



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON:	01.04.2021
DELIVERED ON:	07.07.2021

CORAM:

THE HONOURABLE MR.JUSTICE M.S.RAMESH

W.P. (MD) Nos.4557 & 5175 of 2020

and

WMP. (MD) Nos.3898, 3899, 4507 & 4508 of 2020
(Through Video Conference)

1.S.S.Sivachandran ... Petitioner in WP(MD)No.4557/2020
2.R.Praveen ... Petitioner in WP(MD)No.5175/2020

Vs.

1. The Chairman,
Tamil Nadu Public Service Commission, TNPSC Road,
VOC Nagar, Park Town,
Chennai-9 ...Respondent in WP(MD).No.5175 of 2020
2.Tamil Nadu Public Service
Commission
rep. by its Secretary,
Park Town, VOC Nagar,
Chennai-600 003. ... Respondent in WP(MD).No.4557 of 2020

PRAYER in W.P. (MD) No.4557 of 2020: Petition filed under Article 226 of the Constitution of India to issue a Writ of Declaration, to declare the provisional selection of candidates to the Original Certificate Verification and Counselling to the post of Junior Assistant/Field Surveyor/Village Administrative Officer included in Combined Civil Services Examination-IV (Group-IV) 2018-19 and 2019-2020 as illegal insofar as not including the petitioner and consequently for a direction, directing the respondent to select and appoint the petitioner in the post of Junior Assistant/Field Surveyor/Village Administrator under the category of BC in view of the marks secured by the Petitioner in the Written Examination conducted on 01.09.2019 in the event of the petitioner coming within the zone of consideration within the time period stipulated by this Court.

PRAYER in W.P. (MD) No.5175 of 2020: Petition filed under Article 226 of the Constitution of India to issue a Writ of Declaration, declaring the rejection of the petitioner's application as illegal and consequently direct the respondent to select and appoint the petitioner in any one of the posts included in Combined Civil Services Examination-4 (Group IV Services) 2018-19 by calling the



petitioner for the ongoing counseling within the time stipulated by this Court.

For Petitioner : Mr.K.Prabhu
in W.P.(MD) No.4557/2020

For Petitioner : Mr.S.Louis
in W.P.(MD) No.5175/2020

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

C O M M O N O R D E R

The petitioner in both the Writ Petitions 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 petitioners had taken part in the written examination. After publication of the results and based on the claim made in their On-line applications, they were called upon to upload the documents between 05.12.2019 and 18.12.2019 to substantiate their claim made in the On-line applications.

2. During the certificate verification, the TNPSC was of the view that the petitioners herein, had claimed reservation under "Persons Studied in Tamil Medium" (PSTM) category, but had not uploaded the PSTM Certificates. 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 petitioners herein were rejected for non uploading of PSTM Certificates. The petitioners herein are aggrieved against their non selection in these Writ Petitions.

3. Heard the learned counsel for the parties.

4. The learned counsel for the petitioners submitted that based on the marks obtained in the written examination, the petitioners herein had qualified themselves on merits in the open category. Just because the petitioners had mentioned their medium of instructions as 'Tamil' in their On-line application, they 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 Certificates 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 petitioners had not been brought under the PSTM category, they would have qualified

themselves in the open category. The petitioners also claim that they 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



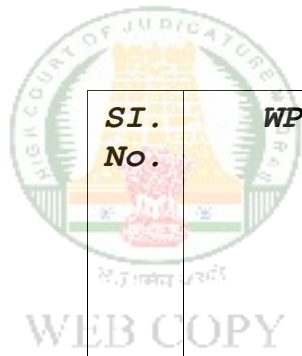
depriving such an opportunity would also be violative of Article 14 of the Constitution of India. This proposition has been reiterated by the Hon'ble Supreme Court in the case of **Ritesh R. Sah Vs. Dr.Y.L.Yamul & Others** reported in **1996 (3) SCC 253**.

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 petitioners herein, are similarly placed as that of the candidates in the aforesaid Writ Petitions, the reason for rejection of their candidature on the ground that they have not uploaded the PSTM Certificates, cannot be sustained.

7. The learned Senior counsel for the TNPSC further submitted that, based on the interim orders granted in the aforesaid Writ Petitions, the petitioners were 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 petitioners herein had belatedly approached the TNPSC to participate in the counselling process, by which time, the vacancies were already filled up and therefore their candidatures are not feasible for selection. The dates on which these petitioners had approached the TNPSC reads as follows:-

SI. 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	4557/2020 S.S.Sivachandran	02.03.2020	03.03.2020	02.03.2020

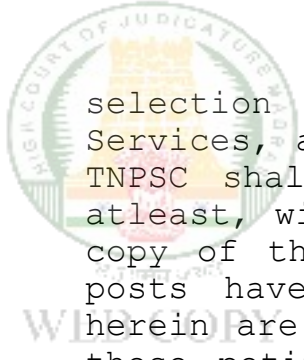


SI. No.	WP (MD) No.	Date of Interim Order	Date when the Petitioner approached the Commission for counseling	Date when the Vacancies were filled up
2	5175/2020 R.Praveen	11.03.2020	12.03.2020	11.03.2020

Hence, the learned Senior counsel submitted that there are no vacancies for selection, since the petitioners 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 02.03.2020 in the case of the petitioner/S.S.Sivachandran in W.P.No.4557 of 2020 and on 11.03.2020, in the case of the petitioner/R.Praveen in W.P.No.5175 of 2020, there was no date stipulated by this Court for the petitioners to participate in the counseling on a particular date. Furthermore, the interim orders does not stipulate an outer time limit also. A perusal of the aforesaid tabular column evidences that after the interim orders were passed by this Court, both the Writ Petitioners had approached the Commission for counseling on the very next day. However, the TNPSC claims to have filled the vacancy on the very same day when the interim orders were passed by this Court, thereby defeating the very interim orders of this Court. 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 either reported before this Court that the vacancies were filled on the date of the interim orders or sought prior permission to fill up the vacancies on the date of the interim orders 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 petitioners herein approaching them for counseling. These mistakes on the part of the TNPSC cannot be put against the petitioners and thereby deprive them from the selection process. As such, the rejection of the petitioners' candidature on this ground also, cannot be sustained.

9. In the result, the above Writ Petitions stand allowed. Consequently, the action of the TNPSC in rejecting the petitioners' candidatures on the ground that they had not uploaded the PSTM Certificates relied upon by them in their On-line applications, is declared as illegal. As a result, there shall be a direction to the TNPSC to include the names of all the petitioners 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 names of these petitioners, 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 posts have already been filled up insofar as these petitioners herein are concerned, two supernumerary posts shall be created for these petitioners and their names shall be accordingly considered for inclusion in the selection process.

10. In fine, the Writ Petitions stand allowed. Consequently, the connected Miscellaneous Petitions are closed. There shall be no orders as to costs.

Sd/-

Assistant Registrar (AD-II)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

DP

To

1.The Secretary,
Tamil Nadu Public Service
Commission,
Park Town, VOC Nagar,
Chennai-600 003.(in WP(MD).No 4557 of 2020)

2.The Chairman,
Tamil Nadu Public Service Commission, TNPSC Road,
VOC Nagar, Park Town,
Chennai-9

+1CC to Mr.S.Louis, Advocate, SR.No.21620 dated 08.07.2021

W.P. (MD) Nos. 4557 & 5175 of 2020
and

WMP. (MD) Nos.3898, 3899,
4507 & 4508 of 2020
07.07.2021

LS (CO)

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