

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 20.01.2023

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THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P.(MD)No.26878 of 2019

and

**W.M.P.(MD)Nos.23225, 23226,
23228 and 23229 of 2019**

G.Sakthi Rao

... Petitioner

vs.

1.The Chief Secretary,
Government of Tamil Nadu,
Secretariat, St.George Fort,
Chennai-600 009.

2.The Secretary,
Department of Higher Education,
Government of Tamil Nadu,
Secretariat, St.George Fort,
Chennai-600 009.

3.The Secretary,
Tamilnadu Public Service Commission,
TNPSC Road, Park Town,
Chennai - 600 003.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, to call for the entire records of the 3rd respondent pertaining to the oral test list published on 09.12.2019 for the posts of included in Combined Civil Service-I Examination (Group-1 services)-2019 by 3rd respondent notification No:01/2019, dated 01.01.2019 and to quash the same as illegal and to direct the 3rd respondent to issue the allow only the regular college students to avail the PSTM quota and publish the fresh oral test list and also to direct the 1st respondent to frame proper rules for PSTM quota and also the 2nd respondent in controlling universities to stop issuing PSTM certificates to correspondence course/Distance education within the stipulated time period.

For Petitioner	: Mr.G.Sakthi Rao Party in person
For R1 & 2	: Mr.D.Sadiq Raja Additional Government Pleader
For R3	: Mr.J.Anand Kumar

ORDER

This writ petition is filed for issuance of a writ of Certiorarified Mandamus, to quash the oral test list published on 09.12.2019 for the posts included in

Combined Civil Service-I Examination (Group-1 services)-2019 by 3rd respondent notification, dated 01.01.2019 and to direct the 3rd respondent to allow only the regular college students to avail the PSTM quota and publish the fresh oral test list and also to direct the 1st respondent to frame proper rules for PSTM quota and also the 2nd respondent in controlling universities to stop issuing PSTM certificates to correspondence course / Distance education within the stipulated time period.

2. The brief facts of the case are that the petitioner has done schooling only in Tamil Medium, studied computer science subject in Tamil medium. The petitioner completed B.Com., degree, M.Com., degree in Tamil medium and a 3 year BL degree (Regular) in Tamil medium and enrolled as advocate in the year 2017. The petitioner has also completed Diploma in Law of Taxation through Annamalai University. The 3rd respondent issued Notification No.01 of 2019, dated 01.01.2019, calling for applications for CCS-I Examination (Group-I

Services) for the vacancy of 139 posts. Subsequently, the vacancy was increased to 181 posts. The petitioner applied through online. The petitioner has passed the preliminary exam and was allowed to write main examination. The 3rd respondent published list of candidates eligible for oral test on 09.12.2019 based on main written examination marks. In the said list, the petitioner's name was not included.

3.The contention of the petitioner is even though the petitioner has done the examination well, the petitioner was not selected even under PSTM reservation. The petitioner has completed B.Com., B.L., and Diploma in Law of Taxation. Since the TNPSC notification states that preference would be given to candidates if they possess degree in same subjects, the petitioner is having degree in same subject and hence the petitioner is eligible to be posted in the post of Commercial Tax Officer (CTO). Moreover the respondents have granted 20% reservation for the persons who have studied in Tamil Medium based on the “Persons studied in

Tamil Medium Rules, 2010”, since the said rules clearly states “Tamil Medium Instruction”. Hence the correspondence course PSTM certificates are not eligible under the said Rules. However there is no proper instructions in this regard, hence the second respondent Universities are issuing PSTM certificates indiscriminately. Certain candidates in order to occupy the PSTM reservation are applying the degree course in Tamil medium but they have completed the other degrees in regular course in English medium. Hence, the reservation granted to the Tamil medium students are being occupied by ineligible candidates. Hence, the petitioner submitted a representation dated 09.03.2019 and 08.06.2019 to the Government regarding the malpractice. The petitioner has also sought information under the Right to Information Act but the respondents have not produced proper information. In spite of several complaints to various authorities through various channels, the respondents have not considered the same. Hence, left with no other option, the petitioner has filed this writ petition.

