



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 04.10.2021

PRONOUNCED ON : 07.01.2022

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P. Nos.12833,12835 & 4852 of 2021
and W.M.P.Nos.13628,13626,13629,
13625,16010 and 11750 of 2021, 13450 of 2021
(Through Video Conferencing)

W.P.Nos.12833 & 12835 of 2021

B.Akkim ..Petitioner in W.P.No.12833 of 2021
S.M.Prabu ..Petitioner in W.P.No.12835 of 2021

vs.

1. The State of Tamil Nadu,
Rep.by its Principal Secretary to Government,
Home Department, Fort St.George,
Secretariat, Chennai 600 009.
2. The Chairman,
Tamil Nadu Uniformed Services Recruitment Board,
Old Commissioner of Police Office Campus,
Egmore, Chennai 600 008.
3. The Member Secretary,
Tamil Nadu Uniformed Services Recruitment Board,
Old Commissioner of Police Office Campus,
Egmore, Chennai 600 008.
4. The Director General of Police,
O/o.The Director General of Police,
Mylapore, Chennai 600 004.
..Respondents in W.P.Nos.12833 & 12835 of 2021

Prayer in W.P.Nos.12833 & 12835 of 2021: Writ petitions filed under Article 226 of the Constitution of India praying for issuance of a writ of Certiorarified Mandamus calling for records pertaining to order passed by the 2nd respondent vide his proceedings in C.No.D2/1319/2017 dated 31.05.2021 and C.No.L1/1441/2021 respectively dated 31.05.2021 and quash the same and consequently direct the respondents to treat their candidature bearing Registration Nos.1210305 and 0813900



respectively under the PSTM category for appointment to the post of Sub-Inspector of Police by allowing the petitioner to participate in the next level of selection process and consequently appoint him in the post of Sub-Inspector of Police.

WEB COPY

For Petitioners : Mr.R.Singaravelan
Senior Counsel for
Mr.R.Jayaprakash
(in both W.Ps.)

For Respondents : Mr.L.S.M.Hasan Fizal
Government Advocate.
(in both W.Ps.)

W.P.No.4852 of 2021:

S.Athiyaman

...Petitioner

vs.

1. The Secretary to Government,
Home(Police III) Department,
Fort St.George,
Chennai 600 009.

2. The Chairman,
Tamil Nadu Uniformed Services Recruitment Board,
Anna Salai,
Chennai 600 002.

3. The Director General of Police,
Mylapore, Chennai 600 004.

...Respondents

Prayer:-Writ petition filed under Article 226 of the Constitution of India praying for issuance of a writ of Mandamus directing the second respondent to permit the petitioner to participate in the next stages of the recruitment process i.e. Via-Voce under 20% reservation of PSTM Category in recruitment for the post of Sub-Inspector of Police vide notification No.02/TNUSRB/2019 dated 08.03.2019.

For Petitioner: Mr.V.Murali for
Mr.M.Habeeb Rahman

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



C O M M O N O R D E R

The issue that arises for consideration in these writ petitions is whether the petitioners in W.P.No.128333 of 2021 (B.Akkim), W.P No.12835 of 2021 (S.M.Prabhu) and W.P No.4852 of 2021 (S.Athiyaman) were entitled for appointment to the post of Sub-Inspector of Police pursuant to Recruitment Notification No.2/TNUSRB/2009 dated 8.5.2019 by application of the Tamil Nadu Appointment on Preferential Basis under the State of Persons Studied in Tamil Medium Act, 2010 (referred to as PSTM Act, 2010) in the recruitment called.

2.These petitioners had applied to the post of Sub Inspector Police pursuant to the above Recruitment Notification No.2/TNUSRB/2009 dated 8.5.2019. The petitioners in W.P.No.12833 of 2021 (B.Akkim) and W.P.No.12835 of 2021(S.Prabu) had earlier filed W.P.No.7643 of 2021 and W.P.No.7620 of 2021 before this Court.

3. By separate orders dated 24.03.2021 and 25.03.2021, the respective writ petitions were disposed by directing the respondents to consider their representations dated 16.03.2021 and 10.03.2021 after affording an opportunity for the personal hearing and written submission of the petitioners. It is pursuant to the above impugned orders have been passed.

