

(2016) 12 MAD CK 0026

MADRAS HIGH COURT

Case No: W.P. Nos. 16553 of 2015 and M.P. Nos. 1 and 2 of 2015

K. Nandhini

APPELLANT

Vs

The Tamil Nadu Public Service
Commission

RESPONDENT

Date of Decision: Dec. 16, 2016

Acts Referred:

- Constitution of India, 1950 - Article 15(3), Article 16(1), Article 16(4), Article 226
- State of Persons Studied in Tamil Medium Act, 2010 - Section 2(d), Section 3(1), Section 6

Citation: (2017) 1 MLJ 771

Hon'ble Judges: Mr. Hluvadi G. Ramesh and Mr. V. Parthiban, JJ.

Bench: Division Bench

Advocate: Mr. A.K. Manickam, Advocate, for the Respondent No. 17; Mr. Y. Deva Arul Prakash, Advocate, for the Respondent No. 7; Mr. Shivakumar, Advocate, for the Respondent No. 9; Mr. M.V. Venkateshan, Advocate, for the Respondent No. 11; Mr. V. Ayyapparaja, Advo

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

Hluvadi G. Ramesh, J. - While W.P. No. 16553 of 2015 has been filed by the petitioner to quash the selection of respondents 3 to 7, who have been provisionally selected for appointment by direct recruitment for the post of Civil Judges in the Tamil Nadu State Judicial Service and for a further direction to the 1st respondent to republish the list of candidates excluding respondents 3 to 7 from the General Turn PSTM category and, thereby, include the name of the petitioner in the provisional selection list for appointment as Civil Judge in the Tamil Nadu State Judicial Service, W.P. No.19461 of 2015 has been filed by the petitioner to quash the selection of four women candidates bearing Regn. Nos. 170002090, 100002276, 100002148 and

100002230 with a further direction to the 3rd respondent to apply horizontal reservation in relation to women's reservation as laid down by the Supreme Court of India in Rajesh Kumar Daria's case.

General Facts of the Case :

2. The facts, shorn of unnecessary details, as is evident from the affidavit filed in support of the petitions, are culled out herein below for a better understanding of the issue :-

The 1st respondent, vide Notification No.15/2014, dated 26.8.2014, invited application for direct recruitment to the post of Civil Judges in the Tamil Nadu State Judicial Service mentioning the last date of submission of application forms as 3.10.2014. Qualifications, as envisaged under the relevant rules, both for practising advocates as well as fresh law graduates was provided. The notification also prescribed the scheme of written examination as well as viva-voce along with the marks allotted for each subject.

3. Subsequent to the written examination and based on the minimum marks prescribed, 590 persons were called for certificate verification and after verification of the original documents, viva-voce was conducted. After the conduct of the viva-voce, pursuant to the orders of this Court in W.P. No.10069 of 2014, the 1st respondent published the list of marks obtained by the candidates, both in the written examination as well as oral interview. Thereafter, the 1st respondent published the list of register numbers of the candidates provisionally selected for appointment by direct recruitment to the post of Civil Judge in the Tamil Nadu State Judicial Service, provisionally selecting 151 persons along with a reserve list.

Case of the Petitioner in W.P. No. 16553 of 2015 :-

4. It is the case of the petitioner in the above petition that he obtained a total of 255.25 marks out of 460 marks, both in the written examination and oral interview. According to the petitioner, as per the final rank list published by the 1st respondent, the petitioner had is placed at rank 151. It is the further averment of the petitioner that while the 1st respondent has selected rank upto 149 for being filled up, however, has wrongly filled up the candidates in the impugned list in the General Persons Studied in Tamil Medium (for short "PSTM") category, due to which, the petitioner has been denied an opportunity of being selected.

5. It is further averred that vide Tamil Nadu Ordinance No.3 of 2010 made in G.O. Ms. No.145 dated 30.9.2010, PSTM category was created. By the said G.O., a special reservation was carved out for persons, who had studied in Tamil Medium. By the said G.O., 20% of all the vacancies in the appointment in the services under the State was set apart on preferential basis to the persons, who had studied in Tamil Medium. As per the notification of the 1st respondent, while the minimum marks prescribed for the persons under SC, SC (A) and ST is 30%, the minimum marks for

MBC, BC, OBCM and BCM was fixed at 35% and that for the other categories, it was fixed at 40%. The notification issued by the 1st respondent mandates that candidates who had secured less than the minimum marks specified in the written examination would not be eligible for viva-voce and, in turn, would not be eligible for provisional selection. It is the case of the petitioner that under the General PSTM quota, there are 7 vacancies.

6. It is the further averment of the petitioner that 5 candidates, whose names find place in the General PSTM category have not obtained the minimum qualifying marks prescribed for the General category, in which their names find place. According to the petitioner, respondents 3 to 7, having not obtained the minimum qualifying marks as is required for consideration under the General Turn PSTM category, are not qualified for being considered. It is averred by the petitioner that the minimum qualifying marks prescribed for General Category is 40%, however, respondents 3 to 7 have not obtained the minimum qualifying marks, but were called for the interview conducted by the 1st respondent for the General Category under the preferential selection turn. It is further averred by the petitioner that respondents 3 to 7 having not obtained the minimum qualifying marks for being selected on the basis of preferential selection under the General Category cannot be further fitted under the "Person Studied in Tamil Medium" (for short "PSTM") category. It is further averred by the petitioner that according to the list published by the 1st respondent, respondents 3 to 7 were called for viva-voce under the General Category. The act of the 1st respondent in calling respondents 3 to 7 for interview under the general category when they have not qualified themselves by obtaining the minimum qualifying marks for the general category is per se illegal and against Rule 5 of the Notification dated 26.8.14 and, therefore, their provisional selection under the General PSTM category, as is evident from the impugned list dated 2.6.15 is void and illegal.

