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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON	10.01.2022
PRONOUNCED ON	16.02.2022

CORAM

THE HON'BLE MR.JUSTICE C.SARAVANAN

W.P.NOS.10639, 10646, 10939, 10945 & 15472 OF 2020
AND

W.M.P.NOS.12927, 12931, 12938, 13304, 13298,
13299, 19317, 19320, 19321 OF 2020

(THROUGH VIDEO CONFERENCING)

W.P.Nos.10639, 10646, 10939 & 10945 of 2020

1. M.Murugesan
2. S.Vijaya Prapakaran
3. G.A.Kubendran
4. M.Jegadesh
5. M.Selvaraj
6. S.Sankar Raj
7. P.Manojkumar
8. S.Muthupandi
9. M.Selvapandi
10. J.Uthirapathi
11. R.Arul Murugan

... Petitioners in
W.P.Nos.10639 & 10646/20

1. V.Praveen
2. G.Bharathiraja
3. M.Satish

... Petitioners in
W.P.Nos.10939 & 10945/20

Vs.

1. The State of Tamil Nadu,
Rep. by Secretary to Government,
Department of Personnel and
Revenue Administration,
Secretariat, Chennai - 600009.
2. Tamil Nadu Generation and Distribution
Corporation Limited,
Represented by Chief Engineer / Personnel,
No.144, Anna Salai, Chennai - 600 002.



- 3.T.Karthik
- 4.S.Ranjith
- 5.K.G.Manindher
- 6.Layola Francis Ebinezen
- 7.V.Parthasarathi
- 8.M.Viswanath
- 9.G.Manthiramoorthi
- 10.Balaji Durai
- 11.K.Theivasikamani
- 12.G.Gopalakrishnan
- 13.A.Vimal
- 14.Sureshbabu Kaniyappan
- 15.E.Prem Babu
- 16.B.Prabhakaran
- 17.Gopal Subramanian
- 18.C.Prakash
- 19.M.Arun
- 20.R.Manicka Selvam
- 21.M.Ramachandran
- 22.R.Suriyamohan

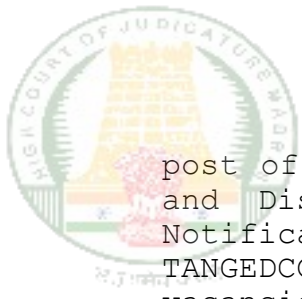
... Respondents in W.P.Nos.
10639, 10646, 10939 & 10945/20

Common Prayer in W.P.Nos.10639 & 10939 of 2020:-

Writ Petitions filed under Article 226 of the Constitution of India, for issuance of a Writ of Declaration, to declare that the reservation of posts of Technical Assistant / Electrical in Tamil Nadu Generation and Distribution Corporation Limited (TANGEDCO) for intercaste marriage candidates under priority category under Notification No.1/2016 dated 28.02.2016 issued by the second respondent is arbitrary, violative of Article 14 and 16(4) of the Constitution and hence unconstitutional and consequently, set aside the selection of third to twenty second respondents under the intercaste marriage priority category for the posts of Technical Assistant / Electrical pursuant to Notification No.1/2016 dated 28.02.2016 issued by TANGEDCO, the second respondent herein.

Common Prayer in W.P.Nos.10646 & 10945 of 2020:-

Writ Petitions filed under Article 226 of the Constitution of India, for issuance of a Writ of Mandamus, to direct the second respondent to select and appoint the petitioners the petitioners who belong to to BC, SC and SC(A) communities and secured 31.834, 36, 32.13, 32.972, 28.89, 32.17, 35.07, 29.88, 30.093, 34.885, 32.9995, 34.52, 33.419 & 30.2485 marks respectively in the written examination and interview to the



post of Technical Assistants/Electrical in Tamil Nadu Generation and Distribution Corporation Limited (TANGEDCO) pursuant to Notification No.01/2016, dated 28.02.2016 issued by the TANGEDCO, the second respondent herein in any of the existing vacancies in the post of Technical Assistants / Electrical in the second respondent TANGEDCO in W.P.No.10646 of 2020.

Prayer in W.P.No.10945 of 2020:

Directing the 2nd Respondent to select and appoint the Petitioners who belong to MBC and BC communities and secured 34.52 33.419 and 30.2485 marks respectively in written examination and interview to the posts of Technical Assistant/Electrical in Tamil Nadu Generation and Distribution Corporation Limited (TANGEDCO) pursuant to notification No.01/2016 dated 28.02.2016 issued by TANGEDCO 2nd Respondent herein in any of the existing vacancies in the posts of Technical Assistant/Electrical in the 2nd Respondent TANGEDCO in W.P.No.10945 of 2020

For Petitioners: Mrs.Nalini Chidambaram, Senior Counsel
for M/s.C.Uma in W.P.Nos.10639, 10646,
10939 & 10945/20

For R1 : Mr.L.S.M.Hasan Fizal
Government Advocate in W.P.Nos.10639,
10646, 10939 & 10945/20

For R2 : Mr.P.Subramanian, Standing Counsel
in W.P.Nos.10639,10646, 10939 & 10945/20

W.P.No.15472 of 2020

1.G.Rajesh
2.R.Muththarasu
3.G.Ramesh
4.S.Kanagaraj
5.T.Tamilmaran
6.K.Sangeetha
7.H.Yuvashree
8.C.Rajasekar
9.V.Veeramani
10.A.Vincent Vijayakumar
11.S.Jahir Hussain
12.P.Kanagaraj
13.G.Sangeeth
14.K.Prakash

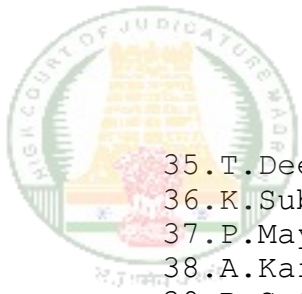
... Petitioners

Vs.



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1. Tamil Nadu Generation and Distribution Corporation Limited,
Represented by Chariman,
No.144, Anna Salai,
Chennai - 600 002.
2. The Chief Engineer / Personnel,
Tamil Nadu Generation and Distribution Corporation Limited,
No.144, Anna Salai,
Chennai - 600 002.
3. The State of Tamil Nadu,
Represented by Secretary to Government,
Department of Personnel and
Public Administration
Fort St.George, Chennai - 600 009.
- 4.A.Kaliyamoorthi
- 5.S.Gowri
- 6.T.Mahadevan
- 7.A.Vaitheeswari
- 8.T.Rajasekar
- 9.M.Kamalakannan
- 10.S.Dharamaraj
- 11.G.Sivakala
- 12.N.Dhasarathan
- 13.S.Balamurugan Shanmugam
- 14.S.Narayanan
- 15.I.Gopalakrishnan
- 16.P.Arul Pandiyan
- 17.R.Gowthami
- 18.S.Maheswari
- 19.N.Dhakshna Moorthy
- 20.P.Muthaiya
- 21.M.Maheswari
- 22.P.Anandaraj
- 23.Santhana Karuppasamy Govindaraj
- 24.K.Sathish Kumar
- 25.S.Ponraj
- 26.R.Ramdass
- 27.T.Saravanan
- 28.L.Arivazhagan
- 29.Nagendiran B
- 30.P.Kathiresan
- 31.Deenath. I
- 32.K.Nagaraj
- 33.C.Avudaiselvan
- 34.S.Ravindran



35.T.Deebanraj
36.K.Suba Suresh
37.P.Mayaperumal Perumal
38.A.Karthy
39.R.Sethuraman
40.R.Thirunavukkarasu
41.A.Mahesh
42.R.Mohanraj
43.G.Ranjithkumar
44.G.Selvakumar
45.S.Sivaprakash
46.T.Gowthaman
47.V.Selvasundaram
48.S.Dhanesh Kumar

... Respondents

(R4 to R48 were impleaded vide order dated 17.12.2020 made in W.M.P.No.20957 of 2020)

Prayer in W.P.No.15472 of 2020:

This Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Declaration that the appointment of intercaste marriage candidate on priority basis to the posts of Field Assistants in Tamil Nadu Generation and Distribution Corporation Limited (TANGEDCO) pursuant to Notification No. 01/ 2016 dated 28.02.2016 issued by the 2nd respondent is arbitrary violative of article 14 and 16 of the constitution lacking in constitutional sanction or legal sanction and consequently direct the Respondents appoint the Petitioners in the post of Field Assistants in Tamil Nadu Generation and Distribution Corporation Limited (TANGEDCO) pursuant to Notification No. 01/ 2016 dated 28.02.2016 issued by the 2nd respondent.