4. The 3rd respondent had filed counter affidavit stating that as per para 6(B) of TNPSC's Notification, the prescribed qualification for the said recruitment is that the candidate should possess a degree of any university incorporated by an Act of Central or State Legislature in India or any other educational institution especially by an Act of Parliament or declared to be deemed as University under Section 3 of University Grants Commission Act, 1956. Hence, the candidates should pursue the prescribed educational qualification (any degree) in Tamil medium have been taken into consideration for vacancies earmarked for the PSTM category. Moreover, under para 2(d) of the Tamil Nadu Appointment on preferential basis in the services under the State of Persons Studied in Tamil Medium Act (Act 40 of 2010) states that the persons studied in Tamil medium means persons who have obtained the educational qualification or qualifications prescribed by the direct recruitment in the rules or regulations or orders applicable to any appointment in the services under the State through Tamil Medium of Instructions. Based on these guidelines, the list of

candidates who have completed degree in Tamil Medium were taken into account. The prescribed qualification is UG degree from UGC recognised University. In the Tamil Nadu Government Servants Conditions of Services Act, the qualification prescribed should have been acquired in the sequence of 10+2+3 and should have acquired from UGC recognised university. Hence, the Commissioner would only check whether the UG degree claimed by the candidate is from a UGC recognised university and has been obtained only after SSLC and HSC or its equivalent. If the candidates claim that the medium of instructions for the degree qualification as Tamil, then the TNPSC would direct the candidates to produce the PSTM certificate. The Commission need not look into the education of the candidate. Hence, the prayer of the petitioner that the candidates who have studied UG degree in Tamil medium in regular college alone should be considered for PSTM vacancies is not a valid ground. Based on the marks obtained by the petitioner in the main written examination and the number of vacancies, applying the rules of reservation of appointment and other conditions

stipulated in the notification, the petitioner did not come within the zone of consideration for oral test. Therefore, the petitioner is not entitled to and hence the respondents prayed to dismiss the writ petition.

5. Heard Mr.G.Sakthi Rao, Party in person, Mr.D.Sadiq Raja, learned Additional Government Pleader appearing for respondents 1 and 2 and Mr.J.Anand Kumar, learned Counsel appearing for 3rd respondent.

6. The petitioner subsequently filed another writ petition in W.P.(MD)No. 8025 of 2020, wherein the said writ petition was listed before the Learned Single Judge. However, the same was converted into public interest litigation and the petition was heard by the Honourable Division Bench. The Honourable Division Bench of this Court after elaborately hearing the case has passed an order, dated 22.03.2021, wherein it has been held as under:

42. For the reasons stated above the impugned notification is held as valid and this Court accepts the contention of the Petitioner that only

those who completed their entire education right from schooling viz., from first standard upto SSLC, HSC, prescribed qualification either Degree, Diploma or Post Graduation, in Tamil medium alone are entitled to avail the benefit of 20% reservation quota. Therefore, the Writ Petition is allowed partly with the following directions:

(1). The impugned notification itself is as per the interpretation given by the petitioner in the prayer viz., to allow only the candidates those who have completed their entire education i.e., from 1st std to 10th std, then 12th std and thereafter, Degree or prescribed qualification only through Tamil Medium to avail PSTM quota and hence it is valid.

(2). The recruitment under the impugned notification is governed by this order.

(3). There shall be a direction to the Respondents to give 20% PSTM reservation only to those who studied their entire education through out in Tamil medium viz., right from 1st standard upto prescribed qualification.

(4). 20% reservation for PSTM candidates shall be applied at every stage of recruitment.

(5). The PSTM Act 2010 and the amendment Act 2020 are constitutionally valid, as the act is to remove the disability sustained by the Tamil medium students due to education in Tamil medium viz., inability to get employment in Central Government as well as in other State Services, Private Sectors.

(6). The Chief Secretary shall direct the Department of School Education and Higher Education to strictly indicate the medium of instruction in the certificates itself viz., Tamil or English in which the student undergo the course in 10th std, 12th std, Degree and Post Graduate Degree, if not already indicated.

(7). The third respondent shall also get the certificates verified from the school or college authorities with regard to those candidates who apply under PSTM quota and also make it mandatory to produce the proof

for having benefitted the scholarship for undergoing education in Tamil Medium and also completion certificate for having studied in Tamil Medium issued by the Institutes as per the full bench judgment of this Court dated 27.09.2019 in W.P.No.27127 of 2018 in the case of R.Boominathan Vs. The Government of Tamil Nadu.

(8). The Director of Vigilance and Anticorruption shall constitute a special team headed by a DSP level Officer, preferably, the seventeenth respondent herein, exclusively, for the investigation on the alleged irregularities in the conduct of examinations and issuance of false certificates, including false PSTM certificates, as discussed supra, by Madurai Kamaraj University and shall ensure that the investigation is completed in a time bound manner not more than six months from the date of receipt of a copy of this order. The investigation team is expected to submit a status report before this Court at regular intervals, preferably, by the end of three months period, in sealed cover. A copy of the final report shall also be submitted before this Court in sealed cover.

