



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On	27.08.2021
Pronounced On	07.01.2022

CORAM

THE HON'BLE MR.JUSTICE C.SARAVANAN

W.P.No.10467 of 2021 &
W.P.Nos.14538 & 9834 of 2020
and
W.M.P.Nos.11954, 11955, 18032 & 18033 of 2020
and W.M.P.Nos.11067 & 11068 of 2021

(Through Video Conferencing)

1.A.Pavunkumar

2.P.Chandrasekar

3.P.Manojkumar

4.P.Ananthan

... Petitioners
in all W.Ps.

Vs.

1.The Member Secretary,
Tamil Nadu Uniformed Services
Recruitment Board (TNUSRB),
Old Commissioner of Police Office Campus,
Panthean Road, Egmore,
Chennai - 600 008.

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

... Respondents
in all W.Ps.

Prayer in W.P.No.10467 of 2021 :- Writ Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Mandamus, to forbear the respondents from proceeding with any further based on the provisional selection list published by the first respondent dated 15.04.2021 for direct recruitment to the post of Sub Inspector of Police without considering the petitioners under Persons Studied in Tamil Medium (PSTM)



category as per the ratio laid down in the orders passed in W.P. (MD) No.19112 of 2020 etc., case dated 10.02.2021 by allowing the petitioners to participate in every stage of selection.

Prayer in W.P.No.14538 of 2020 :- Writ Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Mandamus, to direct the respondents to allow the petitioners to participate in the Physical Measurement Test (PMT) conducted from 30.09.2020 to 12.10.2020 pursuant to the notification made in the paper advertisement dated 29.09.2020.

Prayer in W.P.No.9834 of 2020 :- Writ Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Mandamus, to direct the respondents to conduct selection to the post of Sub-Inspector of Police in accordance with the provisions of 'Tamil Nadu Appointment on Preferential Basis in the Services under the State of Person Studied in Tamil Medium Act, 2010' (Tamil Nadu Act 40 of 2010) in 20% vacancies in each category as per Rule of Reservation in every stage of selection and consequently permit the petitioners to participate in the next stage of selection after written examination, based on merit with reference to the marks secured by the petitioners, in the reserved category.

For Petitioners : Mr.G.Sankaran in all W.Ps.

For Respondents : Mr.L.S.M.Hasan Fizal
Government Advocate in all W.Ps.

C O M M O N O R D E R

By this common order, all these three Writ Petitions are being disposed.

2. All these Writ Petitions have been filed by the same petitioners at different stage of selection to the post of Sub Inspector of Police pursuant to the Notification of the first respondent for direct recruitment for the year 2019. There were about 969 vacancies as detailed under:-

3. The petitioners in these Writ Petitions scored as follows:-

Sl. No.	Name	Enroll No.	Marks	Community
1	A.Pavunkumar	1610403	48	BC
2	P.Chandrasekar	0410647	46	MBC
3	P.Manojkumar	1310604	44	MBC
4	P.Ananthan	2415119	47	MBC



4. It is the grievance of the petitioners that all these petitioners were entitled to be called for the next stage of selection after the written examination as per the provisions of the Tamil Nadu Appointment on Preferential Basis in the Services under State of Persons Studied in Tamil Medium Act, 2010 (hereinafter referred to as PSTM Act, 2010 for brevity). The grievance of the petitioners is that the respondents have not adhered to Clause 15(vi) of the Notification issued by the first respondent in the year 2019 called for the application for various posts in the uniformed service. Clause 15 of the said Notification reads as under:-

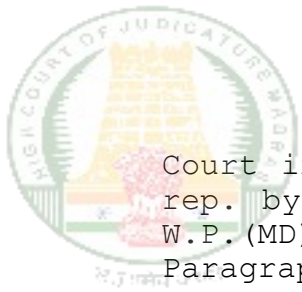
15. STAGES OF RECRUITMENT FOR OPEN CANDIDATES:

A. WRITTEN EXAMINATION:

Written examination will consists of Part.A - General Knowledge and Part.B - Logical Analysis, Numerical Analysis, Psychology Test, Communication Skills, and Information Handling Ability. A written examination total mark is 70.

- i. Part.A. - 40 Marks (objective type). 80 Questions.
- ii. Part.B. - 30 marks (objective type). 60 Questions.
- iii. Each question carries $\frac{1}{2}$ marks.
- iv. Duration 2.30 hrs.
- v. The candidates should get a minimum of 25 marks to qualify in the written examination.
- vi. However, out of those who qualify in the written examination, only five times of the number of notified vacancies in each of the category shall be permitted for next stage of selection i.e. PMT, ET, PET and Original Certificate Verification based on the merit.
- vii. Call letter for written examination: The Call letters of the eligible candidates will be uploaded in this Board's website before commencement of the written examination. The candidate can login his/her account with User ID and Password and download the Call Letter for attending the Written Examination.

5. The learned counsel for the petitioners relied on the decision of the Division Bench of the Madurai Bench of this



Court in M.Vigneshwaran and others Vs. The State of Tamil Nadu, rep. by its Principal Secretary, Home Department and others, in W.P.(MD) Nos.19112 of 2020 etc., dated 10.02.2021, wherein, in Paragraph Nos.11 to 16, it has been held as under:-

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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. In every reserved category coming under vertical reservation, there is a horizontal reservation such as Widow, Disable 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 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



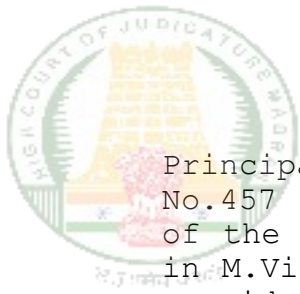
rightly being followed by the other instrumentalities of the State, namely, Tamil Nadu Public Service Commission and Teachers Recruitment Board, and in view of the fair submissions made by the learned Advocate General and the learned Additional Advocate General.