For Petitioners: Mrs.Nalini Chidambaram, Senior Counsel
for M/s.C.Uma

For R1 & R2 : Mr.P.Subramanian, Standing Counsel

For R3 : Mr.L.S.M.Hasan Fizal
Government Advocate

C O M M O N O R D E R

By this common order, all the five Writ Petitions are being disposed.



2. A short point that arises for consideration in these writ petitions is whether the second respondent TANGEDCO was justified in appointing private respondents on priority basis under inter-caste marriage quota overlooking the rights of the petitioners?

3. In these Writ Petitions, the petitioners have challenged the appointment of the private respondents as Technical Assistant / Electrical and as Field Assistants by the Tamil Nadu Generation and Distribution Corporation Limited (TANGEDCO) under the priority quota for contracting inter-caste marriage. The relief in these writ petitions reads as under:

W.P.No.10639, 10939 and 15472 of 2020	W.P.Nos.10646 & 10945 of 2020
"for issuance of a Writ of Declaration, to declare that the reservation of posts of Technical Assistant / Electrical in Tamil Nadu Generation and Distribution Corporation Limited (TANGEDCO) for intercaste marriage candidates under priority category under Notification No.01/2016 dated 28.02.2016 issued by the second respondent is arbitrary, violative of article 14 and 16(4) of the Constitution and hence unconstitutional and consequently set aside the selection of Respondents 3 to 22 under the intercaste marriage priority category for the posts of Technical Assistant / Electrical pursuant to notification No. 01/2016 dated 28.02.2016 issued by TANGEDCO, the second respondent herein"	"for issuance of a Writ of Mandamus, to direct the second respondent to select and appoint the petitioners the petitioners who belong to to BC, SC and SC(A) communities and secured 31.834, 36, 32.13, 32.972, 28.89, 32.17, 35.07, 29.88, 30.093, 34.885, 32.9995, 34.52, 33.419 & 30.2485 marks respectively in the written examination and interview to the post of Technical Assistants/Electrical in Tamil Nadu Generation and Distribution Corporation Limited (TANGEDCO) pursuant to Notification No.01/2016, dated 28.02.2016 issued by the TANGEDCO, the second respondent herein in any of the existing vacancies in the post of Technical Assistants / Electrical in the second respondent TANGEDCO"

4. Notification No.1/2016 dated 28.2.2016 issued by the second respondent stipulated that candidates from inter-caste marriage will be considered for being appointed on priority basis among other candidates to various posts. Relevant portion of the said Notification reads as under:-



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or OBC citizen, or one transplanted by adoption or any other voluntary act, ipso facto, becomes entitled to claim reservation under Article 15(4) or 16(4), as the case may be? It is seen that Dalits and Tribes suffered social and economic disabilities recognised by Articles 17 and 15(2). Consequently, they became socially, culturally and educationally backward; the OBCs also suffered social and educational backwardness. The object of reservation is to remove these handicaps, disadvantages, sufferings and restrictions to which the members of the Dalits or Tribes or OBCs were subjected and was sought to bring them in the mainstream of the nation's life by providing them opportunities and facilities."

"34. In Murlidhar Dayandeo Kasekar v. Vishwanath Pandu Barde [1995 Supp (2) SCC 549] and R.Chandavarappa v. State of Karnataka [(1995) 6 SCC 309 : JT (1995) 7 SC 93] this Court had held that economic empowerment is a fundamental right to the poor and the State is enjoined under Articles 15(3), 46 and 39 to provide them opportunities. Thus, education, employment and economic empowerment are some of the programmes the State has evolved and also provided reservation in admission into educational institutions, or in case of other economic benefits under Articles 15(4) and 46, or in appointment to an office or a post under the State under Article 16(4). Therefore, when a member is transplanted into the Dalits, Tribes and OBCs, he/she must of necessity also have had undergone the same handicaps, and must have been subjected to the same disabilities, disadvantages, indignities or sufferings so as to entitle the candidate to avail the facility of reservation. A candidate who had the advantageous start in life being born in Forward Caste and had march of advantageous life but is transplanted in Backward Caste by adoption or marriage or conversion, does not become eligible to the benefit of reservation either under Article 15(4) or 16(4), as the case may be. Acquisition of the status of Scheduled Caste etc. by voluntary mobility into these categories would play fraud on the Constitution, and would frustrate the benign constitutional policy under Articles 15(4) and 16(4) of the Constitution."



7. It is submitted that a similar view was taken by this Court in M.Aarthi (Minor) rep. by her mother and natural guardian Mrs.M.Renuka and 2 others vs. The State of Tamil Nadu, rep. By its Secretary to Government, Health and Family Welfare Department, Fort St.George, Chennai - 600 009 and 11 others 2002 (4) CTC 449 wherein it was held that allocation of 12 percents for children born of intercaste marriage as per clause 13 (viii) of prospectus for admission into MBBS/BDS was un-constitutional. Power of reservation has been exhausted by enacting Tamil Nadu Act 45 of 1994 and therefore such power of reservation cannot be exercised again. It is submitted that when field is occupied by a legislative Act. The exercise of executive power in the same field is unavailable and the power is no longer available to create an additional special category of reservation in favour of person belonging to intercaste marriages.

8. Apart from the above, it is submitted that the appointment of private respondents on priority basis was a fraud on the Constitution as a separate class is sought to be created which is not recognised under the Constitution.

9. Appearing on behalf of the petitioners, learned senior counsel for the petitioner submits that there cannot be any priority reservation to any of the private respondents based on their inter-caste marriage and intercaste marriage certificate.

10. It is further submitted that the second respondent has also not fixed any ceiling for inter-caste marriage candidates and has indiscriminately appointed about 9.6% of the post for those candidates who belong to inter-caste marriage.

11. It is submitted that the adoption of priority in the impugned notification in turn has reduced the social reservation in favour of the candidates belonging to the other backward community, most backward community, Scheduled Caste and scheduled Tribes and thus violates Article 16 (4) of the Constitution of India.

12. It is further submitted that the second respondent has also not given any definition of the expression "inter-caste marriage" and even schedule caste candidates who were covered under the social reservation under 1994 enactment and the Constitution were getting a priority in appointment under the "inter-caste marriage" category. In this connection, following two datas were presented.

