

**(2010) 03 MAD CK 0050**

**In the Madras High Court**

**Case No :** Writ Petition No's. 19425 and 19710 of 2009 and M.P. No's. 1 to 5 of 2009, 1 to 6 of 2009 and 1, 1, 2 and 2 of 2009

C. Sangu, S. Priyalatha, V.K. Nagalakshmi and K. Jayakumar APPELLANT  
Vs

The Secretary, The Controller of Examinations <BR>C. RESPONDENT  
Minnal Kodi Vs The Secretary and The Controller of  
Examinations, Tamil Nadu Public Service Commission

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**Date of Decision :** 30-03-2010

**Acts Referred:**

Board of Secondary Education Regulations — Regulation 102(2), 104  
Constitution of India, 1950 — Article 226

**Citation :** (2010) 03 MAD CK 0050

**Hon'ble Judges :** K. Chandru, J

**Bench :** Single Bench

**Advocate :** P.K. Rajesh and Praveen Kumar, in W.P. Nos. 19425, 19961 and 19962/2009 and C. Sivakumar, in W.P. No. 19710 of 2009, for the Appellant; A.L. Somayaji, SC for C.N. Niraimathi, for the Respondent

**Final Decision :** Dismissed

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**Judgement**

K. Chandru, J.—In all these writ petitions, the prayer of the petitioners is same. They seek to challenge the selected list of candidates in

preliminary examination for the main written examination held for Grade I Service examinations for 2007-2008, 2008-2009 published in the official

website of respondent Tamil Nadu Public Service Commission (for short TNPSC) and after setting aside the same, seeks for a direction to

conduct a fresh preliminary examination for Grade I service for the year 2007-2008 and 2008-2009 and consequently, to select and publish a

fresh list of candidates for the main written examinations.

2. In the first writ petitions, there are four writ petitioners. According to them, in the Group I service examinations for the year 2007-2008 and

2008-2009, the TNPSC assigned wrong and erroneous key answers for more than 15 questions. Though the petitioners have done well and given

correct answers, they were not given good marks. In the affidavit, they have set out the nature of questions and the key answers. It is in this view

of the matter, they want to set aside the select list.

3. When the matter came up on 22.12.2009, it was noted that by an order dated 1.10.2009, an interim direction was issued to respondent

TNPSC to permit the petitioners to attend the main written examination subject to the result of the main writ petitions and on having written the

examination, they sought for publication of results. In the other three writ petition, i.e. W.P. Nos. 19710, 19961 and 19962 of 2009, the prayer of

the petitioners are identical. Therefore all the four writ petitions were grouped together and directed to be posted for final disposal.

4. It is stated by the petitioner that the respondent TNPSC gave a notification, dated 15.12.2008 for direct recruitment of 82 vacancies in the post

included in Group I service examination for 2007-2008 and 2008-2009. Selection procedure is contemplated by three stages. The first stage is the

preliminary examination, in which a screening test is conducted. The examinations are based on objective types questions. The second stage is the

main examination consisting of two papers, i.e. General Studies paper-1 and General Studies paper-2 and finally, an oral test, in which interviews

are conducted by the Selection Board. According to the petitioners, preliminary examinations were held on 12.4.2009. The questions contained

many disputed questions and from the key answers supplied subsequently, it was found that the candidates who gave correct answers were made

to lose their marks. The candidates who gave wrong answers were awarded marks. By this process, non meritorious and ineligible candidates

were unlawfully selected.

5. As per para 41 of the Instruction, candidates/examinees were advised to write to the Controller of Examinations on items or questions, the

candidates consider as defective in question booklet within three days of examinations and only discrepancies or defects in questions can be

pointed out. But, there was no method of knowing the status of key answers. According to them, preliminary examinations results were made on

4.8.2009. In view of the same, they have come forward with the prayer to seek

for key answers for the preliminary examinations and to declare the results of both selected and non selected candidates in the preliminary as well as main examinations and the cut off marks to various categories to be published. They are also seeking for revaluation.

