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W.A.Nos.1282, 1283 & 1710 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment Reserved on : 10..11..2022

Judgment Pronounced on : 01..12..2022

Coram

The Honourable Mr. Justice **P.N.PRAKASH**
and
The Honourable Mr. Justice **RMT.TEEKAA RAMAN**

Writ Appeal No.1282 of 2022 & C.M.P.No.8077 of 2022
Writ Appeal No.1283 of 2022 & C.M.P.No.8087 of 2022
and
Writ Appeal No.1710 of 2022

W.A.No.1282 of 2022:

1. Tamil Nadu Public Service Commission,
Rep. by its Secretary,
TNPSC Road, Park Town,
V.O.C. Nagar, Chennai 600003.

2. The Controller of Examinations,
Tamil Nadu Public Service Commission,
TNPSC Road, V.O.c.Nagar,
Park Town, Chennai 600003.

..... Appellants

-Versus-

1. M. Aruna

2. The State of Tamil Nadu,
Rep. by Chief Secretary,
Fort St. George, Chennai 600 009.

..... Respondents



W.A.Nos.1282, 1283 & 1710 of 2022

Prayer in W.A.No.1282 of 2022: Appeal filed under Clause 15 of Letters Patent, praying to set aside the order dated 31.01.2022 made in W.P.No.12602 of 2020.

W.A.No.1283 of 2022:

Tamil Nadu Public Service Commission,
Rep. by its Secretary,
Service Commission Road,
Park Town, Chennai 600003.

..... Appellant

-Versus-

1.K.R.Kaarthika

2.The State of Tamil Nadu,
Rep. by its Principal Secretary,
P & AR Department,
Fort ST. George, Chennai 600009.

3.The State of Tamil Nadu,
Rep. by its Principal Secretary,
Revenue Department,
Fort St. George, Chennai 600009.

.... Respondents

Prayer in W.A.No.1283 of 2022: Appeal filed under Clause 15 of Letters Patent, praying to set aside the order of the learned single Judge of this Court dated 31.01.2022 made in W.P.No.10569 of 2020.



W.A.Nos.1282, 1283 & 1710 of 2022

W.A.No.1710 of 2022 :

K.R.Kaarthika

..... Appellant

-Versus-

1.The State of Tamil Nadu,
Rep. by its Principal Secretary,
P & AR Department,
Fort ST. George,
Chennai 600009.

2.The State of Tamil Nadu,
Rep. by its Principal Secretary,
Revenue Department,
Fort St. George,
Chennai 600009.

3.The Tamil Nadu Public Service Commission,
Rep. by its Secretary,
Service Commission Road,
Park Town,
Chennai 600003.

..... Respondents

Prayer in W.A.No.1710 of 2022: Appeal filed under Clause 15 of Letters Patent, praying to set aside the order of the learned single Judge of this Court dated 31.01.2022 made in W.P.No.10569 of 2020.



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Mr.I.Abrar Md. Abdullah for
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Appeal Nos.1282 & 1283 of
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W.A.No.1283 of 2022*

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W.A.No.1710 of 2022*



W.A.Nos.1282, 1283 & 1710 of 2022

COMMON JUDGEMENT

P.N.PRAKASH.J.,

Intra-court Appeals in W.A.No.1282 and 1283 of 2022 have been filed by the Tamil Nadu Public Service Commission (TNPSC) and the Controller of Examination, TNPSC, being aggrieved by the order of the learned single Judge in W.P.No.10569 of 2020 & W.P.No.12602 of 2020 filed by two unsuccessful candidates viz., K.R.Kaarthika & M.Aruna respectively challenging their non-selection to the post of Deputy Collector in Group-I Services of the year 2019 while the other intra-court appeal in W.A.No.1710 of 2022 has been filed by K.R.Kaarthika aggrieved by the order of the learned single Judge in W.P.No.10569 of 2020.

