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W.P.Nos.7142 and 7147 of



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.03.2024

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

and

THE HONOURABLE MR.JUSTICE K.RAJASEKAR

W.P.Nos.7142 and 7147 of 2024

and

W.M.P.Nos.7997 and 8001 of 2024

W.P.No.7142 of 2024

1. J.Kalaiselvan

2. S.Swetha

... Petitioners in W.P.No.7142 of 2024

1. B.Gharishma

2. B.Varalakshmi

... Petitioners in W.P.No.7147 of 2024

Vs.

1. The State of Tamil Nadu,
Rep. by its Additional Chief Secretary to Government,
Home (Courts-I) Department,
Fort St.Goerge,
Chennai – 600 009.

2. The Secretary,
Tamil Nadu Public Service Commission,
Tamil Nadu Public Service Commission Road,
VOC Nagar, Chennai – 600 003.

3. The Secretary,
Human Resources Management Department,
Secretariat, Chennai – 600 009.



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4. The Registrar General,
High Court of Judicature at Madras,
High Court Buildings,
Chennai – 600 104.

... Respondents in both W.Ps

Common Prayer: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, directing the respondents to apply the rule of reservation as per the law laid down by the Honourable Apex Court in *State of Tamil Nadu Vs. K.Shobana* reported in **2021 (4) SSC 686** for the preliminary examination also as the rule of reservation is made applicable to the preliminary examination as per Note (ii) of Clause II of the Scheme of Preliminary Examination in Notification No.12/23 dated 01.06.2023 followed by the Honourable Division Bench of this Honourable Court in W.P.Nos. 5105, 4430, 4431 and 4518 of 2024 dated 27.02.2024 for the provisional selection and accordingly arrive at the final selection of the candidates for appointment to the post of Civil Judge.

For Petitioners : Mr.R.Singaravelan
for Mr.G.Sudangan (in both W.Ps)

For R1 : Mr.P.S.Raman,
Advocate General
assisted by



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W.P.Nos.7142 and 7147 of



Mr.T.Chandrasekaran,
Special Government Pleader
(in both W.Ps)

For R2 : Mr.R.Bharanidharan,
Standing Counsel for TNPSC
(in both W.Ps)

For R3 : Mrs.C.N.G.Niraimathi
(in both W.Ps)

For R4 : Mr.B.Vijay (in both W.Ps)

COMMON ORDER

(Order of the Court was made by **S.M.SUBRAMANIAM, J.**)

The nature of prayer in the present Writ Petitions are to be considered at the first instance by this Court. The prayer plays a pivotal role, since we have already applied the ratio laid down by the Apex Court in the case of “*State of Tamil Nadu -vs- K.Shobana*” reported in (2021) 4 SCC 686 in the case of “*J.Sheena -vs- Tamil Nadu Public Service Commission*” decided by us in a batch of Writ Petitions in W.P.Nos.5105, 4430, 4431 and 4518 of 2024 dated 27.02.2024.

2. The writ petitioners have made a request for a direction to apply the rule of reservation as per law laid down by the Hon'ble Supreme Court of



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India in the case of “*State of Tamil Nadu -vs- K.Shobana*” cited supra for the preliminary examination, as the rule of reservation is made applicable to the preliminary examination as per Note (ii) of Clause II of the scheme of preliminary examination in Notification No.12/23 dated 01.06.2023 followed in our Judgment dated 27.02.2024.

3. Question arises as to whether it is necessary for us to undo the ratio laid down by us in our Judgment dated 27.02.2024 in the case of *J.Sheena* cited supra and batch of Writ Petitions in W.P.Nos.5105, 4430, 4431 and 4518 of 2024 dated 27.02.2024..

4. The learned Senior Counsel, Mr.R.Singaravelan would strenuously contend that our Judgment is running counter to the principles laid down by the Constitution Bench of the Hon'ble Supreme Court of India in the case of “*Union of India -vs- Ramesh Ram and others*” reported in (2010) 7 SCC 234 and “*M.Nagaraj -vs- Union of India and others*” reported in (2006) 8 SCC 212.

5. Citing certain observations in the above Constitution Bench



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Judgments, the learned Senior Counsel would urge us by stating that those principles were not considered while adopting the ratio laid down by the Apex Court in the case of “***State of Tamil Nadu -vs- K.Shobana***”. That prompted the writ petitioners to institute the present writ proceedings.

