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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED : 10.01.2022

PRONOUNCED : 31.01.2022

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.Nos.35219 of 2019, 12602, 10569 & 16481 of 2020
and

W.M.P.Nos.36010, 36014 of 2019, 15544, 23305, 12839
18981 of 2020 & 12843 of 2020

(Through Video Conferencing)

W.P.No.35219 of 2019

Dr.S.Sibichakkaravarthy

... Petitioner

Vs.

1. The Chairman,
The Tamil Nadu Public Service Commission,
TNPSC Road, V.O.C.Nagar,
Park Town,
Chennai-600 003.
2. The Secretary,
The Tamil Nadu Public Service Commission,
TNPSC Road, V.O.C.Nagar,
Park Town,
Chennai-600 003.
3. The Controller of Examination,
The Tamil Nadu Public Service Commission,
TNPSC Road, V.O.C.Nagar,
Park Town,

Prayer: Writ petition filed under Article 226 of the Constitution of India praying for issuance of a writ of Mandamus directing the respondents to conduct re-evaluation of all the answer sheets of the petitioner having Registration No.010153202 in respect of all the three papers in TNPSC Group-1 Examination conducted by the 3rd respondent on 12.07.2019 on the basis of the already existing key answers by constituting an independent expert committee / independent expert to be appointed by this Hon'ble Court and publish the results in such



re-evaluation and consequently consider the candidature of the petitioner for appointment on the basis of his merits.(Prayer Amended vide order dated 17/03/2020 made in WMP.No.5452/2020 in WP35219/2019)

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For Petitioner : Mr.V.Ayyadurai
for Mr.S.Thanka Sivam

For Respondents : Mr.E.Ohm Prakash
Senior Counsel
for Mr.V.Govardhanan
Standing Counsel

W.P.No.12602 of 2020

M.Aruna

... Petitioner

Vs.

1. The State of Tamil Nadu,
Represented by Chief Secretary,
Fort St.George,
Chennai-600 009.
2. The Secretary,
The Tamil Nadu Public Service Commission,
TNPSC Road, V.O.C.Nagar,
Park Town,
Chennai-600 003.
3. The Controller of Examination,
The Tamil Nadu Public Service Commission,
TNPSC Road, V.O.C.Nagar,
Park Town,
Chennai-600 003.

Prayer: Writ petition filed under Article 226 of the Constitution of India praying for issuance of a writ of Mandamus directing the respondents 2 and 3 to revalue the answer papers strictly in accordance with the instructions and guidelines issued to the valuers in respect of Paper II in the Group I Service examinations held by the respondents 2 and 3 July 2019 in proper in the circumstances of the case.

For Petitioner : Mr.R.Viduthalai
Senior Counsel for
M/s.R.Revathi

For R1 : L.S.M.Hasan Fizal
Government Advocate



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For R2 & R3 : Mr.E.Ohm Prakash
Senior Counsel
for Mr.V.Govardhanan
Standing Counsel

W.P.No.10569 of 2020

K.R.Kaarthika

... Petitioner

Vs.

1. The State of Tamil Nadu,
Represented by its Principal Secretary,
P & AR Department,
Fort St. George, Chennai-600 009.
2. The State of Tamil Nadu,
Represented by its Principlal Secretary,
Revenue Department,
Fort St.George,
Chennai-600 009.
3. The Tamil Nadu Public Service Commission,
Represented by its Secretary,
Service Commission Road,
Park Town, Chennai-600 003.

Prayer: Writ petition filed under Article 226 of the Constitution of India praying for issuance of a writ of Declaration declaring the method of valuation and calculation of marks adopted to the Petitioner's answer papers, bearing Registration No.010017250 for the Group-1 Service, pursuant to Respondent Notification No.1/2019 dated 01.01.2019, as null and void and direct the Respondent to revalue the petitioner's answer papers by appointing an independent valuers expert in the relevant subject for awarding appropriate marks and to consequently consider the candidature of the petitioner for appointment to the post of Deputy Collector in the Group-1 Service of the year 2016-2019 as per Notification No.1/2019 dated 01.01.2019.

For Petitioner : Mr.K.Venkataramani
Senior Counsel for Mr.M. Muthappan

For R1 & R2 : L.S.M.Hasan Fizal
Government Advocate

For R3 : Mr.E.Ohm Prakash
Senior Counsel
for Mr.V.Govardhanan
Standing Counsel



W.P.No.16481 of 2020

E.Ranjith

... Petitioner

Vs.

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1. The Tamil Nadu Public Service Commission,
Represented by its Chairman,
TNPSC Road, V.O.C. Nagar,
Park Town,
Chennai-600 003.
2. The Controller of Examination,
The Tamil Nadu Public Service Commission,
TNPSC Road, V.O.C.Nagar,
Park Town,
Chennai-600 003.

Prayer: Writ petition filed under Article 226 of the Constitution of India praying for issuance of a writ of Mandamus directing the respondents 1 & 2 to re-valuate the answer sheets of the petitioner (Register No.170124177) in the main written examination for recruitment to the Group-I Services as notified by the 1st respondent on 01.01.2019 vide notification No.01/2019 by independent valuers as may be appointed by this Hon'ble Court.

For Petitioner : Mr.A.R.L.Sundaresan
Senior Counsel
For M/s.A.L.Gandhimathi

For Respondents :Mr.E.Ohm Prakash
Senior Counsel
for Mr.V.Govardhanan
Standing Counsel

C O M M O N O R D E R

By this common order all these writ petitions are being disposed. These cases were heard at length and reserved for passing final orders on 12.08.2021. These cases were thereafter listed for clarification on 10.01.2022 and were briefly heard and reserved for passing orders. In these writ petitions, the respective Writ Petitioners seek identical for reliefs though on different grounds.

2. The Petitioner (Dr.S.Sibichakaravarthy) in W.P.No.35219 of 2019 has filed this Writ Petition for the following relief:-

"Writ petition filed under Article 226 of the



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Constitution of India praying for issuance of a writ of Mandamus to direct the respondent authorities to conduct re-valuation of all the answer sheets of the petitioner having Registration No.010153202 in respect of all the three papers in TNPSC Group-1 examination conducted by the third respondent on 12.07.2019 on the basis of the already existing key answers by constituting an independent expert committee/independent expert to be appointed by this Hon'ble Court and publish the results in such re-evaluation and consequently consider the candidature of the petitioner for appointment on the basis of his merit."

3. Earlier, the Petitioner had filed this Writ Petition for the following relief:-

"Writ petition filed under Article 226 of the Constitution of India praying for issuance of a writ of Mandamus to direct the respondents to call for the answer sheets written by me with key answers published by the third respondent on 12.07.2019 with regard to General Studies Paper-1 examination conducted by the third respondent on 12.07.2019 with regard to General Studies Paper-I on 13.07.2019 with regard to General Studies Paper-II and 14.07.2019 with regard to General Studies Paper - III for evaluation further direct the respondents to furnish the cut off mark fixed for MBC Male for interview selection to this Hon'ble Court based on the representation dated 09.12.2019 given by the respondents."

4. At the time of admission on 19.12.2019, an interim order was passed to keep one post vacant for the petitioner. The aforesaid order was later modified. As per the aforesaid order, the petitioner will be entitled to be appointed, if the petitioner is found eligible.

5. Thereafter, W.M.P.No.5452 of 2020 was filed by the petitioner to amend the prayer in W.P.No.35219 of 2019. On 17.03.2020 W.M.P.No.5452 of 2020 was allowed and thus the prayer was amended to read as above.

6. The petitioner (Ms.K.R.Krithika) in W.P.No.10569 of 2020 has filed this Writ petition for a Writ of Declaration to declare the method of valuation and calculation of marks adopted to the petitioner's answer papers, bearing Reg.No.010017250 for



the Group-I Service, pursuant to respondent Notification No.1/2019 dated 01.01.2019 as null and void and direct the respondent to revalue the petitioner's answer papers by appointing an independent valuers expert in the relevant subject for awarding appropriate marks and to consequently consider the candidature of the petitioner for appointment to the post of Deputy Collector in the Group-I Service of the year 2016-2019 as per Notification No.1/2019 dated 01.01.2019.

7. The petitioner (M.Aruna) in W.P.No.12602 of 2020 has filed this writ petition for a Writ of Mandamus to direct the 2nd and 3rd respondents to re-value the answer papers strictly in accordance with the instructions and guidelines issued to the valuers in respect of paper II in the group I services examinations held by the respondents 2 and 3 in July 2019.

8. The petitioner (Mr.E.Ranjith) in W.P.No.16481 of 2020 has filed this writ petition for a Writ of Mandamus to direct the 1st and the 2nd respondents one and two to re-valuate the answer sheets of the petitioner (Register No.170124177) in the main written examination for recruitment to the Group I Services as notified by the 1st respondent on 01.01.2019 vide Notification No.01/2019 by independent valuers as may be appointed by this Court.