6. The respondents have filed a common counter affidavit, dated 28.10.2009. In the counter affidavit the stand taken was that instruction No. 41

to candidates will clearly give only three days time for any examinees to point out any defects in the question. The contention that the petitioner in

W.P. No. 19962 of 2009 V. Balasubramanian sent representation was denied. It was stated that no such representation was received. Such a

statement was made only to maintain the writ petition. They sent a representation on 15.4.2009 was clearly a false statement. Normally, question

papers as well as key answers for every examinations were set by 13 subject experts drawn from various Universities or Colleges. The usual

procedure is that the sealed cover containing the manuscript form of questions and answer keys are not opened by any one in the Commission's

office. This was to maintain absolute secrecy. It was only opened by the Printing Press at the time of printing. The TNPSC will not be in the know

of either questions or key answers.

7. It was further stated that after preliminary examinations conducted on 12.4.2009, representations were received only from 17 candidates as per

instruction No. 41. Their representations were referred to the Expert committee consists of 45 subject experts. After receiving the report, the

Commission in its Full Commission Meeting held on 1.4.2009 directed to place all 200 questions and the key answers assigned to them by the

original question paper setters for verification as to the correctness by the Subject experts/Discrepancy settlers before commencing the valuation.

The said exercise was carried out before valuation. Consequent upon the said exercise, the commission adopted the key answers for valuation.

Therefore, uniform yardstick was adopted for all the 63283 candidates who appeared for the preliminary examination and the results were

published on 4.8.2009 on the basis of cut off marks for each category of reserved and unreserved candidates. The candidates who wrote

preliminary examinations were also informed of their date of main written examination. Thus, the Commission had taken all necessary steps in

dealing with the alleged irregularities.

8. It was further stated that in respect of the first writ petition, a representation was received after a delay of 44 days. It was also stated that none

of the successful candidates have been made as parties to the writ petitions. Without their being parties, their selection cannot be challenged. It was

also stated that every successful candidates who have been selected and sent for written examinations and for interview, were all necessary and

proper parties. Therefore, the respondents wanted the writ petitions to be dismissed on the ground on non joinder of parties. It was also stated that

the petitioners have attended written examinations on 1st October, 2009 by an interim order. 888 candidates have also written the main written

examination. In paragraphs 21 and 22, it was averred as follows:

21. ...it is respectfully submitted that the exercise undertaken by the Commission to have even the key answers assigned by the Original Question

Paper Setters for all the 200 questions examined by an Expert Committee would go to show that the Commission acted not only on the

representations made by the 17 candidates (who sent representations in the instant case) but also acted suo-motu to remedy the errors if any that

might have crept in the key answers provided by the Question Paper Setters. Therefore, the writ petitioners who even failed to act as per

Instruction No. 41 cannot be heard to complain that under Instruction No. 41, only discrepancies in the questions can be pointed out and not the

discrepancies in the key answers etc. and that is the reason why they have come forward with the above writ petitions only after the publication of

the results. The above allegation has been made only for the purpose of somehow gaining admission to write the Main Written Examination without

any legal rights in them.

22. ...it is respectfully submitted by way of abundant caution, that the OMT answer sheet in the Preliminary examination is processed by machine

and therefore only the shaded responses are taken into consideration. In such circumstances, only if the candidate shades a key which is fed in the

machine as the correct key, the candidate would be awarded mark. There is no possibility for a candidate who has given any key other than that

fed in the machine as the correct key, to be awarded mark to that question. Therefore, the contention of the petitioners in the above paragraph

under counter is untenable and does not have any factual or legal basis.

9. In the light of the above, it was further stated that many representations were sent after declaration of results. The prayer for revaluation of preliminary examination may not be permitted. Hence, the respondents sought for dismissal of the writ petitions.

