by the third respondent in Notification No.2 of 2019, dated 08.03.2019 insofar as applying Persons Studied under Tamil Medium (PSTM) reservation after completion of the entire selection process is concerned and consequential provisional select list published by the second respondent vide proceedings dated 01.12.2020 and for a consequential direction to the respondents to apply PSTM reservation at the stage of viva voce strictly in terms of G.O.Ms.No.145, Personnel and Administrative Reforms(s) Department, dated 30.09.2010 and consequently, to consider the appellant's candidature for appointment to the post of Sub Inspector of Police under PSTM Category.

3. The appellant's case is that he completed his 10th Standard in the year 2008 from the Government Higher Secondary School, Thevaram, Theni District and completed his Higher Secondary Education in the year 2010 and thereafter, joined Bachelor of Civil Engineering Course at University College of Engineering, Nagercoil and completed the course in Tamil medium during April, 2015. Thereafter, he started preparing for the examinations conducted for various posts.

4. While so, on 08.03.2019, the Tamil Nadu Uniformed Services Recruitment Board ("the Recruitment Board" for brevity) called for applications for filling up 969 posts of Sub Inspector of



Police by direct recruitment. The appellant submitted his application on 01.04.2019 and enclosed the certificate to show that he had completed his Bachelor of Civil Engineering Degree in Tamil medium. The appellant participated in the written examination on 12.01.2020 and the results were published on 16.03.2020 and the rank assigned to the appellant was 2153. The petitioner had secured 50 marks out of 70 marks in the written examination and therefore, he was directed to participate in the physical fitness test, which was conducted on 01.10.2020. The appellant had cleared the physical fitness test and was directed to participate in the certificate verification on 14.10.2020.

5. Thereafter, on 01.12.2020, the Recruitment Board published the list of candidates, who are to be called for viva voce, in which the appellant's name was not found place. It is thereafter on verification, the appellant came to know that three similarly placed candidates had approached this Court and filed W.P. (MD) Nos.19112, 19121 and 19123 of 2020 for quashing the Notification No.2 of 2019 insofar as applying PSTM Reservation after completion of the entire selection process, which is similar to the prayer sought for by the appellant in the writ petition.

6. On 23.12.2020, an interim order was passed in the said writ petitions to the effect that PSTM reservation should be followed from the inception of the process of the recruitment and not in the final stage and noting the legal position, the Recruitment Board gave an undertaking that they would follow the same in the subsequent selections and the Court granted relief to those three writ petitioners to be permitted to participate in the viva voce. It is submitted that the appellant herein is also a similarly placed candidate as that of those three writ petitioners and the appellant has secured 62 marks in the MBC Category and the Recruitment Board has fixed the cut off mark for MBC General as 64 marks and if the appellant is considered as a PSTM candidate, he would definitely be eligible to participate in the viva voce.

7. Further, it is submitted that the appellant hails from a very humble background from a rural area and he performed excellently well in the Physical Endurance Test, he secured double star in rope climbing and 400 meters sprint and got one star in the long jump. The appellant had undergone his school education and the Bachelor of Civil Engineering Education in Tamil medium and the certificate to that effect has been enclosed along with the application. Therefore, it is submitted that the appellant should also be treated on par with those three writ petitioners and granted the relief.

8. The learned Single Bench by the impugned order dismissed the writ petition. Though the decision of the Honourable Division Bench in those writ petitions was taken note of, relief was denied



to the appellant on the ground that the Honourable Division Bench restricts the relief only to those writ petitioners and therefore, the appellant's case cannot be considered. The correctness of the said decision is called in question in this appeal before us.

9. We have elaborately heard Mr. Henry Tiphagne, learned counsel appearing for Mr. R. Karunanidhi, learned counsel for the appellant and Mr. Veera Kathiravan, learned Senior Counsel for the State Government for Mr. A. K. Manickam, learned Government Counsel for the respondents.