9. The first respondent in W.P.No.12602 of 2020, namely, State of Tamil Nadu, represented by Chief Secretary, Fort St.George, Chennai-600 009 has filed W.M.P.No.23305 of 2020 to delete its name from the Cause Title on the ground of mis-joinder.

10. All these petitioners had participated in the Combined Civil Service-I Examination (CCS-1Examination) [Group-I Services] for the various posts like Deputy Collector, Deputy Superintendent of Police, Assistant Commissioner of Commercial Taxes, District Registrar of Co-operative societies, District Registrar, Assistant Director of Rural Development, District Employment Officer and District Officer (Fire & Rescue Services) etc., About 181 announced vide Notification No.01/2019 dated 01.01.2019 as amended by the respondent Tamil Nadu Public Service Commission.

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

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



12.07.2019, 13.07.2019 & 14.07.2019 respectively.

13. The Main Written Examination consisted of three papers namely Paper-I, Paper-II & Paper-III. Each paper consisted of three subjects. The contesting respondent namely the Tamil Nadu Public Service Commission had devised a novel method of evaluation of the answers of the candidates to eliminate the evaluators bias in the evaluation of answers of the candidates.

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

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

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

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

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

19. It is submitted that after the respondents started issuing call letters to the selected candidates from 09.12.2019 for holding Oral Test/Interview between 23.12.2019 and 31.12.2019, these petitioners realized that there were large scale mistakes committed during evaluation of the answers by the



evaluators nominated by the respondent Tamil Nadu Public Service Commission.

20. The common grievance of these petitioners in these writ petitions is that the method adopted in the valuation process by the Tamil Nadu Public Service Commission was not disclosed before exam and was in any event flawed in as much as the respondents have adopted an arbitrary method of evaluation and elimination.

21. It is submitted that either the average of the marks should have been taken or in the alternative average of the highest of the marks should have been taken. It is submitted that the average of the nearest of the two evaluation has resulted in arbitrary inclusions and exclusions of the candidates. It is submitted that this method was not scientific.

22. It is submitted that though the method adopted was intended to eliminate evaluators bias in the evaluation of answers, it has however resulted in arbitrary inclusions and exclusions of the candidate.

23. It is therefore submitted that the method of evaluation of the papers adopted by the Tamil Nadu Public Service Commission which came to be known only after filing the writ petitions, deserves to be interfered. For a fair disposal of these cases, I shall refer to the specific submissions of the Senior Counsel for the petitioners.

24. Appearing on behalf of the petitioner in W.P.No. 35219 of 2019, the learned senior counsel Mr.V.Ayyadurai submits that the petitioner is a Most Backward Community(MBC) candidate.

25. It is submitted that the cut-off mark for MBC candidate was only 426. It is submitted that the petitioner was awarded a cumulative marks of 421.75 as detailed below:-

Group -Paper s	1 st Evaluation	2 nd Evaluation	Average of the 1 st and the 2 nd Evaluation	Difference in the marks awarded (Average)
I	155/250	142.5/250	148.75/250	8.4%
II	157/250	141.5/250	149.25/250	10.4%
III	127.5/250	120/250	123.75/250	6.06%
Total	439.5/750	404/750	421.75/750	8.4%

26. It is submitted that the the petitioner missed the cut off marks by just 4.25 marks due to faulty and skewed method of



evaluation adopted by the Tamil Nadu Public Service Commission.

27. It is submitted that the evaluators who were given key answers for evaluations of the answers have not followed the standard key answers while evaluating the answer papers. It is submitted that the difference in the marks awarded for some of the answers in few papers ranged between 100% to 34%. This resulted in the petitioner getting lesser marks.

28. The learned senior counsel for the petitioner has alluded to the following chart:-

Paper	Question No.	Marks awarded in 1 st Valuation	Marks awarded in 2 nd valuation	Variation in %	Page Nos. of Valuation in Addl. Typed set
Paper I	25	12/15	0/15	100%	165,166
Paper II	21	5/10	0/10	100%	230,231
Paper III	20	8/10	0/10	100%	295,296
Paper I	9	9/15	3/15	40%	165,166
Paper I	17	9/15	4/15	35%	165,166
Paper II	14	7/10	3/10	40%	230,231
Paper II	18	15/15	10/15	34%	230,231
Paper III	6	11/15	2/15	60%	295,296

29. It is submitted that since there was a large variation in the marks awarded by the two evaluators, the respondent Tamil Nadu Public Service Commission ought to have referred each of the such answers where there was huge variation. It is submitted that instead the respondent Tamil Nadu Public Service Commission has taken the average of the cumulative marks in the two evaluation and awarded the marks as a result of which the petitioner has been denied a fair chance.

30. It is submitted that the method of final evaluation was arbitrary and the marks to be awarded was left to the whims of the evaluators. It is submitted that since variation in the marks awarded for some of the questions was huge ranging between 100% and 34%, the respondent Tamil Nadu Public Service Commission ought to have sent each of those answers where variation was more than 15% for re-evaluation and the highest of



the marks ought to have been considered and thereafter total arrived.

31. It is submitted that the respondent has averaged the awarded marks awarded to the petitioner instead of considering the highest marks scored by the petitioner.

32. It is further contended by the learned senior counsel for the petitioner that the answers having been evaluated separately, the Tamil Nadu Public Service Commission could have sent such of those answers for a third evaluation where the variation was above 15% instead of adopting average of the cumulative marks of two evaluation.

33. The learned Senior Counsel for the petitioner further submits that the marks for the same questions awarded by two evaluators show a huge variance itself shows that the evaluators are not following standard method for evaluation and that arbitrariness crept in during the evaluation which is contrary to Article 14, 16 and 21 of the Constitution.

34. The learned Senior Counsel for the petitioner Mr. V. Ayyadurai in W.P.No.35219 of 2019 (Dr. S. Sibichakkaravarthy), has relied on the following submissions on law:-

- i. Himachal Pradesh Public Service Commission Vs. Mukesh Thakur, (2010) 6 SCC 759
- ii. Sanjay Singh Vs. Uttar Pradesh Public Service Commission in (2007) 3 SCC 720
- iii. Ran Vijay Singh Vs. State of Uttar Pradesh, (2018) 2 SCC 357
- iv. Pranav Verma and Ors Vs. Registrar General of the High Court of Punjab and Haryana at Chandigarh and another 2019 SCC Online, SC 1610
- v. Bihar Staff Selection Commission and Others Vs Arun Kumar and Others 2015 SCC OnLine SC 1868.
- vi. Pramod Kumar Srivastava Vs. Chairman, Bihar Public Service Commission, (2004) 6 SCC 714
- vii. Maharashtra State Board of Secondary and Higher Secondary Education and another Vs. Paritosh Bhupesh Kumar Sheth and Ors 1984 (4) SCC 27
- viii. Centre For Public Interest Litigation Vs. High Court of Delhi, (2017) 11 SCC 456
- ix. Pranav Verma Vs. High Court of Punjab and Haryana (2020) 15 SCC 377



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- x. Ravivarma Vs. The Secretary, The Tamil Nadu Public Service Commission in W.A.No.649 of 2009 (2009 SCC Online (Mad) 1569).
- xi. Ms. Priyanka Venkatesh Vs. The Tamil Nadu Dr.M.G.R. Medical University in W.P.No.34154 of 2018 Pranav Varma and Ors in W.P.No.565 of 2019 dated 13.12.2019 - CJI Bench.
- xii. Ku. Payal Kumbhare Vs. The Hon'ble High Court of Madhya Pradesh in 2016 (2) MPLJ 399 in W.P.No.8343 of 2019 dated 29.08.2019.
- xiii. Sujasha Mukherji Vs. High Court of Calcutta, (2015) 11 SCC 395
- xiv. S. Vignesh Vs. The State of Tamil Nadu and Ors in W.P.No.13346 of 2019 dated 20.06.2019
- xv. A. Babu Prasanth Vs. The Secretary, Tamil Nadu Public Service Commission and Ors W.P.No.22670 of 2019 and 113 of 2020 dated 11.02.2020.

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

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

(*Average of 1st and 3rd Evaluation)

36. It is submitted that the cut-off mark for a Backward class community was 424.75 marks. The petitioner has questioned the method of evaluation by demonstrating the alleged arbitrariness in the method of evaluation adopted by the Tamil Nadu Public Service Commission.

37. Appearing on behalf of the petitioner in W.P No 10569 of 2020, the learned Senior Counsel Mr.K.Venkataramani submits that the method of evaluation by the evaluator has varied for the very same question and therefore the exercise carried out by the respondent Tamil Nadu Public Service Commission by taking the average of the nearest of the evaluation where a necessity arose for third evaluation has resulted in unfair denial of



opportunity to the petitioner for participating in the next round of selection process.

38. It is submitted that if the average of the highest marks scored was taken, the petitioner would have qualified. It is submitted that the difference in the marks between second and the third evaluation of 156/250 and 131/250 was 25 marks whereas the difference between the 1st and the 2nd evaluation of only 16 marks for Paper II. Thus, 1% difference between the marks awarded by the 1st and the 2nd evaluators for Paper III has unfairly ousted the petitioner from the selection process.