2. The facts admitted by both sides and the conundrums therein have been set out lucidly in Paragraphs 10 to 18 of the impugned order, which for the sake of convenience, we are adopting and extracting hereunder:-

“10. All these petitioners had participated in the Combined Civil Service-I Examination (CCS-I Examination) [Group-I Services] for the various posts like Deputy Collector, Deputy Superintendent



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of Police, Assistant Commissioner of Commercial Taxes, District Registrar of Co-operative societies, District Registrar, Assistant Director of Rural Development, District Employment Officer and District Officer (Fire & Rescue Services) etc., About 181 announced vide Notification No.01/2019 dated 01.01.2019 as amended by the respondent Tamil Nadu Public Service Commission.

11. A Preliminary Examination was held on 03.03.2019 from (10.A.M. to 1.00.P.M.) throughout the State of Tamil Nadu. About 2,30,588 candidates participated in the Preliminary Examination.

12. These petitioners are one among 9441 persons who cleared the preliminary exams. All the successful candidates were called to appear in the Main Written Examination which was held on 12.07.2019, 13.07.2019 & 14.07.2019 respectively.

13. The Main Written Examination consisted of three papers namely Paper-I, Paper-II & Paper-III. Each paper consisted of three subjects. The contesting respondent namely the Tamil Nadu



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Public Service Commission had devised a novel method of evaluation of the answers of the candidates to eliminate the evaluators bias in the evaluation of answers of the candidates.

14. This novel method adopted by the respondent Tamil Nadu Public Service Commission for evaluation of the answers is being questioned in these writ petitions by these petitioners. None of these petitioners were able to get the cut-off mark in the Main Examinations. They have therefore challenged their rejection/elimination.

15. Each of the petitioners have given different reasons to drive home the point that the method devised and adopted by the respondent Tamil Nadu Public Service Commission in the evaluation of the answers was arbitrary resulting in arbitrary inclusion and exclusions.

16. As per the new method adopted, the descriptive answers given by each of the candidates in paper I, II and III were evaluated simultaneously by two different evaluators by disguising the identity of the candidates by assigning dummy numbers for each of the answers.

17. If the difference in the total marks



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awarded was less than 15%, straight away average of the two marks would be considered as the mark of the candidate. Where, however, if after the evaluation, the difference in the sum total of the marks awarded in the two evaluations exceeds fifteen percentage (15%), the answers of the candidate for the relevant paper would be sent for a fresh evaluation by a third evaluator. Again the identity of the candidate would be disguised.

18. Where there is third evaluation after the evaluation, the average of the nearest two of the total marks in the three evaluation was taken as the total marks secured by the candidate for that paper. It is uniformly submitted that this method was arbitrary and therefore these petitioners have been wrongly denied a fair chance of being considered in the next stage of selection.”

3. After hearing either side, the learned single Judge, by a common order dated 31.01.2022 has issued the following directions in W.P.No.10569 of 2020 (filed by K.R.Kaarthika) and W.P.No.12602 of 2020 (filed by M.Aruna):-



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“119. Though, no mala fide can be attributed, the fact that lowest of the two marks from the three valuations has been reckoned to give average score has resulted in arbitrariness.

120. As far as the petitioner in W.P.No.10569 of 2020 (K.R.Kaarthika) is concerned the respondents have taken the lowest of the two marks secured by her in first and third evaluations for Paper III Similarly, in the case of the petitioner (in W.P.No.12602 of 2020 M.Aruna) also, the respondents have taken the lowest of the two marks secured by her in second and third evaluations for Paper -II.

121. If the average of the highest marks was taken, these petitioners would have secured highest marks. In the alternative, if the average of the three score was also taken these petitioners would have perhaps scored higher marks. To choose the lowest of the two marks appears to be arbitrary. It seeks to give an impression that cumulative of the higher marks awarded by one of the evaluator was of no consequence. In my view, the proper method would have been to take the average of the three scores. This would have



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reduced the scope for bias and arbitrariness.”

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4. Aggrieved by the above, the TNPSC has filed W.A.Nos.1282 and 1283 of 2022. Though the directions of the learned single Judge set out above is partly in favour of K.R.Karthika, not satisfied with it, she has filed W.A.No.1710 of 2022 wherein, she has principally taken two grounds viz.,

(i) that her answer scripts were not properly evaluated; and

(ii) that each paper consisting of three units and if the difference in the marks awarded by the 1st and 2nd examiner for a particular unit in a particular paper exceeds 15%, then, third valuation must be done.