TECHNICAL ASSISTANT:



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Sl. No.	Serial Number in the Selected list	Community	Marks
1.	(2)	SCA	41.26
2.	(53)	SC	28.17
3.	(82)	SC	30.11
4.	(87)	SC	28.38
5.	(122)	SC	22.98
6.	(132)	SC	28.08
7.	(146)	SC	27.77
8.	(187)	SCA	20.70
9.	(211)	SC	26.56
10.	(259)	SC	25.48
11.	(276)	ST	24.51
12.	(287)	SC	24.32
13.	(309)	SC	23.68
14.	(323)	SC	19.81
15.	(340)	SC	23.03
16.	(353)	SC	22.44
17.	(387)	SC	18.95
18.	(406)	SC	22.00
19.	(420)	SC	21.94
20.	(423)	SC	30.50
21.	(453)	SC	18.52

FIELD ASSISTANTS

Sl. No.	Serial No	Name	Roaster	Community	Marks
1.	5	S.Gowri	GT (W) (P)	SC	37.92
2.	6	T.Mahadevan	SC (P)	SC	43.77
3.	36	T.Rajasekar	SC (P)	SC	38.39
4.	72	N.Dhasarathan	SC (P)	SC	35.07
5.	89	S.Narayanan	GT (P)	SC	34.77
6.	106	I.Gopalakrishnan	SC (P)	SC	34.13
7.	135	S.Maheswari	GT (W) (P)	SC	11.63
8.	136	N.Dhakshnamoorthy	SC (P)	SC	31.12



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Sl. No.	Serial No	Name	Roaster	Community	Marks
9.	151	P.Muthiaya	GT (P)	SC	30.30
10.	172	P.Anandraj	SC (P)	SC	29.58
11.	185	Santhana Karuppasamy Govindaraj	GT (P) TM	SC	20.12
12.	206	R.Ramdass	SC (P)	SC	29.09
13.	219	L.Arivazhagan	GT (P)	SC	28.28
14.	231	B.Nagendiran	GT (W) (P)	SC	27.96
15.	236	I.Deenath	SC (P) TM	SC	25.88
16.	248	K.Nagaraj	GT (P)	SC	25.21
17.	265	C.Avudaiselvan	GT (W) (P)	SC	24.76
18.	272	S.Ravindiran	SC (P)	SC	24.20
19.	281	T.Deebanraj	GT (P)	SC	23.99
20.	298	K.Subasuresh	GT (W) (P)	SC	22.77
21.	311	P.Mayaperumal	GT (P)	SC	22.62
22.	329	R.Sethuraman	GT (W) (P)	SC	22.53
23.	336	R.Thirunavukkarasu	SC (P) TM	SC	22.09
24.	345	A.Mahesh	GT (P) TM	SC	21.54
25.	361	R.Mohanraj	GT (W) P	SC	19.72
26.	372	G.Ranjithkumar	SC (P)	SC	19.46
27.	395	G.Selvakumar	GT (W) (P) TM	SC	17.03
28.	406	S.Sivaprakash	SC (P)	SC	16.79
29.	409	T.Gowthaman	GT (P)	SC	15.20
30.	427	V.Selvasundaram	GT (W) (P)	SC	14.68
31.	436	S.Dhanesh Kumar	SC (P) TM	SC	10.37



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i) Scheduled caste candidates already have the benefit of 18% reservation under Act 45 of 1994.

ii) Thus Scheduled Caste candidates with very low marks like 10.37 have been selected under the intercaste marriage category. Another candidates with just 5 marks coming under the BCO category has been selected under the intercaste marriage category.

iii) The other legal submissions made in the Writ Petitions for the post of Technical Assistants will apply to the post of Field Assistant also.

iv) The petitioners have impleaded all the intercaste marriage candidates in W.P.No.15472 of 2020 and the implead petition has been ordered by order dated 17.12.2020.

v) The Employment Exchange did not sponsor any intercaste marriage candidates for the post of Field Assistant in TANGEDCO. Documents enclosed.

vi) Dated at Chennai this the 18th day of August, 2021.

13. That apart, it is submitted that at best only "destitute widows" and "ex-servicemen" are entitled for appointment on priority basis. It is submitted that the appointment of 43 inter-castemarriage candidates on priority basis, as Technical Assistant/Assistant out of 455 Post of Technical Assistant was arbitrary, perverse and contrary to the Constitution and contrary to the provisions of the 2 enactments mentioned above, and therefore the second respondent should be directed to redraw the selection list only by following vertical reservation and horizontal reservation recognised under law.

14. Similarly, it is submitted that about 31 Field Assistants have been wrongly appointed and therefore the second respondent should be directed to redraw the selection list only by following vertical reservation and horizontal reservation recognised under law.

15. It is submitted that the petitioners, who have scored higher marks have been left out. It is submitted that the petitioners belong to poor weaver and agricultural families and have suffered grave injustice on account of the arbitrary policy adopted by the second respondent reserving posts for intercaste marriage candidates under priority category.



16. It is further submitted that in G.O.Ms.No.142 (Personnel and Administrative Department) dated 14.10.2009 dealing with the 200 point roster (Page 7 of the Additional Typed Set of Papers) has been referred to in the Impugned Notification No.01/2016 dated 28.02.2016. The said G.O. gave the 200 point roster with priority and non-priority candidates in the ratio 1:4 in the Annexure to the said GO. It is submitted that there is no reference to intercaste marriage candidates coming under priority category in the list of priority candidates.

17. It was further submitted that the Division Bench in its Judgment in W.A.(MD).No.886 of 2020 dated 16.07.2021 held as follows:

"20. Further, G.O.(Ms) No.142, dated 14.10.2009, has not been shown to be adopted by the TANGEDCO and therefore, it cannot be made applicable unless and otherwise it has been adopted by TANGEDCO. To put it in a different form, if the candidates apply for the post by direct recruitment and they are drawn from two sources, namely, those candidates whose names have been sponsored from Employment Exchange whose names have been sponsored from Employment Exchange and those candidates, who apply from the open market pursuant to the advertisement issued in the newspapers. Then automatically priority category could be made applicable. On the contrary, if the recruitment process is conducted only by inviting applications from the open market by issuing advertisement in the dailies, then unless and until it is shown that G.O.(Ms).No.142 has been adopted by TANGEDCO, the same cannot be made applicable".

18. A reference was made to Paragraph No.24 of the above order of the Division Bench which reads as follows:

"24.... In Serial No.3 of clause 11 (7), list of certificates, which are nine in number, has been mentioned. Out of the nine priority categories, the Notification specifically excludes only two of the reserved categories, namely, Destitute Widow and Ex-Serviceman. Thus, it goes without saying that seven other priority categories would be considered for selection and this, in our view, would be the correct interpretation of the Notification, because it is not that the priority has been implemented for Scheduled Tribe alone, but it has been



implemented for all other reserved categories, such as, BC, MBC, SC and ST.

19. A reference was also made to Clause 5 (viii) in the Notification No.01/2016 dated 28.02.2016 which reads as under:-

"Reservation of appointment to "Destitute Widows" and "Ex-servicemen" shall apply to this recruitment"

20. It is therefore submitted that since the Notification No.01/2016 specifically included only two of the priority categories in Clause 13 namely "Destitute Widows" and "Ex-servicemen", the seven other priority categories in Clause 13 cannot be considered for selection and are considered to be excluded. It is submitted that the intercaste marriage candidates have been excluded from priority category under Notification No.01/2016, dated 28.02.2016."

21. It is submitted therefore the Respondent No.1 in the Writ Appeal has given up the challenge to the selection of the Respondent No.2 to the post of Assistant Engineer under the Scheduled Tribe and intercaste marriage category, the observations of the Division Bench on the priority of inter caste candidates for the post of Assistant Engineer is only an obiter dicta. The meaning of "obiter" is that which is stated in passing, an incidental statement referring to a passage in a judicial opinion which is not necessary for the decision of the case before the Court. As already stated above, the first respondent in Writ Appeal (MD)No.886 of 2020 had given up the challenge to the selection of the second respondent under the inter caste marriage category. Hence the decision of the Division Bench dated 16.07.2021 would not constitute a binding precedent on the issue relating to priority for intercaste candidates. The petitioners have impleaded 20 of the intercaste marriage candidates as respondents in representative capacity and affidavit of service has been filed.