10. The petitioners have filed a reply affidavit, dated 23.11.2009. The ground taken in the common reply affidavit was that there was no necessity

to implead the selected candidates as the petitioners are not aware of the details of selected candidates. If wrong key answers are assigned and the

answer sheets were valued on the basis of the wrong key answers, they should rectify the discrepancies. There must be transparency in the act of

the TNPSC. In this context, they relied upon the judgment of the Supreme Court in Kanpur University and Others Vs. Samir Gupta and Others, as

well as the judgment of this Court in John Kennedy v. Secretary, TNPSC, Chennai reported in 2008 (8) MLJ 836. Also they referred to an

unreported judgment in S. Senthilkumar v. Secretary, TNPSC, dated 31.7.2008 in W.P. No. 12127 of 2008 and batch cases. They also relied

upon the judgment of the Supreme Court in Manish Ujwal and Others Vs. Maharishi Dayanand Saraswati University and Others, and Guru Nanak

Dev University v. Saumil Garg reported in (2005) 13 SCC 749.

11. Per contra, learned Senior Counsel for TNPSC relied upon the judgment of the Supreme Court in Maharashtra State Board of Secondary and

Higher Secondary Education and Another Vs. Paritosh Bhupeshkumar Sheth and Others, and placed reliance upon the following passages found

in paragraphs 12, 14, 15, 20, 22, 26 and 29, which may be usefully extracted below:

12.... In our opinion, the High Court was perfectly right in taking this view and in holding that the "process of evaluation of answer papers or of

subsequent verification of marks" under Clause (3) of Regulation 104 does not attract the principles of natural justice since no decision-making

process which brings about adverse civil consequences to the examinees is involved. The principles of natural justice cannot be extended beyond

reasonable and rational limits and cannot be carried to such absurd lengths as to make it necessary that candidates who have taken a public

examination should be allowed to participate in the process of evaluation of their

performances or to verify the correctness of the evaluation made by the examiners by themselves conducting an inspection of the answer books and determining whether there has been a proper and fair valuation of the answers by the examiners....

14.... In our opinion, this approach made by the High Court was not correct or proper because the question whether a particular piece of

delegated legislation - whether a rule or regulation or other type of statutory instrument - is in excess of the power of subordinate legislation

conferred on the delegate has to be determined with reference only to the specific provisions contained in the relevant statute conferring the power

to make the rule, regulation, etc. and also the object and purpose of the Act as can be gathered from the various provisions of the enactment. It

would be wholly wrong for the Court to substitute its own opinion for that of the Legislature or its delegate as to what principle or policy would

best serve the objects and purposes of the Act and to sit in judgment over the wisdom and effectiveness or otherwise of the policy laid down by

the regulation-making body and declare a regulation to be ultra vires merely on the ground that, in the view of the Court, the impugned provisions

will not help to serve the object and purpose of the Act. So long as the body entrusted with the task of framing the rules or regulations acts within

the scope of the authority conferred on it, in the sense that the rules or regulations made by it have a rational nexus with the object and purpose of

the statute, the court should not concern itself with the wisdom or efficaciousness of such rules or regulations. It is exclusively within the province of

the Legislature and its delegate to determine, as a matter of policy, how the provisions of the statute can best be implemented and what measures,

substantive as well as procedural would have to be incorporated in the rules or regulations for the efficacious achievement of the objects and

purposes of the Act. It is not for the Court to examine the merits or demerits of such a policy because its scrutiny has to be limited to the question

as to whether the impugned regulations fall within the scope of the regulation-making power conferred on the delegate by the statute....

15.... It is thus clear that the conduct of the final examination and the evaluation of the candidates' performance and the compiling and release of

results are all to be carried out by the Divisional Board in accordance with the

instructions to be issued by the State Board from time to time. It is, therefore, manifest that a duty is cast on the State Board to formulate its policy as to how the examinations are to be conducted, how the evaluation of the performances of the candidates is to be made and by what procedure the results are to be finalised, compiled and released. In our opinion, it was perfectly within the competence of the Board, rather it was its plain duty, to apply its mind and decide as a matter of policy relating to the conduct of the examination as to whether disclosure and inspection of the answer books should be allowed to the candidates, whether and to what extent verification of the result should be permitted after the results have already been announced and whether any right to claim revaluation of the answer books should be recognised or provided for. All these are undoubtedly matters which have an intimate nexus with the objects and purposes of the enactment and are, therefore, within the ambit of the general power to make regulations conferred under Sub-section (1) of Section 36. In addition, these matters fall also within the scope of Clauses (c), (f) and (g) of Sub-section (2) of the said section. We do not, therefore, find it possible to accept as correct the view expressed by the High Court that Clause (3) of Regulation 104 is ultra vires on the ground of its being in excess of the regulation-making power conferred on the Board....