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 learned Additional Advocate General fairly submitted that the petitioners' case can be considered, provided they come within the cut off 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 may be, 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.

6. The learned counsel for the petitioners further relied on the decision of the Division Bench of the Madurai Bench of this Court in Pravin Kumar Vs. The State of Tamil Nadu, rep. by its



Principal Secretary, Home Department and others, in W.A. (MD) No.457 of 2021, dated 27.07.2021, wherein, the earlier decision of the Division Bench of the Madurai Bench of Madras High Court in M.Vigneshwaran case cited supra was specifically referred and considered as to whether the appellants therein could be treated on par with the case of the candidates. The decision of the Division Bench of the Madurai Bench of the Court in M.Vigneshwaran case cited supra was followed by another Division Bench of the Madurai Bench of the Court in Pravin Kumar case cited supra.

7. The learned Government Advocate for the respondents submits that the petitioners approached this Court belatedly and were fence sitters and had allowed recruitment to be proceeded and therefore as rightly pointed out by the Division Bench of the Madurai Bench of this Court in M.Vigneshwaran case cited supra, no relief can be granted to the petitioners, even if it is considered the provisions of the Act 40 of 2010 (PSTM Act) and notification was not complied properly. It is therefore submitted that having allowed the issue to get lapsed due to efflux of time in view of the completion of the recruitment process, the relief of the petitioners cannot be granted.

8. Heard the learned counsel for the petitioner and the learned Government Advocate for the respondents. I have perused the decision of the Division Bench of the Madurai Bench of this Court in M.Vigneshwaran case cited supra and in Pravin Kumar case cited supra.

9. The first respondent, by a Notification of 2019, called for applications to fill up the 969 vacancies of Sub-Inspector of Police (TK), Sub-Inspector of Police (AR) and Sub-Inspector of Police (TSP) under the Tamil Nadu Police Subordinate Service and Tamil Nadu Special Police Subordinate Service.

10. The Notification itself stipulates that about 30% will be allotted for Women and Transgender candidates. Women and Transgender candidates were also be entitled to compete in the remaining 70% of the vacancies along with Men candidates in the TK and AR vacancies.

11. The Notification also states that if eligible Women and Transgender candidates were not available for selection, their vacancy will be filled up by the Men candidates of the same category during final provisional selection.

12. Thus, 198 and 83 representing 30% of vacancies were reserved for Women and Transgender candidates for Tamil Nadu Police Subordinate Service and Tamil Nadu Special Police Subordinate Service and balance could be filled up by Men only



if adequate number of Women and Transgender were not available. Similarly, Women and Transgender were eligible to participate in the 70% of the vacancies for Men in Tamil Nadu Police Subordinate Service and Tamil Nadu Special Police Subordinate Service. The Notifications also presents 20% for departmental quota and 10% for sports quota.

13. The notification also recognized that the communal reservation will be followed as per existing rules and Government orders as detailed below:-

Open Competition	31%
Backward Class	26.5%
Backward Class (Muslim)	3.5%
Most Backward Class / Denotified Communities	20%
Scheduled Caste	15%
Scheduled Caste (Arunthathiyar)	3%
Scheduled Tribe	1

14. As per Clause 11 of the Recruitment Notification, it was also made clear that 20% of "all vacancies" shall be set apart on preferential basis for the "open candidates" who studied the Bachelor's Degree (qualifying degree) in Tamil Medium "during final provisional selection".

15. Clause 15(vi) of the Recruitment Notification stipulates the stages of recruitment for open candidates. It reads as under:-

15 (vi). However, out of those who qualify in the written examination, only five times of the number of notified vacancies in each of the category shall be permitted for next stage of selection i.e, PMT, ET, PET and Original Certificate Verification based on the merit.

16. The minimum mark to be obtained is 25 marks in Written Examination. In other words, to be considered to the next state of selection, i.e. Physical Measurement Test (PMT), Endurance Test (ET), Physical Efficiency Test (PET) and Original Certificate Verification based on the merit, a candidate should have obtained a minimum mark of 25 out of 70, i.e. 35.71%.

17. In W.P.Nos.12833, 12835 & 4852 of 2021, an identical issue arose for consideration. By an order dated 07.01.2022 (pronounced today), the said Writ Petitions were disposed,



wherein, the views expressed by the Division Bench of the Madurai Bench of this Court in M.Vigneshwaran case cited supra which were followed in Pravin Kumar case cited supra were to be differed in the light of the decision of the Hon'ble Supreme Court in Saurav Yadav and Others Vs. State of Uttar Pradesh and Others, (2021) 4 SCC 542. The relevant portion of the said order reads as under:-

37. Before referring the respective decision of the Division Bench of the Madurai Bench of Madras High Court, it will be useful to refer to the observation in W.A.(MD)No.457 of 2021 in its order dated 27.7.2021, which reads as under:-

"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."

(*W.P. (MD).Nos.19112, 191121, 19123 and 18668 of 2020 dated 10.02.2021)

38. The interim order dated 23.12.2020 in W.P.(MD).Nos.19112, 19121, 19123 and 18668 of 2020 states that PSTM reservation should be followed from the inception of the process of the recruitment and not at 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.

39. The final order in W.P.(MD).Nos.19112, 191121, 19123 and 18668 of 2020 dated 10.02.2021



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does not discuss how the preferential appointment in the recruitment has to be made.

40. It is noticed that in W.P.(MD)Nos.19112, 19121, 19123 and 18668 of 2020 two concessions were given by the then learned Additional Advocate General in para Nos. 6 & 7 before the Madurai Bench of this Court. Relevant portion from the common order dated 10.02.2021 are reproduced below:-

"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 W.P.(MD)Nos.19112 of 2020, etc., batch them as a separate category as done by the Tamil Nadu Public Service Commission and Teachers Recruitment Board, it is agreed upon."

41. The Court ultimately in para 12 held as under:-

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



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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 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



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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."