22. The learned counsel for the first respondent has referred to the counter affidavit, wherein, it has been stated that in G.O.Ms.No.541, Personnel and Administrative Reforms (Per.R) Department, dated 29.09.1989, it has also been ordered that if suitable and sufficient number of candidates are not available in the priority category candidates from the non-priority categories should be considered for appointment against those vacancies. In the year 1978, the Priyar Centenary Committee made a recommendation that children born of intercaste marriages would be given priority, treated on par with Scheduled Caste and Scheduled Tribes for the purpose of educational and other concessions with a view to encourage



intercaste marriages and widow remarriages. The Director of Employment and Training, Chennai had issued orders assigning priority to the category of " Intercaste Married Couple" whereon of the spouse (not their children) belonged to Scheduled Caste/Scheduled Tribe for sponsoring through Employment Exchange under Sub-group(i) of Group-II vide amendment orders issued in G.O.Ms.No.939, Personnel and Administrative Reforms (Per.R) Department dated 24.09.1986. As per Sub-Sections (1) and (2) of Section 18 of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016, the posts those are outside the purview of the Tamil Nadu Public Service Commission, recruitment shall be made by calling for names of eligible candidates from the employment exchange besides inviting applications by giving advertisements in two prominent dailies (one in vernacular language).

23. The candidates to be appointed shall be selected on the basis of merit by the appointing authority or by an officer designated by the appointing authority or by a Committee of Officers not exceeding three duly constituted by the appointing authority, subject to the rule of reservation of posts wherever applicable after subjecting the candidates to an oral interview and if necessary, a short written test which can be evaluated in a short time.

24. It is further submitted that the post of Technical Assistant / Electrical in Tamil Nadu Generation and Distribution Corporation Limited (TANGEDCO) is not under the purview of the Tamil Nadu Public Service Commission. Hence, the recruitment for the above post shall be made by the appointing authority concerned by following the provisions made in the Regulations/Acts/Rules of the TANGEDCO.

25. Appearing on behalf of the second respondent, learned Standing Counsel submits that the second respondent has followed the prevailing Law, Rules and Government Orders. It is submitted that appointments were made in accordance with law.

26. He further submits that the second respondent has followed the prevailing Government orders. It is submitted that appointment were made in accordance with law.

27. The learned counsel for the second respondent has referred to the counter affidavit, wherein, it is stated that as per G.O.Ms.No.44 dated 11.03.2015, TANGEDCO issued PER(FB) TANGEDCO Proceedings No.10, dated 10.12.2015 for implementing the direction of this Court in W.A.No.1027 of 2013. The Employment Exchange furnished the list of registered candidates including the priority candidates in the ratio of 1:5 and after issuance of G.O.Ms.No.44, TANGEDCO was followed it by recruiting



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its personnel both from Employment Exchange and open market. The selection procedure adopted earlier to 2015 was followed in selecting the candidates even after 2015, including the priority candidates based on the merit of marks scored by them. This was adopted since the list of eligible registered candidates obtained from Employment Exchange included the priority candidates. With no orders withdrawing the implementation of the G.O.(Ms.) No.1138 dated 25.09.1978, TANGEDCO cannot exclude the selection of the priority candidates when their list was sponsored by the Employment Exchange in the ratio of 1:5 and following the selection procedure adopted earlier to 2015. The second respondent has stated that after the issuance of G.O. (Ms.) No.44 dated 11.03.2015 started conducting direct recruitment of eligible candidates through open market and by obtaining list from employment exchange. The employment exchange furnished the list of candidates including priority candidates. The said employment sponsored candidates including the priority candidates were applied for vacancies.

28. He further stated that G.O.Ms.No.398 Personnel and Administrative Reforms (Per.R) Department dated 13.09.1990, has directed to fill the vacancies in their organization if done through Employment Exchange in the ratio of 1:4 between priority and Non-Priority category by simultaneously applied communal reservation for women and Physically handicapped. Following the said instruction, the appointing of priority and non-priority has conducted in TANGEDCO till 2015 after implementation G.O.Ms.No.44 dated 11.03.2015 was also carried further the list obtained from the Employment Exchange along with the open market candidates and also being a organization getting financial assistance by way of grant or loan or material assistance etc., from the Government. Hence he prayed for dismissal of these writ petitions.

29. I have perused Notification No.1/2016, dated 28.2.2016 issued by the second respondent. The said Notification stipulates that candidates from inter-caste marriage will be considered for being appointed on priority basis among the other candidates to various posts.

30. The procedure for selection is set out in Clause 7. The selection process consists of written examination and interview. 85% of the marks were reserved for written exams and 15% for interview.

31. Earlier, W.P.No.28092 of 2017 was filed by few degree holders and diploma holders. The case was filed for a Writ of Mandamus, to direct the second respondent to complete the process of selection of 500 Technical Assistant / Electrical and 25 Technical Assistant / Mechanical as per the procedure set out



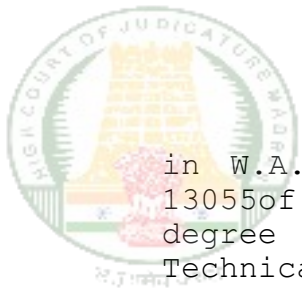
in Notification No.01/2016 dated 28.02.2016 by fixing an early date for interview and permitting the selected candidates in the ratio of 1:5 to attend the interview based on the ranking and as per rule of reservation. The learned Single Judge of this Court in W.P.No.28092 of 2017 on 26.10.2018 passed the following order:-

3. Mr.Dhilip Kumar, who is the Standing Counsel for the respondent is present and intimate this Court that the aforesaid writ petitions are pending but does not dispute that the result of the written test has already been published.

4. However, the learned counsel appearing for the writ petitioner could not bring to the notice of this Court that any legal obligation is there on the part of the respondents to conduct the recruitment and publish the final selection list to fill up the post in a time bound manner. In the notification made, no time schedule was also indicated within what time the recruitment process shall be concluded. Furthermore, the respondents have also the discretion not to proceed with the recruitment from any particular stage and cancel the recruitment, if the facts and situations so warrant. Therefore, no statutory duty to conduct the recruitment in a time bound manner being there on the respondent nor right of the petitioner can be read in the notification to ask the respondent the relief sought for, the writ petition filed seeking the relief is misconceived.

5. In such premises, I am unable to accept the submission made by the learned counsel for the petitioner to entertain this writ petition, to issue a writ of mandamus as prayed for inasmuch as in my considered opinion, the petitioners are not entitled to the relief invoking the jurisdiction of this Court under Article 226 of the Constitution of India. Hence the writ petition stands dismissed at the stage of admission. Consequently, the W.M.P. No.32756 of 2018 filed for interim relief stands closed. No costs.

32. The said order was challenged in W.A.No.2485 of 2018. The Hon'ble Division Bench by an interim order dated 20.03.2019



in W.A.No.24850 of 2018 along with W.P.Nos.10374 of 2016 and 13055 of 2017 held that there was no discrimination between degree holders and diploma holders for being appointed as Technical Assistants and Field Assistants.

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33. The Hon'ble Division Bench considered Note 2 of Clause 94 of the Tamil Nadu Electricity Board Service Regulations which reads as under:-

"Note 2: In cases where the Regulations prescribe a Diploma in a particular subject as a qualification, then a Degree in that subject should be deemed to be a higher qualification, and where a lower qualification or its equivalent is prescribed for appointment to any category, a person possessing a higher qualification will be eligible for appointment."

34. In paragraph No.11, the Hon'ble Division Bench held as under:-

"11. In as much as, the selection process has already been completed, which apparently is fair, we direct the Chief Engineer (Personnel), TANGEDCO, Chennai, to allot the selected candidates to the respective Superintending Engineers, for issuance of orders of appointment, within a week from today."

35. Thus, the Hon'ble Division Bench held that there was no discrimination between the degree holders and diploma holders in the matter of entitlement to apply, to the posts of Technical Assistants. The Hon'ble Division Bench further noticed that the selection process has already been completed and therefore directed the Chief Engineer (Personnel), TANGEDCO, Chennai, to allot the selected candidates, to the respective Superintending Engineers, for issuance of orders of appointment, within a week from today.

36. The Hon'ble Division Bench also directed the second respondent TANGEDCO herein to conduct interview for the eligible candidates as per the service regulations on the basis of the interview and apply the Rule of Reservation and complete the exercise within a period of two weeks.

37. The present Writ Petitions have been filed in the backdrop of the above orders which came to be passed by the Hon'ble Division Bench of this Court in W.A.No.2485 of 2018.