5. Heard Mr.P.S.Raman, learned senior counsel for the TNPSC and Mr.R.Viduthalai, learned senior counsel for M.Aruna (candidate) and Mr.K.Venkataramani, learned senior counsel for K.R.Kaarthika (candidate).

6. The clause (i) and (j) of the Memorandum of Appeals in



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W.A.No.1282 & 1283 of 2022 filed by the TNPSC read as under:-

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“(i) The learned Judge adopted a concept of average of three valuations which will be contrary to the approved pattern of valuation which has been in vogue from 1994 pursuant to J.Ramalingham Committee Report which has been approved by this Honourable Court in W.P.(MD) No.12194 of 2014 & Batch such a substitution of opinion is not permissible even in a proceedings made under Article 226 of the Constitution of India.

(j) The learned Judge ought to have considered that the Appellant Commission has taken average of nearest two marks in order to eliminate examiner variability and application of moderation method which will put any candidate in uniform level and no candidates will be able to take an undue advantage of valuation such a methodology as adopted by the Commission is neither arbitrary nor unfair but it has been uniformly applied without any malice.”

7. To appreciate the rival contentions, it may be necessary to



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understand the methodology that was adopted by the TNPSC in the valuation of the answer scripts of the candidates.

8. Admittedly, every answer script is examined by two independent examiners, who are given dummy numbers. The marks awarded by the 1st examiner will not be disclosed to the 2nd examiner. The total marks awarded individually by the 1st examiner and the 2nd examiner for a paper is added and the same is divided by 2 and the average marks so arrived at, is awarded to the candidate for the paper. However, if the difference in the total marks awarded by the 1st examiner and the 2nd examiner exceeds 15% then, such an answer script would be sent for third evaluation. How the marks are awarded after the third evaluation has been set out in paragraphs 35 and 42 by the learned single Judge in his common order dated 31.01.2022, which we are extracting herein below:-

“35. The petitioner K.R.Kaarthika in W.P No 10569 of 2020 claims to be a candidate belonging to a Backward Class Community (BC) and has scored a cumulative mark of 408.75 as detailed below:-



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GROUP-I PAPERS	1 st EVALUATION	2 nd EVALUATION	3 rd EVALUATION	MARKS AWARDED (AVERAGE)
I	164.5/250	149/250		156.75/ 250
II	137/250	121/250		129.00/250
III	115/250	156/250	131/250	123.00/ 250*
Total	416/750	426/750		408.75/ 750

(* Average of 1st and 3rd Evaluation)”

“42. The petitioner M.Aruna in W.P No. 12602 of 2020 again claims to be a candidate belonging to the Most Backward Community (MBC/DNC) has questioned the method of evaluation. The petitioner was awarded a cumulative marks of 418.25 as detailed below:-

GROUP-I PAPERS	1 st EVALUATION	2 nd EVALUATION	3 rd EVALUATION	MARKS AWARDED (AVERAGE)
I	151.5/250	14.0/250		150.25/250
II	164.5/250	113.5/250	137/250	125.25/ 250
III	134.5/250	150/250		142.75/250
				418.25/750

(* Average of 2nd and 3rd Evaluation)”

For easy identification of the figures, we have made the relevant portion bold.

9. The table relating to K.R.Kaarthika shows that for Paper-III, the 1st examiner had given her 115 out of 250 marks and the 2nd examiner had given



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156 out of 250 marks. Since the difference between the marks given by the 1st and 2nd examiner was more than 15%, Paper-III of K.R.Kaarthika was sent for 3rd evaluation, where the examiner had given her 131 out of 250 marks. According to the TNPSC, $131 - 115 = 16$, whereas $156 - 131 = 25$. As the marks given by the 3rd examiner is closer to the marks given by the 1st examiner, the TNPSC has taken the average of the marks given by the 1st examiner and the 3rd examiner, i.e., $115 + 131 / 2$ and has awarded 123 marks for Paper-III.