20. We consider that the above approach made by the High Court is totally fallacious and is vitiated by its failure to follow the well-established doctrine of interpretation that the provisions contained in a statutory enactment or in rules/regulations framed thereunder have to be so construed as to be in harmony with each other and that where under a specific section or rule a particular subject has received special treatment, such special provision will exclude the applicability of any general provision which might otherwise cover the said topic. Regulation 102(2), if properly construed in the setting in which it occurs, only confers a suo motu power on the Divisional Board to amend the result of the examination in respect of any candidate or candidates on its being found that such result has been affected by error, malpractice, fraud, improper conduct, etc. The "error" referred to in the said provision has, in the context, to be understood as being limited to an error arising in consequence of malpractice, fraud, improper conduct or other similar matter of whatsoever nature. We are

unable to understand this provision as conferring any right on an examinee to demand a disclosure, inspection or verification of his answer books or other related documents.... The right of verification conferred by Clause (1) is subject to the limitation contained in the same clause that no revaluation of the answer books or supplements shall be done and the further restriction imposed by Clause (3), prohibiting disclosure or inspection of the answer books.... In our opinion, this interpretation of the concluding words of Clause (3) is incorrect. What is laid down therein is that the answer books and other documents are to be treated by the Divisional Boards as most confidential. In other words, this Clause of the regulation contains a mandate to the Divisional Boards to treat the answer books and documents as confidential and lays down that no candidate shall be entitled to claim disclosure or inspection of the said confidential books and documents. We are also of the opinion that the High Court was in error in invoking the "doctrine of implied power and obligation" for the purpose of holding that because the right of verification has been conferred by Clause (1) of Regulation 104, there is an implied power in the examinees to demand disclosure and inspection and a corresponding implied obligation on the part of the Board to accede to such a demand. There is no scope at all for invoking any such implied power or imputing to the regulation-making authority an intention to confer such power by implication when there is an express provision contained in the very same regulation [Clause (3)] which clearly manifests the contrary intention and states in categorical terms that there shall be no claim or entitlement for disclosure or inspection of the answer books....

22.... In making the above observations, the High Court has ignored the cardinal principle that it is not within the legitimate domain of the Court to determine whether the purpose of a statute can be served better by adopting any policy different from what has been laid down by the Legislature or its delegate and to strike down as unreasonable a bye-law (assuming for the purpose of discussion that the impugned regulation is a bye-law) merely on the ground that the policy enunciated therein does not meet with the approval of the Court in regard to its efficaciousness for implementation of the object and purposes of the Act....

26.... What constitutes fair play depends upon the facts and circumstances

relating to each particular given situation. If it is found that every possible precaution has been taken and all necessary safeguards provided to ensure that the answer books inclusive of supplements are kept in safe custody so as to eliminate the danger of their being tampered with and that the evaluation is done by the examiners applying uniform standards with checks and cross-checks at different stages and that measures for detection of malpractice, etc. have also been effectively adopted, in such cases it will not be correct on the part of the courts to strike down the provision prohibiting revaluation on the ground that it violates the rules of fair play....

29. Far from advancing public interest and fair play to the other candidates in general, any such interpretation of the legal position would be wholly defeasive of the same. As has been repeatedly pointed out by this Court, the Court should be extremely reluctant to substitute its own views as to what is wise, prudent and proper in relation to academic matters in preference to those formulated by professional men possessing technical expertise and rich experience of actual day-to-day working of educational institutions and the departments controlling them....