38. About 2625 candidates were found eligible out of which, 289 candidates were degree holder and 23 diploma holder. The petitioners, who participated in the selection process, were not issued with the appointment letters. The petitioners have challenged the appointment of 43 Technical Assistants-Electrical and 31 Field Assistants by the second respondent under the priority given to Inter-Caste Marriage couples.

39. They have challenged the appointments of the private respondents on the ground that they have been given wrongly preference on account of their inter-caste marriage based on G.O Orders which do not survive in view of the subsequent enactments.

40. In these Writ Petitions, the second respondent has pointed out that the private respondents, whose appointment is being challenged, were selected on account of their inter-caste marriage, who were sponsored by the Employment Exchange. It is submitted that these candidates were selected on merits.

41. Before answering to pivotal issue, it will be useful to refer to few decision of the Hon'ble Supreme Court. The Hon'ble Supreme Court in Pradeep Kumar Rai Vs. Dinesh Kumar Pandey, (2015) 11 SCC 493 has followed a long list of cases that candidates having participated in the recruitment procedure pursuant to a recruitment notification cannot subsequently challenge the recruitment. The Court held as follows:-

"The candidates cannot approbate and reprobate at the same time. Either the candidates should not have participated in the interview and challenged the procedure or they should have challenged immediately after the interviews were conducted." [See Vijendra Kumar Verma v. Public Service Commission, (2011) 1 SCC 150]

42. In Madan Lal Vs. State of Jammu & Kashmir, (1995) 3 SCC 486, the Honb'le Supreme Court held as under :-

"9. Before dealing with this contention, we must keep in view the salient fact that the petitioners as well as the contesting successful candidates being respondents concerned herein, were all found eligible in the light of marks obtained in the written test, to be eligible to be called for oral interview. Up to this stage there is no dispute between the parties. The petitioners also appeared at the oral interview



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conducted by the members concerned of the Commission who interviewed the petitioners as well as the contesting respondents concerned. Thus the petitioners took a chance to get themselves selected at the said oral interview. Only because they did not find themselves to have emerged successful as a result of their combined performance both at written test and oral interview, they have filed this petition. It is now well settled that if a candidate takes a calculated chance and appears at the interview, then, only because the result of the interview is not palatable to him, he cannot turn round and subsequently contend that the process of interview was unfair or the Selection Committee was not properly constituted. In *Om Prakash Shukla v. Akhilesh Kumar Shukla* [1986 Supp SCC 285 : 1986 SCC (L&S) 644] it has been clearly laid down by a Bench of three learned Judges of this Court that when the petitioner appeared at the examination without protest and when he found that he would not succeed in examination he filed a petition challenging the said examination, the High Court should not have granted any relief to such a petitioner."

43. The Hon'ble Supreme Court in *Prakash Chand Meena vs. State of Rajasthan*, (2015) 8 SCC 484, has held that in the matter of eligibility qualification, the equivalent qualification must be recognised as such in the recruitment rules or Government Order existing on or before the initiation of recruitment process. The Hon'ble Supreme Court in *Prakash Chand Meena vs. State of Rajasthan*, has held that a candidate after participating in the selection process cannot challenge the selection process. Therefore, there are no merits in the contention of the petition.

44. The petitioners have not challenged the Notification No.1/2016 dated 28.2.2016 issued by the second respondent. The petitioners have challenged the selection pursuant to the direction of the Division Bench of this vide order dated 20.03.2019.

45. Having participated in the selection process pursuant to Notification No.1/2016 dated 28.02.2016, it is not open to the petitioners now to challenge the method of recruitment giving preference to ICM candidates.

46. Thus, challenge to the Notification is not permissible



as the petitioners have participated in the recruitment and selection process initiated by the second respondent. The petitioners cannot challenge the selection of the private respondents by the second respondent, if the selection was as per the Recruitment Notification and the Government Orders.

47. Therefore, the submission of petitioners that unless a special statute similar to Act 40 of 2010 or Rights of Persons Disabilities Act, 2016 was passed for making any reservation for inter-caste Marriage Candidates, there is no provision for making any horizontal reservation in the post of Technical Assistants by TANGEDCO cannot be countenanced.

48. It is not open to challenge that the recruitment made was contrary to Article 16(1) and 15(3) of the Constitution of India under Notification No.01/2016, dated 28.02.2016.

49. Therefore, challenge to the appointment pursuant to reservation/priority quota in the impugned notification cannot be countenanced. Thus, to that extent, there are no merits in the present Writ Petitions.

50. However, the question, whether the second respondent had followed the correct procedure in appointing the private respondents in accordance with the law declared by the Hon'ble Supreme Court, is totally a different issue and is justiciable.

51. Appointment on priority basis of those candidates who belong to a special category was recognised by the Government of Tamil Nadu in G.O.Ms.No.188, Personnel and Administrative Reforms (Personnel-P) Department, dated 28.12.1976. It suppressed the Government Orders that were in force prior to the aforesaid date.

52. Relevant portion from the aforesaid G.O.Ms.No.188, Personnel And Administrative Reforms (Personnel-P) Department, dated 28.12.1976 reads as under:-

"2. In suppression of the orders issued in the G.O. first read above, as subsequently amended, the Government direct that the order of priorities in regard to provision of employment assistance through Employment Exchanges shall be as indicated in the annexure to this G.O."

53. Priority in employment for "Inter-Caste Married Couple" (where one of the spouse belongs to SC/ST) through Employment Exchanges was recognized in Group II Services vide



G.O.Ms.No.188, Personnel And Administrative Reforms (Personnel-P) Department, dated 28.12.1976. This was an incentive for the couples contracting inter-caste marriage where one of the couple belonged to the Scheduled Caste or Scheduled Tribe Community.

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54. By G.O.Ms.No.541, Personnel And Administrative Reforms (PER.R) Department, dated 29.9.1989, it was decided to give marginal advantage to candidates belonging to priority group over the non-priority candidates. It was directed that the vacancies for which appointment by direct recruitment are to be made through employment exchanges and vacancies should be filled from candidates belonging to the priority categories and non-priority categories in the ratio of 1:4, subject to the Rule of Reservation/allocation in the Service Rules.

55. The government also directed that only if suitable candidates are not available in sufficient numbers in the priority category, candidates from the non-priority categories should be considered for appointment against these vacancies.

56. The above attempt of the Government is to encourage the inter-caste marriage between the persons belonging to any other community with a person belonging to Scheduled Caste or Scheduled Tribe Community.

57. However, it should be remembered that by contracting marriage to a person belonging to Scheduled Caste or Scheduled Tribe Community, neither of the person change their community. It is open for such persons to repudiate the caste system and not disclose the same to the authorities and not claim any privilege. However, choice is left to such person.

58. However, harsh reality of societal prejudice and social sanction haunt persons contracting inter-caste marriage though in a small way they attempt to break the caste hegemony that still rules, divides and balkanizes the society into different strata despite the cherished dreams and promises in the Constitution.

59. Thus, Government Orders were issued by progressive Government ahead of time knowing fully well that not only a person contracting such inter-caste marriage but also their family may face ex-communication from their society apart from the family itself ex-communication and isolating such individual contracting inter-caste marriage.

60. Appointment of persons on priority from the persons who have been issued Inter Caste Marriage Certificate is a social engineering to bring homogeneity in the society. It however does not partake the characteristic of a vertical reservation. It



operates only as a horizontal reservation.

61. Such horizontal reservation has to work only within the confines of vertical reservation. Only a priority can be conferred to such person in the matter of appointment. However, priority conferred under the Government Orders cannot metaphorize into another form of a vertical reservation.

62. In Tamil Nadu, the Tamil Nadu Backward Classes, Scheduled Caste and Scheduled Tribes (Reservation of Seats in Educational Institutions and Appointments or Posts in the Service under the State) Act, 1993 (Act 45 of 1994) was enacted. It codified vertical reservation which was otherwise recognised till then under various Government Orders.