10. Similarly, on a perusal of the table relating to M.Aruna, the bold portion shows that for Paper II, she was awarded 164.5 out of 250 by the 1st examiner and 113.5 out of 250 by the 2nd examiner. Since the difference between the two evaluations was more than 15%, her paper was sent for third evaluation, where the examiner had given 137 out of 250. In this case, what the TNPSC has done is, $164.50 - 137 = 26.5$ and $137 - 113.5 = 23.5$. Since marks given by the 3rd examiner is closer to the mark given by the 2nd examiner, the average of those two marks were taken and determined as 125.25 marks for Paper-II.



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11. The aforesaid methodology, according to the learned single Judge, was erroneous and, therefore, he set aside the same on the reasons given given in paragraphs 119 to 121 of the impugned order which we have already extracted supra.

12. Mr.R.Viduthalai, learned Senior Counsel supporting the reasoning given in the impugned order made the following submissions:-

(i) The TNPSC has only come up with the Writ Appeals and not the State Government, which is the ultimate authority to issue the orders of appointment. Therefore, non-filing of the appeals by the State Government amounts to acceptance of the verdicts of the learned single Judge and hence, the present Writ Appeals in W.A.Nos.1282 & 1283 of 2022 are not maintainable.

(ii) Mere administrative instructions cannot be kept on such a high pedestal as it involves the lives and aspirations of those aspirants to join the



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public services and hence, the method adopted by the TNPSC should be rejected.

(iii) The method adopted by the TNPSC is violative of Article 14 of the Constitution of India inasmuch as its arbitrary and unsound.

13. We have carefully perused the grounds raised in W.A.No.1710 of 2022 filed by K.R.Kaarthika, wherein the entire methodology adopted by the TNPSC has been challenged in the appeal.

14. Per contra, Mr.P.S.Raman, the learned Senior Counsel for the TNPSC submitted that from 1994 onwards, the TNPSC has been adopting this procedure, which is pursuant to the report of an Expert Committee dated 10.11.1994. He submitted that the said method has been approved by this Court in W.P.(MD) No.12194 of 2014, etc., batch cases dated 06.01.2016. To appreciate the rival contentions, the relevant passage from the order dated 06.01.2016 in W.P.(MD) No.12194 of 2014, etc., batch cases, is extracted hereunder:-

“10. At this juncture, it is more appropriate



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to refer to the relevant portion of the Committee Report of Mr.J.Ramalingam, former Member of TNPSC, which is extracted below:

“Dated 10.11.1994 I am of the view that for taking of tabulation, the two valuations which are the closest should be taken for arriving at the average marks and when the marks are equally equidistant from each, then the highest of the two equidistant marks should be taken for tabulation, as suggested by the C.E. Adopting this method is a scientific one because when a candidate is awarded two closest marks by two examiners, then these two marks would be the real marks and in that event we can very well ignore the third, which is not a fair valuation because the majority of the examiners have awarded the closest marks.”



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15. Thus, the short question is,

“Is it open to this Court to interfere with the methodology of evaluation adopted by an Expert Constitution Body, like the TNPSC and in its place substitute a new methodology?”

16. The answer to the above question is an emphatic '**No**'. Unless it is shown to us that the methodology adopted by the TNPSC defies common sense, rationality or is arbitrary, could a Constitution Court, in exercise of its powers under Section 226 of the Constitution of India, interfere with and not otherwise. This methodology in question is being adopted by the TNPSC successfully in all the public examinations that are being conducted by them. Even in the present examination, this methodology was adopted and 206 answer scripts, including the answer scripts of K.R.Kaarthika and M.Aruna, in which the difference in marks exceed 15%, were sent for third valuation.

17. We find that the learned single Judge had fallen in error by holding in para 120, that the TNPSC had taken the “**lowest of the two marks**”. This



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is factually incorrect. What the TNPSC has done is, it has taken the closest or nearest of the two marks to arrive at the average as concluded by us in para (*) above. According to the TNPSC, only 206 papers, either Paper-I, or Paper-II or Paper-III, were subjected to third evaluation. Admittedly, only K.R.Kaarthika and M.Arana had filed Writ Petitions seeking revaluations. There is an ocean of difference between the expressions, **“lowest of the two marks”** and **“closest of the two marks”**. On principle, the TNPSC had not taken the lowest of the two marks. Incidentally, in the case of K.R.Kaarthika and M.Arana, closest of the two marks are also the lowest of the two marks. For misconstruing the policy of the TNPSC and interfering with it, as if they had taken the lowest of the two marks, the order of the learned single Judge warrants interference.