12. Further he placed reliance upon the judgment of the Supreme Court in Board of Secondary Education v. Pravas Ranjan Panda reported in

(2004) 13 SCC 383. The Supreme Court in paragraph 6 of its judgment observed as follows:

6. The High Court though observed that the writ petitioner who has taken the examination is hardly a competent person to assess his own merit

and on that basis claim for re-evaluation of papers, but issued the aforesaid direction in order to eliminate the possibility of injustice on account of

marginal variation in marks. It is an admitted position that the Regulations of the Board of Secondary Education, Orissa do not make any provision

for re-evaluation of answer-books of the students. The question whether in absence of any provision to that effect an examinee is entitled to ask for

re-evaluation of his answer-books has been examined by us in Pramod Kumar Srivastava v. Chairman, Bihar Public Service Commission 2

decided on 6-8-2004. It has been held therein that in absence of rules providing for re-evaluation of answer-books, no such direction can be

issued. It has been further held that in absence of clear rules on the subject, a

direction for re-evaluation of the answer-books may throw many problems and in the larger public interest such a direction must be avoided. We are, therefore, of the opinion that the impugned order of the High Court directing for re-evaluation of the answer-books of all the examinees securing 90% or above marks is clearly unsustainable in law and must be set aside.

13. It must also be noted that earlier various selections made for the year 2007 by the TNPSC came to be challenged in *P. Thamilarasi v. TNPSC*

in W.P. No. 8745 of 2009, dated 26.8.2009. This Court rejected the request of the petitioner in the miscellaneous petition on the ground that the selection was already over and results were published on 25.4.2008 and the petition has to be dismissed on grounds of delay.

14. The matter was taken on appeal by the affected candidate by a division bench in W.A. No. 1453 of 2009. The division bench dismissed the writ petition itself by an order dated 14.10.2009. In paragraph 7, the division bench held as follows:

7. In any case, inasmuch as the selection process in respect of the aforesaid notification having already been completed, it will be difficult to upset the selected candidates at this stage. Learned senior counsel, therefore, requests that if that is the view of the Court, the writ petition itself be decided. We, therefore, withdraw the writ petition to this Division Bench and in view of what is stated above, inasmuch as there is substantially long delay in approaching the Court, we dismiss the writ petition on that ground alone.

15. Similarly, for the selection conducted for the year 2006-2007 for Group-I Examination had three rounds of litigation before this Court. In the final round, a division bench of this Court in W.A. No. 649 of 2009 and batch cases in *M.A. Ravivarma v. The Secretary, TNPSC*, by a common order, dated 18.09.2009 held as follows:

60. Having stated this, we have to look into the problem which has come up in this particular examination and as to how it has been attended.

Now the Rules require the candidates to raise their objections within three days of the examination and none of the candidates raised their objections within that period. The successful candidates, in order to substantiate their case, therefore, relied upon a judgment of the Apex Court in

Pramod Kumar Srivastava v. Chairman, Bihar Public Service Commission, Patna (supra) to submit that in view of failure to comply with the

required rule, the learned single Judges should not have directed revaluation by the Expert Committee. In any case, as has been submitted by Mr.

Somayaji, learned senior counsel appearing in pursuance to the public notice for the successful candidates that the least the learned single Judges

should have done was to have issued a notice to the successful candidates before arriving at a conclusion that the key answers were wrong. He

pointed out that in fact the questions were such, particularly those from the humanities, which probably had two correct answers. As we have

noted earlier, there was controversy about some 21 questions and out of them, the Public Service Commission accepted that there are doubts on

the veracity of the correctness of the answers to eight questions. Seven out of them were on humanities, and what the Public Service Commission

has done is to give marks to the unsuccessful candidates for the answers that they had given as per the report of the Expert Committee. As far as

the successful candidates are concerned, they were given marks for the answers that they have given, which were corresponding to the key

answers. As has been, and has been accepted by the Public Service Commission both the group of answers are probable answers and could be

assessed as the correct answers. In this state of affairs, there was no prejudice to any of the unsuccessful candidates in the marks that they were

given for those questions. As noted earlier, only one question i.e., Question No. 45 was the one on Science where as per the key answer, the

correct answer was A, whereas, according to the Expert Committee, both A or B could be the correct answer. In any case, those unsuccessful

candidates, who marked either A or B as the correct answer for Question No. 45 have been given the marks as the correct answer. It could be

said that the question being one on Science perhaps either the key answer is correct or the expert committee answer is correct. But since both the

group of candidates are given 1.5 marks for that answer the element of prejudice gets eliminated.

