



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 10.02.2021

CORAM:

THE HONOURABLE MR. JUSTICE **M.M. SUNDRESH**

AND

THE HONOURABLE MRS. JUSTICE **S. ANANTHI**

W.P. (MD) Nos. 19112, 19121, 19123 & 18668 of 2020

and

**W.M.P. (MD) Nos. 15983 to 15985, 15988 to 15993,
15623, 15624 of 2020 & 119 to 121 of 2021**

M. Vigneshwaran	: Petitioner in WP(MD) 19112/2020
N. Prammanayagam	: Petitioner in WP(MD) 19121/2020
S. Karthick Raja	: Petitioner in WP(MD) 19123/2020
Manimaran	: Petitioner in WP(MD) 18668/2020

Vs.

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

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

3. The Member Secretary,
Tamil Nadu Uniformed Service 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,
Tamil Nadu,
Chennai - 600 004.

: Respondents in WP(MD) 19112, 19121, 19123/2020

1. The State of Tamil Nadu,
Through by its Additional Chief Secretary,
(Home, Prohibition & Excise Department),
Chief Secretariat,
St. George Fort,
Chennai - 600 009.



2.The Director General of Police,
Tamil Nadu,
Dr.Radhakrishnan Salai,
Chennai - 600 004.

3.The Member Secretary,
Tamil Nadu Uniformed Service Recruitment Board, (TNUSRB)
Old Commissioner of Police Office campus,
Pantheon Road, Egmore,
Chennai - 600 008. : Respondents in WP(MD)18668/2020

PRAYER in WP(MD)Nos.19112, 19121, 19123/2020: Writ Petition filed under Article 226 of the Constitution of India seeking a Writ of Certiorarified Mandamus calling for the records pertaining to the impugned notification issued by the 3rd respondent vide notification No.2/2019 dated 08.03.2019 insofar as applying the PSTM reservation after completion of the entire selection process is concerned and the consequential impugned provisional selection list passed by the 2nd respondent vide his proceedings in RC.No.860/R2/TNUSRB/2019 dated 01.12.2020, quash the same as illegal and consequently, 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 Administrative 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.

PRAYER in WP(MD)No.18668/2020: Writ Petition filed under Article 226 of the Constitution of India seeking a Writ of Mandamus directing the 3rd respondent to consider the true spirit of the Tamil Nadu Appointment on preferential basis in the Services under the State of Persons Studied in Tamil Medium Act, 2010 and revise the entire selection list of candidates by following the PSTM quota in every stage of selection process, ie., the written examination, physical measurement test, endurance test, physical efficiency test, Certificate verification and Viva-Voce and select the petitioner towards Notification No.2 of 2019 dated 08.03.2019.

For Petitioner : Mr.M.Ajmal Khan
Senior Counsel
for M/s.Ajmal Associates
in W.P. (MD)19112, 19121, 19123/2020

Mr.G.Sakthi Rao
in W.P. (MD)18668/2020

For Respondents : Mr.Vijay Narayan,
Advocate General



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Assisted by
Mr.K.Chellapandian,
Additional Advocate General

Assisted by
Mr.K.P.Krishnadoss
Special Government Pleader
In all WPs

COMMON ORDER

(Order of the Court was made by **M.M.SUNDRESH, J.**)

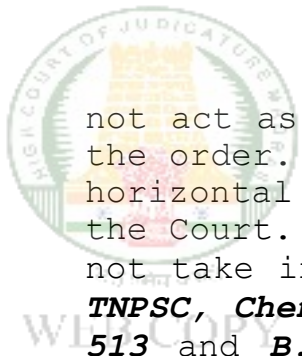
In all these writ petitions, a common issue is involved and accordingly, they are taken up together and are disposed of by a common order.

2. The respondent Board, namely, Tamil Nadu Uniformed Services Recruitment Board (TNUSRB) invited applications from the eligible candidates for Direct Recruitment to the post of Sub-Inspector for 969 vacancies, vide notification No.2/2019, dated 08.03.2019. The basic qualification for the post of Sub-Inspector is a Bachelor Degree from a recognized university. The mode of selection is by way of a written examination, followed by physical examination and viva-voce.

3. In pursuant to the notification, 13,425 persons applied under the Persons Studied in Tamil Medium (PSTM) category, out of the general applications made for about 1,42,243. All the candidates were subjected to the main written examination and the marks secured in the written test for each category has been taken into consideration. The candidates have been called for at the ratio 1:5 for the physical endurance test. Similarly, 1:2 ratio has been fixed for viva-voce.

4. Of the total vacancies, 20% has been earmarked for PSTM category, which comes to 155. The written examination was held on 12.01.2020 for the open candidates. Results have been published on 16.03.2020. It was followed by physical test, starting from 30.09.2020 and viva-voce from 17.12.2020 to 23.12.2020. This viva-voce examination has been put on hold by the orders of this Court. About 8,027 candidates were become eligible for PSTM category posts and after the physical test, 155 candidates were selected. Of this, 140 candidates were found eligible in pursuant to the certificate verification done and 102 candidates have been called for viva-voce thereafter.