63. The Tamil Nadu Backward Classes, Scheduled Caste And Scheduled Tribes (Reservation of Seats in Educational Institutions and Appointments or Posts in the Service under the State) Act, 1993 (Act 45 of 1994) which was passed by the State Assembly codified 69% reservation to various communities which was in force prior to its enactment in the form of Government Orders.

64. In the matter of employment and in the matter of Education, both social reservation (vertical reservation) and horizontal reservations are recognized. As far as vertical reservation is concerned, it is as per the provisions of the Tamil Nadu Backward Classes, Scheduled Caste And Scheduled Tribes (Reservation of Seats in Educational Institutions and Appointments or Posts in the Service under the State) Act, 1993 (Act 45 of 1994).

65. Vertical Reservation in public employment in the State is sanctioned under Article 15 (4) and Article 16 (4) of the Constitution of India. In the State of Tamil Nadu, it has been enacted for the aforesaid purpose.

66. The Government of Tamil Nadu, vide letter dated 17.2.2003, bearing reference No.76183/R/2002-2, clarified as under:-

"I am to refer to the references cited and to clarify that the categories of priorities specified in the Government order are only for sponsoring the names in regard of employment assistance through Employment Exchanges. Therefore, the above said order shall be applicable only if the Special Rules to the post to which Recruitment is proposed to be made



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specifies that the appointment shall be made through Employment Exchange.

2. However, while appointing candidates through Employment Exchanges the ratio 1: 4 should be followed among priority and non-priority candidates subject to the rule of reservation /allocation made in the Service Rules. If suitable and sufficient numbers of candidates are not available in the priority category, candidates from non-priority category should be considered for appointment against these vacancies."

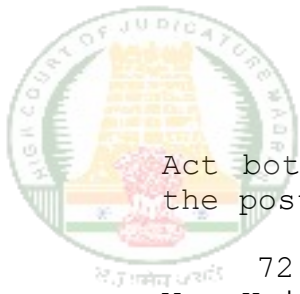
67. Thus, priority was to be given to those priority candidates sponsored by the Employment in the ratio of 1:4 subject to Rule of reservation. Priority in employment was to operate as a horizontal reservation within in the bounds of the vertical reservation.

68. Part -I and Part-II of the Tamil Nadu State and Subordinate Service Rules in Volume-I of the Tamil Nadu Services Manual was amended vide G.O.Ms.No.55, Personnel and Administrative Reforms (S) Department, dated 08.04.2010. It amended roster point. Above amendment does not deal with the priority in appointment for inter-caste married couples.

69. It will be also useful to refer to the Tamil Naidu Appointment on Preferential Basis in the Service under the State of Persons Studied in the Medium Rules, 2010. It was framed under Section 8 (1) of the Tamil Nadu Appointment on Preferential Basis in Service under the State of Persons Studied in Tamil Nadu, Medium Ordinance, 2010 (Tamil Nadu Ordinance 3 of 2010).

70. These Rules are now part of the Persons Studied in Tamil Medium (PSTM), Act 40 of 2010, which now stands amended by the Persons Studied in Tamil Medium (PSTM) (Amendment) Act, 2020. As per the aforesaid rules, out of 200 seats, 40 seats shall be set apart on preferential basis to persons studied in Tamil Medium, in their respective category.

71. Tamil Nadu Backward Classes, Scheduled Caste and Scheduled Tribes (Reservation of Seats in Educational Institutions and Appointments or Posts in the Service under the State) Act, 1993 (Act 45 of 1994) fulfils the object enshrined in the Constitution by providing vertical reservation. About 69% of the vacancies have been reserved for various socially and educationally backward communities in the State under the said



Act both in the educational institutions and for appointment to the posts in the service in the State.

72. The Hon'ble Supreme Court in India in Indira Sawahany Vs. Union of India, 1992 Supp (3) SCC 217 : 1992 SCC (L&S) Supp 1, summarised the law as follows:-

859. We may summarise our answers to the various questions dealt with and answered hereinabove:

- (1) (a) It is not necessary that the 'provision' under Article 16(4) should necessarily be made by the Parliament/Legislature. Such a provision can be made by the Executive also. Local bodies, Statutory Corporations and other instrumentalities of the State falling under Article 12 of the Constitution are themselves competent to make such a provision, if so advised. (Paras 735-737)
- (b) An executive order making a provision under Article 16(4) is enforceable the moment it is made and issued. (Paras 738-740)
- (2) (a) Clause (4) of Article 16 is not an exception to clause (1). It is an instance and an illustration of the classification inherent in clause (1). (Paras 741-742)
- (b) Article 16(4) is exhaustive of the subject of reservation in favour of backward class of citizens, as explained in this judgment. (Para 743)
- (c) Reservations can also be provided under clause (1) of Article 16. It is not confined to extending of preferences, concessions or exemptions alone. These reservations, if any, made under clause (1) have to be so adjusted and implemented as not to exceed the level of representation prescribed for 'backward class of citizens' – as explained in this Judgment. (Para 745)
- (3) (a) A caste can be and quite often is a social class in India. If it is backward socially, it would be a backward class for the purposes of Article 16(4). Among non-Hindus, there are several occupational groups, sects and denominations, which for historical reasons, are socially backward. They too represent backward social collectivises for the purposes of Article 16 (4). (Paras 746 to 779)



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- (b) Neither the Constitution nor the law prescribes the procedure or method of identification of backward classes. Nor is it possible or advisable for the court to lay down any such procedure or method. It must be left to the authority appointed to identify. It can adopt such method/procedure as it thinks convenient and so long as its survey covers the entire populace, no objection can be taken to it. Identification of the backward classes can certainly be done with reference to castes among, and along with, other occupational groups, classes and sections of people. One can start the process either with occupational groups or with castes or with some other groups. Thus one can start the process with the castes, wherever they are found, apply the criteria (evolved for determining backwardness) and find out whether it satisfies the criteria. If it does – what emerges is a “backward class of citizens” within the meaning of and for the purposes of Article 16(4). Similar process can be adopted in the case of other occupational groups, communities and classes, so as to cover the entire populace. The central idea and overall objective should be to consider all available groups, sections and classes in society. Since caste represents an existing, identifiable social group/class encompassing an overwhelming minority of the country's population, one can well begin with it and then go to other groups, sections and classes. (Paras 780 and 785).
- (c) It is not correct to say that the backward class of citizens contemplated in Article 16(4) is the same as the socially and educationally backward classes referred to in Article 15(4). It is much wider. The accent in Article 16(4) is on social backwardness. Of course, social, educational and economic backwardness are closely inter-twined in the Indian context. (Paras 786-789)
- (d) ‘Creamy layer’ can be, and must be excluded. (Paras 790-793)
- (e) It is not necessary for a class to be designated as a backward class that it is situated similarly to the Scheduled Castes/Scheduled Tribes. (Paras 794 and 797)



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- (f) The adequacy of representation of a particular class in the services under the State is a matter within the subjective satisfaction of the appropriate Government. The judicial scrutiny in that behalf is the same as in other matters within the subjective satisfaction of an authority. (Para 798)
- (4) (a) A backward class of citizens cannot be identified only and exclusively with reference to economic criteria. (Para 799)
- (b) It is, of course, permissible for the Government or other authority to identify a backward class of citizens on the basis of occupation-cum-income, without reference to caste, if it is so advised. (Para 800)
- (5) There is no constitutional bar to classify the backward classes of citizens into backward and more backward categories. (Paras 801 to 803)
- (6) (a) and (b) The reservations contemplated in clause (4) of Article 16 should not exceed 50%. While 50% shall be the rule, it is necessary not to put out of consideration certain extraordinary situations inherent in the great diversity of this country and the people. It might happen that in far-flung and remote areas the population inhabiting those areas might, on account of their being out of the mainstream of national life and in view of the conditions peculiar to and characteristic of them need to be treated in a different way, some relaxation in this strict rule may become imperative. In doing so, extreme caution is to be exercised and a special case made out. (Paras 804 to 813)
- (c) The rule of 50% should be applied to each year. It cannot be related to the total strength of the class, category, service or cadre, as the case may be. (Para 814)
- (d) Devadasan [T. Devadasan v. Union of India, (1964) 4 SCR 680 : AIR 1964 SC 179 : (1965) 2 LLJ 560] was wrongly decided and is accordingly overruled to the extent it is inconsistent with this judgment. (Paras 815 to 818)
- (7) Article 16(4) does not permit provision for reservations in the matter of promotion. This rule shall, however, have only prospective operation and shall not affect the promotions



