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W.A.(MD) Nos.1950, 1951 & 1952 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 19.10.2023

CORAM:

**THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM
and
THE HONOURABLE MR.JUSTICE V.LAKSHMINARAYANAN**

**W.A.(MD) Nos.1950, 1951 & 1952 of 2021
and
C.M.P.(MD) Nos.8741, 8742 & 8743 of 2021**

W.A.(MD) No.1950 of 2021:

Tamil Nadu Public Service Commission
rep.by its Secretary
Park Town, VOC Nagar
Chennai-600 003

... Appellant

-vs-

1.S.Anitha

2.The Principal Secretary /
Commissioner of Archaeology
Department of Archaeology
Tamil Valarchi Valagam
Tamizh Salai, Egmore, Chennai-8

... Respondents



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W.A.(MD) Nos.1950, 1951 & 1952 of 2021

Writ Appeal filed under Clause 15 of Letters Patent to set aside the order, dated 07.07.2021, passed in W.P.(MD) No.19705 of 2020, on the file of this Court.

For Appellant : Mr.V.Panneerselvam

For Respondents : Mr.T.Aswin Rajasimman
for T.Lajapathi Roy & Associates for R1
Mr.T.Amjadkhan
Government Advocate for R2

W.A.(MD) No.1951 of 2021:

Tamil Nadu Public Service Commission
rep.by its Secretary
Park Town, VOC Nagar
Chennai-600 003

... Appellant

-vs-

1.D.Ananthy

2.The Principal Secretary /
Commissioner of Archaeology
Department of Archaeology
Tamil Valarchi Valagam
Tamizh Salai, Egmore, Chennai-8

... Respondents

Writ Appeal filed under Clause 15 of Letters Patent to set aside the order, dated 07.07.2021, passed in W.P.(MD) No.19702 of 2020, on the file of this Court.



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W.A.(MD) Nos.1950, 1951 & 1952 of 2021

For Appellant : Mr.V.Panneerselvam

For Respondents : Mr.T.Aswin Rajasimman
for T.Lajapathi Roy & Associates for R1
Mr.T.Amjadkhan
Government Advocate for R2

W.A.(MD) No.1952 of 2021:

Tamil Nadu Public Service Commission
rep.by its Secretary
Park Town, VOC Nagar
Chennai-600 003

... Appellant

-vs-

1.M.Shanmugavalli

2.The Principal Secretary /
Commissioner of Archaeology
Department of Archaeology
Tamil Valarchi Valagam
Tamizh Salai, Egmore, Chennai-8

... Respondents

Writ Appeal filed under Clause 15 of Letters Patent to set aside the order, dated 07.07.2021, passed in W.P.(MD) No.19703 of 2020, on the file of this Court.

For Appellant : Mr.V.Panneerselvam

For Respondents : Mr.T.Aswin Rajasimman
for T.Lajapathi Roy & Associates for R1
Mr.T.Amjadkhan
Government Advocate for R2



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W.A.(MD) Nos.1950, 1951 & 1952 of 2021

COMMON JUDGMENT

[Judgment of the Court was made by S.M.SUBRAMANIAM, J.]

These writ appeals are directed against the common order of the learned Single Judge, dated 07.07.2021, passed in W.P.(MD) Nos.19705, 19702 & 19703 of 2020 respectively.

2. The issue mainly raised in all these writ appeals is that the candidates, who indicated the medium of instruction as “Tamil” in the application, should be considered only under the Persons Studied in Tamil Medium (PSTM) Quota or under the General Pool and Reserved Categories.

3. Learned counsel appearing for the appellant – Tamil Nadu Public Service Commission mainly contended that the first respondents / writ petitioners have stated the medium of instruction as “Tamil” in the application and therefore, their cases were considered under PSTM Quota. However, subsequently, they failed to produce the PSTM Certificate for the purpose of considering their case under the said quota. Thus, the appellant has rejected their candidature and therefore, there is no infirmity in rejecting the case of the first respondents.



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4. It is further contended that the learned Single Judge has not considered the instructions given by the appellant to the candidates. The instructions clearly indicate that PSTM Certificate is to be produced along with the application, which the candidates in the present case failed to do so.

5. In support of his contentions, learned counsel appearing for the appellant relied on the Judgment of the Division Bench of this Court dated 11.03.2020 in W.A.No.4318 of 2019 [**A.Prabu vs. Tamil Nadu Public Service Commission**].

6. We have gone through the said Judgment and found that it was a case of suppression of material facts, which was considered by the Division Bench of this Court and thus, the facts in the said case are different and hence, the said decision is of no avail to the appellant in the present case for the purpose of considering their ground.

