

(2009) 04 MAD CK 0441

In the Madras High Court

Case No : Writ Petition No's. 29831, 29832 , 30554, 30738 to 30740, 30742 to 30744, 30770, 30771, 30794 to 30796, 30798, 30900 of 2008, 450, 787, 989, 3130 and 3139 of 2009 and W.P. (MD) No's. 11731 and 12390 of 2008, 63 and 231 of 2009

S. Senthil Kumar

APPELLANT

Vs

The Secretary, Tamil Nadu Public Service Commission

RESPONDENT

Date of Decision : 30-04-2009

Acts Referred:

Constitution of India, 1950 — Article 320

Citation : (2009) 04 MAD CK 0441

Hon'ble Judges : V. Ramasubramanian, J

Bench : Single Bench

Advocate : Vijay Narayan, T.R. Rajagopalan, N.G.R. Prasad, AR. L. Sundaresan, K. Venkataramani, s and G. Krishnamurthy, for the Appellant; V.T. Gopalan and N.R. Chandran, Sr. Counsels, for the Respondent

Final Decision : Dismissed

Judgement

V. Ramasubramanian, J.—Since Group-I Services in the State of Tamil Nadu provide a short cut for entry into All India Services (IAS, IPS etc.), every selection to Group-I Services, has always been bogged down by litigation and the batch of cases on hand is one such. But unfortunately, it is a second round of litigation in respect of the same selection, for reasons mainly attributable to persons who set the question papers for the preliminary examination.

2. I have heard Mr. N.G.R. Prasad, Mr. Vijay Narayan, Mr. T.R. Rajagopalan, Mr. AR. L. Sundaresan, Mr. K.Venkataramani and Dr. G. Krishnamurthy, learned Senior counsel/Counsel appearing for the petitioners and Mr. V.T. Gopalan and Mr. N.R.Chandran, learned Senior Counsel appearing for the Tamilnadu Public Service Commission, and Mr. AL. Somayaji and Mr. C. Selvaraju, learned Senior Counsel appearing for the some candidates who have filed impleading petitions.

3. By a notification published on 1.8.2007, the Tamil Nadu Public Service

Commission (Respondent) invited applications from eligible candidates for direct recruitment to 172 posts included in Group-I Services of the State of Tamil Nadu, for the year 2006-2007. The process of selection comprised of (i) a preliminary examination for selecting candidates for admission to the main examination (ii) a main written examination and (iii) an oral interview.

4. A total of 85,913 candidates are said to have applied in response to the notification and the preliminary examination was held at various centres in the State on 23.12.2007. On 25.4.2008, the results of the preliminary examination were declared and out of those candidates who appeared for the preliminary examination, 1,796 candidates were declared successful for admission to the main written examination. This represented 10 times the total number of posts sought to be filled up.

5. Immediately after the announcement of the results of the preliminary examination, a batch of 31 writ petitions came to be filed by some unsuccessful candidates, contending that there were serious mistakes in some of the questions and/or in the key answers to those questions. By a judgment dated 31.7.2008, Justice N. Paul Vasantha Kumar, disposed of the batch of writ petitions W.P.Nos.12127 of 2008 etc., with the following directions:

18. In the light of the above findings and having regard to the judgments cited supra, I am inclined to pass the following orders:

(i) The petitioners herein are directed to submit representation pointing out the number of questions where the questions are not correctly asked, more number of answers are found correct as per leading text books and whether key answer to the questions are correctly given on or before 7.8.2008.

(ii) On receiving the said representations the respondent/TNPSC is directed to place the disputed questions/answers before the Expert Committee to be constituted by it for verification as to whether the questions pointed out are correct, if more than one answer given in the choice are correct and whether the key answers given to any question pointed out by the petitioners are wrong.

(iii) On verifying the same, the Expert Committee is directed to award marks to such of those petitioners who attempted the said questions and on that basis determine the final marks of the petitioners in the preliminary examination.

(iv) Since the above said exercise will take sometime and in view of fixation of date for the main written examination as 16.8.2008 and 17.8.2008, the respondent/TNPSC is directed to permit the petitioners herein to write the main written examinations along with 1750 candidates, who are already found eligible to write main written examination.

(v) By following the above process, if the petitioners are getting the required cut-off marks prescribed for the respective category, their final written examination papers shall be valued. If the petitioners are not getting the required cut-off marks, their final written examination papers need not be valued.

(vi) Since the preliminary examination results were published as early as on 25.4.2008, and the main written examination is to be held on 16.8.2008 and 17.8.2008, the benefit of this order is restricted to the writ petitioners herein, as no general directions could be issued at this belated stage.

All the writ petitions are ordered accordingly. No costs. Connected miscellaneous petitions are closed.

6. Following the above judgment, rendered on 31.7.2008, another writ petition filed on the same day viz., 31.7.2008 was allowed by the learned Judge, on 8.8.2008. But in the meantime, another group of 76 persons filed 77 writ petitions in W.P.Nos.18714 of 2008 etc., seeking identical reliefs. This batch of petitions was opposed by the Service Commission on the ground that as per the earlier order dated 31.7.2008, the benefits of the order were restricted only to the writ petitioners in the first batch. But the said objection was over ruled and the second batch of writ petitions were disposed of by Justice P.Jothimani by a common order passed on 13.8.2008. The operative portion of the said order in paragraph-17 reads as follows:

17. For the reasons stated, the above writ petitions stand disposed of with the following directions:

(i) The respondent, Tamil Nadu Public Service Commission, shall permit the petitioners herein to write final examinations to be conducted on 16.8.2008 and 17.8.2008 in various centres at Chennai by issuing Hall Tickets to them. As submitted by the learned Counsel appearing for the Tamil Nadu Public Service Commission, the petitioners are entitled to collect their respective Hall Tickets from the Secretary, Tamil Nadu Public Service Commission, Chennai, in its Office on or before 5.00 p.m., on 14.8.2008. It is made clear that allowing the petitioners to write the examination does not mean that their rights to appear for final examination are recognised by this Court.