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already made, whether made on regular basis or on any other basis. We direct that our decision on this question shall operate only prospectively and shall not affect promotions already made, whether on temporary, officiating or regular/permanent basis. It is further directed that wherever reservations are already provided in the matter of promotion – be it Central Services or State Services, or for that matter services under any Corporation, authority or body falling under the definition of 'State' in Article 12 – such reservations may continue in operation for a period of five years from this day. Within this period, it would be open to the appropriate authorities to revise, modify or re-issue the relevant rules to ensure the achievement of the objective of Article 16 (4). If any authority thinks that for ensuring adequate representation of 'backward class of citizens' in any service, class or category, it is necessary to provide for direct recruitment therein, it shall be open to it to do so. (Ahmadi, J expresses no opinion on this question upholding the preliminary objection of Union of India). It would not be impermissible for the State to extend concessions and relaxations to members of reserved categories in the matter of promotion without compromising the efficiency of the administration. (Paras 819 to 831)

- (8) While the rule of reservation cannot be called anti-meritarian, there are certain services and posts to which it may not be advisable to apply the rule of reservation. (Paras 832 to 841)
- (9) There is no particular or special standard of judicial scrutiny applicable to matters arising under Article 16(4). (Para 842)
- (10) The distinction made in the impugned Office Memorandum dated September 25, 1991 between 'poorer sections' and others among the backward classes is not invalid, if the classification is understood and operated as based upon relative backwardness among the several classes identified as Other Backward Classes, as explained in paras 843-844 of this Judgment. (Para 843-844)
- (11) The reservation of 10% of the posts in



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favour of 'other economically backward sections of the people who are not covered by any of the existing schemes of the reservation' made in the impugned Office Memorandum dated September 25, 1991 is constitutionally invalid and is accordingly struck down. (Para 845)

- (13) The Government of India and the State Governments have the power to, and ought to, create a permanent mechanism – in the nature of a Commission – for examining requests of inclusion and complaints of over-inclusion or non-inclusion in the list of OBCs and to advise the Government, which advice shall ordinarily be binding upon the Government. Where, however, the Government does not accept the advice, it must record its reasons therefor. (Para 847)
- (14) In view of the answers given by us herein and the directions issued herewith, it is not necessary to express any opinion on the correctness and adequacy of the exercise done by the Mandal Commission. It is equally unnecessary to send the matters back to the Constitution Bench of five Judges. (Paras 848 to 850)

860. For the sake of ready reference, we also record our answers to questions as framed by the counsel for the parties and set out in para 681. Our answers question-wise are

- (1) Article 16(4) is not an exception to Article 16(1). It is an instance of classification inherent in Article 16(1). Article 16(4) is exhaustive of the subject of reservation in favour of backward classes, though it may not be exhaustive of the very concept of reservation. Reservations for other classes can be provided under clause (1) of Article 16.
- (2) The expression 'backward class' in Article 16(4) takes in 'Other Backward Classes', SCs, STs and may be some other backward classes as well. The accent in Article 16(4) is upon social backwardness. Social backwardness leads to educational backwardness and economic backwardness. They are mutually contributory to each other and are intertwined with low occupations in the Indian society. A caste can



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be and quite often is a social class in India. Economic criterion cannot be the sole basis for determining the backward class of citizens contemplated by Article 16(4). The weaker sections referred to in Article 46 do include SEBCs referred to in Article 340 and covered by Article 16(4)

- (3) Even under Article 16(1), reservations cannot be made on the basis of economic criteria alone
- (4) The reservations contemplated in clause (4) of Article 16 should not exceed 50%. While 50% shall be the rule, it is necessary not to put out of consideration certain extraordinary situations inherent in the great diversity of this country and the people. It might happen that in far-flung and remote areas the population inhabiting those areas might, on account of their being out of the mainstream of national life and in view of the conditions peculiar to and characteristic of them need to be treated in a different way, some relaxation in this strict rule may become imperative. In doing so, extreme caution is to be exercised and a special case made out.

For applying this rule, the reservations should not exceed 50% of the appointments in a grade, cadre or service in any given year. Reservation can be made in a service or category only when the State is satisfied that representation of backward class of citizens therein is not adequate

To the extent, Devadasan [T. Devadasan v. Union of India, (1964) 4 SCR 680 : AIR 1964 SC 179 : (1965) 2 LLJ 560] is inconsistent herewith, it is overruled.

- (5) There is no constitutional bar to classification of backward classes into more backward and backward classes for the purposes of Article 16(4). The distinction should be on the basis of degrees of social backwardness. In case of such classification, however, it would be advisable – nay, necessary – to ensure equitable distribution amongst the various backward classes to avoid lumping so that one or two such classes do not eat away the entire quota leaving the other backward



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classes high and dry.

For excluding 'creamy layer', an economic criterion can be adopted as an indicium or measure of social advancement.

- (6) A 'provision' under Article 16(4) can be made by an executive order. It is not necessary that it should be made by Parliament/Legislature
- (7) No special standard of judicial scrutiny can be predicated in matters arising under Article 16(4). It is not possible or necessary to say more than this under this question
- (8) Reservation of appointments or posts under Article 16(4) is confined to initial appointment only and cannot extend to providing reservation in the matter of promotion. We direct that our decision on this question shall operate only prospectively and shall not affect promotions already made, whether on temporary, officiating or regular/permanent basis. It is further directed that wherever reservations are already provided in the matter of promotion – be it Central Services or State Services, or for that matter services under any Corporation, authority or body falling under the definition of 'State' in Article 12 – such reservations may continue in operation for a period of five years from this day. Within this period, it would be open to the appropriate authorities to revise, modify or re-issue the relevant rules to ensure the achievement of the objective of Article 16(4). If any authority thinks that for ensuring adequate representation of 'backward class of citizens' in any service, class or category, it is necessary to provide for direct recruitment therein, it shall be open to it to do so.

(As pointed out at the end of the paragraph 820 of this judgment, Ahmadi, J having upheld the preliminary objection raised by Shri Parasaran and others has not associated himself with the discussion on the question whether reservation in promotion is permissible. Therefore, the views expressed in this judgment on the said point are not the views of Ahmadi, J)



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861. The following Directions are given to the Government of India, the State Governments and the Administration of Union Territories

- (A) The Government of India, each of the State Governments and the Administrations of Union Territories shall, within four months from today, constitute a permanent body for entertaining, examining and recommending upon requests for inclusion and complaints of over-inclusion and under-inclusion in the lists of other backward classes of citizens. The advice tendered by such body shall ordinarily be binding upon the Government.
- (B) Within four months from today the Government of India shall specify the bases, applying the relevant and requisite socio-economic criteria to exclude socially advanced persons/sections ('creamy layer') from 'Other Backward Classes'. The implementation of the impugned O.M. dated August 13, 1990 shall be subject to exclusion of such socially advanced persons ('creamy layer')

This direction shall not however apply to States where the reservations in favour of backward classes are already in operation. They can continue to operate them. Such States shall however evolve the said criteria within six months from today and apply the same to exclude the socially advanced persons/sections from the designated 'Other Backward Classes'.