42. The Division Bench of the Madurai High Court in W.P.(MD).Nos.19112, 191121, 19123 and 18668 of 2020 dated 10.02.2021 in para 12 merely concluded that the respondents are actually following the Rules of Reservation but at the final stage and that there is no question of two identical persons being considered and that one with PSTM category being preferred among the vertically reserved candidates.

43. The Hon'ble Division Bench in its order dated 10.02.2021 W.P.(MD).Nos.19912, 199121, 19123 and 18668 of 2020 has found fault with the relegation of application of preferential treatment to the final stage of selection. It has concluded that if 20 % of the vacancy 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 stage as in para 12 of the order of the Division Bench of the Madurai Bench of Madras High Court, in its order dated 10.02.2021 as extracted above.

44. W.P.(MD) No.3307 of 2021 was filed by one Pravin Kumar to quash the recruitment in Recruitment Notification No. 02/2019.

45. There, the learned Single Judge had earlier dismissed W.P.No.(MD)No.3307 of 2021 filed by the said Pravin Kumar vide order dated



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10.02.2021. While dismissing W.P.No.(MD)No.3307 of 2021 vide Order dated 10.2.2021, the learned Single Judge followed the views of the Madurai Bench of the Madras High Court in W.P.(MD). Nos.19112 of 2020 and etc., batch with the following observations:-

2. The case of the petitioner is that he had undertaken his medium of instruction in Tamil and the recruitment notification provides for 20% reservation for the persons, who had studied in Tamil Medium (PSTM). Since the respondent Board had applied 20% reservation under PSTM category at the final stage and not at every stage of selection, which is not permissible and therefore, if 20% reservation for PSTM is applied at every stage, he would come within the cut off mark for being considered for selection. In support of the same, the learned counsel relied upon an interim order of the Hon'ble Division Bench of this Court, dated 23.12.2020, passed in W.P (MD) No.19112 of 2020 etc.,

3. The learned Additional Advocate General for the respondents would however bring it to the notice of this Court that pursuant to the interim order of the Hon'ble Division Bench dated 23.12.2020, final orders came to be passed by the Hon'ble Division Bench in the same batch of cases on 10.02.2021, whereby the Hon'ble Division Bench was of the view that 20% reservation under PSTM category should be applied at every stage of selection and not at the final stage. However, by taking note of the fact that the selection process was over, the benefit of 20% reservation to PSTM candidates was extended to the petitioners before the Hon'ble Division Bench alone and the relief to the others was denied. The relevant portion of the order reads thus:-

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



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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.

4. The aforesaid order is self explanatory and therefore, the petitioner may not be in a position to claim the benefits under the order of the Hon'ble Division Bench of this Court, since the order restricts the relief only to the petitioners before the Hon'ble Division Bench. In view of the decision of the Hon'ble Division Bench, this court is unable to consider the ground raised by the petitioner in the present writ petition, seeking for 20% reservation under PSTM category."

46. Aggrieved by the same, the petitioner Pravin Kumar filed W.A.(MD) No.457 of 2021. While



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allowing the appeal in W.A.(MD) No.457 of 2021 vide order dated 27.07.2021, the Division Bench followed the views of the Division Bench in W.P.(MD).Nos.19912 of 2020 and etc., batch dated 10.02.2021, and noted that since W.P.No.(MD) No.3307 of 2021 was dismissed at the admission stage and immediately and thereafter the writ petitioner-appellant (Pravin Kumar) had filed W.A.(MD) No.457 of 2021 and secured an interim order dated 27.07.2021, thereby reserved a seat and therefore relief must be given to the said writ petitioner-appellant. In paragraph Nos.14 and 15 of the said order it was observed as under:-

"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,



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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."

47. However ilar view was taken in W.A.(MD) No.720 of 2021 vide order dated 27.07.2021, the same Division Bench, was dismissed the writ appeal filed by the writ petitioner, Manimaran with the following observations:-

"8. We need to examine as to whether the learned Writ Court was right in doing so. Admittedly, the writ petition was filed only on 15.03.2021 and listed for admission on 17.03.2021. As on 15.03.2021, the viva voce had been completed. Therefore, the selection process cannot be interdicted at that stage of the matter as the provisional select list had already been published and the only thing that remains to be done is to subject the provisionally selected candidates for medical test, which would be followed by issuance of appointment orders to the provisionally selected candidates, who are found to be medically fit. Therefore, the recruitment process having attained finality, the appellant cannot be directed to be permitted to participate in the viva voce i.e., the next stage of the selection process, when viva voce has already been completed and provisional select list has also been published.

9. Further, we note the submissions of Mr.VeeraKathiravan, learned Senior Counsel for the respondents that 159 seats were earmarked for PSTM Category, of which 112 candidates were selected under the said category and the remaining 47 seats have been filled up by following Section 6 of the Tamil Nadu Conditions of Service Act and other Government Orders in vogue and final select list has been



published on 15.04.2021. Therefore, the contention of the appellant that seats reserved for PSTM Category still continues to remain vacant is factually incorrect."

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48. Earlier, the learned single Judge of the Madurai Bench of Madras High Court by an order dated 10.02.2021 in W.P.(MD).No.6014 of 2021 dismissed the said writ petition filed by the said V.Manimaran. The said writ petition was filed for issuance of a Writ of Mandamus to treat him under the PSTM Category for appointment to the post of Sub-Inspector of Police and to permit him to participate in the next level of selection process by considering his representation, dated 11.03.2021.

49. The Division Bench of the Madurai Bench of this Court, while passing final order dated 27.07.2021 in W.A.(MD) No.720 of 2021 noted that the appellant-petitioner (V.Manimaran) had filed the writ petition only on 15.03.2021 which was listed for admission on 17.03.2021 and that the viva voice had been completed and therefore, the selection process cannot be interdicted at the stage of the matter as provisional selection had already been published and that only under that remains to be done is to subject the provisionally selected candidates for medical test, which would be followed by issuance of appointment orders to the provisionally selected candidates, who are found to be medically fit.