(ii) The answer papers of final examinations to be taken by the petitioners as per the above said direction shall be kept separately in a sealed cover by the Tamil Nadu Public Service Commission without referring for valuation.

(iii) All the petitioners before this Court are permitted to make individual representation to the respondent, Tamil Nadu Public Service Commission, bringing out the specific instances of mistake ascertained by them in the question papers or in the key answers, provided such questions are attended by the petitioners concerned. They must also disclose their names, addresses, register numbers, question numbers, question booklet series, the Writ Petition Numbers, the genuine doubt about their key answers etc., in the representation. Such representations shall be submitted by the petitioners to the Secretary, Tamil Nadu Public Service Commission, in its Office on or before 5.00 p.m., on 14.8.2008. As fairly submitted by the learned Counsel for the respondent Public Service Commission, on submission of such representation by individual petitioners, the Tamil Nadu Public Service Commission shall acknowledge the

receipt of such objections by making proper endorsement.

(iv) On receipt of the said representations, the respondent Service Commission shall place the entire issue before the Experts Committee to be constituted by it for verification by comparing the necessary papers of the concerned petitioners and to arrive at a final decision about its correctness or otherwise. In the event of the Experts appointed by the respondent Service Commission deciding that the questions attempted by the individual petitioner are either wrong or some mistakes have crept in, the respondent Service Commission shall grant necessary marks to the concerned petitioners.

(v) After completion of the above said exercise, the respondent Service Commission shall decide about the petitioners entitlement or eligibility of the petitioners to write the final written examination based on the cut off mark issued by the Service Commission and thereafter, the Service Commission shall direct valuation of the final examination papers of those petitioners alone. With regard to the petitioners, who are not able to get the required cut off mark, after the exercise made by the Service Commission as stated above, their final written examination papers need not be valued and the said factum shall be published by the Service Commission in its usual manner.

(vi) It is made clear that the decision of the Tamil Nadu Public Service Commission after referring to the Experts opinion shall be final, however subject to any legal remedy, which may be available to the petitioners. All other rights of Public Service Commission as per the Notification issued by them shall continue to be operative. It is made clear that if the petitioners do not appear before the respondent Service Commission by the time stipulated for submitting their objections and receiving Hall Tickets, they are not entitled for the benefits given in this order.

7. Based on the above order passed on 13.8.2008, in the group of 77 writ petitions, 12 more writ petitions came to be allowed on 14.8.2008 and 5 writ petitions came to be allowed in the Madurai Bench of this Court, following these orders. Thus a total of 126 writ petitions, filed by 125 candidates (one candidate filed two writ petitions) were covered by the aforesaid directions passed by the two learned Judges.

8. As a result of the orders passed in the above batches of writ petitions, 125 candidates who were the writ petitioners in those batches of writ petitions, were permitted to write the main written examination, along with the 1,796 candidates originally declared successful. All of them wrote the main written examination on 16.8.2008 and 17.8.2008.

9. As per the directions issued in the above batches of cases, the Service Commission constituted a Committee of 23 Experts and the petitioners in the above batches of cases submitted representations to them, pointing out the questions and/or answers disputed by them. The Expert Committee examined these disputed questions, about 40 in number, finalised the correct answers,

compared those correct answers with the original key answers, with which the Service Commission originally made the evaluation. In this process, some of those 125 writ petitioners gained extra marks and some of them lost even the original tally.

10. Finally, the Expert Committee found that out of 125 writ petitioners, who filed the previous batches of writ petitions, only 25 candidates secured the cut off marks, after revaluation, to be eligible for admission to the main written examination. Consequently, the Service Commission sent for evaluation, the answer papers of only these 25 out of 125 candidates, in the main written examination.

11. After evaluating the answer papers of these 25 candidates, in the main written examination, apart from evaluating the answer papers of the originally qualified 1,796 candidates, the Service Commission declared the results of the main written examination on 8.12.2008. Among the persons declared successful in the main written examination, it was found that only two out of those 25 candidates had been successful. Therefore those two candidates were invited for oral interview held during the period from 26.12.2008 to 3.1.2009.

12. Thus, in the ultimate analysis, out of 125 candidates, who challenged the results of the preliminary examination, only 25 could make it to the main written examination and out of these 25, only two could make it to the oral interview, leaving the love's labour lost for the others. Therefore, another set of candidates, comprising of those who had come up earlier and those who are coming for the first time, have come up with the present batch of writ petitions. Due to the pendency of these writ petitions, the final list of selected candidates has not so far been released, though the Service Commission has released, in their Website, the marks scored by all candidates, who were invited for the oral interview. Therefore, some candidates, who found their marks to be fairly high, have come up with petitions for impleading themselves in these writ petitions, out of fear that the writ petitioners may play spoilsport, in the chances of their success in the selection process. Hence all the writ petitions and the impleading petitions were taken up for disposal, with the consent of all the parties.

13. The present batch of writ petitions can be divided into three categories viz., (a) those who are coming up for the first time before this Court, (b) those who came up earlier, permitted by this Court to write the main examination and found by the Expert Committee to have qualified in the preliminary examination, but who failed in the main written examination and (c) those who came up earlier and who were found by the Expert Committee appointed by this Court to have not got qualified in the preliminary examination. Legally and factually, the cases of these three categories of petitioners, lie on different footing than one another. Therefore, each category will have to be dealt with differently.