10. The Honourable Division Bench in W.P.(MD) Nos.19112 of 2020 etc. batch, dated 10.02.2021 (**M. Vigneswaran and others vs. State of Tamil Nadu and others**) has considered an identical prayer as that of the prayer sought for by the appellant in W.P.(MD) No.3307 of 2021. The legal question was answered by the Honourable Division Bench on the following terms:

"8. We have perused the judgments of the Division Bench relied upon by the respondents in **W.P.No.27005 of 2015 [D. Anbarasan v. Secretary to Government, Home Department, Secretariat, Chennai and Others]**; **W.P.No.23075 of 2015 [B. Velmurugan v. Secretary to Government, Home Department, Secretariat, Chennai and Others]**; and **W.P.No.332 to 334 of 2016 [K. Silamparasan and Others v. State of Tamil Nadu and Others]**, of which, one has been confirmed by the Hon'ble Apex Court.

9. As rightly submitted by the learned Senior Counsel appearing for the petitioners, unfortunately, the object and rationale behind the enactment has not been brought to the notice of the Court. The enactment, in its specified terms, justifies the classification sought to be made. This is, by taking note of the inequality, which is inherent in treating a candidate coming within the same communal roster having studied in English medium and Tamil medium. Therefore, there is no violation to Article 16 of the Constitution of India, nor the reservation policy of the State qua vertical reservation. Thus, we are inclined to hold that the Act by itself clearly thinks of a valid reservation, despite being a horizontal one.

10. Section 2 of the Act defines a preferential vacancy. These vacancies would only mean such vacancies available for Persons Studied in Tamil Medium. Therefore, these vacancies ought to be filled up through Direct Recruitment only



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with the Persons Studied in Tamil Medium alone. The mere fact that such persons are entitled to compete for the vacancies other than the preferential vacancies, would not make them to the extent of considering them along with the others, for the vacancies specifically earmarked for them. As per Section 6 of the Act, the others are entitled for such vacancies earmarked for the PSTM candidates only when they are unfilled. Therefore, Sections 2, 3(1), 5 & 6 of the Act are to be read in consonance. In this connection, we may note that Section 5 of the Act clearly states that reservation has to be made as per the law in force.

11. As stated, these provisions are not only in consonance with each other, but with respect to the roster point fixed. The State of Tamil Nadu has got its own unique roster point system. This is with respect to both horizontal and vertical reservation. In every reserved category coming under vertical reservation, there is a horizontal reservation such as Widow, Disabled and PSTM. These are all the disadvantaged class of persons forming a distinct category among the vertically reserved categories. The roster point has been fixed in the vertical category to be filled with such horizontal category candidates. As stated, this aspect has not been brought to the notice of the Hon'ble Division Bench in the earlier cases. Even otherwise, the law laid down by the Division Bench, though relied upon by the respondents, is not even being followed.

12. In fact, the respondents are actually following the rule of reservation, but at the final stage. In other words, there is no question of two identical persons being considered and the one with PSTM being preferred among the vertically reserved candidates. That has never been done even in this case. Now what the respondents are doing is that, they take the finally selected candidates in each category and then trying to fix 20% for PSTM. Therefore, even the respondents have understood the object of the Act, but the mistake lies in its implementation. If 20% of the vacancies will have to be filled up, as per the roster point and in accordance with law, the starting point would be at the initial selection, namely, the written examination. When once the Act itself says that



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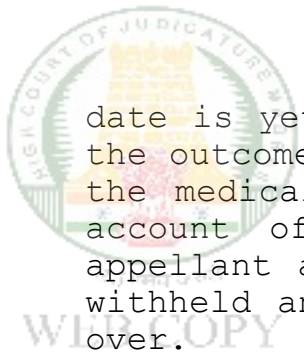
these persons cannot be treated on par and categorized along with the other candidates, who can be considered as per the vertical reservation, this approach of the respondents is obviously against the very Act itself.

13. The aforesaid observation, we give, as in future, no such anomalies should occur and as rightly being followed by the other instrumentalities of the State, namely, Tamil Nadu Public Service Commission and Teachers Recruitment Board, and in view of the fair submissions made by the learned Advocate General and the learned Additional Advocate General."

11. After holding that the manner in which the PSTM reservation was applied by the Recruitment Board was against the provisions of the Act, the Court proceeded to consider as to what is the relief that can be granted to those writ petitioners and in Paragraph No.15 of the order, the Court directed the Recruitment Board to extend the benefit of PSTM Reservation to those candidates alone and if they are otherwise eligible by following the roster point for PSTM category within the other general category or reserved category, as the case may be, and they should be considered for the next stage of recruitment process and after undertaking the said exercise, if the petitioners are entitled to, they should be given appointment accordingly. Those writ petitioners have been permitted to participate in the next stage of recruitment process. However, the final select list is yet to be published as on date.