39. It is submitted that the method adopted for evaluation is skewed. As far as the marks awarded in Paper-I and Paper II is concerned the difference is 14 and 16 marks and it is arbitrariness and the respondent Tamil Nadu Public Service Commission as a statutory body cannot risk the career of a candidate by adopting arbitrary method of evaluation.

40. The learned Senior counsel for the petitioner submits that the correct method would have been considered only the highest of the marks scored in the three evaluation instead of averaging the lowest of the nearest or the nearest of the two marks.

41. The learned Senior Counsel for the petitioner Mr.K.Venkatramani, in W.P.No.10569 of 2020 has relied on the following submissions on law:-

i. The President Board of Secondary Education, Orissa and Ors. Vs. D.Suvankar and Ors. (S.L.P. (C) No. 17990 of 2005).

ii. Ran Vijay Singh Vs. State of Uttar Pradesh (2018) 2 SCC 357.

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

GROUP-I-PAPER	1st Evaluation	2 nd Evaluation	3 rd Evaluation	Marks Awarded (Average)
I	151.5/250	149.0/250		150.25/250
II	164.5/250	113.5/250	137/250	125.25/250



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III	134.5/250	150/250		142.75/250
				418.25/750

(*Average of the 2nd and 3rd evaluation)

43. The learned Senior Counsel for the petitioner Mr.R.Viduthalai in W.P.No.12602 of 2020 has attempted to demonstrate the alleged arbitrariness in the method of evaluation adopted by the Tamil Nadu Public Service Commission.

44. It is submitted that the difference between first and the second evaluation for Paper II is 51 marks (164.5-113.5) and the difference between the second and the third evaluation of the paper II is about 23.5 marks and the difference between the first and the third evaluation is 27.5 marks.

45. It is submitted that if the petitioner was awarded two more marks instead of 137 during the third Evaluation for Paper II, the petitioner would have been awarded 151.75 marks which would have taken up the petitioner ahead by 178 ranks i.e., 84th rank from 262 rank.

46. It is further submitted that the method adopted in the evaluation is irrational and does not seek to achieve the object of eliminating the bias and arbitrariness. It is submitted that even if the respondent had taken the average of all the three marks awarded by the three evaluators, the petitioner would have got 138.33 marks [164.5+113.5+125.25] for Paper II.

47. It is further submitted that the decision rendered in the context of academic qualifications cannot be compared with the marks obtained in competitive exams. It is further submitted that the fact that there is a huge variation in the evaluation by three evaluators itself shows the evaluation was highly arbitrary and has resulted in unfair discrimination and thereby ousting of the petitioner.

48. The learned Senior Counsel for the petitioner, Mr.R.Viduthalai in W.P.No.12602 of 2020 has relied on the following submissions on law:-

- i. Ran Vijay Singh Vs. State of Uttar Pradesh (2018) 2 SCC 357
- ii.Registrar General Vs. Tirtha Mukherjee & Ors 2019 SCC Online SC 139
- iii.W.P. (MD) .No.9356 of 2020



49. The petitioner E.Ranjith in W.P No 16481 of 2020 also claiming to be a candidate from the Most Backward Community (MBC) has questioned the method of evaluation and is aggrieved by the marks awarded to the petitioner by demonstrating the alleged arbitrariness in the method of evaluation adopted by the Tamil Nadu Public Service Commission.

50. The petitioner was awarded a cumulative mark of 312/750 as detailed below:-

Group-I Paper	1 st Evaluation	2 nd Evaluation	3 rd Evaluation	Marks Awarded (Average)
I	100/250	106/250		103/250
II	110/250	113/250		112.5/250
III	94/250	101/250		97/250
				312/750

51. The learned Senior Counsel for the Petitioner Mr.A.R.L.Sundaresan in W.P.No.16481 of 2020 submits that there were gross irregularities committed by the respondents in the evaluation of answer sheets of the petitioners and in assigning marks as such it is arbitrary, unjust, unfair, unreasonable, inequitable and violative of the rights of the petitioner under Article 14&16 of the Constitution of India.

52. It is submitted that though the difference in the above total marks awarded by different evaluators appears to be within a reasonable range, however, it is submitted that the perusal of the marks awarded by each evaluator on a question by question basis discloses that there has been no proper valuation.

53. It is submitted that there is a difference of about 23 marks in answers given by the petitioner to question No.1,3,4,5,11,12,14,15,21 and 23 in Group1 -Paper I in 10 marks question.

54. Similarly, it is stated as there is a difference of 18 marks between the marks awarded by the evaluators for question No.7,8,9,10,16,17,18,20, where the maximum marks to awarded as 15.

55. It is submitted that in respect of Paper-I, for question No.5 the second evaluator has awarded '0' marks as against '5' marks given by the first evaluator. In respect of question No.23, while the second evaluator has awarded full '10' marks,



the first evaluator has given only '0' marks.

56. There are such glaring differences in respect of question Nos. 9,10,12,15,16,18 & 20 as well. The petitioner is filing the tabulated statement of the marks as awarded by the two evaluators and the difference in the typed set of papers.

57. The Question No.23 is a mathematical problem calling upon the candidate to find out the gain or loss in terms of percentage in a sale transaction. While one evaluator has found my answer to be correct and awarded full marks, it is totally shocking and surprising that the first evaluator has chosen to consider the answer as incorrect and awarded '0' marks.

58. It is submitted that this kind of evaluation is a dangerous phenomenon which has a serious catastrophic effect on the lives of the aspiring candidates. Looked at in this manner the total difference in the marks between the two valuations comes to '41' marks and not just '6' marks as appears from the above table.

59. It is submitted that similarly the total difference in marks in the Paper-II is '39' marks and the total difference in marks in the Paper-III is '28.5' marks. The detailed tabulation of the marks is filed in the typed set of papers. By this method of improper valuation, there is a loss of about 108.5 marks. It is my grievance the method of valuation is totally erroneous and improper and proper marks have not been awarded to my answers by both the valuers and the awarding of marks has been done in the most arbitrary fashion without any logic or reason. When the key answers are given, there could not be such arbitrary awarding of marks which affects the life and career prospects of the candidates who, like me have put in years of hard work for this selection process.

60. It is submitted that the petitioner belongs to the Most Backward Caste (MBC) and he definitely stand the chance of having come within the zone of consideration for oral test and appointment, if proper marks had been awarded to me on a proper valuation of my answer sheets. He submits that as per the cut-off mark in the main written test from the category of candidates belonging to Most Backward Caste selected for oral test is 426.5 and if proper marks had been awarded to me, my marks would be 450 which is much above the cut-off mark of the last person selected for oral test and the petitioner definitely stood a good chance of being selected to any of the posts to employment to public service has been taken away by an improper evaluation.



61. It is submitted that there appears to be complete lack of transparency in the matter of conducting the selection process by the respondents herein. While there could be no impediment for publishing the marks scored by each of the candidates in both the preliminary examinations as well as the main written examinations, the same are not published.

62. It is submitted that the above provides room for possible manipulation and improper valuation and the petitioner has every reason to suspect that his answer sheets were not valued at all in a proper manner as part of selection process and that his answer sheets could have been subjected to valuation only after a request was made under the Right to Information Act for copies of the answer sheets and such a valuation is bound to be an exercise for namesake and that is what is reflected in the evaluations. The date of such evaluations are also not disclosed from the copies furnished to the petitioner.

63. It is submitted that the main examinations are descriptive type of answers and the key answers are provided to examiners by the respondents and in such an event there cannot be a difference by about 100% in the matter awarding marks to the answers for the respective questions. Therefore, it is very clear that there has been no proper valuation at all. Therefore, the petitioner was restricting the prayer in this writ petition for a proper valuation of his answer sheets by independent valuers as may be appointed/directed by this Hon'ble Court and reserve petitioner's right to seek appropriate reliefs before this Hon'ble Court for setting aside the entire selection process and to cancel the select list of candidates after independent valuation of his answer sheets.

64. Similarly it is stated that in Group 1-Paper II there is a total of 39 marks difference between the marks awarded by the 1st evaluator, the 2nd evaluators and 28.5 marks by the 1st and the 2nd evaluator for Group1-paper III 10 and 15 mark question it is therefore submitted that the method adopted was arbitrary.

65. The learned Senior Counsel for the Petitioner Mr.A.R.L.Sundaresan, in W.P.No.16481 of 2020 (E.Ranjith) has reiterated the case on laws filed by the counsels for the petitioners.

66. Explaining the stand of the respondent Tamil Nadu Public Service Commission, learned Senior Counsel for the Commissioner Mr.E.Ohm Prakash for Mr.V.Govardhanan stated that since many examiners are employed to assess the answers given by the candidates, it is not possible that all the examiners will follow the same yardstick while awarding marks particularly when



the answers are descriptive.

67. It is submitted that while an examiner may tend to be liberal another examiner may tend to be more strict while awarding marks and therefore, to remove evaluators bias, the Tamil Nadu Public Service Commission has adopted a new method called On Screen Marking Valuation of the answer scripts whereby before sending the answers for valuation each answer sheet is scanned and every answer is segregated as individual clips.