4.The impugned orders in the above two mentioned Writ Petitions have been passed after following the decisions of the Division Bench of the Madurai Bench of this Court in W.P.(MD). Nos.19112 etc., batches and W.A.(M.D) NO.457 of 2012. The 2nd Respondent passed the impugned order dated 31.05.2021 and has informed the petitioners that their application cannot be considered.

5.As far as the Writ Petitioner in W.P.No.4852 of 2021 (.S.Athiyaman) is concerned, an interim Order on 12.05.2021 was passed by reserving one post and if the said petitioner was not found to be eligible, the reserved post was to be vacated. The respondents were also directed to conduct an enquiry with respect to the same and obtain the statement of the petitioner and report to this court as to the studies of the petitioner herein on the next date of hearing.

6.These petitioners were not called for interview after certificate verification. These three writ petitions have been filed on the strength of the observation in para 12 of the order dated 10.02.2021 of the Division Bench of this Court in W.P. (MD).Nos.19112 of 2020 and etc batch, reads as follows:-

"12. In fact, the respondents are actually following the rule of reservation, but at the



WEB COPY

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 percent for PSTM. Therefore, even the respondents have understood the object of the Act, but the mistake lies in its implementation. If 20 percent 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."

7. It is submitted that the petitioners herein are also a similarly placed candidates as that of those three writ petitioners therein and the petitioners herein had requisite cut off marks for being considered as a PSTM candidate under PSTM Act, 2010 for being called to the next stage of selection for preferential appointments as these petitioners had also studied in Tamil Medium.

8. It is submitted that if the preferential reservation was applied at each stage of selection, the petitioners would have been appointed as Sub- Inspector of Police.

9. It is stated that the respondents have not considered the candidature of the respective petitioners under the preferential quota reserved for persons eligible for appointment contrary to the provisions of the Tamil Nadu Appointment on Preferential basis under the State of Persons Studied in Tamil Medium Act, 2010 (referred to as Tamil Act, 2010 for brevity).

10. It is thus submitted that the petitioners have been wrongly denied the opportunity of being appointed in the Uniformed Police Service under the provisions of the Sub-Inspector of Police (Armed Rules 2019).

11. It is submitted that the petitioners were under the impression that a separate cut-off would be prescribed for the persons who Studied in Tamil Medium at the stage of selection. However, the respondents did not fix separate cut-off marks for



PSTM candidates to consider them under PSTM preferential reservation in roster points fixed for them.

12.It is further submitted that the petitioner in W.P.No.19112 of 2020 (Mr.Vigneshwaran) an MBC candidate scored only 63 marks, whereas the petitioner in W.P.No.4852 of 2021, (S.Athiyaman) scored 63.5 marks, but was not allowed to participate in the next level of selection process and was a more meritorious candidate having scored higher marks than those who have been given relief by the Court.

13.It is further submitted that in compliance with the order of this Court, the petitioner (S.Athiyaman) was called for enquiry before the Board on 01.06.2021. Accordingly, the said petitioner also appeared before the Board and his statement was obtained.

14.It is submitted that though the Writ Petitioner in W.P.No.4852 of 2021 (S.Athiyaman) has completed his qualifying degree B.A.(Police Administration) in Tamil as medium of instruction and is therefore eligible to be considered against 20% PSTM reservation, he did not satisfy the requirement.

15.Appearing on behalf of the petitioners, the learned Senior Counsel Mr.R.Singaravelan submitted that the Hon'ble Supreme Court in State of Karnataka and others Vs. C.Lalitha (2006) 2 SCC 747 had held that all similarly situated person should be treated similarly irrespective of the fact that only one person had approached the Court. In this connection, a reference was made to paragraph Nos.29 and 32 which are extracted here under:

"29.Service jurisprudence evolved by this Court from time to time postulates that all persons similarly situated should be treated similarly only because one person had approached the court that would not mean that persons similarly situated should be treated differently."

"32.Justice demands that a person should not be allowed to derive undue advantage over other employees. The concept of justice is that one should get what is due to him or her in law. The concept of justice cannot be stretched so as to cause heart-burning to more meritorious candidates."