50. The Hon'ble Division Bench therefore observed that the recruitment process having attained finality, the appellant there could not be permitted to participate in the viva voice i.e., in the next stage of the selection process, when viva voice has already been completed and provisional select list has also been published and therefore the Court declined to interfere with the order of the Learned Single Judge in W.P.MD.No.6014 of 2021.

51. Since the passing of the orders by the Division Bench in the above noted cases and the cases followed by the Madurai Bench of the Madras High Court, it is noticed that the Hon''ble Supreme Court in Saurav Yadav and Others vs. State of Uttar Pradesh and Others (2021) 4 SCC 542, has



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clarified the position of law. Therefore, it will be useful to refer to PSTM Act, 2010 and the Rules made thereunder.

52. The Hon'ble Supreme Court has overruled the decision of the Full Bench of the Allahabad High Court in *Ajay Kumar vs. State of U.P. and Others*, 2019 SCC Online All 2674 and accepted the view of the Rajasthan, Bombay, Uttarakhand and Gujarat High Courts as rational and disagreed with the views of the Full Bench of the Hon'ble Allahabad High Court in *Ajay Kumar Vs. State of U.P. And Ors.* 2019 SCC Online All 2674.

53. The Hon'ble Supreme Court in *Saurav Yadav and Others Vs. State of Uttar Pradesh and Others*, (2021) 4 SCC 542 affirmed the views of the Gujarat High Court in *Tamannaben Ashokbhai Desai vs. Shital Amrutlal Nishar*, 2020 SCC Online Guj 2592.

54. The Gujarat High Court in *Tamannaben Ashokbhai Desai Vs. Shital Amrutlal Nishar*, 2020 SCC Online Guj 2592 explained the position as under:-

59. There are 115 posts of Police Inspector (unarmed), out of which 55 posts are reserved for the SC, ST and SEBC and remaining 60 posts for Open/General category. Out of the said posts, 33% are reserved for women under each category, meaning thereby, out of 60 posts in the open category, 20 posts are reserved for women. Thus, the first step would be that of preparing the entire list on the basis of merit and out of the same, selecting first 60 candidates, irrespective of their caste and sex, in open category. The second step would be then of evaluating as to whether 20 women, irrespective of their caste, are there within those 60 candidates, so as to meet with the requirement of horizontal reservation. If 20 women are already there, then there is no need to select any more woman in that category, but if not, then in the third step, the remaining number of women have to be included on the basis of the merit from the aforesaid list, irrespective of their caste, while deleting the corresponding number of male candidates from the bottom of the list of first 60 candidates. Thereafter, identical



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exercise is required to be undertaken for implementing vertical reservation, followed by horizontal reservation, with respect to the posts belonging to the SEBC, SC and ST categories.

62. It is pertinent to note that Rule 2(d) seeks to carve out a fourth category of posts, not being posts reserved in favour of the Scheduled Castes, Scheduled Tribes and Socially and Educationally Backward Classes. In other words, this fourth category is nothing but an open category of posts, excluding the posts reserved in favour of the above-referred classes i.e. the posts reserved for women in open category would be over and above the posts reserved for women in SC, ST and SEBC quota, as referred to in Rule 2(a), 2(b) and 2(c) of the said Rules. Thus, all the meritorious candidates, whether belonging to the reserved category or unreserved category, will be covered by the open category, irrespective of their caste, community or tribe where merit alone will be taken into account, while implementing vertical reservation as well as horizontal reservation within the same. It may be noted that by virtue of the Gujarat Civil Services (Reservation of Posts for Women) (Amendment) Rules, 2014, the requirement of reservation in favour of women came to be enhanced from 30% to 33%.

63. In view of the aforesaid discussion, we have no hesitation in arriving to the conclusion that the Government Resolution dated 1-8-2018 of the GAD deserves to be quashed and set aside, and is hereby quashed and set aside."

69. For the future guidance of the State Government, we would like to explain the proper and correct method of implementing horizontal reservation for women in a more lucid manner.

"PROPER AND CORRECT METHOD OF IMPLEMENTING
HORIZONTAL RESERVATION FOR WOMEN.

No. of posts available for recruitment. 100
Social Reservation quota (50%)



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Open Competition (OC)	...	51
Scheduled Caste (SC)	...	12
Scheduled Tribe (ST)	...	17
Socially and Educationally Backward Classes (SEBC)	...	20
Horizontal Reservation for Women (33% in each of the above categories)		
OC	...	17
SC	...	04
ST	...	06
SEBC	...	07

Step 1 : Draw up a list of at least 100 candidates (usually a list of more than 100 candidates is prepared so that there is no shortfall of appointees when some candidates don't join after offer) qualified to be selected in the order of merit. This list will contain the candidates belonging to all the aforesaid categories.

Step 2: From the aforesaid Step 1 List, draw up a list of the first 51 candidates to fill up the OC quota (51) on the basis of merit. This list of 51 candidates may include the candidates belonging to SC, ST and SEBC.

Step 3: Do a check for horizontal reservation in OC quota. In the Step 2 List of OC category, if there are 17 women (category does not matter), women's quota of 33% is fulfilled. Nothing more is to be done. If there is a shortfall of women (say, only 10 women are available in the Step 2 List of OC category), 7 more women have to be added. The way to do this is to, first, delete the last 7 male candidates of the Step 2 List. Thereafter, go down the Step 1 List after item no. 51, and pick the first 7 women (category does not matter). As soon as 7 such women from Step 1 List are found, they are to be brought up and added to the Step 2 List to make up for the shortfall of 7 women. Now, the 33% quota



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for OC women is fulfilled. List of OC category is to be locked. Step 2 List becomes final.

Step 4: Move over to SCs. From the Step 1 List, after item no. 51, draw up a list of 12 SC candidates (male or female). These 12 would also include all male SC candidates who got deleted from the Step 2 List to make up for the shortfall of women.