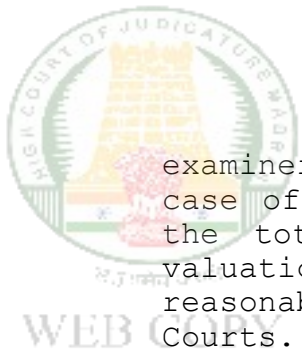
68. Then the clips are shuffled and each clip is assigned with a unique random number and the clips are arranged subject wise and kept ready to be distributed to the respective subject examiner. This shuffling and randomization is being done each and every day for the remaining clips left over for evaluation as well as the new clips imported, till the evaluation is complete for all the clips.

69. Each of such clips are evaluated twice simultaneously. The evaluation is also done on screen on the clips and marks awarded in the system and nothing would be reflected in the answer scripts of the candidates or marks in each paper by separate sheet, until towards the end the same is collated by the system. Thereafter, after restoring the respective clips in the respective papers belonging to the concerned candidate, the Service Commission takes the average of the total score in each valuation as the final score obtained by the candidate in that paper.

70. It is only if the difference of total marks awarded in the two valuations exceeds 15% of the total and above, those papers will be placed for third valuation and after completion of third valuation the average of the nearest two total marks out of the three valuations will be taken as the total mark secured by a candidate in that paper which is subjected to third valuation.

71. It is respectfully submitted that the examiners invited by the TNPSC are none else than personnel having high profiles and good number of years of standing as Lecturer/Professor etc. Further, the two examiners who evaluate the answer clips will not be the same examiners invited to evaluate the answer clips. Further, each of evaluators will not be shown whether the evaluation is already done or the mark awarded.

72. So there is no scope for any examiner to get influenced by the mark awarded in the first valuation and there can be no likelihood of fear in the mind of the candidate that only because his paper went to a strict examiner, he has been denied of mark, because the compulsory two valuations take care of both



examiner bias and subject bias. Further, as stated above, in case of extreme/unexpected discrepancies to an extent of 15% in the total score, the concerned paper is subjected to third valuation. This percentage of 15% has been held to be a reasonable fixation in more than one judgement of the Hon'ble Courts.

73. This shuffling and randomization is being done each and every day for the remaining clips left over for evaluation as well as the new clips imported, till the evaluation is complete for all the clips. The process is repeated over again during second valuation also.

74. Thereafter, after restoring the respective clips in the respective papers belonging to the concerned candidate, the Tamil Nadu Public Service Commission takes the average of the total score in each valuation as the final score obtained by the candidate in that paper.

75. It is only if the difference of total marks awarded in the first and second valuations exceeds 15% of the total and above, those papers will be placed for third valuation and after completion of third valuation the average of the nearest two total marks out of the three valuations will be taken as the total mark secured by a candidate in that paper which is subjected to third valuation.

76. The Respondent in its counter have further stated that every candidate has a right to receive fair play in examination and get appropriate marks matching his performance. Improper valuation of the answer sheets and refusal to reevaluate the answers sheets results in the violation of the rules of fair play.

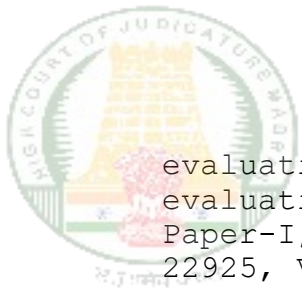
77. It is further submitted that the main reason for taking the average of the nearest two total marks out of the three valuation and fixing it as the final mark for the paper which is subject to third valuation lies in the very motto of the commission that there should not be any slightest remote possibility of disparity occurring in the matter of fixing and awarding marks to the candidate due to the liberal or stringent valuation of different examiners during the 1st and 2nd valuation.

78. The said concept of taking the average of the nearest two total marks out of the three valuation and fixing it as the final mark for the paper which is subjected to third valuation is applicable to one and the all candidate whose papers are subjected to 3rd valuation.

79. It is further submitted that when the rules of the



85. Altogether, they evaluated 22,945 answer papers and 11,97,456 answer clips. A total of 822 man days were involved in the evaluation of Paper-I, 836 man days were involved in the



evaluation of Paper-II and 866 man days involved in the evaluation of Paper-III. The total number of answer booklets in Paper-I, II and III put together subjected to Valuation I was 22925, Valuation - II was 22925 and valuation -III was 206.

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86. Thus, a uniform procedure was adopted in the evaluation process and therefore the petitioner candidate cannot be allowed to contend that his case alone stands on a different footing and his grievance should be addressed separately.

87. Thus, after completing the entire evaluation by adopting the new technology of on screen marking and the selection process, the commission was able to declare the final list of successful candidates on the closure of the oral test on the 31st December 2019.

88. Thus, a cursory perusal of the statics above which is shown in the form of tabular column below would show that the process adopted to minimize variations in the evaluator's subjectivity is quite robust. It is only 0.89% of valuation-I or valuation-II.

Total Number of answer booklets paper 1,2,3 all put together	Valuation -I	Valuation-II`	Valuation -III
	22925	22925	206

89. It is submitted that the entire process of valuation that has to be looked into and not the valuation of each and every single answer clip that can be the subject matter of third valuation or the subject matter of revaluation more especially when the Rules of the examination do not provide for any kind of re-evaluation. No candidate in an examination has got any right whatsoever to claim or ask for re-valuation of his marks.

90. Mr.E.Ohm Prakash , learned Senior Counsel for the Tamil Nadu Public Service Commission has relied on the following submissions of law:-

- i. Maharashtra State Board of Secondary and Higher Secondary Education Vs. Paritosh Bhupesh Kumar Sheth (1984) 4 SCC 27
- ii. Pramod Kumar Srivastava Vs. Chairman, Bihar Public Service Commission (2004) 6 SCC 714
- iii. Himachal Pradesh Public Service Commission Vs. Mukesh Thakur (2010) 6 SCC 759
- iv. Ran Vijay Singh Vs. The State of Uttar Pradesh (2018) 2 SCC 357



v. Pranav Verma Vs. High Court of Punjab and
Haryana (2020) 15 SCC 377

91. I have considered the arguments advanced on behalf of the respective petitioners and the respondent Tamil Nadu Public Service Commission. I have perused the impugned notification recruitment notification and the case laws cited by the learned Senior counsels for the respective petitioners and learned Government counsel for the respondents.

92. Among the decisions cited by the learned Senior Counsel for the petitioners and the learned Senior Counsel for Tamil Nadu Public Service Commission, the decision in Maharashtra State Board of Secondary and Higher Secondary Education Vs. Paritosh Bhupesh Kumar Sheth (1984) 4 SCC 27 is the leading case. The Hon'ble Supreme Court in the above judgment has held as under:

"16. In our opinion, the aforesaid approach made by the High Court is wholly incorrect and fallacious. The Court cannot sit in judgment over the wisdom of the policy evolved by the Legislature and the subordinate regulation-making body. It may be a wise policy which will fully effectuate the purpose of the enactment or it may be lacking in effectiveness and hence calling for revision and improvement. But any drawbacks in the policy incorporated in a rule or regulation will not render it ultra vires and the Court cannot strike it down on the ground that, in its opinion, it is not a wise or prudent policy, but is even a foolish one, and that it will not really serve to effectuate the purposes of the Act. The Legislature and its delegate are the sole repositories of the power to decide what policy should be pursued in relation to matters covered by the Act and there is no scope for interference by the Court unless the particular provision impugned before it can be said to suffer from any legal infirmity, in the sense of its being wholly beyond the scope of the regulation-making power or its being inconsistent with any of the provisions of the parent enactment or in violation of any of the limitations imposed by the Constitution."

93. The Hon'ble Supreme Court in Paritosh Bhupesh Kumar Sheth case referred to supra further held that there is no scope for judicial interference if there is no provision for re-valuation either under the Recruitment Notification or under the



relevant law.

94. The above view was followed by a three bench judgment of the Hon'ble Supreme Court in Promod Kumar Srivastava Vs. Chairman, Bihar Public Service Commission, (2004) 6 SCC. The Hon'ble Supreme Court held as follows:

"7. There is no dispute that under the relevant rule of the Commission there is no provision entitling a candidate to have his answer-books re-evaluated. In such a situation, the prayer made by the appellant in the writ petition was wholly untenable and the learned Single Judge had clearly erred in having the answer-book of the appellant re-evaluated.

8. Adopting such a course as was done by the learned Single Judge will give rise to practical problems. Many candidates may like to take a chance and pray for re-evaluation of their answer - books. Naturally, the Court will pass orders on different dates as and when writ petitions are filed. The Commission will have to then send the copies of individual candidates to examiners for re-evaluation which is bound to take time. The examination conducted by the Commission being a competitive examination, the declaration of final result will thus be unduly delayed and the vacancies will remain unfilled for a long time. What will happen if a candidate secures lesser marks in re-valuation? He may come forward with a plea that the marks as originally awarded to him may be taken into consideration. The absence of clear rules on the subject may throw many problems and in the larger interest, they must be avoided."