16.The learned Senior Counsel for the petitioners has also drawn attention to another decision of the Supreme Court in State of Uttar Pradesh and others Vs. Arvind Kumar Srivastava and others (2015) 1 SCC 347, wherein it was held that normal



rule is that when a particular set of employees is given relief by the court, all other identically situated persons should be treated alike by extending same benefit since not doing so would amount to discrimination and be violative of Article 14 of the Constitution of India. Relevant portion reads as under:

"22. The legal principles which emerge from the reading of the aforesaid judgments, cited both by the appellants as well as the respondents, can be summed up as under.

22.1. The normal rule is that when a particular set of employees is given relief by the Court, all other identically situated persons need to be treated alike by extending that benefit. Not doing so would amount to discrimination and would be violative of Article 14 of Constitution of India. This principle needs to be applied in service matters more emphatically as the service jurisprudence evolved by this court from time to time postulates that all similarly situated persons should be treated similarly. Therefore, the normal rule would be that merely because other similarly situated persons did not approach the court earlier, they are not to be treated differently."

17. The learned Senior Counsel for the petitioners further submits that though the Division Bench of the Madurai Bench of this Court in W.P.(MD).Nos.19112 of 2020 & etc, batch has found fault with the method adopted by the respondents while applying the provisions of Tamil Act, yet it has given protection only to few persons who had earlier filed W.P.(MD).Nos.19112 of 2020 & etc, batch by holding that such relief cannot be extended to all the others.

18. It is submitted that to that extent the above observation of the Division Bench of the Madurai Bench of Madras High Court in W.P.(MD).Nos.19112 of 2020 & etc, batch is to be ignored as not laying correct position of law in the light of the above decision of the Hon'ble Supreme Court.

19. The learned Senior Counsel for the petitioners further submits that the concession granted by the Advocate General before the Madurai Bench of Madras High Court in W.P.(MD).Nos.19112 of 2020 & etc, batch cannot be construed as law.

20. The learned Senior Counsel also drew attention to another decision of the Division Bench of the Madurai Bench of Madras



High Court in W.A.(MD).No.457 of 2021 in the case of Pavin kumar rendered on 27.07.2021.

21.He further submits that though the said decision of the Court in W.P.(MD).Nos.19112 of 2020 & etc, batch vide order dated 20.02.2021 of Division Bench of Madurai Bench of Madras High Court concurred, the Division Bench while passing order on 27.07.2021 again fell in error and ignored the law laid down by the Hon'ble Supreme Court in the above mentioned cases.

22.Appearing on behalf of the respondents, the learned Government Advocate, Mr.L.S.M.Hasan Fizal submitted that the petitioners had not challenged the notification issued by the respondents, wherein it has been clearly stated as follows:

"PSTM preference:During the final provisional selection, 20 percent of vacancies shall be apart on preferential basis for the open candidates who studied the Bachelor's Degree in Tamil Medium."

23.The learned Government Advocate for the respondents further submits that pursuant to the order of the Hon'ble Court in the earlier round of writ petition filed by the petitioners in W.P.Nos.12833 and 12835 of 2021, a personal hearing was conducted and the petitioners were heard by the Member Secretary. Subsequently, the Board took sincere effort to consider their representation based on the merits of their case and in accordance with law.

24.It is submitted that as per the order of the Division Bench of Madurai Bench of Madras High Court in W.P.(MD). Nos.19112 19121, 19123 and 18668 of 2020 cited supra, the case of the petitioners could not be considered favourably. Hence, the submission of the respective petitioners that the decision taken by the Board was unjust and resulted in miscarriage of justice cannot be countenanced.

25.It is further submitted that the recruitment has been completed and therefore these Writ Petitions filed by the petitioners are liable to be dismissed in the light of the two decisions of the Division Bench of the Madurai Bench of this Court referred by the learned Senior Counsel for the petitioners is of no use.

26.That apart, it was further submitted that the petitioners had filed these writ petitions only after the Division Bench of the Madurai Bench of Madras High Court had passed an order dated 10.02.2021 in W.P.(MD).Nos.19112 of 2020 & etc, batch and had granted relief to the petitioners therein and since the



petitioners were fence sitters, they are not entitled to the relief in these Writ Petitions.