7. It is further averred by the petitioner that while the candidature of respondents 3 to 7 ought to have been rejected, they having not obtained the minimum qualifying marks for being considered in the general turn, instead, non-PSTM candidates, who are next in the line of seniority and eligible for being filled up in the General Turn under PSTM Category ought to have been filled up. It is further averred by the petitioner that respondents 15 to 18, who are General Turn Women Category candidates and respondent 14, who is a MBC (General) candidate, should have been filled up against the General Turn PSTM category, they having obtained the requisite qualifying marks. Rule 4B of the notification further mandates that if candidates with PSTM are not available for selection for appointment against a reserved turn, such turn shall be filled up with non-PSTM candidates belonging to the particular communal category. It is further averred by the petitioner that respondents 15 to 18 have been filled up under the General Turn Women Quota, though, in actuality they should have been filled up against the General Turn PSTM category as respondents 3 to 7 are not qualified enough for consideration. However,

the 1st respondent has erroneously filled up the non-qualified candidates, viz., respondents 3 to 7 under the General Turn PSTM Category, though respondents 15 to 18 should have been selected under the General Turn PSTM Category rather than under the General Turn Women Quota. Had this procedure been adopted, respondents 15 to 18 would have been filled up against the General Turn PSTM Category, thereby there would have existed 4 vacancies under the General Turn Women Quota, which could have been filled up from the candidates under the reserved list, the reserved list containing 3 persons, of whom one is the petitioner and the others are respondents 12 and 13. But for the wrongful action of the 1st respondent, the petitioner as well as respondents 12 and 13 have been denied of their right to get selected under the General Turn Women Quota.

8. It is further averred by the petitioner that the above fact came to the knowledge of the petitioner only after the rank list was filed before this Court by the 1st respondent in W.P. No.10069 of 2015. The unlawful act of the 1st respondent in calling the ineligible candidates, viz., respondents 3 to 7, for interview under the General Turn PSTM category came to light only when the above list was filed before the Court. Immediately on coming to know of the said illegal act of the 1st respondent, the petitioner submitted a detailed representation on 30.4.2015 pointing out the above discrepancies and requested the 1st respondent to consider respondents 3 to 7 under their respective communal category rather than in the General Category. However, the representation was not considered by the 1st respondent, but the 1st respondent proceeded to publish the impugned list of candidates provisionally selected for the post of Civil Judge in the Tamil Nadu State Judicial Service by selecting respondents 3 to 7 under the General PSTM Category. This act of the 1st respondent in wrongfully placing respondents 3 to 7 has adversely affected the petitioner, in that she has been placed in the reserve list in the General Turn Women Quota, when in actuality she should have been considered for selection under the General Turn Women Quota had respondents 15 to 18 been placed under the General PSTM Category instead of respondents 3 to 7.

9. It is further averred by the petitioner that respondents 3 to 7 are not eligible to be considered under the General Category though the 4th respondent would be eligible to be considered under the MBC (General PSTM) category and respondents 3, 5, 6 and 7 would be eligible to be considered under SC (General PSTM) Category, thereby displacing the persons, who have been wrongfully placed under the above categories. The illegal and wrongful act of the 1st respondent has adversely and grossly affected the petitioner and respondents 15 to 17 and to undo the wrong, which has been done to the petitioner and respondents 8 to 11, this Court, in exercise of its inherent powers, has to set aside the impugned list insofar as it pertains to respondents 3 to 7 is concerned and further direct the 1st respondent to consider the representation submitted by the petitioner and, thereafter, republish the list with the name of the petitioner and respondents 15 to 17 under their respective quotas to as to render substantial justice.

Case of the Petitioner in W.P. No.19461 of 2015 :-

10. The main grievance of the petitioner in the above petition is that the reservation with regard to women in the select list has been applied vertically instead of horizontally. The grievance of the petitioner is that the 3rd respondent-TNPSC, while published the select list of candidates, who had qualified for viva-voce, however, did not publish the marks obtained by the candidates in the written examination. Due to there being lack of transparency, some of the persons approached this Hon"ble Court and this Court directed the TNPSC to publish the marks of the respective candidates, and accordingly, TNPSC published the marks. Though the petitioner was confident that he would be within the select list for being called for viva-voce based on his ranking in the written examination, however, to the shock and surprise, the name of the petitioner did not find place in the provisional list published by TNPSC on 23.4.2015. However, the petitioner's name was included in the reserve list of candidates, wherein the petitioner was ranked as 4th in the MBC category. The anomaly has crept in due to TNPSC selecting number of women candidates, who have obtained less marks than the petitioner under the women's reserved quota. The selection of candidates based on the registration number and the marks obtained under the MBC category, as is furnished in the affidavit is quoted hereunder for better clarity :-

S. No.	Registration No.	Marks Obtained
1	20003002	304
2	170002024	293.25
3	250001172	272.75
4	170001158	271.75
5	20003060	267.5
6	260002052	267
7	100001078	262.5
8	280001286	261.75
9	10006156	254.75
10	10002380	254.25
11	10007090	251
12	170002090	249.75
13	100002276	248.5
14	100002148	247
15	10002230	247

11. It is the further averment of the petitioner that TNPSC has not published the community-wise cut-off marks for each category of candidates, but only a general merit list of candidates with their marks have been published. It is averred by the petitioner that the list reveals that the first two candidates in the select list have been placed under the general turn while S. No.3 onwards, all the women have been selected under the MBC category. According to the petitioner, the distribution of vacancies as published by TNPSC shows that for MBC General the quantified vacancies is 16, whereas for MBC women, the quantified vacancies is 7. According to the petitioner, the select list from S. Nos. 3 to 9 satisfies the selection of candidates, all being women. However, S. Nos.10 and 11 have been earmarked for women PSTM candidates, though in actuality there were no candidates fulfilling the said criteria.