95. However, as per the decision of the Hon'ble Supreme Court in Ran Vijay Singh case referred to supra, the wide power under Article 226 of the Constitution of India continues to be available even in absence of any provisions for re-valuation in a situation where a candidate despite having given correct answer and about which there cannot be even the slightest manner of doubt, he is treated as having given the wrong answer and consequently the candidate is found dis-entitled to any marks. This view was also followed by the Hon'ble Supreme Court in Tirtha Sarathi Mukherjee case referred to supra. A reference to these two decision will be made in the course of discussion.

96. In Sanjay Singh and another Vs. The Uttar Pradesh



Service Commission, Allahabad and another, (2007) 3 SCC 720, the Hon'ble Supreme Court was called upon to consider the correctness of "Scaling System" adopted by the Public Service Commission considering the text of U.P. Judicial Service Rules, 2001. This Court concluded that the "Scaling System" was unsuited in regard to Civil Judge (Junior Division) Examination. It noted that in the earlier decision in Subhash Chandra Dixit, the Court had upheld scaling and had ruled that scaling was a recognized method to bring raw marks in different subjects to a common scale. It was, however, found that there was no provision in Judicial Service Rules akin to proviso to Rule 51 of the Public Service Commission Procedure Rules. The Hon'ble Supreme Court in Sanjay Singh and another Vs. The Uttar Pradesh Service Commission, Allahabad and another, (2007) 3 SCC 720 held as under:-

"17. It is no doubt true that the Judicial Service Rules govern the recruitment to Judicial Service, having been made in exercise of power under Article 234, in consultation with both the Commission and the High Court. It also provides what examinations should be conducted and the maximum marks for each subject in the examination. But the Judicial Service Rules entrust the function of conducting examinations to the Commission. The Judicial Service Rules do not prescribe the manner and procedure for holding the examination and valuation of answer-scripts and award of the final marks and declaration of the results. Therefore, it is for the Commission to regulate the manner in which it will conduct the examination and value the answer-scripts subject, however, to the provisions of the Judicial Service Rules. If the Commission has made Rules to regulate the procedure and conduct of the examination, they will naturally apply to any examination conducted by it for recruitment to any service, including the Judicial Service. But where the Judicial Service Rules make a specific provision in regard to any aspect of examination, such provision will prevail, and the provision of the PSC Procedure Rules, to the extent it is inconsistent with the Judicial Service Rules, will be inapplicable. Further, if both the Rules have made provision in regard to a particular matter, the PSC Procedure Rules will yield to the Judicial Service Rules.

18. The manner in which the list of candidates as



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per merit should be prepared is provided both in the Judicial Service Rules and the PSC Procedure Rules. Relevant portion of Rule 20(3) and Note (i) of Appendix II of the Judicial Service Rules and Rule 51 of the PSC Procedure Rules providing for the aggregation of marks and preparation of the merit list, are extracted below:

Judicial
Service Rules

"20. (3) The Commission then shall prepare a final list of selected candidates in order of their proficiency as disclosed by aggregate of marks finally awarded to each candidate in the written examination and the interview."

Note (i) of Appendix II
—"(i) The marks obtained in the interview will be added to the marks obtained in the written papers and the candidate's place will depend on the aggregate of both."

PSC Procedure
Rules

"51. The marks sheets so obtained shall be opened on the last day of interview and immediately thereafter the marks of interview/personality test shall be added to the marks obtained by the candidates in the written examination. Thereafter, on the basis of the totals so obtained the merit list shall be prepared and placed before the Commission for final declaration of the result:



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Provided that the Commission may, with a view to eliminating variation in the marks awarded to candidates at any examination or interview, adopt any method, device or formula which they consider proper for the purpose."

(different emphasis supplied)

As the field is occupied by Rule 20(3) and Note (i) of Appendix II of the Judicial Service Rules, they will prevail over the general provision in Rule 51 of the PSC Procedure Rules.

19. Rule 20(3) provides for the final list of selected candidates in order of their proficiency as disclosed by the aggregate of "marks finally awarded to each candidate in the written examination and the interview". Note (i) to Appendix II of the Judicial Service Rules provides that the "marks obtained in the interview" will be added to "the marks obtained in the written papers" and that the candidate's place will depend on the aggregate of both. Though the Judicial Service Rules refers to "marks finally awarded", the said Rules do not contain a provision similar to the proviso to Rule 51 of the PSC Procedure Rules, enabling the Commission to adopt any method, device or formula to eliminate variation in the marks. It is not possible to read the proviso to Rule 51 or words to that effect into Rule 20(3) or Note (i) of Appendix II of the Judicial Service Rules. It is well settled that courts will not add words to a statute or read into the statute words not in it. Even if the courts come to the conclusion that there is any omission in the words used, it cannot make up the deficiency, where the wording as it exists is clear and unambiguous. While the courts can adopt a



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construction which will carry out the obvious intention of the legislative or the rule-making authority, it cannot set at naught the legislative intent clearly expressed in a statute or the rules. Therefore, Rule 20(3) and Note (i) of Appendix II have to be read as they are without the addition of the proviso to Rule 51 of the PSC Procedure Rules. If so, what can be taken into account for preparing final list of selected candidates, are "marks finally awarded to a candidate" in the written examination and the interview. The marks assigned by the examiner are not necessarily the marks finally awarded to a candidate. If there is any error in the marks awarded by the examiner it can always be corrected by the Commission and the corrected marks will be "the final marks awarded to the candidate". Where the Commission is of the view that there is "examiner variability" in the marks (due to strict or liberal assessment of answer-scripts) or improper assessment on account of erratic or careless marking by an examiner, they can be corrected appropriately by moderation. The moderation is either by adding (in the case of strict examiners) or deducting (in the case of liberal examiners) a particular number of marks which has been decided with reference to principles of moderation applied. If there is erratic or careless marking, then moderation is by fresh valuation by another examiner. Therefore, the marks assigned by the examiner as moderated will be the marks finally awarded to the candidates or marks obtained by the candidates. Moderation, it has to be held, is inherent in the evaluation of answer-scripts in any large scale examination, where there are more than one examiner.

20. We cannot accept the contention of the petitioner that the words "marks awarded" or "marks obtained in the written papers" refer only to the actual marks awarded by the examiner. "Valuation" is a process which does not end on marks being awarded by an examiner. Award of marks by the examiner is only one stage of the process of valuation. Moderation when employed by the examining authority, becomes part of the process of valuation and the marks awarded on moderation become the final marks of



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the candidate. In fact Rule 20(3) specifically refers to the "marks finally awarded to each candidate in the written examination", thereby implying that the marks awarded by the examiner can be altered by moderation.

32. The formula heavily relies upon the standard deviation among the candidates in a given pool or batch. The standard deviation is a measure of the range and distribution of marks awarded by an examiner. It depends on the set of students in any given pool. If an examiner has a set of extremely good or poor standard candidates and another examiner has a more even set of average candidates, the standard deviation would be high for the first examiner and low for the second examiner, having regard to the range of distribution of marks. Consequently the scaled marks of a candidate calculated on a formula heavily relying on standard deviation, would be based on the cumulative standard deviation of all the candidates in his pool rather than the strictness or liberality of the examiner. Therefore, standard deviation has only a bearing on ascertaining the range of capabilities of the candidates in a given examination and in no way eliminates the anomalies arising out of the strictness or liberality of the examiner. We may demonstrate the fact that the scaled marks vary with reference to the extent of standard deviation (and have nothing to do with the issue of strictness or liberality of the examiner), from the following examples:

Actual marks	Average (mean) marks	Strict Examiner I		Strict Examiner II	
		Standard deviation	Scaled marks	Standard deviation	Scaled marks
0	50	15	33	25	60
5	50	15	40	25	64
20	50	15	60	25	76
Actual marks	Average (mean) marks	Liberal Examiner I		Liberal Examiner II	
		Standard deviation	Scaled marks	Standard deviation	Scaled marks
50	90	15	47	25	68
120	90	15	140	25	124
150	90	15	180	25	148



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"33. The reason given for introducing scaling is to cure the disparity on account of strictness or liberality of the examiners. But the effect of the scaling formula adopted by the Commission is to average the marks of a batch of candidates and convert the raw marks of each candidate in the batch into scaled marks with reference to the average marks of the batch and the standard deviation. The scaling formula therefore, does not address or rectify the effect of strictness or liberality of the examiner. The scaling formula is more suited and appropriate to find a common base and inter se merit, where candidates take examinations in different subjects. As the scaling formula has no nexus or relevance to give a solution to the problem of eliminating the variation or deviation in the standard of valuation of answer-scripts by different examiners either on account of strictness or liberality, it has to be concluded that scaling is based on irrelevant considerations and ignores relevant considerations."