CATEGORY- 1 : Petitioners coming to Court for the first time

W.P.NO

BENCH

NAME

PASSED OR NOT IN PRELIMINARY EXAMINATIONS

1

WP 450 of 2009

Madras

[1][2]M Chandrasekaran

K Senthilnathan

Kn Sakthivel

T Arasu

P Usha

M Sandhanam

R Devaraj

M Venkatesh

[1]

PASSED

2

WP 787 of 2009

Madras

Natrajan

P Gunasekarn

S Paneerselvam

K R Balaji

PASSED

3

WP (MD) 11731 of 2008

Madurai

[1][2]R Ganesan

L Nagarajan

A Muthupandi

[1]

PASSED

4

WP (MD) 12390 of 2008

Madurai

P Subramanian

PASSED

5

WP 30738,

of 2008

Madras

K Ramesh Kumar

PASSED

6

WP 30744 of 2008

Madras

K Devarajan

PASSED

7

WP (MD) 63 of 2009

Madurai

N SURESH

PASSED

8

WP 30739 of 2008

Madras

S RAMESH

PASSED

CATEGORY 2: Persons who came to court earlier, permitted by Court to attend the Main Examination and who were subsequently declared by the Expert

Committee to have passed in the preliminary examination.

WP No.

Name

Prior Writ No.

Marks before Reassessment

After Reassessment

1

WP 30794 of 2008

+ WP 3130 of 2009

P V VIJEYA KARTHIK RAJA

WP 14855 of 2008

193

196.5

2

WP 29831 of 2008

S SENTHIL KUMAR

WP 12127 of 2008

192

196.5

3

WP 30796 of 2008

S SENTHILNATHAN

WP 17474 of 2008

199

202.5

4

WP 30770 and

WP 30771 of 2008 (2 writ petitions with different prayers)

M SELVARAJ

V KARTHIKEYAN

WP 18888 of 2008

193.5

199.5

195

201

5

WP 30798 of 2008

K.Ramya

WP 17452 of 2008

178.5

180

CATEGORY-3 : Persons who came to Court earlier and permitted to attend the Main Examination but declared by the Expert Committee to have failed in the Preliminary examination

WP No

Bench

Name

Earlier WP

Marks

before reassessment

After reassessment

1

WP 30795 &

WP 3131 of 2008

chennai

M A RAVIVARMA

WP 14854 of 2008

192

192

2

WP 29832 of 2008

Chennai

R GOVINDASWAMY

WP 13762 of 200

151.5

154.5

3

WP 989 of 2009

Chennai

D GANESH BABU

WP 18889 of 2008

196.5

192

4

WP 30742 &

WP 30743 of 2008

Chennai

M SENTHIL KUMAR

WP 18888 of 2008

198

196.5

5

WP (MD) 231 of 2009

Madurai

S JOHN KENNEDY

WP 7174 of 2008

196

199

6

WP 30554 of 2008

Madras

K DHAKSHINAMOORTHY

WP 18780 of 2008

198

198

7

WP 30900 of 2008

Madras

S JANAKIRAMAN

WP 19243 of 2008

187.5

186

8

WP 30740 of 2008

Madras

P MAHALAKSHMI

WP 19121 of 2008

175.5

171

9

WP 30770 & WP 30771 of 2008

Madras

V. BALASUBRA-MANIAM

V ARIVUKANNAN

C SANGU

WP 18888 of 2008

205.5

192

175.5

208.5

CATEGORY-1:

14. Persons who have come up with a challenge to the selection process, for the first time before this Court, form Category-I. Even at the outset, these petitioners who have come up for the first time challenging the selection process cannot be allowed to raise any objections to the preliminary examination, as they are guilty of delay and laches. The preliminary examination was conducted on 1.8.2007 and the results were declared in the last week of April 2008. One set of persons came up with a batch of writ petitions, challenging the method in which the preliminary examinations were conducted and they succeeded, by the order dated 31.7.2008. Even in the order dated 31.7.2008, passed by Justice N.Paul Vasanthakumar, it was indicated clearly in paragraph-18(vi) that the benefit of that order was restricted only to the petitioners in that batch. The learned Judge made it clear that no general directions could be issued at that belated stage.

15. However, a second batch of writ petitions were filed and they were entertained on the ground that they approached the Court before the conduct of the main written examination on 16.8.2008 and 17.8.2008. But even while extending the benefit of the order passed in the first batch of writ petitions, dated 31.7.2008, Justice P.Jothimani, made it clear in paragraph-16 of judgment dated 13.8.2008 passed in the second batch of writ petitions that the same benefit cannot be extended to others. The relevant portion of the said order found in the last portion of paragraph-16 of the judgment of Justice P. Jothimani in *John Kennedy v. Secretary, Tamil Nadu Public Service Commission, Chennai* 2008 (8) MLJ 836 reads as follows:

This Court would have otherwise extended the benefits which are to be given to these petitioners, to the other candidates also, but the same is restricted to these petitioners before this Court, due to the reason that such an exercise may result in grave prejudice to the administration and such exercise may be unwieldy and unworkable.

16. Thus the order passed in the second batch of writ petitions, sealed any further inflow into this Court on this subject. Therefore the petitioners who have come up for the first time are barred, on account of the above observations of the learned Judge in the order passed in the second batch of writ petitions.

17. The learned Counsel appearing for the petitioners contended that the order passed in the second batch of writ petitions was in the nature of a preliminary order, in as much as the Service Commission failed to disclose all the details at that time and that the Service Commission did not even produce the key answers to the Court. In support of this contention, the learned Counsel for the petitioners relied upon certain observations in paragraph-16 of the judgment dated 13.8.2008 passed in the second batch of writ petitions. The learned Judge

has observed in paragraph-16 of his judgment that the Service Commission did not admittedly produce even the key answers to the Court. The learned Judge had also observed that the Service Commission exercising constitutional functions under Article 320(i) of the Constitution ought to have produced the key answers in fairness before this Court, to enable the Court to come to a proper conclusion. In paragraph-7 of his judgment also, the learned Judge had indicated that some of the questions which were found to be wrong, were shocking and alarming and were only examples.