(9). After completing the investigation in Madurai Kamaraj University, the investigation team shall also extend the scope of investigation and find out any such fraud has been committed in any other Universities in Tamil Nadu.

(10). Needless to state that during the course of investigation, if the investigation team finds the commission of cognizable offence, they are expected to file the final report by including the relevant penal provisions, apart from the provisions of Prevention of Corruption Act.

(11). The respondents 1 and 2 are directed to appoint only those teachers who have been qualified in Tamil literature to teach "Tamil subject" for the students at school as well as college level.

(12). The Government shall not appoint candidates who obtained cross major subject degrees in Tamil as Tamil Teachers."

7. The respondents submitted that in the said order it has been clearly held that the direction given by this Court would be applicable for the recruitment challenged in the said writ petition. The challenge in the aforesaid W.P.(MD)No. 8025 of 2020 is for the notification issued for the year 2020 and hence the respondents submitted that the said direction cannot be applied to the petitioner's claim which has been filed earlier to the aforesaid writ petition. The petitioner submitted that the said writ petition was subsequently converted as public interest litigation. Therefore, the Honourable Division Bench considered the case of the petitioner therein individually but has laid a policy decision. Based on the direction, the Government has also issued G.O.No.82, Human Resource Development (S) Department, dated 16.08.2021 and the said G.O. was given only prospective effect. Since the said G.O. was passed in the light of the judgment of Honourable Division Bench, the claim of the petitioner to grant PSTM only to students who have completed 10+2+3 in Tamil alone cannot be considered for the 2019 recruitment process. Admittedly the present writ petition is filed challenging

the recruitment Notification for the year 2019. However the said contention of the respondents cannot be accepted, since in the aforesaid judgement it is held that PSTM is applicable for students who have completed 10th standard, Plus two and degree in Tamil medium. And the judgment declined to grant PSTM status for the candidates who had done 10th and 12th in English Medium and Under Graduation in Tamil medium. In short the entire schooling and the Under Graduation should be in Tamil Medium, only then the said candidates shall be considered as PSTM.

8. Even in Act 40 of 2010, it states as under:

“(d) “persons studied in Tamil medium” means persons who have obtained the educational qualification or qualifications prescribed for direct recruitment in the rules or regulations or orders applicable to any appointment in the services under the State through Tamil medium of instruction;”

The respondents have prescribed the qualification that the candidate should possess PSTM for direct recruitment. But the respondents has interpreted that the PSTM is prescribed only for graduation alone and it cannot be stated that it is

applicable for 10th standard and +2 also. However, the Honourable Division Bench has held that it is applicable to the persons who have completed 10+2+3 and the interpretation of the respondents has been held as illegal and erroneous. Therefore this Court is of the considered opinion that the petitioner is entitled to be considered in the 2019 recruitment also.

9. The next contention of the respondents is that based on the interpretation given to the Act 40 of 2010, already certain persons have been appointed in the said post and at this juncture, the appointment of those candidates cannot be disturbed. Moreover the rule of play cannot be changed in the midway and hence respondents prayed to dismiss the claim of the petitioner and the in turn dismiss the writ petition. The petitioner submitted that rule of play need not be changed. At least, the respondents ought to consider the petitioner's case and select the petitioner. Since the petitioner has completed 10+2+3 in Tamil medium,

preference shall be given to the petitioner than the other candidates. The respondents further submitted that the petitioner's mark is below the cut off mark prescribed for the categories. The cut off mark for BC is 401 and for MBC is 413.75. However, the petitioner being a BC candidate, he has obtained only 379.5. Since the petitioner is not coming within the zone of consideration, as per marks obtained by the petitioner, the petitioner's claim cannot be entertained. However the petitioner relied on the qualification details of the other candidates which is extracted here under:

S.No	Rank	Reg.No.	Post selected	10 th		12 th		Degree					Regular /Distance Education in Degree
				Year of passing	Medium	Year of passing	Medium	Year of passing	Degree	Major	University	Medium	
4	131	320107323	ADRD	2005	English	2007	English	2018	B.A.,	Tamil	Periyar Univ	Tamil	Distance Education
6	152	010039295	DSP	1999	English	2001	English	2018	B.A.,	History	Madurai Kamaraj Univ	Tamil	Distance Education
10	186	010015031	DSP	2004	English	2006	English	2018	B.A.,	History	Annamalai Univ	Tamil	Distance Education
13	201	010001278	DC	2007	English	2009	English	2017	B.A.,	History	Annamalai Univ	Tamil	Distance Education
18	241	010140231	DSP	2009	English	2011	English	2018	B.A.,	Public Admn.	Annamalai Univ	Tamil	Distance Education