97. The next Judgment in the march of law is that of the decision of the Hon'ble Supreme Court in Himachal Pradesh Public Service Commission Vs. Mukesh Thakur and another, 2010 (6) SCC 759, A Bench of two Judges of the Hon'ble Supreme Court held as follows:

"20. In view of the above, it was not permissible for the High Court to examine the question papers and answer sheets itself, particularly, when the Commission had assessed the inter se merit of the candidates. If there was a discrepancy in framing the question or evaluation of the answer, it could be for all the candidates appearing for the examination and not for Respondent 1 only. It is a matter of chance that the High Court was examining the answer sheets relating to Law. Had it been other subjects like Physics, Chemistry and Mathematics, we are unable to understand as to whether such a course could have been adopted by the High Court. Therefore, we are of the considered opinion that such a course was not permissible to the High Court. (Emphasis supplied) It was further held more importantly as follows:

24. The issue of revaluation of answer book



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is no more res integra. This issue was considered at length by this Court in Maharashtra State Board of Secondary and Higher Secondary Education Vs. Paritosh Bhupeshkumar Sheth; (1984) 4 SCC 27, wherein this Court rejected the contention that in the absence of the provision for revaluation, a direction to this effect can be issued by the Court. The Court further held that even the policy decision incorporated in the Rules/Regulations not providing for rechecking / verification / revaluation cannot be challenged unless there are grounds to show that the policy itself is in violation of some statutory provision.

26. Thus, the law on the subject emerges to the effect that in the absence of any provision under the statute or statutory rules / regulations, the Court should not generally direct revaluation."

98. In Mahinder Kumar Vs. High Court of M.P., (2013) 11 SCC 87, the Court dealt with paragraph 9 of the Recruitment Advertisement and Rule 7, M.P.Uchhtar Nyayik Seva (Bharti Thatha Seva Sharten) Niyam, 1994, the Court dealt with the scope of the meaning of the expression "Evaluation".

99. There once the written examination part is fulfilled, the High Court was to formulate a procedure by which the answer papers were to be evaluated in order to ascertain the marks scored by the candidates. Para 9(iv) of the Recruitment Advertisement specified that before calling any of the candidates for interview who appeared for the written examination, an 'evaluation' will have to be made and based on the evaluation and performance. The High Court would decide as to who should be called for the interview. The Court observed as under in paragraph 37.5 and 38.

"37.5. The expression "evaluation" would, therefore, take into its fold the minimum marks to be scored, the manner in which the evaluation is to be made and in the event of any requirement, to equalise the merits of the candidate in the written examination and follow any appropriate procedure in consonance with law, in order to ultimately arrive at a fair process by which the candidate can be called for interview, based on the evaluation of the marks in the written examination.



not identified herein are required to be considered, which questions, by their very nature should be left to the expert bodies in the field, including the Public Service Commissions. The Court ultimately observed in paragraph 11 and 13 as follows:-

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"11. Having considered the rival submissions advanced before us, we are of the view that the question that calls for an answer in the present case is whether this Court in Sanjay Singh [Sanjay Singh v. U.P. Public Service Commission, (2007) 3 SCC 720 : (2007) 1 SCC (L&S) 870] had laid down any principle or direction regarding the methodology that has to be adopted by the Commission while assessing the answer scripts of the candidates in a public examination and specifically whether any such principle or direction has been laid down governing public examinations involving different subjects in which the candidates are to be tested. Closely connected with the aforesaid question is the extent of the power of judicial review to scrutinise the decisions taken by another constitutional authority i.e. the Public Service Commission in the facts of the present case.

13. We have read and considered the judgment in Sanjay Singh[(2007) 3 SCC 720 : (2007) 1 SCC (L&S) 870 Sanjay Singh v. U.P. Public Service Commission,] . In the said case, this Court was considering the validity of the selections held for appointment in the U.P. Judicial Service on the basis of a competitive examination in which the Rules prescribed five (5) papers all of which were compulsory for all the candidates. There is no dispute that the U.P. Public Service Commission in the aforesaid case had scaled down the marks awarded to the candidates by following the scaling method. This Court, after holding that the Judicial Service Rules which governed the selection did not permit the scaled down marks to be taken into consideration, went into the further question of the correctness of the adoption of scaling method to an examination where the papers were compulsory and common to all the candidates. In doing so, it was observed as follows: (SCC p. 742, para 24,)

"24. The moderation procedure referred to in the earlier paragraph will solve only the



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problem of examiner variability, where the examiners are many, but valuation of answer scripts is in respect of a single subject. Moderation is no answer where the problem is to find inter se merit across several subjects, that is, where candidates take examination in different subjects. To solve the problem of inter se merit across different subjects, statistical experts have evolved a method known as scaling, that is creation of scaled score. Scaling places the scores from different tests or test forms on to a common scale. There are different methods of statistical scoring. Standard score method, linear standard score method, normalised equipercetile method are some of the recognised methods for scaling."

It was furthermore observed: (SCC p. 742, para 25)

"25. ... Scaling process, whereby raw marks in different subjects are adjusted to a common scale, is a recognised method of ensuring uniformity inter se among the candidates who have taken examinations in different subjects, as, for example, the Civil Services Examination."

14. After holding as above, this Court, on due consideration of several published works on the subject, took note of the preconditions, the existence or fulfilment of which, alone, could ensure an acceptable result if the scaling method is to be adopted. As in Sanjay Singh [Sanjay Singh v. U.P. Public Service Commission, (2007) 3 SCC 720 : (2007) 1 SCC (L&S) 870] the U.P. Public Service Commission had not ensured the existence of the said preconditions the consequential effects in the declaration of the result were found to be unacceptable. It was repeatedly pointed out by this Court (paras 36 and 37) that the adoption of the scaling method had resulted in treating unequals as equals. Thereafter, in para 45 this Court held as follows: (SCC p. 751)

"45. We may now summarise the position regarding scaling thus:

(i) Only certain situations warrant adoption of scaling techniques.



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(ii) There are number of methods of statistical scaling, some simple and some complex. Each method or system has its merits and demerits and can be adopted only under certain conditions or making certain assumptions.

(iii) Scaling will be useful and effective only if the distribution of marks in the batch of answer scripts sent to each examiner is approximately the same as the distribution of marks in the batch of answer scripts sent to every other examiner.

(iv) In the linear standard method, there is no guarantee that the range of scores at various levels will yield candidates of comparative ability.

(v) Any scaling method should be under continuous review and evaluation and improvement, if it is to be a reliable tool in the selection process.

(vi) Scaling may, to a limited extent, be successful in eliminating the general variation which exists from examiner to examiner, but not a solution to solve examiner variability arising from the 'hawk-dove' effect (strict/liberal valuation)."

15. Moreover, in para 46, this Court observed that the materials placed before it did not disclose that the Commission or any expert body had kept the above factors in mind for deciding to introduce the system of scaling. In fact, in the said paragraph this Court had observed as follows: (Sanjay Singh case [Sanjay Singh v.U.P. Public Service Commission, (2007) 3 SCC 720 : (2007) 1 SCC (L&S) 870] , SCC p. 751)

"46. ... We have already demonstrated the anomalies/absurdities arising from the scaling system used. The Commission will have to identify a suitable system of evaluation, if necessary by appointing another Committee of Experts. Till such new system is in place, the Commission may follow the moderation system set out in para 23 above with appropriate modifications."



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16. In Sanjay Singh [Sanjay Singh v. U.P. Public Service Commission, (2007) 3 SCC 720 : (2007) 1 SCC (L&S) 870] an earlier decision of this Court approving the scaling method i.e. U.P. Public Service Commission v. Subhash Chandra Dixit [U.P. Public Service Commission v. Subhash Chandra Dixit, (2003) 12 SCC 701] to a similar examination was also noticed. In para 48 of the judgment in Sanjay Singh [Sanjay Singh v. U.P. Public Service Commission, (2007) 3 SCC 720 : (2007) 1 SCC (L&S) 870] it was held that the scaling system adopted in Subhash Chandra Dixit [U.P. Public Service Commission v. Subhash Chandra Dixit, (2003) 12 SCC 701] received this Court's approval as the same was adopted by the Commission after an in-depth expert study and that the approval of the scaling method by this Court in Subhash Chandra Dixit [U.P. Public Service Commission v. Subhash Chandra Dixit, (2003) 12 SCC 701] has to be confined to the facts of that case.

17. Finally, in para 51 of the Report in Sanjay Singh [Sanjay Singh v. U.P. Public Service Commission, (2007) 3 SCC 720 : (2007) 1 SCC (L&S) 870] the Court took note of the submission made on behalf of the Commission that it is not committed to any particular system and "will adopt a different or better system if the present system is found to be defective" (SCC p. 754).

18. In Sanjay Singh [Sanjay Singh v. U.P. Public Service Commission, (2007) 3 SCC 720 : (2007) 1 SCC (L&S) 870] the Court was considering the validity of the declaration of the results of the examination conducted by the Public Service Commission under the U.P. Judicial Service Rules by adoption of the scaling method. This, according to this Court, ought not to have been done inasmuch as the scaling system is more appropriate to an examination in which the candidates are required to write the papers in different subjects whereas in the examination in question all the papers were common and compulsory. To come to the aforesaid conclusion, this Court had necessarily to analyse the detailed parameters inherent in the scaling method and then to reach its conclusions with regard to the impact of the adoption of the



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method in the examination in question before recording the consequences that had resulted on application of the scaling method. The details in this regard have already been noticed (Sanjay Singh case [Sanjay Singh v. U.P. Public Service Commission, (2007) 3 SCC 720 : (2007) 1 SCC (L&S) 870] , paras 45 and 46) (in paras 14 and 15 herein).