- (C) It is clarified and directed that any and all objections to the criteria that may be evolved by the Government of India and the State Governments in pursuance of the direction contained in clause (B) of para 861 as well as to the classification among backward classes and equitable distribution of the benefits of reservations among them that may be made in terms of and as contemplated by clause (i) of the Office Memorandum dated September 25, 1991, as explained herein, shall be preferred only before this Court and not before or in any other High Court or other Court or Tribunal.



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Similarly, any petition or proceeding questioning the validity, operation or implementation of the two impugned Office Memorandums, on any grounds whatsoever, shall be filed or instituted only before this Court and not before any High Court or other Court or Tribunal.

862. The Office Memorandum dated August 13, 1990 impugned in these writ petitions is accordingly held valid and enforceable subject to the exclusion of the socially advanced members/sections from the notified 'Other Backward Classes', as explained in para 861(B).

863. Clause (i) of the Office Memorandum dated September 25, 1991 requires – to uphold its validity – to be read, interpreted and understood as intending a distinction between backward and more backward classes on the basis of degrees of social backwardness and a rational and equitable distribution of the benefits of the reservations amongst them. To be valid, the said clause will have to be read, understood and implemented accordingly.

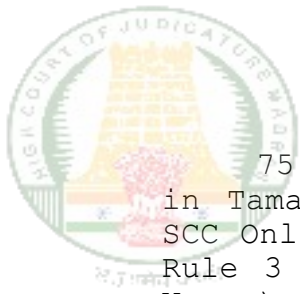
864. Clause (ii) of the Office Memorandum dated September 25, 1991 is held invalid and inoperative.

865. The writ petitions and transferred cases are disposed of in the light of the principles, directions, clarifications and orders contained in this Judgment.

866. No costs.

73. Though few amendments have been made to the Constitution (77th, 81st, 82nd and 84th) to get over, the few conclusions from the above judgement, the judgment still holds the field barring the amendments. These amendments are however not relevant for the final disposal of the present cases and are therefore not discussed. The above decision was rendered on 9.11.1992.

74. The Hon'ble Supreme Court in Saurav Yadav and Ors Vs. State of Uttar Pradesh & Others, (2021) 4 SCC 542, has recently clarified how horizontal reservation has to be worked and preference is to be given on reference.



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75. It upheld the method suggested by the Gujarat High Court in *Tamannaben Ashokbhai Desai Vs. Shital Amrutlal Nishar*, 2020 SCC Online Guj 2592: (2021) 62(2) GLR 1696. The Court dealt with Rule 3 of the Gujarat Civil Services (Reservation of Posts for Women) (Amendment) Rules, 2012. Few passages from the said judgment are reproduced below:-

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 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



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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 IMPEMETING HORIZONTAL RESERVATION FOR WOMEN.

No. of posts available for recruitment. 100

Social Reservation quota (50%)

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



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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 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



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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."

76. 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 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.”

77. Rights of Persons Disabilities Act, 2016 was passed for giving the promises in the Constitution. Reservation for Inter Caste Marriage Candidates can only operate as a horizontal reservation in the post of Technical Assistants by TANGEDCO. Article 16(1) and 15(3) of the Constitution of India in Notification No.01/2016 dated 28.02.2016.

78. In Tamil Nadu, the law on reservation is governed by the Tamil Nadu Backward Classes, Scheduled Caste And Scheduled Tribes (Reservation of Seats in Educational Institutions and Appointments or Posts in the Service under the State) Act, 1993 and the Persons Studied in Tamil Medium (PSTM), Act 40 of 2010.

79. Apart from the above, the Central enactments such as Rights of Persons Disabilities Act, 2016 are in force. However, merely because these enactments have been specifically enacted cannot mean that the Government Orders issued earlier giving preference and priority in employment to couples contracting inter-caste marriage category are ultra-vires of the Constitution. Government are entitled to take a policy decision and implement such decision.

80. As long as such decisions do not infringe on the rights conferred on privileged class of Citizens, it is not open to challenge the same. Preference/priority given to the persons under the inter-caste marriage category, cannot mean that they are entitled to a vertical reservations separately. Only preference and priority can be given to them in the recruitments as horizontal reservation. Thus, the person belonging to the community other than the Scheduled Caste or Scheduled Tribe Community, marrying a person belonging to the Scheduled Caste or Scheduled Tribe Community, is entitled to get a preference/priority from among the candidates of that community to which such person belongs.

81. For instance, a person belonging to a forward community marrying a Scheduled Caste or Scheduled Tribe person will be entitled to a preference among the candidates from the open category. Similarly, a person belonging to any other communities, i.e. BC, BCM & MBC or MBC (NC), who is entitled to a reservation under the Tamil Nadu Backward Classes, Scheduled Caste And Scheduled Tribes (Reservation of Seats in Educational Institutions and Appointments or Posts in the Service under the State) Act, 1993, will be entitled to preference among the candidates belonging to the same category. A person belonging to Scheduled Caste or Scheduled Tribe community again cannot be



given priority, if a such person secures lesser marks than cut-off marks of the persons from the aforesaid community.

82. A person, who has contracted inter-caste marriage cannot claim a vertical reservation in appointment conferring of such reservation would be contrary to Articles 15(1)(4) and 16 (1) of the Constitution of India. The purpose of granting preference/priority in the appointment to the persons who have contracted inter-caste marriage is only to incentivise such persons by giving preference and priority to them among the persons with whom they would otherwise compete. Therefore, the persons contracting inter-caste marriage cannot claim a separate vertical reservation in the employment. This would not only resulting to fraud of the Constitution, but conferring of unintended benefit, but would also be contrary to the law laid down by the Hon'ble Supreme Court as explained above in Saurav Yadav and Ors vs. State of Uttar Pradesh & Others (2021) 4 SCC 542.

83. In the manner of filling up of vacancies on priority / preferential basis, the method prescribed in paragraph No.69 of the Gujarat High Court in the case of Tamannaben Ashokbhai Desai referred to supra which was affirmed by the Hon'le Supreme Court in the case of Saurav Yadav referred to supra ought to have been followed.

84. In the light of the above discussions, I am inclined to dispose these Writ Petitions, by directing the second respondent to re-visit the issue and examine whether by appointing the private respondents, the petitioners have been wrongly edged out by treating the persons who have contracted inter-caste marriage as a separate social reservation. In case, such appointments have been made, such appointments are to be declared as irregular. At the same time, since these appointments were made long before based on the understanding of law prevailing then, their appointments shall not be disturbed.

85. Therefore, the second respondent is directed to create supernumerary posts to accommodate the petitioners by re-visiting the selection process again. In case, the petitioners are otherwise entitled to be appointed in the place of those persons who have contracted inter-caste marriage and have been irregularly appointed, such of those petitioners may be appointed by creating supernumerary posts by the second respondent. This exercise shall be carried out by the second respondent, within a period of six (6) weeks from the date of receipt of a copy of this order.



86. Accordingly, these Writ Petitions stand disposed with the above observation. No cost. Consequently, connected Miscellaneous Petitions are closed.

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Sd/-
Deputy Registrar

//True Copy//

Sub Assistant Registrar

kkd / jen

To

1. The Secretary to Government,
Department of Personnel and Revenue Administration,
The State of Tamil Nadu,
Secretariat, Chennai - 600009.
2. The Chief Engineer / Personnel,
Tamil Nadu Generation and Distribution Corporation Limited,
No.144, Anna Salai, Chennai - 600 002.
3. The Chariman,
Tamil Nadu Generation and Distribution Corporation Limited,
No.144, Anna Salai,
Chennai - 600 002.
4. The Secretary to Government,
Department of Personnel and
Public Administration,
Fort.St.George, Chennai -9

+1cc to M/s.C.Uma, Advocate, S.R.No.9811
+1cc to Mr.P.Subramanian, Advocate, S.R.No.10134
+1cc to the Government Pleader, S.R.No.10768

W.P.Nos.10639, 10646, 10939,
10945 & 15472 of 2020

BR(CO)
PM/15/03/2022