Step 5: Do a check for horizontal reservation in the Step 4 List of SCs. If there are 4 SC women, the quota of 33% is complete. Nothing more is to be done. If there is a shortfall of SC women (say, only 2 women are available), 2 more women have to be added. The way to do this is to, first, delete the last 2 male SC candidates of the Step 4 List and then to go down the Step 1 List after item no. 51, and pick the first 2 SC women. As soon as 2 such SC women in Step 1 List are found, they are to be brought up and added to the Step 4 List of SCs to make up for the shortfall of SC women. Now, the 33% quota for SC women is fulfilled. List of SCs is to be locked. Step 4 List becomes final. If 2 SC women cannot be found till the last number in the Step 1 List, these 2 vacancies are to be filled up by SC men. If in case, SC men are also wanting, the social reservation quota of SC is to be carried forward to the next recruitment unless there is a rule which permits conversion of SC quota to OC.

Step 6 : Repeat steps 4 and 5 for preparing list of STs.

Step 7 Repeat steps 4 and 5 for preparing list of SEBCs."

55. In Para 43, the Hon'ble Supreme Court in Saurav Yadav case referred to supra observed as under:-

43. "Finally, we must say that the steps indicated by the High Court of Gujarat in para 69 of its judgement in TamannabenAshokbhai Desai contemplate the correct and appropriate procedure for considering and giving effect to



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both vertical and horizontal reservations. The illustration given by us deals with only one possible dimension. There could be multiple such possibilities. Even going by the present illustration, the first female candidate allocated in the vertical column for Scheduled Tribes may have secured higher position than the candidate at Serial No.64. In that event said candidate must be shifted from the category of Scheduled Tribes to Open/General Category causing a resultant vacancy in the vertical column of Scheduled Tribes. Such vacancy must then enure to the benefit of the candidate in the waiting list for Scheduled Tribes-Female. The steps indicated by the Gujarat High Court will take care of every such possibility. It is true that the exercise of laying down a procedure must necessarily be left to the authorities concerned but we may observe that one set out in said judgment will certainly satisfy all claims and will not lead to any incongruity as highlighted by us in the preceding paragraphs."

56. Hon'ble Mr. Justice S. Ravindra Bhat in his separate opinion while supplementing and concurring with the views of the majority observed as under:-

59.The features of vertical reservations are:

59.1.They cannot be filled by the open category, or categories of candidates other than those specified and have to be filled by candidates of the social category concerned only (SC/ST/OBC).

59.2.Mobility ("migration") from the reserved (specified category) to the unreserved (open category) slot is possible, based on meritorious performance.

59.3. In case of migration from reserved to open category, the vacancy in the reserved category should be filled by another person from the same specified category, lower in rank.

59.4. If the vacancies cannot be filled by the specified categories due to shortfall of



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candidates, the vacancies are to be "carried forward" or dealt with appropriately by rules.

60. Horizontal reservations on the other hand, by their nature, are not inviolate pools or carved in stone. They are premised on their overlaps and are "interlocking" reservations [The expression used by B.P. Jeevan Reddy, J., in *Indra Sawhney v. Union of India*, 1992 Supp (3) SCC 217 : 1992 SCC (L&S) Supp 1.] . As a sequel, they are to be calculated concurrently and along with the inviolate "vertical" (or "social") reservation quotas, by application of the various steps laid out with clarity in para 21.3 [Ed. : See also paras 21.4, 21.6, para 23.11 r/w para 43 and paras 30 to 43.] of Lalit, J.'s judgment. They cannot be carried forward. The first rule that applies to filling horizontal reservation quotas is one of adjustment i.e. examining whether on merit any of the horizontal categories are adjusted in the merit list in the open category, and then, in the quota for such horizontal category within the particular specified/social reservation.

57. Therefore, the correct method for giving preferential treatment to Persons Studied in Tamil Medium (PSTM) under Section 3 of the PSTM Act, 2010 was to be by following the method described in the illustration in Para 43 of the decision of the Hon'ble Supreme Court in *SAURAV YADAV & ORS. Vs. STATE OF UTTAR PRADESH & ORS.* (2021) 4 SCC 542.

58. Illustration of the Gujarat High Court in Paragraph Nos.58, 59, 62 & 63 of *Tamannaben Ashokbhar Desai* case referred to supra as affirmed in *SAURAV YADAV & ORS. Vs. STATE OF UTTAR PRADESH & ORS.* (2021) 4 SCC 542 can be understood while implementing 33% horizontal reservation for women from total of 115 posts for Inspector (unarmed) in the recruitment notification as detailed therein.

59. There, 60 posts were for the Open/General category. The balance 55 posts were reserved for SC, ST and other Socially and Economically Backward Community (SEBC). The method followed was as under :-

i) The first step would be that of preparing the



entire list on the basis of merit and out of the same, selecting first 60 candidates, irrespective of their caste and sex, in open category.

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- ii) The second step would be then of evaluating as to whether 20 women, irrespective of their caste, are there within those 60 candidates, so as to meet with the requirement of horizontal reservation.
- iii) If not, then in the third step, the remaining number of women have to be included on the basis of the merit from the aforesaid list, irrespective of their caste, while deleting the corresponding number of male candidates from the bottom of the list of first 60 candidates.
- iv) If 20 women are already there, then there is no need to select any more woman in that category.
- v) Thereafter, identical exercise is required to be undertaken for implementing vertical reservation, followed by horizontal reservation, with respect to the posts belonging to the SEBC, SC and ST categories.

60. Before applying the above decision of the Hon'ble Supreme Court, therefore it will be useful to refer to PSTM Act, 2010.