The petitioner further avers that though he has no grievance with regard to the selection of candidates upto S. No.11, however, is only aggrieved in respect of selection from S. Nos.12 to 15, as the selection of women in those places is in excess to their reservation. Due to the faulty selection made by TNPSC in selecting excess women from S. Nos.12 to 15, the petitioner has been deprived of his chance to make it to the select list, else, the petitioner, who is in the 4th position in the reserve list would automatically get selected.

12. It is further averred by the petitioner that the general cut off for MBC General Category is 263 and that of the persons in the MBC reserve list and not selected, the marks obtained is 262.25. It is further averred by the petitioner that while S. Nos.3 to 6 amongst the 15 have been selected on their own merit, the cut-off being higher than the last selected male candidate in the General MBC category, the selection of the said women ought to have been taken into consideration for the purpose of reservation with regard to selection of women as propounded by the Supreme Court in Rajesh Kumar Daria's case. The above fact has been lost sight of by TNPSC and instead 9 more women candidates have been selected to set right the women's reservation, which in effect means that the reservation of women has been done vertically instead of horizontally and, thereby, completely giving a go-by to the decision of the Supreme Court in Rajesh Kumar Daria's case. The petitioner has further submitted that the petitioner is in possession of only the registered numbers of the selected candidates and does not have the names and, therefore, not in a position to implead them as party respondents and if the said details are provided by TNPSC, the petitioner would implead them as party respondents in the present petition. On the facts narrated above, the petitioner prays to quash the select list with the prayer as made supra.

13. Counter affidavit has been filed by TNPSC, wherein all the contentions submitted by the petitioners are categorised as highly misconceived, erroneous, baseless and devoid of merits. It is the stand of TNPSC that Turn Nos.181, 205, 229, 251, 275, 298 and 319 are ear-marked for General PSTM as per G.O. Ms. No.40, Personnel & Administrative Reforms (S) Dept. dated 30.4.2014. It is averred by TNPSC that the above turns cut across only the General Turn in the roster. It is further averred that

it is settled law that reserve category candidates are entitled to compete for non-reserve posts and in the event of their selection against non-reserved posts, the requisite number cannot be subtracted against the vacancies earmarked for the particular category.

14. It is averred by TNPSC that the notification in question was issued for filling up 155 vacancies in addition to 7 carry forward vacancies and that the roster for the said recruitment commenced from the 178th turn in the II Rotation and ended at 132nd turn in the III Rotation. It is further averred that between the 178th Turn in Rotation II and the 132nd Turn in Rotation III, there are 49 General Turns, which signifies 31% of the vacancies notified. These 49 vacancies are available to all the categories of persons, irrespective of communal category. The break-up details of the above 49 vacancies are as under :-

GT (G)	GT (W)	GT (G)(PSTM)	GT (W)(PSTM)	GT (W)(PB)
27	10	7	4	1

15. It is further averred that out of the above turns, 11 turns have been specifically identified and set apart for persons who have obtained the prescribed qualification in tamil medium of instruction in addition to the turns earmarked for BC, MBC, SC and ST. Further out of the 11 turns, specifically 4 turns, viz., 195, 235, 259 and 311, are set apart for women candidates. Thus, the 11 turns, viz., 181, 195, 205, 229, 235, 251, 259, 275, 298, 311 and 319 cut across the vertical communal turns and can therefore be occupied by any of the candidates, who possess the certificate indicating that they have obtained the prescribed qualification through Tamil medium of instruction irrespective of the category to which they belong, viz., Others/BC/MBC/SC/ST. Thus, TNPSC has not traversed the turns meant for women candidates, as the selection of 7 candidates pertains to 7 General Turn (General) (PSTM) vacancies. Thus, irrespective of category or gender, the above 7 General Turn (General) (PSTM) vacancies can be competed by any candidate possessing PSTM certificates, which posts mandates selection to be made of candidates, who are holders of PSTM certificates in the order of merit. Thus, the above procedure has been followed by TNPSC for selection of candidates for the 7 vacancies in the General Turn (General) (PSTM) vacancies and, therefore, the said act cannot be found fault with.

16. It is further averred that in the present recruitment, which is under challenge, only 6 candidates, got short-listed for oral test, who were in possession of PSTM certificates and, therefore, all the above 6 candidates were selected against the General Turn (General) (PSTM) vacancies. For want of candidate in possession of

PSTM certificate, as there was paucity of candidates with the prescribed qualification, as the said post could not be carried forward, the same was converted into a Non-PSTM vacancy and filled up by the candidate next in the order after filling up of the 27 unreserved General Turn vacancies.

17. It is further averred by TNPSC that the cut-off of 40% as prescribed for "Others" is only for "OC" candidates (Other Community Candidates), viz., who do not fall under the reservation category, while General Turn covers both reserved as well as "Others" categories. It is further averred that the scheme of written examination and viva-voce as prescribed in Clause 5 of the notification has to be read along with the note that is appended to the tabular column. A conjoint reading of both the tabular column and note would only go to show that the stipulation in the tabulated column is only to impose a filtering process to limit the number of candidates at any one stage of the selection process to the next stage. It is further averred that clause 7 of the notification clearly stipulates that ultimate selection to the post will be on the basis of the marks secured in the written examination as well as viva-voce put together. Based on the marks secured by the candidates, the candidates are selected as against the open competition General Turn vacancies, which is in the order of merit under the heads General Turn (General), General Turn (General) (PSTM), General Turn (Women) and General Turn (Women) (PSTM).