19	248	140105113	DSP	2000	English	2002	English	2017	B.A.,	Rural Mang.	Annamalai Univ	Tamil	Distance Education
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10. There are 2 sets of candidates, one is the candidates who have completed PSTM in degree alone. The petitioner has completed the entire course, i.e., from 10+2+3 in Tamil medium. The petitioner is the single person who has completed 10+2+3 in Tamil medium. Other candidates whom the respondents have considered have completed 10th and 12th standards in English medium and has completed UG degree in Open University under Tamil medium. If the respondents had given preference to the candidates who have completed 10+2+3 in Tamil medium, the petitioner would be the single person who would be eligible. This Court is of the considered opinion that in PSTM itself the first preference should be to the candidates who have completed the entire education in Tamil medium. At least, the respondents ought to have granted preference to the petitioner and ought to have kept the other persons below the petitioner. In such circumstances, the petitioner would be a successful candidate under the PSTM quota. Therefore, this Court is directing the respondents to consider the

petitioner's case under PSTM quota than the other candidates who have completed UG degree alone in Tamil medium.

11. The respondents vehemently opposed that it will be difficult task for TNPSC to scrutinise for every candidate and find out if the candidate had undergone their education only in Tamil Medium and relied on the judgement dated 20.12.2019 rendered in W.P.No.35055 of 2019 and the relevant portion is extracted here under:

“9.It will be relevant to extract the definition of persons studied in Tamil medium as provided under Section 2(d) of the Act.

2(d) “persons studied in Tamil medium” means persons who have obtained the educational qualification or qualifications prescribed for direct recruitment in the rules or regulations or orders applicable to any appointment in the services under the State through any medium of instruction other than Tamil.

10.A combined reading of the object of the Act and the definition clearly shows that preference in appointment is given to those candidates who have obtained the educational qualification prescribed for direct

recruitment through Tamil medium of instruction. There is absolutely no insistence in the entire Act, that a candidate should have gone through the entire education right from the beginning only in Tamil medium. It will not be possible to read into the Act, such an expanded version as attempted to be projected by the learned counsel for the petitioner. It will be normally found that only those persons who had undergone their education in Tamil medium in School, will only prefer to do the U.G or P.G course in Tamil medium. It will be an arduous task to undergo an U.G or P.G course directly in Tamil medium without having the basic exposure in those subjects through Tamil medium while studying 10th or 12th standard. It will also be very difficult for the Public Service Commission to scrutinise for every candidate and find out if they have undergone their education only in Tamil medium right through. This will make the process of selection very complicated”

However the Hon’ble Division has held that the TNPSC is bound to scrutinise that the candidates have completed 10th, 12th and the UG in Tamil Medium. Moreover the Division Bench judgment was rendered on 22.03.2021, which is subsequently to the aforesaid order passed by the Learned Single Judge. Therefore this Court is of the considered opinion that the difficulty expressed by the respondents cannot be sustained.

12. The respondents submitted that once the rule of play is determined, then the same cannot be changed in midway and for this preposition the respondents relied on the order dated 22.02.2022 rendered in W.P.(MD)No.3302 of 2022 and the relevant portion is extracted hereunder:

“6. It is consistently held by the Courts across the country that once the recruitment notification is issued and the candidates participated in the process of selection, they cannot turn around and challenge the conditions in the notification. If at all any selection is made contrary to the terms and conditions of the Notification, the same alone would provide cause for aggrieved persons to move the Court of law, but not otherwise.”

13. The respondents further relied on the order dated 31.03.2022 passed in W.P.No.1439 of 2022 and the relevant portion of the order, is extracted hereunder:

“ 6. An identical issue came up before the Madurai Bench of this Court in W.P.(MD)No.3302 of 2022 dated 22.02.2022, wherein a learned Single Judge of this Court has observed as under:

“4. The fact remains that the recruitment notification was issued on 27.11.2019. The applications were finalized, the candidates have already participated in the written examination and the Teachers Recruitment Board is in the process of finalizing the selection list. The petitioner has also participated in the process of selection and he is waiting for his result.