18. On the basis of those observations and on the basis of the Expert Committee's report, the learned Counsel for the petitioners contended that the order of the learned Judge could only be treated as a preliminary order and that after the report of the Expert Committee, the entire complexion of the game changed. Therefore the learned Counsel contended that the petitioners who have come to Court for the first time can also maintain the writ petitions.

19. However, I am of the considered view that the above contentions cannot be accepted. Despite being convinced that some questions and key answers were wrong, the learned Judge refused to open the Pandora's Box, on the simple logic that it would paralyse the administration. Though the learned Judge did not elaborate on this, the reasons are not too far to seek. Admittedly, 85,000 candidates had taken the preliminary examination on 23.12.2007. The results of the preliminary examination were declared on 25.4.2008 and only 1,796 candidates were declared successful, leaving about 83,000 candidates unsuccessful in the preliminary examination.

20. Out of those 83,000 candidates, who were unsuccessful, only 31 persons came up with writ petitions in the first instance and those writ petitions were disposed of on 31.7.2008 by Justice N.Paul Vasanthakumar. On the date on which the said order was passed viz., 31.7.2008, one writ petition came to be filed and hence it was allowed on 8.8.2008. In the second batch 76 persons came up with a batch of 77 writ petitions which were allowed by Justice P.Jothimani, on 13.8.2008. A group of left over writ petitions, numbering 12, were allowed on 14.8.2008. Similarly, 5 writ petitions were ordered in the Madurai Bench. Thus, it is only 125 candidates out of a total number of about 83,000 unsuccessful candidates, who chose to come up before Court. The others chose to be fence sitters, as they are termed by the Apex Court, waiting for a miracle to happen in the form of an Expert Committee. It is not as if the new writ petitioners have come up after coming to know of the report of the Expert Committee. The report of the Expert Committee constituted in pursuance of the orders of this Court in the first two batches of writ petitions, was not published. The Service Commission merely published the results of the main written examination, after which the present batch of writ petitions came to be filed.

21. Therefore the candidates who have come up with the writ petitions for the first time, are guilty of delay and laches and are deemed to have accepted their fate, irrespective of what it is. Hence the first timers cannot be granted any

relief, except wishing them the best of luck for the ensuing selections.

CATEGORY-2:

22. The second category of persons are those who were petitioners in the earlier batch of writ petitions. In pursuance of the orders passed in the earlier batch, an Expert Committee comprising of 23 persons were constituted by the Service Commission. The petitioners falling under the second category as well as the others who were parties to the previous batch of writ petitions, filed their objections before the Expert Committee. The Expert Committee found that the writ petitioners and others raised disputes with regard to the correctness of 40 questions. Therefore the Expert Committee examined those 40 questions with reference to the key answers and came to an independent conclusion about what the correct answers to those questions were. On the basis of the answers so arrived at by them, the Expert Committee took the answer papers of all the 125 candidates who were the writ petitioners in the two previous batches of cases and evaluated their answers. After evaluating their answer sheets with reference to the correct answers decided by the Expert Committee, the marks awarded to all the 125 candidates were tested on the bench mark of the cut off marks for each category (OC, BC, MBC, SC, ST, General and Women etc.). Such testing resulted in only 25 out of 125 candidates who were parties to the earlier writ petitions, being found to have secured the cut off marks for being invited for the main written examination. Therefore as per the directions contained in paragraph-17(v) of the decision of Justice P. Jothimani in *John Kennedy v. Secretary, TNPSC*, the answer papers of these 25 candidates in the main written examination were taken up for evaluation. After evaluation, only two out of these 25 candidates were found to have qualified in the main written examination and became eligible for being invited for oral interview.

23. The second category of writ petitioners are those who belong to this group of "select 25" who were found to have cleared the preliminary examination, but who did not qualify in the main written examination. In other words, this group of 25 persons, who were declared to have cleared the preliminary examination, by the Expert Committee constituted in pursuance of the orders of this Court, are actually the beneficiaries of the order passed by this Court. But unfortunately, they could not succeed in the second tier of selection. Therefore they are now not entitled to challenge the preliminary examination.

24. Interestingly, a few of these candidates who succeeded in the preliminary examination, but failed in the main written examination and a few writ petitioners who have come up for the first time after clearing the preliminary examination, have also challenged the validity of the main written examination at this stage. The challenge to the main written examination is made on the following grounds:

- (a) that there was no liberal valuation;
- (b) that there were incompetent examiners;

- (c) that the lecturers of the same College conducted double valuation;
- (d) that the Service Commission changed the pattern of the examination;
- (e) that the candidates were required to answer questions, in not more than certain number of words, which totalled to a staggering figure of 5,200 words, if all the questions are taken together and it was actually impossible;
- (f) that the pattern of question paper was known to the candidates who attended classes in a Coaching Centre recently inaugurated, indicating thereby that the selection process was not fair;
- (g) that a male candidate was invited for oral interview against a slot reserved for a woman candidate;
- (h) that a candidate who had not obtained the No Objection Certificate from the employer was invited for interview in violation of the prescription; and
- (i) that the separate valuation conducted for 25 candidates, who were declared successful by the Expert Committee, was not done in a fair and proper manner.

25. I do not think that any of the above contentions should detain me for a long time. That there was strict valuation or liberal valuation can never be a ground to assail an examination, especially when it is a highly competitive examination for selection of persons to the highest cadre of posts in the State Services. Therefore the first ground of attack cannot be accepted.