18. It is submitted by TNPSC that for the oral test, the candidates were short-listed in the ratio of 1:2 and 314 candidates were called for oral test on the basis of the rank obtained in the written examination and the first 27 candidates among those who came out on top (in both the written and oral test put together) were selected against the General Turn (General) vacancies. Next in queue was the candidates who possessed PSTM certificates who were selected against the General Turn (General) (PSTM) vacancies. However, since only 6 persons were possessed of the PSTM certificates under the General Turn (General) (PSTM) vacancies, while the 6 persons were filled up, the remaining one post was converted into a non-PSTM vacancy and the 28th rank holder, who is a BC candidate was selected against the remaining one General Turn (General) (Non-PSTM) vacancy, which was through conversion of the one General Turn (General) (PSTM) vacancy.

19. It is further averred by TNPSC that Section 3 (1) of the Act prescribes 20% of the vacancies for appointment in the service to be set apart on preferential basis for persons who have studied Tamil Medium and possessing PSTM certificates. In effect, "Preferential Vacancies" mean such vacancies that are made available for a class of persons, who have studied in Tamil medium as envisaged under Section 3 (1) of the Act. Provision has also been made under the Act for the persons, who have studied in Tamil medium to compete for vacancies other than preferential vacancies that have been notified. It is therefore submitted that the selection of respondents 3 to 7 against General Turn (General) (PSTM) vacancies is in conformity with the provisions of the Act, rule of reservation on appointments and also the various

judgments of the Supreme Court.

20. The 10th respondent in W.P. No.16553 of 2015 has filed a counter, wherein the maintainability of the writ petition itself has been questioned. The 10th respondent has averred that the non-impleadment of the necessary party hits at the root of the writ petition making it not maintainable. It is further averred that one of the candidate, who belongs to MBC, having scored more than 40% marks and liable for selection under the PSTM turn in the general category, which fact has been admitted by the petitioner and, therefore, the petitioner is estopped from maintaining the writ petition with respect to the selection of respondents 3 to 7.

21. It is the further averment of the 10th respondent that the petitioner not having challenged Rule 4 and 5 of the Notification No.15/2014 dated 26.8.2014, framed in consonance with the powers conferred on TNPSC under Article 320 of the Constitution based on which selection has been made and, therefore, non-challenge to the same render the writ petition not maintainable. Further the selection having been made as per the 200 point roster, the said 200 point roster having not been challenged, the writ petition is not maintainable.

22. It is further averred by the 10th respondent that the cut-off marks prescribed for the general category is only for the purpose of making the candidates eligible to be called for viva-voce and the respondents 3 to 7 belonging to either SC or MBC category, have secured more marks than the cut-off marks prescribed for the said category and, therefore, would be eligible to be called for viva-voce and, therefore, the contention of the petitioner in this regard is not sustainable. Reliance has been placed on the judgment in **Yamuna Devi & Ors. v. TNPSC (2015 (5) MLJ 44)**.

23. In fine, it is the contention of the 10th respondent that the writ petition, on the one hand not being maintainable for the reasons aforesaid, on the other hand it is sought to be contended that the petitioner having misconstrued the distribution and having worked out the selection wrongly, on the wrong assumption has claimed that respondents 3 to 7 are dis entitled for selection, which is erroneous. Therefore, it is submitted that the writ petitions are liable to be dismissed.

24. Learned senior counsel for the petitioner in W.P. No.16553 of 2015 contended that the minimum qualifying marks for the general category having been fixed at 40% under Clause 3 of Annexure II to Rule 5, some of the candidates, who have been selected under the PSTM category in the General Turn have not obtained the minimum qualifying marks for being selected under the General category. Any person to be considered under the general category, obtaining the prescribed marks is a condition precedent. Securing of minimum marks itself having been made as a qualification for being considered under the respective categories, respondents 3 to 7 having not obtained the minimum marks as prescribed for selection under the general category, their selection is improper and against the rule and, therefore, bad in law. The argument of TNPSC that respondents 3 to 7

have obtained the minimum qualifying marks prescribed under their respective communal categories is in violation of Clause 3 of Annexure II of Rule 5 of the Tamil Nadu State Judicial Service (Cadre & Recruitment) Rules, 2007 and Section 2 (d) of Appointment on Preferential Basis in the Services under the State of Persons studied in Tamil Medium Act, 2010 and also against the Notification No.5 of 2014 issued by TNPSC.

25. It is further submitted by the learned senior counsel appearing for the petitioner that the act of TNPSC in the matter of selection in the above manner virtually amounts to treating the PSTM reservation as a vertical reservation, when in fact, it should be a horizontal reservation. Only if the reservation is treated in vertical terms, could the candidates, who have secured marks below the qualifying marks in the general category could be placed in the general category against the vacancies earmarked for PSTM candidates. PSTM, being a preferential treatment, reservation in this regard could only be horizontal and, therefore, persons selected under PSTM quota under the general category should satisfy all the eligibility criteria prescribed for general category and failure to even satisfy one of the criteria would render them ineligible for selection under the general category.