61. For the sake of completion and final disposal of these cases, it will be useful to refer to the preamble of the PSTM Act, 2010. It reads as under:-

WHEREAS under Article 345 of the Constitution, the Legislature of the State has been given power to adopt any one or more of the languages in use in the State for official purposes;

AND WHEREAS the State of Tamil Nadu enacted the Tamil Nadu Official Language Act, 1956 (Tamil Nadu Act XXXIX of 1956) and adopted Tamil as the Official language of the State under Article 345 of the Constitution;



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AND WHEREAS the Official Languages Act, 1963 (Central Act 19 of 1963) provides for continuation of English language for all the official purposes of the Union and for the transaction of business in Parliament;

AND WHEREAS the first proviso to section 3 (1) (b) of Central Act 19 of 1963 provides that English shall be used for purposes of communication between the Union and the States;

AND WHEREAS Article 348 in Chapter III of Part XVII of the Constitution provides that notwithstanding anything contained in the provisions of that Part, until the Parliament by law otherwise provides, all proceedings in the Supreme Court and in every High Court shall be in the English language;

AND WHEREAS Tamil has been used as the language of Courts upto the district level inclusive of drafting of pleadings of parties, taking evidence, arguments of respective counsel for the parties and writing of judgements;

AND WHEREAS those who have studied in Tamil Medium have very little chances of getting selected in the employment of Central Government, other State Governments or in Private Sectors, and therefore preference need be given to them in the State Government Services;

AND WHEREAS under Article 14 of the Constitution, mere differentiation or inequality of treatment does not per se amount to differentiation within the inhibition of the equal protection clause and to attract the operation of the clause, it is necessary to show that the selection or differentiation is unreasonable or arbitrary; that it does not rest on any rational basis having regard to the object which the Legislature has in view;

AND WHEREAS the classification between persons who obtained the educational qualification prescribed for direct recruitment through



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Tamil medium of instruction and persons studied in other medium has a reasonable relation to the object sought to be achieved;

AND WHEREAS such classification neither crosses the frontiers of Article 16 of the Constitution nor prejudices the reservation policy of the State made thereunder;

AND WHEREAS the equality of opportunity of all citizens with similar qualifications relating to appointment to any services under the State does not get altered in view of such classification;

AND WHEREAS the provisions of the Tamil Nadu Backward Classes, Scheduled Castes and Scheduled Tribes (Reservation of seats in Educational Institutions and of appointments or posts in the Services under the State) Act, 1993 (Tamil Nadu Act 45 of 1994) are not transgressed;

AND WHEREAS unless employment opportunities are provided for persons studied in Tamil medium, there is no scope for the populace of the State to pursue school and college career through Tamil medium;

AND WHEREAS in order to facilitate a conducive environment for the populace to prefer Tamil medium of instruction at all levels of education, appointment to any services under the State on preferential basis of persons studied in Tamil medium is a rational classification;

62. A reading of the above underlined clauses from the preamble of the PSTM Act, 2010 makes it clear that the intention of the legislature was to give 20% reservation on preferential basis for PSTM candidates in State employments through direct recruitment as these persons have otherwise very little chance of getting employed with the Central and State Government Departments and or in Private Sectors. Therefore, it recognised that unless priority is given to PSTM candidates by conferring preference to them, there is no scope for the populace in the State to pursue education in schools and colleges through Tamil medium.



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63. The preamble of the PSTM Act, 2010 also declares that the provisions of the Tamil Nadu Backward Classes, Scheduled Castes and Scheduled Tribes (Reservation of Seats in Educational Institutions and of appointments or posts in the Services under the State) Act, 1993, (Tamil Nadu Act 45 of 1994) was not intended to be transgressed.

64. The preamble also states that classification between persons who obtained the educational qualification prescribed for direct recruitment through Tamil medium of instruction and the persons who have studied in other medium has a reasonable nexus with the object sought to be achieved under the Act.

65. Therefore, it recognised that unless priority is given to PSTM candidates by conferring preference to them, there is no scope for the populace in the State to pursue education in schools and colleges through Tamil medium.

66. As per Section 3 of the PSTM Act, 2010, 20% of all vacancies in all appointment in the services under the State which are to be followed by direct recruitment shall be set apart on preferential basis to persons studied in Tamil Medium as illustrated in the aforesaid rules. Section 3 of the Act starts with a non-obstante which reads as under:-

Section 3.(1) Notwithstanding anything contained in any law for the time being in force and subject to section 5, twenty per cent of all vacancies in appointment in the services under the State which are to be filled through direct recruitment shall be set apart on preferential basis to persons studied in Tamil medium.

(2) Selection for appointment under sub-section (1) shall be made in such manner as may be prescribed.

(3) Nothing contained in sub-section (1) shall apply in the case of appointment to the posts in the services under the State for which the educational qualification prescribed in the rules or regulations or orders applicable to



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the post is a degree or diploma or any academic distinction in a language.”

67. Section 2(d) of the PSTM Act, 2010 defines the expression “persons studied in Tamil medium”. It was later amended in 2020, vide Act No.35 of 2020. The definition before and after amendment read as under :-

(Same definition in Rule 2(d) of the PSTM Rules)

68. When Recruitment Notification No.2/2019 dated 8.3.2019 was issued, Section 2(d) of the PSTM Act, 2010 read as it stood before Amendment in 2020, the respective petitioners possessed required qualification for being considered on preferential basis as PSTM candidates.

69. Section 3 of the PSTM Act, 2010 starts with a non obstante clause is however subject to Section 5 of the PSTM Act, 2010.

70. Sub -Section (2) to Section 3 of the PSTM Act, 2010 also states that selection for appointment shall be made in such manner as may be prescribed.

71. The manner is prescribed under Tamil Nadu Appointment on Preferential Basis in the Services under the State of Persons Studied in Tamil Medium Rules, 2010 (PSTM Rules, 2010). The aforesaid Rules, predates the enactment of PSTM Act, 2010.