6. In the case of “***M.Nagaraj -vs- Union of India and others***”, the Hon'ble Supreme Court held that the backlog vacancies are to be dealt with independently and so also in the case of “***Union of India -vs- Ramesh Ram and others***”. If those principles are adopted, there is no occasion of this Court to follow the ratio laid down in the case of “***State of Tamil Nadu -vs- K.Shobana***”. It is argued that the above two Judgments are not referred by the Hon'ble Supreme Court in the case of “***State of Tamil Nadu -vs- K.Shobana***”. Therefore, the principles on those lines are to be considered in the present Writ Petitions.

7. Alternatively, Mr.R.Singaravelan, learned Senior Counsel would submit that certain candidates, who scored higher marks are deleted from the provisional select list on account of implementation of the judgment in the case of ***J.Sheena***. In lieu, few other candidates were included in the select



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list. When number of vacancies are available in the post of Civil Judge (Junior Division) in judicial services, the meritorious candidates in addition can be accommodated based on their marks. In either of the case, the learned Senior Counsel submits that the Judgment of the Hon'ble Supreme Court is to be applied from the preliminary examination stage or the candidates, whose names are excluded from the provisional select list are to be provided with an opportunity of appointment in the current vacancies. Whenever, the MRC candidates were opted to go under the reserved category, the vacancies aroused on account of that may be filled up through the meritorious candidates, as per the ratio laid down in the case of “***Union of India -vs- Ramesh Ram and others***”.

8. Mr.P.Subramaniam arguing for the writ petitioners in W.P.No.7147 of 2024 would submit that the Judgment of the Hon'ble Supreme Court in the case of “***State of Tamil Nadu -vs- K.Shobana***” is *per incuriam*. Therefore, it has no binding effect. Thus, this Court ought not to have followed the ratio laid down by the Hon'ble Supreme Court in ***K.Shobana's*** case. Mr.P.Subramaniam would further contend that the principles laid down in the cases of “***Union of India -vs- Ramesh Ram and others***” and “***M.Nagaraj***”



-vs- Union of India and others” are to be followed in the matter of selection for appointment to the post of Civil Judge (Junior Division) in the present case. He further referred Section 27(e) of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016 by stating that the roster reservation has not been followed properly.

9.At the first instance, we are not inclined to approve the arguments of Mr.P.Subramaniam that the Judgment of the Hon'ble Supreme Court of India in **K.Shobana's** case is *per incuriam*. The Judgment of the Hon'ble Supreme Court of India in the case of **South Central Railways Employees Co-Operative Credit Society Employees Union -vs- B.Yashodabai and others**, the principles are laid down as follows:-

“ 9. The learned counsel had further submitted that once this Court decides an issue by taking a particular decision, it cannot be said that the judgment delivered by this Court is per incuriam or this Court had not considered all relevant factors while delivering the said judgment. So as to substantiate the aforestated submission, the learned counsel had relied upon the judgments delivered by this Court in Government of Goa Vs



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*A.H.Jaffar and Sons and another 2008(11) SCC 18
and Suganthi Suresh Kumar V.Jagaseeshan
2002(2) SCC 420.*

10. It had been finally submitted that the different view taken by the High Court is absolutely improper and therefore, the appeal deserves to be allowed.

.....

16. We are of the view that it was not open to the High Court to hold that the judgment delivered by this Court in C.A. No.4343 of 1988 was per incuriam.

17. If the view taken by the High Court is accepted, in our opinion, there would be total chaos in this country because in that case there would be no finality to any order passed by this Court. When a higher court has rendered a particular decision, the said decision must be followed by a subordinate or lower court unless it is distinguished or overruled or set aside. The High Court had considered several provisions which, in its opinion, had not been considered or argued



before this Court when C.A. No.4343 of 1988 was decided. If the litigants or lawyers are permitted to argue that something what was correct, but was not argued earlier before the higher court and on that ground if the courts below are permitted to take a different view in a matter, possibly the entire law in relation to the precedents and ratio decidendi will have to be re-written and, in our opinion, that cannot be done. Moreover, by not following the law [laid down by](#) this Court, the High Court or the Subordinate Courts would also be violating the provisions of [Article 141](#) of the Constitution of India.”