26. The allegation that the Service Commission appointed incompetent examiners to value the answer papers, is made solely on the basis that one examiner by name T.Vijayakumar did not have 4 years of experience as an examiner in valuing papers. But this allegation is denied by the Service Commission on the ground that the said T.Vijayakumar had one year of experience in the present institution, but already possessed 3 years experience in a previous institution. In paragraph-19(g) of the counter affidavit filed by the Service Commission in W.P. No. 989 of 2009, the Service Commission has denied the averment that a minimum of 4 years of standing is required for a person to be an examiner. Therefore the contention raised by the petitioner in this regard appears to be not based upon any Rule or Regulation nor even based upon the past practices. From the statistics furnished by the Service Commission in paragraph-19(g) of the counter affidavit, it is seen that a total of 144 examiners were involved in the process of valuing the answer sheets. The Service Commission has explained in the counter affidavit, the process of selection of these examiners. It is claimed by the Service Commission that a list of competent examiners is invited from the Registrars of Universities and Principals of various Colleges and that out of the list forwarded to the Commission, a random selection is made. Therefore by making an averment not supported by any Rule or Regulation, against one out of a total of 144 examiners, the petitioners cannot plead that the valuation process in the main written examination was vitiated.

27. The next contention that the lecturers of the same College conducted double valuation, cannot really hold good. It is stated by the Service Commission that a person who conducted first valuation on a particular paper was prevented from conducting the second valuation of the same paper. The only requirement is that both valuations should not be done by the same examiner. This requirement, according to the Service Commission, has been strictly complied with. There is no allegation by the petitioners that the same person conducted the first and second valuation of the same answer paper. There is no bar for the Examiners from the same college conducting one valuation each.

28. The allegation that the Service Commission changed the pattern of the question paper, even if true, cannot advance the cause of the petitioners. It is not disputed that the syllabus for the main written examination indicated to be of a descriptive type, was notified in the Website of the Service Commission. All that the candidates participating in such examinations are entitled to know, is the syllabus. So long as the syllabus is not changed, the candidates cannot take exception to the change of pattern of examination.

29. The next contention that the pattern of examination required answers to be written to the extent of 5,200 words and that it was impossible to achieve the said outer limit, has no force. It is seen from the question paper that the Service Commission had merely prescribed that the answers to each question shall not exceed a particular number of words. The maximum number of words to which the answers to all questions are to be limited, together worked out to 5,200. It is not the allegation of the petitioners that the marks awarded to candidates were based upon the number of words contained in the answers to each question. A wrong answer written in the maximum number of words may not carry any mark, while a crisp and right answer written in half the maximum number of words might have carried the maximum marks. So long as there is no allegation that the examiners were carried away by the total number of words contained in the answers, this contention of the petitioners cannot be accepted.

30. The petitioners have made a very serious allegation against a Coaching Centre allegedly started 7 months before the commencement of the selection process. Though, at the beginning, the petitioners were only making wild allegations, without any concrete material, it appears that the petitioners came across two important material to raise the level of credibility of their suspicion. It is the contention of the petitioners that in the model question paper, given to the students of the particular Coaching Centre, a similar pattern of examination was indicated. It is also stated across the Bar, at the time of arguments, that in the final tally of 178 candidates, who may now get selected (by virtue of the marks displayed in the Website of the Service Commission), 48 candidates were students of that Coaching Centre. Such an assertion is made on the basis of the claim made by the very Coaching Centre with the photographs of 48 candidates published by them.

31. But unfortunately for the petitioners, the law is well settled that any amount

of suspicion cannot take the place of proof. As rightly contended by the learned Senior Counsel appearing for the impleading petitioners (who are likely to get selected because of the marks secured by them), these allegations are not sufficient to set aside the entire process of selection. The presumption that there cannot be smoke without fire, cannot be made a rule of law, though it may serve as a rule of conscience for the powers that be, to look into it. I only hope that the Service Commission itself takes up this issue seriously and order an investigation to find out what went wrong (if anything had gone wrong) and if so, where it went wrong.

32. A male candidate by name Ponnuerusan, who belongs to the Most Backward Community, did not secure the cut off marks in the main written examination, to be eligible for being invited for interview. But unfortunately, he was invited wrongly for the interview and he was also awarded 60 out of the maximum of 80 marks by the Interviewing Committee. It is the contention of the petitioners that that candidate was invited in the place of a Most Backward Community woman candidate, who ought to have been invited for interview.

33. In paragraph-19(i) of their counter affidavit, the Service Commission has admitted that a mistake had crept in, in inviting the said candidate. However, the selection is not finalised and hence the Service Commission has assured that the mistake will be rectified. Therefore on the basis of this mistake, it is not possible to hold that the entire selection is vitiated.

34. There is some force in the contention of the learned Senior Counsel for the petitioners that the final result of that candidate was not withheld by the Service Commission even after coming to know of the mistake. It is stated in paragraph-19(i) of the counter affidavit filed by the Service Commission that the mistake was noticed when Ponnuerusan appeared for oral test on 3.1.2009. But it is contended that it was the last day of the interview and hence it was not possible to call a substitute female candidate at the last minute. It was also stated by the learned Senior Counsel appearing for the Service Commission that the Interview Card sent to the candidates did not indicate "male" or "female". Therefore there was no possibility of the members of the Interviewing Committee finding out that a male candidate had come in the place of a female candidate.

35. But admittedly the mistake was noticed on 3.1.2009 when the candidate appeared for interview. Therefore the Service Commission could have at least indicated in the Website, at the time of publishing the final results that his candidature is withheld on account of the mistake. However, the failure of the Service Commission to do so, as stated earlier, cannot vitiate the entire selection process.

36. The contention that one of the candidates selected for interview had not produced the No Objection Certificate, is no ground to call the selection bad. The Application Form contains a column in Column No. 24, where the candidates are required to indicate the particulars of their present and previous employment.

Therefore if a candidate does not produce a No Objection Certificate at or after the interview from his employer, his selection may be vitiated but not the entire process of selection.