26. It is the further contention of the learned senior counsel for the petitioner that while Section 2 (d) of the PSTM Act defines "person who studied in Tamil Medium", Section 3 (1) mandates that 20% of the vacancies in the services under the State shall be set apart for PSTM candidates on preferential basis. In effect, the PSTM Act itself mandates that the reservation is only on preferential basis and, therefore, the reservations carved out for the persons could only be horizontal reservation within a particular category. Reliance is placed on the following decisions :-

i) **P. Veeramuthu v. The Secretary & Ors., (2015) 3 MLJ 157, (W.P. No. 1715 of 2014) ; and**

ii) **D. Anbarasan v. Secretary to Government & Ors., (W.P. No.27005 of 2015).**

27. It is further contended by the learned senior counsel for the petitioner that while the PSTM Act mandates and where persons with PSTM qualification are not available for appointment against a reserved turn, such of those vacancies should be treated as non-PSTM vacancies and should be filled up with non-PSTM persons from the same category. However, the stand of TNPSC that though there were only 2 PSTM qualified candidates available with 40% marks, the remaining posts have been filled up with respondents 3 to 7 is against clause 4 (b) of the PSTM Act.

28. The further argument of TNPSC that even striking down the selection of respondents 3 to 7 would not enure to the benefit of the petitioners, is countered by the learned senior counsel for the petitioner by submitting that the said argument is contrary to the materials available on record. To substantiate the said submission, a flow chart is submitted showing the movement of the persons from one category to other category in the event of movement of respondents 3 to 7 being selected

under their respective communal reservation. In fine, it is submitted through the flow chart that reworking on the notion that respondents 3 to 7 will move out of general turn would only affect respondents 8 to 11, who will go out of the selection list as respondents 3 to 7 will stand selected under their respective communal quota.

29. It is submitted by the learned senior counsel for the petitioner that the act of TNPSC in adverting to selection in the present form is against the very stand taken by TNPSC in W.P. Nos.10069 of 2015, etc., Batch, where TNPSC has filed the filling up order, which clearly entitles the petitioner for selection under the general category. The act of TNPSC in hiding the fact of distribution of vacancies placed before this Court in W.P. Nos.10069 of 2015 and adopting a stand that PSTM reservation is a vertical reservation is against the very PSTM Act and the submission made before this Court in the earlier round of litigation.

30. It is further submitted by the learned senior counsel for the petitioner that in case of horizontal reservation within a particular communal reservation, person can avail the same only on satisfying the criteria prescribed for that particular communal reservation. The act of TNPSC in treating PSTM candidates as vertical reservation and fitting them across communal categories, in spite of their not satisfying the prescribed qualification is illegal and contrary to the settled law laid down in a catena of decisions. Reliance is placed on the following decisions :-

i) **Bibhudatta Mohanty v. Union of India (2002 (4) SCC 16) ;**

ii) **Secretary, A.P. Public Service Commission v. Y.V.V.R. Srinivasulu & Ors. (2003 (5) SCC 341) ;**

iii) **Rajesh Kumar Daria v. Rajasthan Public Service Commission & Ors. (2007 (8) SCC 785) ;**

iv) **Public Service Commission, Uttaranchal v. Mamta Bisht & Ors. (2010 (12) SCC 204) ; and**

v) **D. Anbarasan v. Secretary to Govt. (W.P. No.27005 of 2015).**

31. Identical submissions have been advanced by the learned counsel appearing for the petitioner in W.P. No.19461 of 2015. Further, emphasis has been laid on the decision of the Apex Court in Rajesh Kumar Daria's case (supra) as also the judgment of the Division Bench of this Court in **Yamuna Devi's case (2011 (1) CTC 496 (Mad))**, wherein this Court, while considering the various intricacies pertaining to reservations, both horizontal and vertical, has summarised the method to be followed while making selection for each category based on merit. In sum and substance, it is the submission of the learned counsel for the petitioner that under the guise of applying the women's reservation, the private respondents, who have obtained less marks than the petitioner have been brought within the zone of consideration to the exclusion of the petitioner, which act of TNPSC is against the

well accepted rule of reservation and selection and, therefore, the said selection has to be interfered with.

32. Learned counsel appearing for TNPSC, while reiterated the submissions advanced in the counter affidavit, further submitted that it is trite that General Turn vacancies are filled up first in the order of merit before filling up the reserved vacancies. It is further submitted that in the present selection, 7 vacancies were ear-marked as General Turn (General) (PSTM) vacancies. Since only 6 persons were available under the head, the said 6 candidates were selected. The 7th vacancy was converted into a non-PSTM vacancy as per Section 6 of the Act and the 28th rank holder was selected, since the available vacancies for GT (General) is 27 vacancies for the present recruitment. Likewise, for women also, since no women PSTM candidates were available, the vacancies were converted as non-PSTM vacancies and in addition to the 10 General Turn (Women) vacancies, the 4 were added, in all making the vacancies 14. So, the selection was done in accordance with the rules as also following the 200 point roster and, therefore, the grievance expressed by the petitioners is devoid of substance and liable to be rejected.

33. The further contention of the petitioners that persons, who had not secured 40% in each paper cannot be considered for selection under the "Others" category, as the qualifying marks mandated for "Others" is 40, cannot also stand the test of legal scrutiny, since a candidate has to be judged/determined by the category to which he belongs, when the candidate initially applies for the post. The community to which he belongs determines the qualifying marks that is required to be obtained for his selection to the next stage. Therefore, the said criteria prescribed is only community based and not the category under which the candidate would stand ultimately selected. The notion expressed by the petitioners is totally misconceived and against the well settled legal principles.