10. Mr.P.S.Raman, learned Advocate General referred the Judgment of the Constitution Bench in the case of “***Central Board of Dawoodi Bohra Community and Others -vs- State of Maharashtra***” reported in (2005) 2 SCC 673, wherein the Apex Court made the following observations:-

“7. The Constitution Bench in the case of [Chandra Prakash and Ors. Vs. State of U.P. & Anr.](#) (2002) 4 SCC 234 took into consideration the law [laid down in Parija's](#) case and also referred to the decision



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in *Union of India and Anr. Vs. Raghbir Singh* (dead) by Lrs. etc. relied on by Ms. Indra Jaising, the learned senior counsel and then reiterated the view taken in *Parija's* case. *Per incuriam* means a decision rendered by ignorance of a previous binding decision such as a decision of its own or of a Court of co-ordinate or higher jurisdiction or in ignorance of the terms of a statute or of a rule having the force of law. A ruling making a specific reference to an earlier binding precedent may or may not be correct but cannot be said to be *per incuriam*. It is true that *Raghbir Singh's* case was not referred to in any case other than *Chandra Prakash & Ors.* case but in *Chandra Prakash & Ors.* case *Raghbir Singh's* case and *Parija's* case both have been referred to and considered and then *Parija's* case followed. So the view of the law taken in series of cases to which *Parija's* case belongs cannot be said to be *per incuriam*.”

11. In view of the above Judgments of the Hon'ble Supreme Court, it would be improper on the part of the learned counsel, Mr.P.Subramaniam to argue before the High Court that the ratio laid down by the Hon'ble Supreme Court in the case of “*State of Tamil Nadu -vs- K.Shobana*” is *per incuriam*. Thus, we are not inclined to approve the arguments in this regard.



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12. The learned Advocate General, Mr.P.S.Raman would oppose the writ petitioners by stating that the preliminary examination was conducted and the results were published on 11.10.2023. The short-listed candidates were permitted to participate in the main examination at the ratio of 1:10 by adhering the rule of reservation.

13. Mr.R.Bharanidharan, learned counsel for the Tamil Nadu Public Service Commission brought to our notice that 12,000 candidates participated in the recruitment process for appointment to the post of Civil Judge (Junior Division). After preliminary examination, 2,500 candidates were short-listed for main examination. Accordingly, the said 2,500 candidates had written the main examination. At the ratio of 1:2 candidates were further short-listed to participate in viva-voce. Thereafter, the provisional select list was published. The Tamil Nadu Public Service Commission had taken a decision to implement the Judgment of this Court dated 27.02.2024 and revised the provisional select list and communicated the same to the Government for initiation of further action to issue order of appointment to the selected candidates.



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14. The learned Advocate General would further contend that the prayer in the present Writ Petitions are to implement the principles laid down in the case of “*State of Tamil Nadu-vs- K.Shobana*” for preliminary examination, which is untenable. The preliminary examination was conducted on 19.08.2023. The results were published on 11.10.2023. Thereafter, 2,500 short-listed candidates were permitted to write main examination. The entire selection process was concluded in all respects. The Judgment of this Court dated 27.02.2024 was implemented in its letter and spirit. The revised select list was communicated to the Government for issuing appointment orders. Therefore, the relief sought for at this length of time cannot be considered. More so, one writ petitioner was successful in the preliminary examination and few other writ petitioners were unsuccessful in the preliminary examination. For all these reasons, the Writ Petitions are to be rejected.

15. With reference to the query raised by this Court, the learned counsel for the Tamil Nadu Public Service Commission, Mr.R.Bharanidharan would submit that the candidates at the preliminary examination stage was short-listed at the ratio of 1:10. Therefore, even in case the ratio laid down in



the case of “*State of Tamil Nadu -vs- K.Shobana*” is applied, it would not make any changes as ten candidates were permitted to participate in the main examination and there is no probability of changes in the matter of reservation. More so, it will not affect the prospects of the candidates, who have selected for main examination.

16. In view of the fact that the rule of reservation has been adopted at the stage of preliminary examination based on the roster point, Section 27(e) of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016 has been followed. Therefore, the arguments in this regard deserves no merit consideration. Even at the time of issuance of recruitment notification, the vacancy position was taken into consideration. The rule of reservation and the backlog vacancies were notified based on the roster point. That being so, we do not find any infirmity in respect of the recruitment notification issued and the preliminary examination conducted and short-listing of candidates by adopting the ratio of 1:10 for the main examination. Thereafter, for viva-voce ratio of 1:2 was adopted. The entire process had already been concluded and the revised select list was communicated to the Government for issuance of appointment orders.