61. In this connection, we may profitably refer to the judgment of the Apex Court in the case of Pankaj Sharma Vs. State of Jammu and Kashmir

and Others, . That was a case concerning the preliminary examination conducted by J & K Public Service Commission. There also were some

questions which were claimed to be defective. The Public Service Commission decided to award permissible maximum marks to the disputed

answers. The said approach of the J & K Public Service Commission was upheld by the High Court and the High Court declined to set aside the

preliminary examination in the larger interest of the administration as well as in the interest of the candidates. The Apex Court held the approach to

be the correct one and held that a general action was required to be taken to ensure that no candidates are suffered when there was no fault on his

or her part. Strangely enough it was submitted by the unsuccessful candidates that conferring benefit to them in this particular manner was

erroneous, which submission was, naturally, turned down.....

65. The preliminary examination is essentially a short listing examination. The right of the candidate to appear for the main examination depends

upon his succeeding in the preliminary examination. The unsuccessful candidates who raised grievance were allowed to write the main examination.

There answers were corrected on the basis of a liberal yardstick, as accepted by the Expert Committee. The main papers of only those who

obtained the cut-off marks were evaluated. In view of grant of marks to both groups of candidates for the disputed questions in the preliminary

examination, the rigor of prejudice has been taken off and therefore, there is no occasion to say that there has been any unfair or impartial

treatment to any of the candidates.

66. Having noted, as stated above, in our view, much of the problems would have been avoided had notice been issued to the successful

candidates at the level when the matter was heard before the learned single Judges earlier. The unsuccessful candidates have gone on attempting to

make new and new submissions, which were not taken at the earliest opportunity. One cannot be permitted to raise such new points as and when

one thinks fit and proper. As held by the Apex Court in the case of *Sadananda Halo v. Montaz Ali Sheikh* (supra), a microscopic approach in

such huge exercise is not accepted and one has to have a sense of proportionality, particularly when it is seen that at the end of this exercise no

prejudice has been caused to the unsuccessful candidates in any manner whatsoever. As stated earlier by us, had the learned single Judge issued

notice to the successful candidates much of the trouble would have been avoided

and therefore, there is much force in the submission of Mr. A.L.

Somayaji that the findings by the learned single Judges in their judgments with respect to errors in the key answers and appointment of the expert

committee would not have been called for. In any case, however, we note that the steps taken by the learned Judges were with a desire to see to it

that if at all there was any error that error should be removed since the candidates must have full confidence in the fairness of the examination. As

stated earlier, in any case, in the facts of the case, there is no reason to interfere with the results of the examination, since no prejudice has been

caused.

16. On the question of non joinder of parties, the attention of the petitioners were drawn to the judgment of the Supreme Court in Prabodh Verma

and Others Vs. State of Uttar Pradesh and Others, .

17. The Supreme Court subsequently had followed the reasoning in Probodh Verma's case (cited supra) in Suresh v. Yeotmal Distt. Central

Coop. Bank Ltd. reported in (2008) 12 SCC 558. The relevant passage found in paragraphs 15 to 17 may be usefully extracted below:

15. Respondent 1 is a cooperative society. It has its own rules and bye-laws. The service rules framed by Respondent 1 stand approved by the

Registrar. We have noticed hereinbefore that in the seniority list published in the year 1995, the position of the appellant was at Sl. No. 4. Those

candidates whose names appeared at Sl. Nos. 2 and 3 were not impleaded as parties in the said proceeding. In their absence, the dispute could

not have been effectively adjudicated upon.