Under these circumstances, now after a lapse of about 2 ½ years, the petitioner has challenged the notification issued. The candidates, who have participated in the written examination accepting the conditions in the recruitment notifications, cannot turn around challenging the notification. Thus, after a lapse of about 2 ½ years, more specifically, with reference to prescription of eligibility for PSTM Quota, if at all the petitioner raises some ground or otherwise, the notification ought to have been challenged during the relevant point of time, when it was issued in the year 2019. Contrarily, a person, who has submitted an application and participated in the written examination, at the time of issuing of final Selection list, cannot challenge the conditions in the recruitment notifications. However, even as per the notification, the Teachers Recruitment Board has stated that “20% horizontal reservation on preferential basis for persons studied in Tamil medium will be followed as per existing G.O.Ms.No.145, Personnel and Administrative Reforms (S) Department dated 30.09.2010”. Therefore, it is needless to state that the selection must be conducted strictly in accordance with the terms and conditions stipulated in the notification which is in consonance with the Government Policy in the matter of grant of PSTM Quota to the eligible candidates.

5. In case the petitioner raises a ground in respect of validity of the conditions imposed, that cannot be now adjudicated as the Scope of PSTM quota is further interpreted by the Hon’ble Division Bench, after issuance of impugned notification and based on that, the Teachers Recruitment Board also issued new conditions for PSTM quota in the recent recruitment notification dated 21.10.2021. Therefore, the notification of the year 2019 cannot be challenged based on subsequent developments and changes made in the policy.

6. It is consistently held by the Courts across the country that once the recruitment notification is issued and the candidates participated in the process of selection, they cannot turn around and challenge the conditions

in the notification. If at all any selection is made contrary to the terms and conditions of the Notification, the same alone would provide cause for aggrieved persons to move the Court of law, but not otherwise. 7. This being the scope of the writ petition, the notification of the year 2019 cannot be now challenged in the year 2022 and after completion of process of selection, if any violations are noticed, then the aggrieved persons are at liberty to approach the Court of law. Thus, the Writ Petition stands dismissed. No costs.”

7. A Division Bench of this Court has also observed in W.A.No.1481 of 2021 and CMP.No.9429 of 2021 dated 17.11.2021 that, “7.14. the changes brought out in the qualification norms by the way of the subsequent Government Order viz., G.O.(Ms.)No.361, dated 31.12.1999 has to be applied prospectively and cannot be allowed to take retrospective effect.” In the case on hand, the notification is of the year 2019 and the Government Order in G.O.Ms.No.82, Human Resource Development (S) Department is dated 16.08.2021 and it cannot be given retrospective operation in the light of the Division Bench judgment of this Court cited supra. The notification of the year 2019, cannot be now challenged in the year 2022, after a delay of three years. It is the stand of the third respondent in the counter affidavit that examinations are over and the results are yet to be published and therefore, amending the notification in the midway of the recruitment process cannot be accepted in the light of the Division Bench decision cited supra.”

The rule is same right from the enactment of Act 40 of 2010, but the respondents have wrongly interpreted the provisions and had allowed the candidates who were possessing PSTM certificate for degree alone. Therefore this Court is of the

considered opinion that there is no change in rule, but the rule is one and the same, but the Courts have held that the interpretation is illegal and erroneous. The Hon'ble Division Bench has further directed to take action against the erred officials who were responsible for wrong committed. Therefore the contention of the respondents that the rule cannot be changed in midway is erroneous, sicne there is no change in rule in midway at all.

14. In the notification issued in the year 2019, the respondents have initiated recruitment process for 8 Government departments. Therefore, the respondents are directed to accommodate the petitioner in any one of the departments as a special case. The said exercise shall be completed within a period of 8 weeks from the date of receipt of a copy of this order.

15. Unless employment opportunities are provided for a person studied in

Tamil medium in their entire education, there is no scope for the students to pursue School and College through Tamil medium. Therefore, the preference ought to be granted to the candidates who had pursued their entire education from 1st standard to 12th standard and then in college in Tamil Medium.

16. With the above said observation, the writ petition is allowed. No costs. Consequently, connected miscellaneous petitions are closed.

Index : Yes / No
Internet : Yes
NCC : Yes / No

20.01.2023

Tmg

To

1. The Chief Secretary,
Government of Tamil Nadu,
Secretariat, St. George Fort,
Chennai-600 009.

W.P.(MD)No.26878 of 2019

2.The Secretary,
Department of Higher Education,
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