72. It was made in exercise of the powers conferred by sub-section (1) of Section 8 of the Tamilnadu Appointment on Preferential basis in the Services under the State of Persons Studied in Tamil Medium Ordinance, 2010 (Tamil Nadu Ordinance 3 of 2010) vide G.O.Ms.No.145 Personnel and Administrative Reforms (S) Department dated 30.09.2010.

73. Rule 3 of the PSTM Rules, 2010 merely gives an illustration for implementing 20% vacancies in Government Service contemplated in Section 3 of the PSTM Act, 2010. At the time of inception in 2010, the illustration given in Rule 3 was as under:-



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General Turn	19	31	48	65	81	100	115	131
	148	165	181	200				
Backward Classes (Other than backward classes Muslims)	18	38	58	74	94	114	134	149
	170	19	199					
Most Backward Classes/ De-notified Communities	23	46	73	96	123	146	173	196
Schedule d Castes	26	62	92	126	192			
Backward Class Muslims	188							
Schedule d Castes Arutnthathars	166							
Schedule d Tribes	150							

74. By G.O.Ms.No.40 dated 30.04.2014, illustrations in Rule 3 of the PSTM Rules, 2010 was amended. For the sake of brevity, it is not reproduced.

75. However, it will suffice to state that the illustration in Rule 3 of the PSTM Rules, 2010 merely gives an illustration as to how 40 seats (i.e. 20% of 200 seats) shall be set apart on preferential basis for persons studied in Tamil medium, in their respective category i.e.within communal roster.

76. As per Section 4 of the Act, persons studied in Tamil medium shall also be entitled to



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compete for the vacancies, other than preferential vacancies in appointment in the services under the State, along with persons studied in other medium. In other words, persons who have studied in Tamil Medium of instruction are entitled to be compete with other candidates who have studied in other medium.

77. Section 5 of the PSTM Act, 2010 also makes it clear that preferential basis of appointments through direct recruitment of persons studied in Tamil Medium under Section 3 shall be made following the reservation as per the law in force. Thus, 20% of the vacancies under Section 3 of the PSTM Act, 2010 is to be set apart and reserved only for direct recruitment.

78. As per Section 5 of the PSTM Act, 2010, "Rules of Reservation" shall apply as in force for preferential appointment to persons who have studied in Tamil Medium.

79. As per Section 6 of the PSTM Act, 2010 only when adequate number of qualified and suitable persons studied in Tamil Medium are not available for appointment in the preferential vacancies, such unfilled vacancies shall be filled up with persons studied in other mediums within the respective category.

80. A cumulative reading of the provisions of the PSTM Act, 2010, makes it clear that the provisions in the Act have been incorporated to give preferential appointment to PSTM candidates in State Government service. It was intended to be a horizontal reservation within the existing vertical and horizontal reservation.

81. It was enacted with the twin objects of promoting the Tamil language and to give priority in employment on preferential basis to PSTM candidates.

82. Clearly the intention under the PSTM Act, 2010 is not only promote the language Tamil but also to give incentives to those who study in Tamil Medium an opportunity to get employed on preferential basis.

83. Preferential appointments under PSTM Act,



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2010 was to operate only as a horizontal reservation and not as a vertical reservation.

84. PSTM Act, 2010 operates within to existing vertical reservation under the provisions of the Tamil Nadu Backward Classes, Scheduled Castes and Scheduled Tribes (Reservation of Seats in Educational Institutions and of appointments or posts in the Services under the State) Act, 1993, (Tamil Nadu Act 45 of 1994) and along with other horizontal reservation recognised by the courts.

85. Under the Recruitment Notification No.2 dated 8.3.2019, 20% of 969 posts were reserved for in-service candidates for the post of Sub-Inspector of Police, 80% was meant for direct recruitment. 20% from the balance 80% meant for direct recruitment were to be reserved for PSTM candidates on preferential basis.

86. Thus, a total of 155 number of vacancies were set apart for appointment on preferential basis for PSTM candidates as detailed below:-

	Men	Women/T	Total
Total vacancies	688	281	969
20% for Inservice Candidates.	137.6	56.2 (56)	193.8
Rounded off	138	56	194
Total Vacancies available for Direct Recruitment.	550	225	775
20%vacancies for PSTM	110	45	155

87. Thus, 20% of the vacancies were to be filled through direct recruitment and set apart for persons who have studied in Tamil medium on preferential basis is another form of horizontal reservation. While applying PSTM Act, 2010, the respondents would be required to apply reservation and preference as per the terms of the notification calling for application.



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88. As Para 15 (vi) of Brochure attached the Recruitment Notification, the respondents were required to apply reservation on preferential basis as follows:-

15(vi): However, out of those who qualify in the written examination, only five times of the number of notified vacancies in each of the category shall be permitted for next stage of selection i.e. PMT, ET, PET and Original Certificate Verification based on the merit."

89. The minimum marks prescribed for passing written test was 25 marks out of 70 marks. Thus, those who secured a minimum of 25 marks in the written exam were entitled to be sent to the next stage of selection i.e PMT, ET, PET and Original Certificate Verification based on the merit.

90. There is a maximum cap fixed in the Recruitment Notification as is evident from a reading of the above clause. Not more than 5 times of the vacancies announced can be sent to the next stage of selection i.e PMT, ET, PET and Original Certificate Verification.

91. It is only at that stage, filtering of candidates among those who have cleared written exams can be made.

92. In other words, among the PSTM Candidates who had cleared written exams, 5 times of the vacancies as against the seats reserved in each category could be sent to the next stage of selection.

93. The method adopted appears to be contrary to the law declared and affirmed by the Hon'ble Supreme Court in SAURAV YADAV & ORS. Vs. STATE OF UTTAR PRADESH & ORS. (2021) 4 SCC 542.