12. The question would be as to whether the appellant's case can be treated to be a case which cannot be treated on par with the cases of candidates, which were dealt with by the Honourable Division Bench in the aforementioned order. Under normal circumstances, the Court will hold that a person, who does not approach the Court at the earliest point of time, will not be entitled to any relief. The question would be as to whether the appellant before us was diligent in prosecuting his claim or was lethargic and cannot be granted any relief. The writ petition was dismissed at the admission stage. Immediately thereafter, the present appeal was filed, in which the Honourable Division Bench by order dated 26.02.2021 had directed one seat to be reserved for the appellant.

13. Subsequently, by order dated 08.06.2021, we passed an order noting that pursuant to the interim direction issued by the Court on 26.02.2021, subject to the outcome of the appeal, the appellant was called for viva voce on 15.03.2021 and the appellant had cleared the viva voce and his name finds place in the provisional select list, dated 15.03.2021 and the next stage to the selection process is to undergo medical examination for which, the



date is yet to be published. In the light of the same, subject to the outcome of the writ appeal, we permitted the appellant to attend the medical test as and when notified. We made it clear that on account of such orders, it will not confer any right on the appellant and the final result shall not be announced and shall be withheld and produced before this Court, after his medical test is over.

14. Considering the facts and circumstances of the case, more particularly that one seat was reserved for the appellant and the appellant was permitted to attend the viva voce subject to the outcome of the writ appeal and he has successfully cleared the viva voce and his name finds place in the provisional select list published on 15.03.2021, we are of the view that the benefit of the decision of the Honourable Division Bench in W.P.(MD) No.19112 of 2020 etc. batch, dated 10.02.2021 should enure in favour of the appellant as well. We say so, because of the facts and circumstances of the case and the appellant had been vigilant in approaching the Court at the earliest point of time and after the dismissal of the writ petition, he had immediately filed the writ appeal, in which an interim direction was granted to reserve one seat. Therefore, the appellant having participated in the selection process, though subject to the outcome of the writ appeal, we are of the view that if the benefit of the order, dated 10.02.2021 in W.P. (MD) Nos.19112 of 2020 etc. batch is not extended to the appellant, it will be inequitable. Admittedly, the selection process is yet to be completed and on account of the appellant being permitted to undergo the medical test, it will in no manner hamper the selection process, which has been completed upto the stage of viva voce and provisional select list has been issued. Therefore, we are of the view that the case of the appellant is quite distinct and different from the other cases, where much after the completion of the selection process, the candidate would approach the Court.

15. For the above reasons, the writ appeal is allowed and the order, dated 19.02.2021, passed in W.P.(MD) No.3307 of 2021 is set aside and consequently, the writ petition is allowed. We direct the respondents to permit the appellant to undergo the medical test and if he is found fit, appoint him in the post of Sub Inspector of Police by treating him under the PSTM Category. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS-II)

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Sub Assistant Registrar(CS)

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Note :

In view of the present lock down owing to COVID-19 pandemic, a web copy of the Judgment may be utilized for official purposes, but, ensuring that the copy of the Judgment that is presented is the correct copy, shall be the responsibility of the advocate / litigant concerned.

To:

- 1.The Principal Secretary,
Home Department,
State of Tamil Nadu,
Secretariat, Chennai-600 009.
- 2.The Chairman,
Tamil Nadu Uniform Service Recruitment Board,
Old Commissioner of Police Office Campus,
Egmore, Chennai-600 008.
- 3.The Member Secretary,
Tamil Nadu Uniform Services Recruitment Board,
Old Commissioner of Police Office Campus,
Egmore, Chennai-600 008.
- 4.The Director General of Police,
O/o.The Director General of Police,
Dr.Radhakrishnan Salai,
Chennai-600 004.

+1 CC to M/s.SPL GP (SR-24431[F] dated 29/07/2021)

JUDGMENT

IN W.A. (MD) No.457 of 2021
and C.M.P. (MD) Nos.1889 & 1890 of 2021
27.07.2021

es (CO)

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