16. This Court in Rashmi Mishra v. M.P. Public Service Commission 1 observed: (SCC pp.728-29, para 16)

16. In Prabodh Verma 2 this Court held: (SCC pp.273-74, para 28)

28. "The first defect was that of non-joinder of necessary parties. The only respondents to the Sangh's petition were the State of Uttar Pradesh

and its officers concerned. Those who were vitally concerned, namely, the reserve pool teachers, were not made parties-not even by joining some

of them in a representative capacity, considering that their number was too large for all of them to be joined individually as respondents. The

matter, therefore, came to be decided in their absence. A High Court ought not to decide a writ petition under Article 226 of the Constitution

without the persons who would be vitally affected by its judgment being before it as respondents or at least by some of them being before it as

respondents in a representative capacity if their number is too large, and, therefore, the Allahabad High Court ought not to have proceeded to hear

and dispose of the Sangh's writ petition without insisting upon the reserve pool teachers being made respondents to that writ petition, or at least

some of them being made respondents in a representative capacity, and had the petitioners refused to do so, ought to have dismissed that petition

for non-joinder of necessary parties."

(See also All India SC & ST Employees' Assn. v. A. Arthur Jeen 3 and Indu Shekhar Singh v. State of U.P.)

17. The dispute raised by the appellant before the Cooperative Appellate Court, therefore, was not maintainable. It was so held by the High Court

also.

18. Recently, the Supreme Court once again reiterated the principle laid down in Prabodh Verma's case in Tridip Kumar Dingal and Others Vs.

State of West Bengal and Others, and reliance can be made on the following passage found in paragraph 41, which reads as follows:

41. Regarding protection granted to 66 candidates, from the record it is clear that their names were sponsored by the employment exchange and

they were selected and appointed in 1998-1999. The candidates who were unable to get themselves selected and who raised a grievance and

made a complaint before the Tribunal by filing applications ought to have joined them (selected candidates) as respondents in the original

application, which was not done. In any case, some of them ought to have been arrayed as respondents in a "representative capacity". That was

also not done. The Tribunal was, therefore, wholly right in holding that in absence of selected and appointed candidates and without affording

opportunity of hearing to them, their selection could not be set aside.

19. However, the learned Counsel for the petitioners referred to the judgment of the learned single Judge of this Court in D. Shylaja v. The

Secretary to Government and Ors. reported in 2004 WLR 639. In that case this Court in paragraph 49 observed as follows:

49.... Where however the process of selection is not complete and "admission is yet to take place, and review" of the disputed questions is sought

for, it would be futile to insist that such students should be impleaded as respondents for affording them opportunity of hearing. Indeed it would be impracticable, nay, impossible to afford opportunity of hearing at the stage of considering whether a question is to be deleted or not or whether the key answer"" or ""revised key answer"" is correct or incorrect....

20. But, in the present case, it is not as if selected parties should have been made as parties only at the time of filing of the writ petition. Parties can be brought on record even during the course of trial, but before the final hearing. Even otherwise, an application to sue them in a representative capacity could have been filed in terms of Rule II-B framed under Article 226 of the Constitution. In such a case, necessary directions could have been given to the TNPSC to serve all selected candidates either individually or collectively. Even otherwise, if any such application was filed under Rule II-B, the TNPSC could have been directed to incorporate the fact of the pendency of the writ petition in the order of selection given to the selected candidates with an endorsement that no equity can be raised by them on having been given the selection order. Therefore, the objections by the TNPSC that selected candidates were not made as parties cannot be brushed aside.

21. In the light of these facts, on the grievance projected by the petitioners, the following conclusions will emerge:

- (i) Paragraph 41 of the Instruction given by TNPSC cannot be a leverage for conducting a revaluation.
- (ii) The petitioners themselves never made any grievance within the time limit stipulated by the TNPSC.
- (iii) TNPSC on its own on receipt of some complaints made certain rectification exercise.
- (iv) Successful candidates who got through the selection procedures and interview, have not been made as parties in the writ petitions.
- (iv) There is no indefeasible right is available to the petitioners to seek for a direction as prayed for in the writ petitions.

22. In the light of the above, all the writ petitions will stand dismissed. However, there will be no order as to costs. Consequently, connected miscellaneous petitions stand closed.