

HIGH COURT OF MADRAS**Bench: Justice G.R. Swaminathan****Date of Decision: 30 May 2024**

W.P. Nos. 13034 & 13038 of 2024 AND W.M.P. Nos. 14198 and 14199 of 2024

S. Nithesh & Others ... Petitioners**Vs.****The State of Tamil Nadu & Others ... Respondents****Legislation:**

Articles 14 and 16 of the Constitution of India

Tamil Nadu Government Servants (Conditions of Service) Act, 2016

Tamil Nadu Act 40 of 2010

Subject: Writ petitions challenging G.O. Ms. No. 133 and consequential notification No. 1 of 2024 regarding the Tamil Nadu Combined Civil Services (Group-IV Services) Examination. The petitions contest the policy mandating a compulsory Tamil language paper and its impact on non-Tamil medium students.

Headnotes:

Constitutional Law – Equality before Law – Challenge to Recruitment Notification – Petitioners, aspiring candidates for Tamil Nadu Combined Civil Services (Group-IV), challenged the notification requiring a Tamil language eligibility-cum-scoring test for selection, alleging it discriminated against non-Tamil medium students and contravened the Tamil Nadu Government Servants (Conditions of Service) Act, 2016. Held that the requirement of passing the Tamil language test with a minimum of 40% marks is consistent with Section 21A of the Act and does not amount to 100% reservation for

Tamil medium candidates. The stipulation ensures proficiency in Tamil, essential for efficient public service delivery. Thus, the notification was upheld. [Paras 1-10]

Recruitment Process – Role of Language Proficiency – Analysis – The petitioners argued that consideration of marks in the Tamil eligibility test for overall ranking disadvantaged non-Tamil medium candidates. The Court found this contention without merit, affirming that proficiency in Tamil is crucial for Group-IV posts requiring direct interaction with the public. The policy of evaluating both the Tamil eligibility and general studies papers ensures that selected candidates meet the necessary language competency standards. [Para 7-10]

Decision – Dismissal of Writ Petitions – The writ petitions were dismissed, upholding the validity of the Government Order and the TNPSC notification. The Court emphasized that the employer’s policy decisions regarding recruitment qualifications, unless shown to be illegal or ultra vires, should not be interfered with. [Para 10]

Referred Cases:

- T.M.A. Pai Foundation v. State of Karnataka (2002) 8 SCC 481
- P.A. Inamdar v. State of Maharashtra (2005) 6 SCC 537
- Ashok Kumar Thakur v. Union of India (2008) 6 SCC 1
- Indra Sawhney v. Union of India (1992) Supp (3) SCC 217
- Pramati Educational and Cultural Trust v. Union of India (2014) 8 SCC

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Representing Advocates:

Ms. Nalini Chidambaram, Senior Counsel for Ms. C. Uma for Petitioners

Mr. P.S. Raman, Advocate General, assisted by Mr. D. Ravichander, Special Government Pleader for Respondents

in both W.Ps.

COMMON ORDER

Heard the learned Senior counsel appearing for the writ petitioners and the learned Advocate General appearing for the first respondent and the learned Standing counsel appearing for TNPSC.

2. W.P.No.13034 of 2024 has been filed challenging G.O.Ms.No.133, Human Resource Management (M) Department, dated 01.12.2021 issued by the first respondent and the consequential notification No.1 of 2024 dated 30.01.2024 issued by the second respondent. W.P.No.13038 of 2024 has been filed for appropriately amending the impugned recruitment notification.