34. Learned counsel appearing for the 10th respondent in W.P. No.16553 of 2015, while reiterating the contentions advanced in the counter affidavit, further contended that the petitioners having not challenged Rule 4 and 5 of the Notification dated 26.8.2014 and having not challenged the 200 point roster based on which selection has been made, cannot maintain the writ petition. Further, non-impleadment of the selected candidates hits at the substratum of the case, which render the writ petitions not maintainable, in view of the law laid down by the Supreme Court in umpteen number of decisions.

35. Finally, it is submitted that the contention that some of the persons, who have been selected have not obtained the minimum qualifying marks and, therefore, their selection is bad cannot be countenanced on a reading of Note (i) of Rule 5 of the Notification, wherein it is clearly specified that pass in the written examination is only for the purpose of determining the eligibility of the candidate to be called for interview and it does not correlate itself to the selection of the candidate. Further, the minimum qualifying marks required to be obtained by the candidate is on the

basis of the candidate's community at the initial point and the same does not get carried to the final destination of selection. Though the marks obtained in the written test and viva-voce determine the ultimate ranking of a person, however, selection being a two stage process, marks obtained in the written examination stands alone from that of marks obtained in viva-voce. Further the qualifying marks of a candidate is with relevance to his particular community and not the category in which he would finally be selected at the ultimate point. Therefore, it cannot be said that the candidates, who have obtained lesser marks are not qualified, as those candidates, belonging to reserved category, have obtained the minimum qualifying marks prescribed for the particular reserved category and, hence, their selection is well within the legal framework and needs no interference at the hands of this Court.

36. Heard the learned counsel appearing on either side and perused the materials available on record as also the decisions relied on by the learned counsel for the parties.

37. Before embarking upon the analysis of the contentions raised by the learned counsel appearing for the parties, it would be prudent to have a bird's eye view of the facets of reservation and the steps to be followed in filling up the posts notified.

38. Two types of reservations are granted under the constitutional scheme, viz., (i) vertical reservation and (ii) horizontal reservation. While vertical reservation is provided for under Article 16 (4) of the Constitution, horizontal reservation is provided for under Articles 16 (1) and 15 (3) of the Constitution. In effect, while social reservations are vertical reservation, any reservation granted as a special benefit over and above the vertical (social) reservation would fall within the ambit of horizontal reservation.

39. The Supreme Court, in the case of **Rajesh Kumar Daria v. Rajasthan Public Service Commission (2007 (8) SCC 785)**, which has been reiterated in **Public Service Commission v. Mamta Bisht (2010 (12) SCC 204)**, has held as under :-

"9. The second relates to the difference between the nature of vertical reservation and horizontal reservation. Social reservations in favour of SC, ST and OBC under Article 16(4) are "vertical reservations". Special reservations in favour of physically handicapped, women, etc., under Articles 16(1) or 15(3) are "horizontal reservations". Where a vertical reservation is made in favour of a Backward Class under Article 16(4), the candidates belonging to such Backward Class, may compete for non-reserved posts and if they are appointed to the non-reserved posts on their own merit, their number will not be counted against the quota reserved for respective Backward Class. Therefore, if the number of SC candidates, who by their own merit, get selected to open competition vacancies, equals or even exceeds the percentage of posts reserved for SC candidates, it cannot be said that the reservation quota for SCs has been filled. The entire reservation quota will be intact

and available in addition to those selected under open competition category. (Vide **Indra Sawhney [1992 Supp (3) SCC 217 : 1992 SCC (L&S) Supp 1 : (1992) 22 ATC 385]**, **R.K. Sabharwal v. State of Punjab [(1995) 2 SCC 745 : 1995 SCC (L&S) 548 : (1995) 29 ATC 481]**, **Union of India v. Virpal Singh Chauhan [(1995) 6 SCC 684 : 1996 SCC (L&S) 1 : (1995) 31 ATC 813]** and **Ritesh R. Sah v. Dr. Y.L. Yamul [(1996) 3 SCC 253]**. But the aforesaid principle applicable to vertical (social) reservations will not apply to horizontal (special) reservations. Where a special reservation for women is provided within the social reservation for Scheduled Castes, the proper procedure is first to fill up the quota for Scheduled Castes in order of merit and then find out the number of candidates among them who belong to the special reservation group of "Scheduled Caste women". If the number of women in such list is equal to or more than the number of special reservation quota, then there is no need for further selection towards the special reservation quota. Only if there is any shortfall, the requisite number of Scheduled Caste women shall have to be taken by deleting the corresponding number of candidates from the bottom of the list relating to Scheduled Castes. To this extent, horizontal (special) reservation differs from vertical (social) reservation. Thus women selected on merit within the vertical reservation quota will be counted against the horizontal reservation for women."

40. In **R.K. Sabharwal v. State of Punjab (1995 (2) SCC 745)**, while filling up vertical reservation, the procedure to be adopted has been clarified by the Supreme Court and the same is extracted hereunder for better clarity :-

"4. When a percentage of reservation is fixed in respect of a particular cadre and the roster indicates the reserve points, it has to be taken that the posts shown at the reserve points are to be filled from amongst the members of reserve categories and the candidates belonging to the general category are not entitled to be considered for the reserved posts. On the other hand the reserve category candidates can compete for the non-reserve posts and in the event of their appointment to the said posts their number cannot be added and taken into consideration for working out the percentage of reservation. Article 16(4) of the Constitution of India permits the State Government to make any provision for the reservation of appointments or posts in favour of any Backward Class of citizens which, in the opinion of the State is not adequately represented in the Services under the State. It is, therefore, incumbent on the State Government to reach a conclusion that the Backward Class/Classes for which the reservation is made is not adequately represented in the State Services. While doing so the State Government may take the total population of a particular Backward Class and its representation in the State Services. When the State Government after doing the necessary exercise makes the reservation and provides the extent of percentage of posts to be reserved for the said Backward Class then the percentage has to be followed strictly. The prescribed percentage cannot be varied or changed simply because some of the members of the Backward Class have already been appointed/promoted against the general seats. As mentioned above the roster point which is reserved for a Backward Class has to be

filled by way of appointment/promotion of the member of the said class. No general category candidate can be appointed against a slot in the roster which is reserved for the Backward Class. The fact that considerable number of members of a Backward Class have been appointed/promoted against general seats in the State Services may be a relevant factor for the State Government to review the question of continuing reservation for the said class but so long as the instructions/rules providing certain percentage of reservations for the Backward Classes are operative the same have to be followed. Despite any number of appointees/promotees belonging to the Backward Classes against the general category posts the given percentage has to be provided in addition."