19. The entirety of the discussion and conclusions in Sanjay Singh [Sanjay Singh v. U.P. Public Service Commission, (2007) 3 SCC 720 : (2007) 1 SCC (L&S) 870] was with regard to the question of the suitability of the scaling system to an examination where the question papers were compulsory and common to all candidates. The deficiencies and shortcomings of the scaling method as pointed out and extracted above were in the above context. But did Sanjay Singh [Sanjay Singh v. U.P. Public Service Commission, (2007) 3 SCC 720 : (2007) 1 SCC (L&S) 870] lay down any binding and inflexible requirement of law with regard to adoption of the scaling method to an examination where the candidates are tested in different subjects as in the present examination? Having regard to the context in which the conclusions were reached and opinions were expressed by the Court it is difficult to understand as to how this Court in Sanjay Singh [Sanjay Singh v. U.P. Public Service Commission, (2007) 3 SCC 720 : (2007) 1 SCC (L&S) 870] could be understood to have laid down any binding principle of law or directions or even guidelines with regard to holding of examinations; evaluation of papers and declaration of results by the Commission. What was held, in our view, was that scaling is a method which was generally unsuitable to be adopted for evaluation of answer papers of subjects common to all candidates and that the application of the said method to the examination in question had resulted in unacceptable results. Sanjay Singh [Sanjay Singh v. U.P. Public Service Commission, (2007) 3 SCC 720 : (2007) 1 SCC (L&S) 870] did not decide that to such an examination i.e. where the papers are common the system of moderation must be applied and to an examination where the papers/subjects are different, scaling is the



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only available option. We are unable to find any declaration of law or precedent or principle in Sanjay Singh [Sanjay Singh v. U.P. Public Service Commission, (2007) 3 SCC 720 : (2007) 1 SCC (L&S) 870] to the above effect as has been canvassed before us on behalf of the appellants. The decision, therefore, has to be understood to be confined to the facts of the case, rendered upon a consideration of the relevant Service Rules prescribing a particular syllabus.

20. We cannot understand the law to be imposing the requirement of adoption of moderation to a particular kind of examination and scaling to others. Both are, at best, opinions, exercise of which requires an in-depth consideration of questions that are more suitable for the experts in the field. Holding of public examinations involving wide and varied subjects/disciplines is a complex task which defies an instant solution by adoption of any singular process or by a straitjacket formula. Not only examiner variations and variation in award of marks in different subjects are issues to be answered, there are several other questions that also may require to be dealt with. Variation in the strictness of the questions set in a multi-disciplinary examination format is one such fine issue that was coincidentally noticed in Sanjay Singh [Sanjay Singh v. U.P. Public Service Commission, (2007) 3 SCC 720 : (2007) 1 SCC (L&S) 870] . A conscious choice of a discipline or a subject by a candidate at the time of his entry to the University thereby restricting his choice of papers in a public examination; the standards of inter-subject evaluation of answer papers and issuance of appropriate directions to evaluators in different subjects are all relevant areas of consideration. All such questions and, may be, several others not identified herein are required to be considered, which questions, by their very nature should be left to the expert bodies in the field, including, the Public Service Commissions. The fact that such bodies including the Commissions have erred or have acted in less than a responsible manner in the past cannot be a reason for a free exercise of the judicial power which by its very nature will have to be understood to be, normally, limited to instances



of arbitrary or mala fide exercise of power.

104. Thus, the method adopted by the respondent Tamil Nadu Public Service Commission cannot be questioned. In *Uttar Pradesh Public Service Commission Vs. Manoj Kumar Yadav*, (2018) 3 SCC 706, the Court considered scaling of marks adopted by Public Service Commission at the preliminary stage as well as in the main written examination. The Court applied the law laid down in *Sanjay Singh and another Vs. The Uttar Pradesh Service Commission, Allahabad and another*, 2022 SCC OnLine SC 17 and held as under:

"13. In the PCS Examination, 2004 and the Backlog Examination, 2004 the candidates had to take part in the main written examinations which consisted of four compulsory subjects and two optional subjects. The compulsory subjects were common to all candidates and the two optional subjects were to be chosen from the available 33 subjects as mentioned in the advertisements. As per the judgment of this Court in *Sanjay Singh case [Sanjay Singh v. U.P. Public Service Commission, (2007) 3 SCC 720 : (2007) 1 SCC (L&S) 870]*, the Commission could have followed the scaling method only for the optional subjects and not for the compulsory subjects. However, it is clear from the submissions made on behalf of the appellant in the High Court that scaling method was followed even for compulsory subjects. We approve the findings of the High Court that the evaluation of the PCS and Backlog Recruitment Examinations, 2004 was contrary to the judgment of this Court in *Sanjay Singh case [Sanjay Singh v. U.P. Public Service Commission, (2007) 3 SCC 720 : (2007) 1 SCC (L&S) 870]*.

14. Though we are in agreement with the view of the High Court that the examinations were not conducted in accordance with the principles laid down in *Sanjay Singh case [Sanjay Singh v. U.P. Public Service Commission, (2007) 3 SCC 720 : (2007) 1 SCC (L&S) 870]*, we do not approve the directions given in the judgment to finalise the results afresh in accordance with the observations made therein. The exercise to be undertaken as per the said directions would result in displacement of a number of selected candidates not before this Court and alteration of the merit list causing serious prejudice to



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those appointed and working for the last ten years. Therefore, we are of the opinion that the appointments made pursuant to the advertisements of 2004 for the "PCS" and "Backlog" posts should not be disturbed.

105. The Court held that the fact that such bodies including the Commissions have erred or have acted in less than a responsible manner in the past cannot be a reason for a free exercise of the judicial power which by its very nature will have to be understood to be, normally, limited to instances of arbitrary or mala fide exercise of power.

106. This view was affirmed by the Hon'ble Supreme Court recently in The State of Uttar Pradesh Vs. Atul Kumar Dwivedi, 2022 SCC OnLine SC 17. The Court ultimately held as follows:-

"88. If we accept the interpretation sought to be placed by the learned counsel for the respondents it would result in a situation where a person having 'normalized score' of 50% marks or above may be out of reckoning because his raw marks were less than 50%; and, there are sizable number of such persons. At the same time, someone whose 'normalized score' was well below 50% may still be part of the Select List because his "raw marks" were above 50%.

89. If the intent is to see that every candidate must have obtained minimum 50% marks and those 'candidates failing to obtain 50% marks in each of the above subjects shall not be eligible for recruitment' as mandated by Rule 15(b) of Recruitment Rules or by paragraph 9 of the notification dated 28.6.2017, even going by the context and purposive interpretation, the expression 'marks' must be given the same meaning at both the stages; and the only possible meaning that can be ascribed is 'normalized score'. Adopting different standards as suggested by the learned counsel for the respondents would result in anomalous situations. Such anomaly will however stand removed if the expression 'marks' appearing in Rules 15(b) and 15(e) stages is construed in the same light and as 'normalized score'. The submissions advanced by the learned Additional Advocate General and other learned counsel for the appellants, therefore, merit acceptance.



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90. In conclusion, the exercise undertaken by the Board in adopting the process of normalization at the initial stage, that is to say, at the level of Rule 15(b) of Recruitment Rules was quite consistent with the requirements of law. The power exercised by the Board was well within its jurisdiction and as emphasized by the High Court there were no allegations of mala fides or absence of bona fides at any juncture of the process. One more facet of the matter is the note of caution expressed by this Court in paragraph 20 of its decision in Sunil Kumar v. Bihar Public Service Commission. As observed by this Court, the decisions made by expert bodies, including the Public Services Commissions, should not be lightly interfered with, unless instances of arbitrary and mala fide exercise of power are made out.

107. In Ran Vijay Singh Vs. The State of Uttar Pradesh, (2018) 2 SCC 357, the Court referred to the above cited decisions and ultimately concluded as follows:-

18. A complete hands-off or no-interference approach was neither suggested in Mukesh Thakur [H.P. Public Service Commission v. Mukesh Thakur, (2010) 6 SCC 759 : (2010) 2 SCC (L&S) 286 : 3 SCEC 713] nor has it been suggested in any other decision of this Court—the case law developed over the years admits of interference in the results of an examination but in rare and exceptional situations and to a very limited extent.