3. The writ petitioners are candidates eligible to participate in the impending Group-IV Combined Civil Services Examination. They challenge G.O.(Ms)No.133 Human Resource Management (M) Department, dated 01.12.2021 and the recruitment notification dated 30.01.2024 issued by TNPSC on the grounds mentioned in the affidavit filed in support of the writ petitions. The learned Senior counsel appearing for the writ petitioners reiterated all the contentions set out therein. The scheme of examination envisages writing Part-A and Part-B papers. The total marks awarded is 300(150 marks for Part-A and 150 marks for Part-B). The candidates have to write both the papers. Only if the candidates secure minimum qualifying mark of 40% in PartA, Part-B paper will be taken up for evaluation. The petitioners complain that if 150 marks awarded for Part-A is taken into account, that will put the petitioners at disadvantage as they are not as proficient in Tamil as others. The learned Senior counsel would submit that it is unreasonable to expect more than mere proficiency in Tamil. According to her, all that the respondents can stipulate is mere pass in Part-A and once the candidates pass in Part-A by securing 40%, the marks secured in Part-B alone should be taken up for consideration. Otherwise, it will amount to providing 100% reservation for Tamil medium candidates. The Tamil Nadu Act 40 of 2010 envisages providing only 20% horizontal reservation for the persons who

studied in Tamil medium. This will become 100% reservation, if the impugned notification is not interfered with.

4. The learned Advocate General submitted that the impugned notification issued by the second respondent is in consonance with Section 21-A of the Tamil Nadu Government Servants (Conditions of Service) Act 2016. The provision came into force and quite a few recruitments have taken place during the intervening period. He pointed out that the validity of a subordinate legislation can be impugned only on certain grounds and that those grounds are absent in this case. In any event, a policy decision consciously taken by the Government cannot be assailed on the grounds canvassed by the petitioners. He pressed for dismissal of the writ petitions.

5. The learned Standing counsel appearing for TNPSC submitted that their notification is merely in consonance with the impugned G.O and that it cannot be faulted.

6. I carefully considered the rival contentions and went through the materials on record.

7. The Tamil Nadu Government Servants (Conditions of Service) Act, 2016 was enacted to regulate the service conditions of the Tamil Nadu Government servants. Section 21 of the Act states that the Government servants should have adequate knowledge of Tamil. Oral test can be conducted to find out if they can converse fluently in Tamil. Section 21-A of the Act was introduced in the year 2021. Section

21-A(1) of the Act is as follows:-

“21-A. Compulsory Tamil language paper for

recruitment – (1) Notwithstanding anything contained in Section 21, on and from the 1st day of December 2021, any person who applies for recruitment to any post in any service by direct recruitment shall pass the Tamil language paper in the examination conducted for the recruitment with not less than forty percent marks.”

The impugned G.O is in consonance with the aforesaid statutory provision and the impugned recruitment notification is in consonance with both.

8. Clause 5 of the impugned Government Order

is as follows:-

“5. xNu epiy nfhz;l (**Single stage Examination**) Njh;Tfspd; (njhFjp III kw;Wk; IV) eilKiwfs; tptuk;.

(1) jw;NghJ eilKiwapYs;s nghJj;jkpo; /

nghJ Mq;fpyk; cs;s Neh;Tfspy;> nghJ

Mq;fpyj;jhs; ePf;fg;gl;L> nghJ jkpo;nkhopj; jhs;

kl;LNk kjpg;gPl;Lj; Njh;thf mikf;fg;gLk;.

(2) mjhtJ> njhFjp III, IV Nghd;w xNu epiy nfhz;l (Single stage Examination) Njh;TfSf;F> jkpo;nkhopj; jhshdJ> jFjp kw;Wk; kjpg;gPl;Lj; Njh;thf (Tamil Eligibility-cum-Scoring Test) elj;jg;gLk;.

.j;jkpo;nkhopj; jFjp kw;Wk; kjpg;gPl;Lj; Njh;thdJ

150 kjpg;ngz;fSf;F gFjp-m vd nfhs;Fwp tifapy; (Objective Type) mikf;fg;gLk;.

(3) nghJ mwpT + jpwdwpT (Aptitude) + kdf;fzf;F Ez;zwpT (Mental Ability) Mfpa ghj;jpl;lq;fs; 150 kjpg;ngz;fSf;F gFjp-M vd nfhs;Fwp tifapy; (Objective Type) elj;jg;gLk;.

(4) gFjp-m-tpy; Fiwe;jgl;rk; 40 rjtPj

kjpg;ngz; Njh;r;rp (Minimum Qualifying Marks) ngw;why; kl;LNk gFjp-M-tpy; vOjpa Njh;Tj;jhSk; / ,ju jhl;fSk; kjpg;gPl nra;ag;gLk;.