41. From the above decisions of the Supreme Court, it is trite that while vertical (social) reservation is an earmarked one for the particular reserved category, the same is not so in the case of horizontal (special) reservation. Further, while vertical reservation is earmarked for the particular communal category and cannot be filled up with any other category, horizontal (special) reservation necessarily cuts across the vertical reservation and if the number of candidates in total within the said communal category is equal to or more than the special reservation quota, then there is no need for further selection towards the special reservation quota. Therefore, it is clear that the above setup is available only in respect of posts meant for reserved category and it does not speak about the general category, viz., "Others".

42. Keeping the above principles enunciated by the Supreme Court in mind, an analysis of the case on hand reveals that the special reservation is more of a preferential reservation based on the special set of circumstances within which it has to be given. In the case on hand, the PSTM Act stipulates that 20% of the vacancies notified be earmarked for candidates who have studied Tamil as the medium of instruction. Based on the above mandate of the PSTM Act, horizontal reservation has been provided for the various communal categories, including general category in the form of horizontal reservation, which cuts across the vertical reservation.

43. While it is one of the contention of the petitioners that candidates, who have been accommodated under the preferential reservation under the General category insofar as the vacancies earmarked for PSTM could very well be accommodated within their respective communal quota with regard to vacancies earmarked for PSTM under the respective communal quota, it is refuted by TNPSC that such a procedure is bad in law and violative of the scheme of reservation. It is the stand of TNPSC that irrespective of community, persons have to be first selected in the category of "Others", i.e., general category, based on their own merit and only thereafter, persons under the reserved category could be filled up. Moreover, the present grievance of the petitioners relate to the PSTM General category vacancies, which is a merit based vacancy, which has to be filled up on the basis of the rule of

reservation, but within the parameters specified under the PSTM Act. Therefore, it is the submission of TNPSC that on assessment of the merit, persons from other communal categories, on their individual merit, and in possession of valid PSTM certificates, have been accommodated against the said vacancies.

44. On a careful consideration of the rival contentions advanced by the parties, this Court is of the considered view that the stand of TNPSC merits acceptance. At the risk of repetition, it is useful to quote the very words of the Supreme Court in *Rajesh Kumar Daria's case* (supra), wherein the Supreme Court held that "Where a vertical reservation is made in favour of a Backward Class under Article 16(4), the candidates belonging to such Backward Class, may compete for non-reserved posts and if they are appointed to the non-reserved posts on their own merit, their number will not be counted against the quota reserved for respective Backward Class. Therefore, if the number of SC candidates, who by their own merit, get selected to open competition vacancies, equals or even exceeds the percentage of posts reserved for SC candidates, it cannot be said that the reservation quota for SCs has been filled. The entire reservation quota will be intact and available in addition to those selected under open competition category." From the above dicta laid down by the Supreme Court, it is abundantly clear that persons getting selected on their own merit, irrespective of the quota, get themselves fitted in the vacancies earmarked for "Others", viz., the general category, and only thereafter the communal reservation is filled up. That being the position, persons, having been selected based on their own merit and fitted in the PSTM quota earmarked for "Others", which is merit based, the petitioners cannot contend that the said posts be left open for being filled up amongst the general quota as it is always open to the reserved category candidates to compete for non-reserved posts. Further, the counter of TNPSC reveals that the selection of 7 candidates pertains to 7 General Turn (General) (PSTM) vacancies and, therefore, irrespective of category or gender, the above 7 General Turn (General) (PSTM) vacancies can be competed and filled up with any candidate, but specifically in possession of PSTM certificates, as it is the mandate that the said posts need to be filled up with candidate in possession of PSTM certificates. In such view of the matter, the General Turn (General) (PSTM) posts having been filled up with candidates irrespective of community, based on merit, and that the horizontal turns cut across the vertical communal turns and could be occupied by any of the candidate in possession of PSTM certificate, the said selection cannot be said to be bad in law. Reliance placed on the decision of the Supreme Court in *Rajesh Kumar Daria's case* (supra) would not come to the aid of the petitioners in getting their grievance fructified.

45. The further contention of the petitioner in W.P. No.19461 of 2015 that the special reservation cannot go beyond the vertical reservation and posts have to be filled up and then the horizontal reservation has to be applied to see whether candidates fulfilling the criteria are available there and if so, no further reservation needs to be granted. Though such a contention is advanced, the same requires to be rejected

for the reason that the candidates, who have been taken under the PSTM quota, which is a horizontal reservation, have been placed in the General Turn (General) (PSTM) category, on their own merit and under the PSTM category and, therefore, any further selection made against the General Turn (Women) (PSTM) category cannot be said to be over the reservation mandated for women, as the selection is made under the "Others" category, which is an unreserved category and is only on the basis of merit. Further, any reservation can be made only for women and there cannot be any reservation for men as has been held by the Supreme Court in Rajesh Kumar Daria's case (supra). Therefore, if women candidates are selected on their own merit against the General Turn (General) (PSTM) Quota and, thereafter, against the General Turn (Women) (PSTM) quota, the said procedure cannot be found fault with, as the process of filling up on sequential basis has been followed. Further, it would also be evident that though 7 posts were earmarked for General Category (General) (PSTM), however, only 6 persons were available and, therefore, one of the post was converted to non-PSTM and one person has been accommodated. In the above backdrop, TNPSC has followed the provisions of the PSTM Act in filling up of the posts and, therefore, the contentions on this aspect relating to the selection of candidates under the category of "Others" does not merit acceptance and the same is liable to be rejected.