37. The last ground on which the main written examination is assailed is that the papers of 25 candidates who were declared by the Expert Committee to be successful in the preliminary examination were valued separately and disqualified deliberately. But the Service Commission has stated that after the orders of this Court in the second batch of writ petitions, dated 13.8.2008, the Expert Committee was constituted in the last week of August 2008. The members of the Committee held sittings on various dates in September and October 2008. The Minutes of the Committee were drawn on 5.11.2008 and the marks of those 125 writ petitioners in the preliminary examination were finalised on 11.11.2008. It was only then that 25 candidates out of the total of 125 writ petitioners were found to have qualified in the preliminary examination. By then, the first evaluation of the answer papers of the other candidates in the main written examination had commenced. It went on from 4.11.2008 to 19.11.2008. The second valuation was done from 20.11.2008 to 1.12.2008 and the third valuation in respect of 20 candidates had to be undertaken on 2.12.2008 and 4.12.2008. Thus, the Service Commission proceeded on a time schedule and hence the allegation that the answer papers of these 25 candidates were valued separately with a view to failing them, has no basis. As a matter of fact, in the order dated 13.8.2008, passed in the second batch of writ petitions, the learned Judge had given a direction in paragraph-17(ii) of the judgment that the answer papers of final examinations taken by the writ petitioners should be kept separately without referring for valuation, till the Expert Committee finalised the out come of the preliminary examination.

38. Therefore none of the grounds of attack made by the petitioners as against the validity of the main written examination, can be accepted. As I have observed earlier, the candidates who were declared successful in the preliminary examination by the Expert Committee, but who failed in the main written examination, cannot also assail the preliminary examination, as they have passed on to the next stage. Therefore the writ petitions filed by the second category of persons are also liable to fail.

CATEGORY-3:

39. This category consists of persons who came to Court challenging the out come of the preliminary examination, who were permitted to write the main written examination and who were found by the Expert Committee to have not qualified in the preliminary examination for admission to main written examination. Therefore their answer papers in the main written examination, have not been valued by the Service Commission.

40. The main ground of challenge of these petitioners to the ultimate outcome is that the Expert Committee's answers were at variance with the key answers.

The Expert Committee also found a few questions to be wrong. Ultimately, the Expert Committee valued the answer papers of those 125 persons, who came up with the previous batch of writ petitions, on the basis of the answers that they evolved. Consequently, some of the writ petitioners in the first batch have now got lesser marks than what they got in the original valuation. In such circumstances, the petitioners belonging to the third category, challenge the outcome.

41. Their challenge is resisted by the Service Commission on the ground that by inviting an order for the appointment of an Expert Committee and for a fresh evaluation by such committee, these petitioners have submitted themselves to an order of Court and that they cannot now go back on the order invited by them.

42. The learned Senior Counsel appearing for the petitioners cited a few judgments of the Apex Court to contend that their present writ petitions are not barred by res judicata and that the orders passed in the earlier batch of writ petitions to which they were parties, did not finally determine their rights. Per contra, Mr. V.T.Gopalan, learned Senior Counsel for the Service Commission, invited my attention to several other decisions in support of his contention that the petitioners are not entitled to reopen the issues already concluded or ought and might have been concluded.

43. But I do not think it necessary to delve deep into the issue of res judicata and finality. The principle of res judicata is primarily based upon (i) the cause of action (ii) the matters directly and substantially in issue and (iii) the matters might and ought to have been made a ground of attack or defence.

44. Keeping the above principles in mind, now let us see what had happened (i) before the previous batch of writ petitions (ii) in the previous batch of writ petitions and (iii) after the previous batch of writ petitions. Admittedly, the Service Commission constituted an Expert Committee of 23 Experts, in pursuance of the orders of this Court. The petitioners in the previous batches of writ petitions identified 40 questions and the Expert Committee went into (i) the questions, (ii) the key answers, (iii) the correct answers and (iv) the answers provided by the candidates.

45. The report of the Expert Committee produced before me, shows the following:-

Question No.

Original Key Answer

Expert Committee's Answer

7

C

C

40

A

B

45

A

A/B

52

D

C

57

A

B

62

C

C

68

D

A

79

B

B

82

C

A

87

ALL

A/D

88

C

C

89

ALL

CORRECT ANSWER NOT PROVIDED

92

C

C

97

B

B

98

ALL

CORRECT ANSWER CODE NOT GIVEN IN THE CHOICES

101

C

C

102

D

THE QUESTION IS WRONG

103

D

B

108

D

D

111

ALL

C

113

B

B

114

C

C

116

A

B

123

C

C

127

C

B

130

A

D

135

D

D

137

C

C

140

B

B

144

D

B

154

A

A

157

ALL

CORRECT ANSWER NOT FURNISHED IN THE FOUR OPTIONS

169

C

C

170

B

B

173

C

A

174

A

C

176

B

MARKS MAY BE AWARDED TO THOSE WHO HAVE ATTENDED THE QUESTION

179

B

B

186

B

AMONG THE 4 CHOICES OF ANSWERS, B IS THE ANSWER

199

B

B

The above table demonstrates that out of 40 questions disputed by the petitioners in the first batch of writ petitions, the Expert Committee found that the dispute with regard to at least 21 questions, was justified, in the sense that the answers provided by the Expert Committee were at variance with the original

key answers or the questions themselves were found to be wrong. Therefore what the Expert Committee chose to do with these disputed questions assumes significance.

46. Therefore let us now see what the Expert Committee had done, after arriving at the correct answers to the disputed questions. From the tabulation furnished by the Public Service Commission, the following picture would emerge:

(a) Some candidates (parties to the previous writ petitions), have secured more marks in the preliminary examination, than they were declared to have secured earlier. But the marks did not reach the cut off level.

(b) Some candidates (parties to the previous writ petitions), have secured more marks in the preliminary examination, than they were declared to have secured earlier. The marks touched the cut off marks and their answer papers in the main written examination were evaluated.

(c) Some candidates (parties to the previous writ petitions), have secured less marks in the preliminary examination, than they were declared to have secured earlier.