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17. Interpretations and implications regarding rule of reservation underwent many changes and such interpretations are to be considered with reference to the Rules applicable for selection and appointment to particular post. The endeavour of the Court is to ensure that the rule of reservation, as contemplated are followed scrupulously. In the present case, we have followed the ratio laid down by the Hon'ble Supreme Court in the case of the ***“State of Tamil Nadu -vs- K.Shobana”*** regarding the interpretation of the word **“first”** as contemplated under Section 27(f) of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016. The word **“first”** has been interpreted in Paragraph No.26 of the said Judgment, as under:-

“ 24. There can be no doubt about the proposition that if a word is used in a Statute, it cannot be made otiose as held in [Hardeep Singh](#) (supra). However, that is not the factual scenario in this case. The question arises as to at which stage would [Section 27](#) of the Act operates, and where in the list, the application of the “first” principle would apply. [Section 27](#) deals with the reservation. It has nothing to do with the general candidates list/ General Turn vacancies. Such of the candidates who have made it on their own merit albeit, from reserved category, have not sought the benefit of the reservation.



*Thus, **Section 27** of the Act would have nothing to do up to that point. **Section 27** would apply only when the reservation principle begins, which is after filling up of the seats on merit. Thus, the word “first” would apply at that stage, i.e., the backlog vacancies have to be filled in first and the current vacancies to be filled in thereafter. At the stage when the general category seats are being filled, there is thus no question of any carry forward or current vacancies for reserved category arising at all.*

18. When the Apex Court interpreted the scope of Section 27(f) of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016, more specifically with reference to the composite examinations conducted both for backlog and current vacancies, the Judgment is binding. As far as the case of **“Union of India -vs- Ramesh Ram and others”** and **“M.Nagaraj -vs- Union of India and others”** relied on by Mr.R.Singaravelan, learned Senior Counsel is concerned, Section 27(f) of the Act was not interpreted. Certain observations in those Judgments cannot have implications with reference to the interpretation of Section 27(f) of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016, which has been specifically made by the Hon'ble Supreme Court in the case of **“the State of Tamil Nadu -vs- K.Shobana”**. Therefore, broader observations made based on certain facts



and circumstances of a case cannot be the binding precedent, when the particular provision is to be applied, has been directly interpreted and answered by the Apex Court.

19. Therefore, the case of “*Union of India -vs- Ramesh Ram and others*” and “*M.Nagaraj -vs- Union of India and others*” have no role to play as far as Section 27(f) of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016 as interpreted by the Hon'ble Supreme Court in unambiguous terms in the case of “*the State of Tamil Nadu -vs- K.Shobana*”.

20. In the present case, the notification itself provides methods to be followed for reservation under the head of “Distribution of Vacancies” in the recruitment notification, it is stated as follows:-

“ 2. DISTRIBUTION OF VACANCIES:

The rule of reservation of appointments is applicable for this recruitment. The distribution of vacancies is put up at ANNEXURE (DV).

First, the selection will be made for '92' carried forward vacancies. [Section 27 of the Tamil Nadu Government Servants (Conditions of Service) Act,



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2016].

Secondly, the selection will be made for '153' regular vacancies following the rule of reservation."

21. By adopting the rule of reservation, as stipulated in the recruitment notification, the Tamil Nadu Public Service Commission had undertaken the process of selection and completed the same. The candidates, accepting the clauses stipulated in the recruitment notification, participated in the selection process and therefore, now they cannot claim that the rule of reservation is to be applied at the preliminary examination. We have directed the Tamil Nadu Public Service Commission to revise the provisional select list in our Judgment dated 27.02.2024 based on the ratio laid down by the Hon'ble Supreme Court in the case of "***the State of Tamil Nadu -vs- K.Shobana***" and such a revision effected would have no implication in respect of the ratio of 1:10 followed by the Tamil Nadu Public Service Commission at the preliminary examination stage. Therefore, the relief as such sought for lost its relevance and the arguments advanced on behalf of the writ petitioners remain counter to the relief, as such sought for in the Writ Petitions.

23. Accordingly, the Writ Petitions are dismissed. Consequently, the



connected Miscellaneous Petitions are closed. No costs.

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(S.M.S.,J.) (K.R.S.,J.)
19.03.2024

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Speaking order

To

1. The Additional Chief Secretary to Government of Tamil Nadu,
Home (Courts-I) Department,
Fort St.Goerge, Chennai – 600 009.
2. The Secretary, Tamil Nadu Public Service Commission,
Tamil Nadu Public Service Commission Road,
VOC Nagar, Chennai – 600 003.
3. The Secretary, Human Resources Management Department,
Secretariat, Chennai – 600 009.
4. The Registrar General,
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