46. The second limb of argument of the petitioners is that the persons, who have been selected under the "Others" category having not obtained the minimum qualifying marks of 40% as mandated in the notification, are not qualified for being called for viva-voce and ultimately their selection under the unreserved category is null and void.

47. Countering the said contention of the petitioners, it is the stand of TNPSC that the qualifying marks is only for the particular community to which a candidate belongs for their being considered to the next step in the selection process and not for their ultimate selection under any particular category. In this regard, reliance has been placed on the Note (i) and (ii) appended below Clause 5 of the Notification.

48. Before adverting to the contention advanced above, it would be useful to refer to Note (i) and (ii) appended to Clause 5 of the Notification, and the same is extracted hereunder for better clarity :-

"(i) Candidates, who have secured less than the minimum marks specified above in any paper of the written examination are not eligible for viva-voce. Candidates who have secured less than the minimum marks prescribed for viva-voce are not eligible for selection.

(ii) The appearances in all the papers at the written examination and for the viva-voce are compulsory."

49. A careful reading of the above Note (i) and (ii) of Clause (5) extracted above reveals that securing of the minimum cut-off marks, both in the written examination

as well as in the viva-voce, at each stage, is a mandatory condition for the ultimate selection of the candidate on overall merit. In effect, prescription has been made at each stage for the candidate to qualify himself for ultimate selection based on overall merit. Therefore, it is a stage by stage qualification for reaching the ultimate destination.

50. The scheme of the written examination, as is evident from the notification reveals that 30% is the qualifying marks for SC, SC (A) and ST candidates; 35% is the qualifying marks for MBC/DC, BC (OBCM) and BCM and 40% is the qualifying marks for Others in all the four subjects of the descriptive examination. An observant reading of the Note (i) and (ii) appended to clause (5) on which much reliance is placed upon by TNPSC reveals that the said clause mandates that candidates who have secured less than the minimum marks specified above in any paper of the written examination are not eligible for viva-voce. Even a cursory reading of the above clearly portrays that obtaining minimum qualifying marks in the descriptive written examination is community centric and it has nothing to do with the selection under each category, which is done at the end. Further, a harmonious reading of Note (i) and (ii) of clause (5) reveals that a candidate, belonging to a particular community, has to obtain the minimum qualifying marks in the written examination in order to qualify himself for the viva-voce, which is the second stage in the selection process. Benefit of selection under one or other category arises only after the completion of viva-voce and the final merit list is drawn based on the total marks obtained by the candidates in the written examination and viva-voce. Based on the position of the candidate in the merit list, the candidate is either placed under the unreserved category or after the filling up of the unreserved category, which is on merit basis, is placed under the reserved category for selection. Therefore, it will not be right for the petitioners to contend that non-obtaining of 40% marks in the written examination would render a candidate from a community other than those falling under the "Others" ineligible for consideration to the next step in the selection process.

51. Coming to the case on hand, it is not in dispute that respondents 1 to 5 in W.P. No.16553 of 2015 belong either to MBC or SC/ST community and they have scored marks, which is over and above the qualifying marks prescribed for the particular community. In essence, the candidates having scored the marks, over and above the marks prescribed for the community to which they belong, have qualified themselves for being considered for the second stage, viz., viva-voce. Merely because the above said respondents have not obtained the minimum qualifying marks prescribed for "Others", but have been selected on their own merit after crossing all the stages in the selection based on the cumulative marks obtained by them in the written examination as well as viva-voce, they cannot be said to have not qualified themselves in the initial step. The contention of the petitioners that the respondents 1 to 5 in W.P. No.16553 of 2015 having not secured the qualifying marks prescribed for "Others" for them to be selected under the vacancies

earmarked for "Others", cannot hold water, as the prescription of qualifying marks is community centric and not selection centric at the final stage, when the cumulative marks of written examination and viva-voce are together taken for arriving at the final selection merit list. Accordingly, the contention of the petitioners relating to respondents 1 to 5 in W.P. No.16553 of 2015 not obtaining the requisite qualifying marks cannot be countenanced and, the said contention deserves to be rejected. Further, it is not the case of the petitioners that they are next in the line of merit for their case to be considered for selection. Between the selected candidates, viz., respondents 1 to 5 and the petitioners, it is not disputed that there are other candidates and non-impleadment of those candidates is fatal, as any order passed in favour of the petitioners affecting the rights of the non-impleaded candidates is against the rule of law and per se impermissible. In view of the non-impleadment of all the persons, who fall in line in the selection list for being considered for selection, the case of the petitioner in W.P. No.16553 of 2015 cannot be considered brushing aside the consideration of the other candidates in the selection list.

52. Therefore, for the reasons aforesaid, all the contentions advanced by the petitioners being devoid of merits are rejected and, accordingly, both the writ petitions are dismissed. Consequently, connected miscellaneous petitions are closed. However, in the circumstances of the case, there shall be no order as to costs.