18. Secondly, the learned single Judge has introduced a new methodology, by which he has directed the TNPSC to add the marks awarded in the Valuations-I, II and III and take the average of them. Therefore, now, we have to examine, whether there is any arbitrariness in the methodology adopted by the TNPSC in taking the average of the closest of the two marks? As stated above, this methodology is pursuant to the report of an Expert



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Committee headed by one J.Ramalingam that was given in the year 1994.

The relevant paragraph of the Expert Committee's report, which we have extracted above, shows that by taking the two closest marks, it can be inferred that the evaluation of the paper by the said two examiners would objectively amount to a fair evaluation. In other words, out of the three examiners, if the marks given by two examiners are closest to each other, whereas the marks given by third examiner is either very high or very low, one can safely infer that the valuation of the said paper by the two examiners, who have awarded marks, which are very closer to each other, is an objective assessment. On the contrary, adding the two highest marks and averaging it, would not result in a fair and objective determination. We do not find anything arbitrary in the methodology of evaluation adopted by the TNPSC in the instant cases, so as to offend Article 14 of the Constitution of India.

19. The learned single Judge has devised a new methodology by adding the marks awarded in the Valuations-I, II and III and taking the average, which would give an unfair advantage to the two candidates herein qua the other candidates, who were awarded marks based on the average of



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the marks awarded by two examiners. The methodology adopted by the learned single Judge would clearly offend Article 14 of the Constitution of India, inasmuch as, for two candidates the average of Valuations I, II and III are taken and for the rest of the candidates, average of Valuations I and II are taken. Therefore, looking at from any angle, the order passed by the learned single Judge cannot be legally sustained.

20. Coming to the Writ Appeal in W.A.No.1710 of 2022 filed by K.R.Kaarthika, though as held by the Supreme Court in **Ran Vijay Singh v. State of UP [(2018) 2 SCC 357]**, this court has the power to go into the answer script in order to find out whether the answer script has been evaluated properly, we do not propose to undertake such an exercise as the facts of the case at hand do not warrant. On facts, K.R.Kaarthika's case does not pass muster the parameters laid down in **Ran Vijay Singh [cited supra]**.

21. As regards the second contention of K.R.Kaarthika, the appellant in W.A.No.1710 of 2022, that third valuation should be done unit-wise and not paper-wise does not cut ice with us. In all fairness, only if the difference in



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the total marks awarded by the 1st examiner and the 2nd examiner for a paper exceeds 15%, can third valuation be ordered as per the procedure being followed by the TNPSC, which cannot be said to be arbitrary and illegal. To say that, there should be a third valuation even in a case where the difference in the marks awarded to a single question in a unit exceeds 15% would be too much as that would result in the TNPSC being engaged only in the process of evaluation of papers and nothing else.

In the result, Writ Appeal Nos.1282 and 1283 of 2022 filed by the Tamil Nadu Public Service Commission are allowed; the order dated 31.01.2022 passed by the single Judge in W.P.No.12602 of 2020 and W.P.10569 of 2020 are set aside and the said two Writ Petitions are dismissed. Consequently, Writ Appeal No.1710 of 2022 filed by K.R.Kaarthika stands dismissed. No costs throughout. Consequently, connected CMPs stand closed.

[P.N.P., J.] [TKR., J.]
01..12..2022



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Index: yes/no

Speaking/Non-Speaking Judgement

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To

- 1.The Chief Secretary, Government of Tamil Nadu,
Fort St. George, Chennai 600 009.
- 2.The Secretary, Tamil Nadu Public Service Commission,
TNPSC Road, Park Town, V.O.C. Nagar, Chennai 600003.
- 3.The Controller of Examinations,
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AND
RMT. TEEKAA RAMAN.J.,

kmk

Pre Delivery Common Judgement
in
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Judgement Pronounced on
01..12..2022