30. The law on the subject is therefore, quite clear and we only propose to highlight a few significant conclusions. They are:

30.1. If a statute, Rule or Regulation governing an examination permits the re-evaluation of an answer sheet or scrutiny of an answer sheet as a matter of right, then the authority conducting the examination may permit it;

30.2. If a statute, Rule or Regulation governing an examination does not permit re-evaluation or scrutiny of an answer sheet (as distinct from prohibiting it) then the court may permit re-evaluation or scrutiny only if it is demonstrated very clearly, without any



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"inferential process of reasoning or by a process of rationalisation" and only in rare or exceptional cases that a material error has been committed;

30.3. The court should not at all re-evaluate or scrutinise the answer sheets of a candidate—it has no expertise in the matter and academic matters are best left to academics;

30.4. The court should presume the correctness of the key answers and proceed on that assumption; and

30.5. In the event of a doubt, the benefit should go to the examination authority rather than to the candidate.

31. On our part we may add that sympathy or compassion does not play any role in the matter of directing or not directing re-evaluation of an answer sheet. If an error is committed by the examination authority, the complete body of candidates suffers. The entire examination process does not deserve to be derailed only because some candidates are disappointed or dissatisfied or perceive some injustice having been caused to them by an erroneous question or an erroneous answer. All candidates suffer equally, though some might suffer more but that cannot be helped since mathematical precision is not always possible. This Court has shown one way out of an impasse — exclude the suspect or offending question.

32. It is rather unfortunate that despite several decisions of this Court, some of which have been discussed above, there is interference by the courts in the result of examinations. This places the examination authorities in an unenviable position where they are under scrutiny and not the candidates. Additionally, a massive and sometimes prolonged examination exercise concludes with an air of uncertainty. While there is no doubt that candidates put in a tremendous effort in preparing for an examination, it must not be forgotten that even the examination authorities put in equally great efforts to successfully conduct an examination. The enormity of the task might reveal some lapse



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at a later stage, but the court must consider the internal checks and balances put in place by the examination authorities before interfering with the efforts put in by the candidates who have successfully participated in the examination and the examination authorities. The present appeals are a classic example of the consequence of such interference where there is no finality to the result of the examinations even after a lapse of eight years. Apart from the examination authorities even the candidates are left wondering about the certainty or otherwise of the result of the examination – whether they have passed or not; whether their result will be approved or disapproved by the court; whether they will get admission in a college or university or not; and whether they will get recruited or not. This unsatisfactory situation does not work to anybody's advantage and such a state of uncertainty results in confusion being worse confounded. The overall and larger impact of all this is that public interest suffers.

108. A cumulative reading of the above decisions of the Hon'ble Supreme Court indicates that normally in the event of doubt, the benefit of doubts has to go to the examination authority rather than the candidates.

109. In the respective cases, the petitioners have challenged the method of valuation from a different perspective. Each of them have ascribed different reasons in their affidavit which according to them have resulted in their being unfairly eliminated from the selection process.

110. The fact that a method has been evolved for allotting average marks where there is a variation in the marks awarded by the evaluator itself shows that the intention was only to eliminate the evaluator bias and not to unfairly filter out any of the candidates from the selection process. After all the entire process adopted was to be select the best candidates who scored higher marks. The procedure adopted has resulted in elimination. However, it cannot be helped, it was not neither arbitrary nor malafide.

111. It would be preposterous to suggest that each of the answers where there were variations should be revalued by a third evaluator. This is because about 9441 candidates appeared during the Main Written Examination and a total of 46056 valuations were made as detailed below:-



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Total Number of answer booklets paper 1,2,3 all put together	Valuation-I	Valuation-II	Valuation-III
	22925	22925	206
Total	46056		

112. The fact that there were variations in the marks awarded by evaluators itself would not mean that the petitioners have been wrongly eliminated as same yardstick was followed for both successful and unsuccessful candidates. Therefore, these petitioners cannot claim any special privilege in their turn. Only 206 answer sheets were sent for fresh evaluations by a third evaluator. This represents a minuscule percentage of answers which were sent for re-evaluation by a third members.

113. Since there is no malafide on the part of the respondent Tamil Nadu Public Service Commission, there cannot be any scope for interference under Article 226 of the Constitution of India as far as the petitioner in W.P.No.35219 of 2019 (Dr.S.Sibichakaravarthy) and the petitioner in W.P.No.16481 of 2020 (E.Ranjith) are concerned.

114. The petitioner in W.P.No.35219 of 2019 (Dr.S.Sibichakaravarthy) cannot find fault with the respondents Tamil Nadu Public Service Commission in the manner in which the marks were awarded to him. The respondents have taken the average of the two marks in the first and second evaluation.

115. Merely because there were some variations in the marks awarded for the same question by the first and second evaluators itself would not mean that an arbitrary method was adopted in the valuation.

116. The very purpose of considering the average marks was to eliminate bias. Therefore, I do not find any reasons to interfere in the elimination of the petitioner in W.P.No.35219 of 2019 (Dr.S.Sibichakaravarthy) notwithstanding the fact that for certain answers, the variations in the marks awarded was more than 15% and upto 100%.

117. As far as the petitioner in W.P.No.16481 of 2020 (E.Ranjith) is concerned, the marks secured by the said petitioner is far below the cut-off marks for the candidates belonging to the MBC. The petitioner never came within the zone of consideration. Therefore, petitioner cannot ask for interference.



118. As far as the petitioner in W.P.No.10569 of 2020 (K.R.Kaarthika) and the petitioner in W.P.No.12602 of 2020 (M.Aruna) are concerned, I find there is some scope for interference inasmuch as the lowest of the marks in three evaluations in Paper II and Paper III was adopted to eliminate these petitioner.

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

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

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

122. Therefore, to that extent, I am inclined to interfere in W.P.No.10569 of 2020 (K.R.Kaarthika) and W.P.No.12602 of 2020 (M.Aruna) by remitting the case back to the respondent Tamil Nadu Public Service Commission to examine whether these petitioners would have qualified, and selected provisionally if average of the three scores of these two petitioners in paper III and II are taken and recomputed as follows:-

Petitioner	1 st Evaluation	2 nd Evaluation	3 rd Evaluation	Marks Awarded	Average of the Three Marks
K.R.Kaarthika (Petitioner in W.P.No.10569 of 2020) in Paper III	115/250	156/250	131/250	123.00/250	134/250



Petitioner	1 st Evaluation	2 nd Evaluation	3 rd Evaluation	Marks Awarded	Average of the Three Marks
M.Aruna (Petitioner in W.P.No.1260 2 of 2020) in Paper II	164.5/250	113.5/250	137/250	125.25/250	138/250

(*Average of the I,II and III Evaluation)

123. The respondent Tamil Nadu Public Service Commission is therefore directed to examine whether these two petitioners would have qualified if the scores of these marks are marginally increased to 134/250 instead of 123.00/250 and 138/250 instead of 125.25/250 respectively.

124. The respondent Tamil Nadu Public Service Commission shall complete this exercise within a period of two weeks from the date of receipt of this Order.

125. In case, these petitioners are found eligible, the respondent Tamil Nadu Public Service Commission shall take suitable steps to interview these petitioners and ascertain their suitability and issue appropriate appointment orders if they are otherwise found qualified.

126. The 2nd mentioned exercise shall be completed by the respondent Tamil Nadu Public Service Commission within a period of four weeks thereafter.

127. In the result,

i. W.P.No.35219 of 2019 filed by (Dr.S.Sibichakkaravarthy) & W.P.No.16481 of 2020 filed by (E.Ranjith) are dismissed.

ii.W.P.No.10569 of 2020 (K.R.Kaarthika) & W.P.No.12602 of 2020 (M.Aruna) are disposed with the above observations.

iii.No costs. Consequently, miscellaneous petitions are closed.

Sd/-
Deputy Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar



rgm/jen

To

1. The Chairman,
The Tamil Nadu Public Service Commission,
TNPSC Road, V.O.C.Nagar,
Park Town, Chennai-600 003.
2. The Secretary,
The Tamil Nadu Public Service Commission,
TNPSC Road, V.O.C.Nagar,
Park Town, Chennai-600 003.
3. Controller of Examination,
The Tamil Nadu Public Service Commission,
TNPSC Road, V.O.C.Nagar,
Park Town, Chennai-600 003.
4. The State of Tamil Nadu,
Represented by its Principal Secretary,
P & AR Department,
Fort St.George,
Chennai-600 009.
5. The State of Tamil Nadu,
Represented by its Principlal Secretary,
Revenue Department,
Fort St.George,
Chennai-600 009.
6. The State of Tamil Nadu,
Represented by its Chief Secretary,
Fort St.George,
Chennai-600 009.

+1cc to M/s.A.L.Gandhimathi , Advocate, S.R.No.6170
+1cc to M/s.R.Revathi, Advocate, S.R.No.6394
+1cc to Mr.M. Muthappan, Advocate, S.R.No.5965
+1cc to Mr.V.Govardhanan, Advocate, S.R.No.5906
+1cc to Mr.S.Thanka Sivam, Advocate, S.R.No.5752

W.P.Nos.35219 of 2019,12602
10569 & 16481 of 2020
and W.M.P.Nos.36010, 36014 of 2019 , 5452,
15544, 23305 12839 & 12843 of 2020

SPD(CO)
CT(21/02/2022)