27.As far as the petitioner in W.P.No.12833 of 2021 (Akkim) and the petitioner in W.P.No.12835 of 2021 (S.M.Prabu) are concerned, it was further submitted that the petitioners belonged to BCM and MBC Community respectively and had applied to the recruitment under open quota and not under PSTM category.

28.It is submitted that since the respective petitioners had not filed application under the provisions of the Tamil Nadu Appointment on Preferential Basis under the State of Persons Studied in Tamil Medium Act, 2010 (PSTM, Act 2010) and therefore they were assigned with Enrolment Nos.1210305 (B.Akkim) and 0813900 (S.M.Prabu) and 0414976 (S.Athiyaman) respectively and therefore they could not be selected.

29.It is submitted that they secured only 46.00, 52.50 and 48.5 marks respectively in the Written Examination and 12.00, 09.00 and 15 marks respectively in the Physical Examination. The last selected candidates for Viva-Voce belonging from the respective categories had secured 59.50 and 64.00 marks and 63.5 marks respectively.

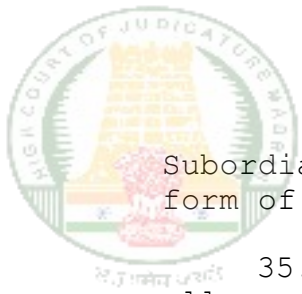
30.While the petitioners herein had secured only 58.00, 61.50 and 63.5 marks respectively and was lesser than the cut off marks. Therefore, the petitioners were not called for the next stage of selection for Viva-Voce.

31.The learned Government Advocate for the respondents further submitted that the respondents have already implemented the order of the Madurai Bench of Madras High Court dated 10.02.2021 and it is therefore submitted that the petitioners can participate in future recruitments.

32.The learned Government Advocate for the respondents therefore submitted that these writ petitions are without merits and are therefore liable to be dismissed.

33.I have considered the arguments of the learned Senior Advocate for the Petitioners and the learned Government Advocate for the respondents. The recruitment Notification No.2/TNUSRB/2009 dated 8.5.2019 (Recruitment Notification No.2/2019 for being called for application to fill up 969 vacancies (688 men) and 281 (women/transgender) to the post of Sub-Inspector of Police.

34.Of the total 969 vacancies, 20% was reserved for in-service candidates under Rule 14 of the Tamil Nadu Police Subordinate Service Rules and Tamil Nadu Special Police



Subordinate Service Rules. For the Balance there were different form of reservation.

35.Recruitment Notification No.2/2019 states that 20 % of all vacancies shall be set apart for the open candidates who have studied the Bachelor Degree (Qualifying Degree) in the Tamil Medium.

36.These petitioners belong to different communities and scored following marks :-

W.P Nos.	Name/ Enrollme nt No.	Community		Wrtten Exams (70 Mark)	Physica l Te (15MarK s)	Total 85 Marks	Rival Candida tes total mark
W.P. No.12833 3 of 2021	B.Akkim (1210305)	BackWard Class Muslim		46.00	12.00	58	59.50 *
W.P. No.12835 of 2021	S.M.Prab hu (0813900)	Most Backward/ (Denotified Community)		52.50	9.00	61.50	64.00**
W.P No.4852 of 2021	S.Athiya man (0414976)	Mos t Bac k War d Com mun ity	As per the Respond ent	48.50	12	60.50	64.00** *
			As per the Peition er	48.50	15	63.50#	64.000* **

*(Muneer Basha),

**(Not given) and

*** (Vigneswaran, the petioner in W.P(MD).No. 19112 of 2020)

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:-



WEB COPY

"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 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



WEB COPY

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 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



WEB COPY

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

15. In view of the above, the respondents are directed to undertake such exercise, insofar as the petitioners before us alone are concerned and if they are otherwise eligible, by following the roster point for PSTM category within the other general category or reserved category, as the case maybe, they should be considered for the next stage of the recruitment process. After undertaking the said exercise, if the petitioners are entitled to, they should be given the appointments accordingly.

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

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 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



WEB COPY

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 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.



WEB COPY

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 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



WEB COPY

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, 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



WEB COPY

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."

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



the Rules made thereunder.

52.The Hon'ble Supreme Court has over ruled 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 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.