7. As far as the Judgment of the Honourable Supreme Court, dated 28.08.2019 in Civil Appeal No.6669 of 2019 [**The State of Tamil Nadu and others vs. G.Hemalathaa and another**] relied on by the learned



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counsel for the appellant is concerned, the said case is also factually distinguishable and unconnected with the facts of the present case. Thus, we are not inclined to rely on the said decision. In the said case, the issue relating to underlining the answer sheet was considered by the Apex Court.

8. Per contra, learned counsel appearing for the first respondents / writ petitioners relied on the Judgment of the Division Bench of this Court, dated 23.01.2019 in W.A.No.424 of 2018 [***M.Silamparasan vs. The Secretary***], wherein the very same issue was considered by the Division Bench. The relevant portion of the said Judgment reads as under:

“...Learned single Judge, has not considered the issue as to whether, if a candidate has made a claim, under PSTM quota, and if a certificate to such preferential claim is not submitted, whether the said candidate can be considered for selection against the seats earmarked for MBC quota, or in general category? Our answer to the above issue is that the candidate who is otherwise qualified, should be considered, against the seats earmarked for MBC, the category to which the candidate belongs or in general category.”



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9. We have considered the facts of the present case independently.

The first respondents / candidates, in their online applications, have stated that they acquired educational qualifications through Tamil medium. They have mentioned so in their applications. The column provided in the application issued by the Tamil Nadu Public Service Commission stipulates that the candidates should state the medium of instructions. However, there is no column for providing the choice of the candidates for the purpose of availing the benefit under PSTM Quota or otherwise. In the absence of any such column seeking the choice of the candidates for availing the benefit under PSTM Quota, mere mentioning of the medium of instructions cannot be a ground to draw an inference that the candidates have submitted their applications only under the PSTM Quota. After receiving the applications from the candidates, Tamil Nadu Public Service Commission cannot turn around and convert the applications only for the purpose of considering such candidates under the PSTM Quota. Those candidates in the event of not producing PSTM Certificates, they must be provided an opportunity under the General Pool or the Reserved Category, which they belong. Thus, the rejection of the applications of the first respondents / candidates in the present case



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has resulted in an inequality and therefore, equal opportunity in public employment has been denied to those candidates. Mere information given by the candidates about the medium of instruction would not disentitle them from availing the benefit under the General Quota or the Reserved Category / Quota in the process of selection. Equal opportunity in public employment being a constitutional mandate, the rejection of applications in the present case has resulted in an unconstitutionality and infringed the rights of the first respondents / candidates. The learned Single Judge in the impugned order has relied on the findings of this Court made in W.P.No.5812 of 2020, dated 07.07.2021, [**M.Nisha vs. The Secretary**], wherein the facts are falling on the same line and akin to that of the Division Bench Judgment of this Court in the case of **Silambarasan** referred supra.

10. The learned Single Judge had gone one step further and directed the appellant to appoint the first respondents in the post of Archaeological Officer, which in our opinion is unnecessary. Therefore, we are inclined to interfere only with the portion of the order issuing positive direction to the appellant to appoint the first respondents in the post of Archaeological officer.



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11. Mere selection would not confer any right of appointment.

The power of appointment vests with the employer concerned. The Tamil Nadu Public Service Commission is the recruiting agency. The flaw identified in the selection process undertaken by the Tamil Nadu Public Service Commission alone is to be considered in the present case. The question of appointment would arise only after the selection process. Even after revising the selection process, it is to be looked into whether the candidates are falling within the zone of consideration or not. When these factors are yet to be considered, issuing a direction to appoint the candidates would be unnecessary and the same would further result in discrimination in respect of the other candidates, who are all longing to secure public employment under the constitutional schemes.

12. In view of the facts and circumstances, the appellant is directed to consider the case of the first respondents under the General Pool or under the Reserved Category as applicable to them and accordingly re-do the exercise of selection process and communicate the decision taken to the first respondents, within a period of twelve weeks from the date of receipt of a copy of this Judgment.



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13. Thus, the portion of the impugned order directing the respondents in the writ proceedings to appoint the writ petitioners / candidates as Archaeological Officers alone is set aside.

14. The writ appeals are partly allowed in the above terms. No costs. Consequently, connected miscellaneous petitions are closed.

[S.M.S., J.]

[V.L.N., J.]

19.10.2023

NCC : Yes / No

Index : Yes / No

Internet : Yes / No

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To:

The Principal Secretary /
Commissioner of Archaeology,
Department of Archaeology,
Tamil Valarchi Valagam,
Tamizh Salai, Egmore, Chennai-8.



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