5. The learned Senior Counsel as well as the learned Counsel appearing for the petitioners submitted that though the mode of selection has been indicated in the notification, the same is contrary to law. The Act, namely, Act 40 of 2010 has to be read as a whole. The preamble of the Act has to be seen in the context of Sections 2, 3(1), 5 & 6. The earlier Division Bench judgments would



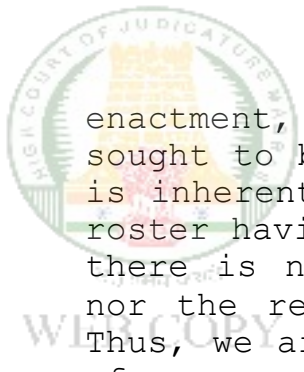
not act as a bar. The respondents themselves have not complied with the order. The selection process involving roster point fixation and horizontal reservation have not been brought before the notice of the Court. In the judgments referred, the earlier Division Bench did not take into consideration of the judgments rendered in **Secretary, TNPSC, Chennai v. T.Maheswaran and Others**, reported in **(2014) 6 MLJ 513** and **B.Yamunadevi and Others v. TNPSC and Others**, reported in **2015-3-L.W.-383**. Therefore, there is no estoppel involved and under those circumstances, the petitioners will have to be given a chance to undergo the physical endurance test and thereafter, viva-voce, subject to the verification made. If the reservation is followed with respect to the fixation of roster point to give effect to the object of the enactment, namely, Act No.40 of 2020, then, in the light of the judgments of the Division Bench as aforesaid, particularly, when two other public instrumentalities, namely, Tamil Nadu Public Service Commission and Teachers Recruitment Board have followed it in letter and spirit, the writ petitions, as filed, will have to be allowed.

6. Though the learned Advocate General and the learned Additional Advocate General sought to sustain the notification issued, followed by the procedure followed, after pointing out the anomaly involved and the very same judgments relied upon are also not followed and in fact, they can never be followed, as we are not dealing with preference among the equals, but such of those persons who are in disadvantageous position to others, it is fairly submitted by them that henceforth, the procedure as being adopted by Tamil Nadu Public Service Commission and the Teachers Recruitment Board would be followed.

7. The learned Advocate General also submitted that there is an amendment and therefore, the situation may be different in the future recruitments. On the suggestion made by this Court to consider the case of the petitioners, provided they come within the cut-off marks, had the procedure being followed by treating them as a separate category as done by the Tamil Nadu Public Service Commission and Teachers Recruitment Board, it is agreed upon.

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 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 reservation exemption. When once the Act itself says that 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.

14. The incidental question is with respect to the relief to be given. We are in respect and agreement with the learned Senior Counsel appearing for the petitioners that there is no question of estoppel, as there is a fundamental error in following the law and therefore, a mere notification cannot be put against the Act. However, we are not dealing with a public interest litigation. Now, much water has flown under the bridge. We are at the final stage of viva-voce, which is actually going on. Therefore, the relief cannot be extended to all others. The learned Advocate General and the learned Additional Advocate General fairly submitted that the petitioners' case can be considered, provided they come within the cutoff marks, if they are treated as a separate category at every stage by following 20% reservation of PSTM category. Therefore, they may not be treated on par with the other candidates, who would otherwise come under the reserved category or open category, as the case may be.

15. In view of the above, the respondents are directed to undertake such exercise, insofar as the petitioners before us alone are concerned 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 maybe, they should be considered for the next stage of the recruitment process. After undertaking the said exercise, if the petitioners are entitled to, they should be given the appointments accordingly.

16. The writ petitions are allowed in the above terms. We place on record our appreciation for the fair submission made by the learned Counsel before us. There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

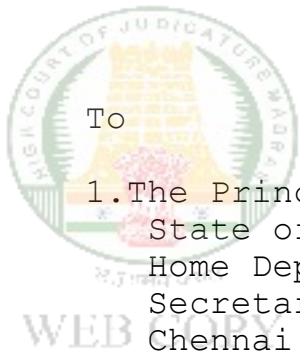
Sd/-

Assistant Registrar (AD-II)

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/ /2021

Sub Assistant Registrar(CS)



To

1.The Principal Secretary to the Government,
State of Tamil Nadu,
Home Department,
Secretariat,
Chennai - 600 009.

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

3.The Member Secretary,
Tamil Nadu Uniformed Service 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,
Tamil Nadu,
Chennai - 600 004.

5.The Additional Chief Secretary to Government,
State of Tamil Nadu,
Home, Prohibition & Excise Department,
Chief Secretariat,
St.George Fort,
Chennai - 600 009.

+1 CC to M/s.SPL. GP (SR-4899)

+3 CC to M/s Ajmal Associates, Advocate, in SR.No.4547.

**W.P. (MD) Nos.19112, 19121,
19123 & 18668 of 2020
10.02.2021**

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