94. The Recruitment Notification dated 8.3.2019 which states preferential will be given only at the final provisional selection thus appears to be only partly in consonance with the views of the Hon'ble Supreme Court in SAURAV YADAV & ORS. Vs. STATE OF UTTAR PRADESH & ORS. (2021) 4 SCC 542. The preference was to be applied twice i.e. once immediately after Written Exam and thereafter at the time of final selection after



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allowing the successful candidates qualifying in the written exam to appear in the next round of selection process.

95. If the method in SAURAV YADAV case was followed, successful Persons Studied in Tamil Medium candidates who cleared the written exams were entitled to participate in PMT, ET, PET and after Original Certificate Verification based on merits through direct recruitment of preferential appointment under PSTM Act, 2010.

96. The ultimate selection of PSTM candidates was to be allowed only within the confines of vertical reservation recognized under the Constitution of India which is under Tamil Nadu Backward Classes, Scheduled Castes and Scheduled Tribes (Reservation of Seats in Educational Institutions and of appointments or posts in the Services under the State) Act, 1993.

97. The facts indicate that though the petitioners were considered for selection under the provisions of the PSTM Act, 2010, they were wrongly filtered and excluded mid-way though they had cleared the first stage of selection in written exam. They were called only for PET.

98. Ultimate filtering and selection candidates should have been made after they were allowed to participate in PMT, ET, PET and after original Certificate Verification once they cleared the first threshold.

99. The decision of the Division Bench of this Court in W.P.No.19112 of 2020 and etc., batch however vide its order dated 10.2.2021 while holding 20% of the vacancies will have to be filled up as per the roster point and in accordance with law and the starting point for applying PSTM Act, 2010 would be at the initial selection namely written examination and not at the final stage.

100. If the views of the Division Bench of this Court in W.P.Nos.19112 of 2020 and etc., batch vide order dated 10.02.2021 which has been reiterated by the Division bench of the Madurai Bench of this Court in W.A.(MD)No.457 of 2021 and W.A.(MD)No.720 of 2021 vide order dated 27.07.2021



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is followed, preferential reservation for PSTM candidates is to be applied at each stage of selection process i.e. at the initial stage immediately after written exams and thereafter at each of the next stage by filtering the candidates at each stage of selection.

101. The view in W.P.No.19112 of 2020 and etc., batch vide its order dated 10.2.2021 is based on a concession given by the then Additional Advocate General for the respondent and is not in consonance with the view of the decision of the Hon'ble Supreme Court in SAURAV YADAV & ORS. Vs. STATE OF UTTAR PRADESH & ORS. (2021) 4 SCC 542 referred to supra.

102. However, this has not been followed or applied. The method followed was neither intended by the legislators nor by the 2nd respondent while issuing the above recruitment notification.

103. Further, operation of Rule 3 of PSTM Rules, 2010 which prescribes the manner of selection for the purpose of Section 3 of the PSTM Act, 2010 cannot run contrary to Section 5 of PSTM Act, 2010.

104. As the exercise was not done properly as is evident from a reading of the counter filed by the respondents in these writ petitions, the petitioners cannot be found fault. The petitioners cannot be expected to rush to the Court. The respondents as recruiting bodies are required to follow the law as declared by the Court.

105. The cumulative marks obtained upto the final stage of test is relevant for provisionally short-listing and selecting candidates under 20% preferential quota for PSTM Candidates under PSTM Act.

106. If the procedure adopted by the Hon'ble Supreme Court in Saurav Yadav and Others vs. State of Uttar Pradesh and Others (2021) 4 SCC 542, was followed, the petitioners may have stood a chance for being appointed on preferential basis.

107. I am therefore inclined to quash the impugned orders dated 31.05.2021 in W.P.Nos.12833 and 12835 of 2021 and remit the case back to the



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second respondent allow the petitioners to be appeared for next round of selection. If they are found qualified, the respondents shall create supernumerary post and absorb them. This exercise shall be completed within a period 45 days from the date of receipt of a copy of this this Order.

108. As far as W.P.No.4852 of 2021 is concerned, it is not clear whether such exercise was carried pursuant to interim order of this Court. After comparing the total score of each of the candidates against the respective category provisional selection shall be made by applying the method in para 59 of the Saurav Yadav and Ors vs. State of Uttar Pradesh & Others (2021) 4 SCC 542.

109. In case, these petitioners are found eligible to be selected under the PSTM Quota under PSTM Act, 2010, the respondents shall create supernumerary posts on accommodate of these petitioners also and absorb them into regular services without disturbing appointments already made.

110. The respondents shall complete the exercise within a period of 45 days from the date of receipt of a copy of this order.

111. These writ petitioners are accordingly allowed with the above observations. No costs. Consequently, connected miscellaneous petitions are closed.

18. The respondents are bound to follow the procedure and cannot unfairly exclude the petitioners contrary to the requirements of the above Recruitment Notification.

19. Therefore, I am inclined to allow these Writ Petitions by directing the respondents to permit the petitioners to participate in the next round of selection and thereafter apply the test procedure prescribed / recognized in Saurav Yadv case referred to supra. This exercise shall be carried out by the respondents within a period of four (4) weeks from the date of receipt of a copy of this order along with the petitioners in W.P.Nos.12833, 12835 & 4852 of 2021.

20. If the petitioners are entitled to be selected, following the procedure in Clause 15(vi) of the Recruitment Notification and test in Saurav Yadv case referred to supra the



respondents shall absorb these petitioners into service by creating supernumerary posts and regularize their appointment. Entire exercise shall be carried out by the respondents within one eighty (180) days from the date of receipt of a copy of this order.

21. These Writ Petitions are allowed. No cost. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

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To

1. The Member Secretary,
Tamil Nadu Uniformed Services Recruitment Board (TNUSRB),
Old Commissioner of Police Office Campus,
Panthean Road, Egmore,
Chennai - 600 008.
2. The Director General of Police,
Tamil Nadu,
Dr.Radhakrishnan Salai,
Mylapore, Chennai - 600 004.

W.P.No.10467 of 2021 and etc.

PL(CO)
CT 09/02/2022