WEB COPY

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%)

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)



WEB COPY

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



WEB COPY

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 Tamannaben Ashokbhai 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.



WEB COPY

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 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



WEB COPY

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.

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.

WEB COPY

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;

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



WEB COPY

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 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.

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 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 :-

WEB COPY



WEB COPY

Section 2(d) of the PSTM Act, 2010 before Amendment	Section 2(d) of the PSTM Act, 2010 after Amendment
(d) "persons studied in Tamil medium" means persons who have obtained the educational qualification or qualifications prescribed for direct recruitment in the rules or regulations or orders applicable to any appointment in the services under the State through Tamil medium of instruction;"	"(d)"person studied in Tamil medium" means a person who has studied through Tamil medium of instruction upto the educational qualification prescribed for direct recruitment in the rules or regulations or orders applicable to any appointment in the services under the State. Explanation.—For the purpose of this clause,— (i) in cases, where SSLC is prescribed as the educational qualification, one shall have studied upto SSLC through Tamil medium of instruction; (ii) in cases, where a Higher Secondary Course is prescribed as the educational qualification, one shall have studied SSLC and the Higher Secondary Course through Tamil medium of instruction; (iii) in cases, where a diploma is prescribed as the educational qualification, one shall have studied SSLC and the diploma through Tamil medium of instruction or if the diploma is obtained after completion of Higher Secondary Course then one shall have studied SSLC, Higher Secondary Course and the diploma through Tamil medium of instruction; (iv) in cases, where a degree is prescribed as the educational qualification, one shall have studied SSLC, Higher Secondary Course and the degree through Tamil medium of instruction; in cases, where a post-graduate degree is prescribed as the educational qualification, one shall have studied SSLC, Higher Secondary Course, degree and the post-graduate degree through Tamil medium of instruction."



(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.

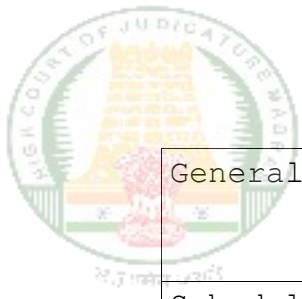
70. Sub -Section (2) to Section 3 of the PSTM Act, 2010 also states that selection for appointment shall be made in such manner as may be prescribed.

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:-

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



General Turn	19	31	48	65	81	100	115	131
	148	165	181	200				
Scheduled Castes	26	62	92	126	192			
Backward Class Muslims	188							
Scheduled Castes Arutnthathia rs	166							
Scheduled 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 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 to 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, 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



WEB COPY

	Men	Women/T	Total
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.

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 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.

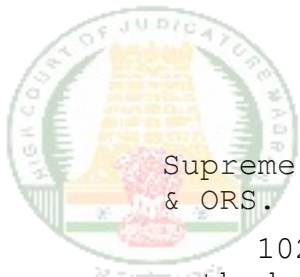
97.The facts indicate that though the petitioners were considered for selection under the provisions of the PSTM Act, 2010, they were wrongly filtered and excluded mid-way though they had cleared the first stage of selection in written exam. They were called only for PET.

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 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 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.

WEB COPY

Sd/-
Assistant Registrar(CS-I)

//True Copy//

Sub Assistant Registrar

kkd

To

1. The Principal Secretary to Government,
Home Department, Fort St.George,
Secretariat, Chennai 600 009.
2. The Chairman,
Tamil Nadu Uniformed Services Recruitment Board,
Old Commissioner of Police Office Campus,
Egmore, Chennai 600 008.
3. The Member Secretary,
Tamil Nadu Uniformed Services Recruitment Board,
Old Commissioner of Police Office Campus,
Egmore, Chennai 600 008.
4. The Director General of Police,
O/o.The Director General of Police,
Mylapore, Chennai 600 004.
5. The Secretary to Government,
Home(Police III) Department,
Fort St.George,Chennai 600 009.
6. The Chairman,
Tamil Nadu Uniformed Services Recruitment Board,
Anna Salai,Chennai 600 002.

+2cc to Mr.R.Jayaprakash, Advocate, S.R.No.1676, 1677

W.P. Nos.12833 & 12835 & 4852 of 2021

GPL(CO)
RGA(08/02/2022)