(5) ,t;tpuz;L gFjpfspd; (gFjp 'm'kw;Wk; 'M) midj;Jj; jhl;fspd; nkjh;j kjpg;ngz;fSk; juthpirg; gl;baYf;F vLj;Jf; nfhs;sg;gLk;.”

9. Section 21-A of the Act has not been challenged. A subordinate legislation can be assailed only if it can be shown that it is contrary to constitution or it is ultra vires the parent Act. The petitioners have not been able to demonstrate that the impugned G.O is ultra vires the constitution. The scope of controversy has therefore become limited. So long as the parent provision is occupying the field, unless the consequential Government Order is shown as ultra vires the parent statute, its validity cannot be questioned. The Government as

employer obviously has the power to prescribe the qualification of the candidates proposed to be selected. As rightly pointed out by the learned Advocate General, persons in Group-IV posts will have to have direct interaction with the people and they ought to have sufficient knowledge in Tamil. They should be able to fluently converse and write in Tamil. This is a *sine qua non* for efficient discharge of their functions and duties. This can be found out only by making them write the eligibility paper. The employer does not insist that the candidates should secure 100% of marks in the eligibility papers. What is expected is mere pass mark of 40%. The petitioners are not justified in insisting that it is sufficient to pass in Tamil paper alone and that the performance in that paper should be otherwise ignored. The scheme of examination is as follows:-

“4. Scheme of Examination:

Type of Examination : Objective Type (OMR Method)						
Part	Subject	No. of questions	Maximum marks	Duration	Minimum Qualifying Marks for selection (All Communities)	
Single Paper (S.S.L.C. Standard)						
Part A	Tamil Eligibility-cum Scoring Test	100	150	3 hours	90	
Part B	General Studies	75	150			
	Aptitude and Mental	25				

	Ability Test			
	Total	200	300	

4.1. Part B of the answer sheets will be evaluated only if the candidate secures minimum qualifying marks of 40% (i.e., 60 Marks) in Part A. Total marks secured in Part A and Part-B taken together will be considered for ranking. The questions in Part-A Tamil Eligibility-cum-Scoring Test will be set in Tamil only. The questions in Part B will be set both in Tamil and English.

4.2. Differently Abled candidates (irrespective of the percentage of disability) who have studied English subject only in Board/University can avail exemption from writing the Tamil Eligibility-cum-Scoring Test and instead, they can opt for General English (SSLC Standard). There will be no translation part in this paper. The questions in Part A of General English will be set in English only. Such candidates should furnish the required details in the application and upload the Certificate of Disability in the format prescribed in Annexure II of this notification, at the time of submission of the online application, without fail.

4.3. The syllabus for the written examination is available in Annexure III of this Notification.

4.4 The instructions to be followed while appearing for the examination, are available in Annexure IV of this Notification. The video regarding the instructions to candidates appearing for the objective-type examinations is available at <https://www.tnpsc.gov.in/English/omrguidelines.html>."

10. It is seen that the candidates have to write two papers; Part-A and Part-B. In Part-A is Tamil eligibility and scoring test. Both the papers carry 150 marks each. Part-B answer paper will be taken up for evaluation only if the candidate had secured 60 marks in Part-A paper. If the contention of the learned Senior counsel appearing for the petitioners is accepted, the candidate who secures 150 marks in part-A and the one who secures 60 marks will have to be put on the same footing. The petitioners want this Court to hold that selection should be based only on the performance in Part-B. This contention is without any merit. I endorse the stand of the learned Advocate

General that in such policy matters, the writ Court ought not to interfere. The employer can very well stipulate that marks secured in both the papers will be taken into account. There is nothing unreasonable in the stand taken by the respondents. In matters concerning recruitment, the employer can prescribe the qualifications and unless it is illegal or without jurisdiction, the Court ought not to interfere. Section 21-A of the Act is holding the field. The impugned Government Order is in consonance with Section 21-A of the Act. The recruitment notification was issued in consonance with the impugned Government Order. There is no merit in the writ petitions. They are dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

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