47. It is seen from the statement furnished by the Service Commission that both sets of candidates, viz., those who secured more marks and those who secured less marks, after the Expert Committee's evaluation, have suffered one common injury, solely on account of the Expert Committee applying answers which it thought to be the correct answers, despite the key answers being different. These candidates have been awarded marks for questions in respect of which the answers given by them tallied with the answers approved by the Expert Committee. So far so good. But the Expert Committee also reduced the marks already awarded to these candidates, if the answers given by them tallied with the key answers and not with the answers provided by the Expert Committee.

48. Therefore, the petitioners who have suffered a reduction in the marks, on account of the valuation of the Expert Committee, got a cause of action which was not only subsequent but also different from the cause of action on the basis of which they came up with the previous batch of writ petitions. Whether the Expert Committee can reduce the marks only for those who approached the Court, despite their answers tallying with the key answers, is an issue which was neither directly nor substantially in issue in the previous batch of writ petitions. I am unable to find from the orders passed in both the previous batches of writ petitions, any intention on the part of the learned Judges that the benefit conferred in the form of a reference to an Expert Committee would also carry with it, a detriment, as two sides of the same coin.

49. As we have seen earlier, about 85,000 candidates participated in the preliminary examination. The answer papers of 125 candidates, who filed writ petitions alone were subjected to an evaluation by the Expert Committee. The answer papers of more than about 84,000 candidates, have been valued only on

the basis of key answers. These 125 candidates who took the initiative to come to Court, cannot be deprived of the marks that they would otherwise be entitled to, on the basis of the key answers, on par with the entire lot of 84,000 candidates. Since the Expert Committee has reduced marks to some of these candidates, the present writ petitions filed by them, challenging the evaluation made by the Expert Committee, cannot be said to be barred by res judicata.

50. Now let us see, as test cases, as to how some of these candidates have suffered by the evaluation of the Expert Committee.

(1) R.Govindasamy, the petitioner in W.P. No. 29832 of 2008, belonging to the Scheduled Tribe, with Registration No. 00118269, was awarded 151.5 marks in the first instance. After the evaluation by the Expert Committee, he had secured 154.5 marks. The cut off marks for Scheduled Tribe candidates was 156. Thus he has narrowly missed the selection in the preliminary examination, by just 1.5 marks. Admittedly, there were 200 questions in the preliminary examination, each carrying 1.5 marks, with the total maximum marks fixed at 300. Therefore this candidate has lost the selection in the preliminary examination by just 1.5 marks or to put it alternatively, by one question.

In the tabulation given by the Service Commission, it is seen that for question No. 111, he was awarded marks in the first instance. But the mark (1.5 marks) was reduced by the Expert Committee since his answer did not tally with the answer provided by the Expert Committee. If the Expert Committee had not reduced the mark for question No. 111, this petitioner would have been eligible to have his main examination answer papers evaluated.

(2) K.Dakshinamoorthy, the petitioner in W.P. No. 30554 of 2008, bearing Registration No. 00113063, had secured the same marks viz., 198, both in the first valuation and in the valuation by the Expert Committee. He belongs to the Backward Community for whom the cut off marks was 201. In other words, he had missed the selection in the preliminary examination by just 3 marks, which if converted into number of questions, would be just two questions.

It is seen from the tabulation given by the TNPSC that the Expert Committee reduced marks for question Nos. 57 and 174, though the Expert Committee awarded marks for question Nos. 130 and 173. Since marks were reduced for two questions, but awarded for two other questions, his final tally stayed at 198. But the reduction of marks for question Nos. 57 and 174, was without justification, as the answers given by him tallied with the original key answers.

(3) P.Mahalakshmi, petitioner in W.P. No. 30740 of 2008, belonging to the Scheduled Caste (woman), with Registration No. 01012153, had secured 175.5 marks in the first valuation and 171 marks after the evaluation by the Expert Committee. The cut off marks for this category was 178.5.

As in the previous cases, the Expert Committee has reduced marks in respect of 5 questions viz., question Nos. 57, 68, 103, 111 and 174, despite her answers

tallying with the original key answers. If the marks for these 5 questions had not been reduced, her total would have been increased by 7.5 marks (5 questions x 1.5), taking into 178.5 (171 + 7.5).

(4) M.Senthilkumar, the petitioner in W.P.Nos.30742 and 30743 of 2008, belonging to the Backward Community with Registration No. 00168016, secured 198 marks in the first valuation, which got reduced to 196.5 after the valuation by the Expert Committee. The cut off marks for this category was 201. In other words, he missed the selection in the preliminary examination by just 4.5 marks (or by 3 questions).

In the tabulation sheet furnished by the Tamil Nadu Public Service Commission, it is seen that the marks already awarded to him for question Nos. 57, 68, 87, 103 and 111 were reduced by the Expert Committee, though the Committee awarded marks for 4 other questions. Out of the 5 questions for which marks were reduced by the Expert Committee, 3 questions contained answers which tallied with the original key answers. Therefore if marks had not been reduced, this candidate would have been selected in the preliminary examination.

(5) V.Balasubramaniam, the petitioner in W.P. No. 30770 of 2008, belonging to the General category, with Registration No. 00108372 secured 205.5 marks in the first valuation, which got increased to 208.5 after the valuation by the Expert Committee. The cut off marks for this category was 210. In other words, he missed the selection in the preliminary examination by just 1.5 marks (or by one question).

In the tabulation sheet furnished by the Tamil Nadu Public Service Commission, it is seen that the marks already awarded to him for question Nos. 40 and 57 were reduced, despite his answers tallying with the original key answers. If it had not been reduced, he would have secured 211.5, which is more than the cut of marks.

(6) M.A.Ravi Varma, petitioner in W.P. No. 30795 of 2008, belonging to the Scheduled Caste, with Registration No. 00158071, secured 192 marks, both before and after the evaluation by the Expert Committee. But it is seen from the tabulation sheet that he was awarded marks for 2 questions and reduced marks for 2 questions, resulting in the total tally remaining the same. The cut off marks for his category was 195 and he missed the selection by 3 marks (2 questions).

In the tabulation sheet furnished by the Service Commission, it is seen that the marks awarded to him for question Nos. 111 and 144, were reduced despite the finding of the Expert Committee that question No. 111 was a wrong question and for question No. 144, his answer tallied with the key answer. Therefore the reduction of marks for two questions was improper. With these two questions, he would have reached the cut off marks.

(7) D. Ganesh Babu, the petitioner in W.P. No. 989 of 2009, belonging to the Backward Community, with Registration No. 00116180, secured 196.5 in the first

valuation and 192 marks after the evaluation by the Expert Committee. The cut off mark for his category was 201.

It is seen from the tabulation sheet furnished by the Service Commission that he was awarded marks for 3 questions, but the marks already awarded for 6 questions got reduced. The marks already awarded for question Nos. 40, 57, 68, 103 and 111 ought not to have been cut, since his answers tallied with the key answers. Therefore if the marks for these 5 questions had not been reduced, his tally would have been 204, which is more than the cut off marks.

51. With the position emerging as above, the learned Senior Counsel appearing for the petitioners contended that the entire selection process should be set at naught, in view of the fact that 40 out of 200 questions became disputed questions and the dispute was found to be justified in respect of 21 out of those 40 questions, in the light of the report of the Expert Committee. Apart from these 21 questions found by the Expert Committee to be wrong either by the questions themselves or by the key answers provided thereto, the petitioners have found fault with the answers provided by the Expert Committee itself in respect of a few questions. For example, question No. 57 and the choices given thereunder were as follows:

The Founder of the Newspaper "The Hindu" was:

- A) S. Subramania Iyer B) Kasturi Ranga Iyengar
- C) S. Satyamurthy D) T.K. Madhavan

The Expert Committee chose the answer "Kasturi Ranga Iyengar", though the correct answer appears to be G.Subramania Iyer. The Service Commission attempted to justify the answer given by the Expert Committee on the ground of some source material and on the contention that it was a weekly when it was founded by G.Subramania Iyer and that as a newspaper it was founded by Kasturi Ranga Iyengar.

52. Therefore it is clear that a lot of questions were either disputable or debatable. With a lot of candidates losing out in the race by very few marks, there is no doubt that these questions have ultimately played a very crucial role in either disqualifying many of them or in qualifying many of them. Therefore I cannot reject the contention of the petitioners as thoroughly unjustified. The Service Commission was not, after all, conducting "kaun banega crorepati", but was conducting a highly competitive examination for selection of candidates for Group-I services of the State.

53. But it is too late in the day to cancel the entire selection process, on this score. Even in the first batch of cases, the petitioners ought to have made appropriate prayers. The petitioners should have prayed for (i) the appointment of an Expert Committee just to go into the questions and choices given in the preliminary examination (ii) identification of wrong questions and/or wrong key answers and (iii) a revaluation of the answer papers of all the participants in the

preliminary examination. Such a prayer would have resulted in the wrong questions being eschewed and the wrong answers being corrected. This process would have placed all the participants in a level playing field, with the answer papers of all candidates being evaluated only in respect of right questions together with right answers. But unfortunately, the petitioners failed to seek such reliefs in the first round of litigation. They were happy with the constitution of an Expert Committee and the examination of their grievances alone by the Expert Committee on an individual basis. Therefore the petitioners cannot now seek to cancel the entire selection process, on the basis of (i) the finding by the Expert Committee in respect of 21 questions and (ii) the answers of the Expert Committee also becoming debatable.

54. It is not on account of any sympathy for the Service Commission that I am unable to agree with the prayer of the petitioners to cancel the selection. The first lap of the race was run by 85,000 candidates, out of whom more than about 1700 got short listed for the main event and about 172 are now waiting in the wings with high hopes. The cancellation of the entire process would be highly frustrating and demoralising for the whole lot of candidates, except perhaps for those who ran from Court to Court, apart from running the race. After all, those candidates have not committed any sin. It is only out of a concern for those unemployed lot that I do not wish to aggravate their agony by setting aside the entire selection process and asking them to run the race all over again.

55. Though I cannot and I do not wish to set aside the entire selection process on account of 21 questions out of 200 questions being found by the Expert Committee itself to be faulted, I cannot also non-suit those belonging to the third category viz., persons who came to Court earlier and who were found by the Expert Committee to have not secured the cut off marks. As I have demonstrated earlier, the third category of persons have suffered at the hands of the Expert Committee, on account of the marks being reduced in respect of questions for which their answers tallied with the original key answers, but not with the answers decided by the Expert Committee.

56. Once these third category of candidates are found to have made out a case, then the next question to be addressed is as to what is the relief that could be granted to them. As found from the tabulation sheet given earlier, if the Expert Committee had not reduced marks for these candidates, they would have become eligible to have their answer sheets in the main examination evaluated by the examiners. This in my considered view, is the relief that they are entitled to at the most. If upon valuation of their answer papers in the main written examination, they are found to have qualified, they would then be entitled to be invited for the oral interview. If not, they will also be out of the race.

57. Coming to the impleading petitions, it is seen that they are filed by persons who had secured sufficiently good marks, so as to make it to the winning post. But unfortunately for them, the Tamil Nadu Public Service Commission has not yet published the final list of selected candidates. The impleading petitioners

became aware of the marks secured by them, through the Website of the Service Commission. This by itself had not conferred any right upon them. It is well settled that even the inclusion of the name of a person in the select list of candidates, does not confer a right upon him to be appointed. Therefore, the impleading petitioners, who have not yet been included in the select list of candidates, cannot seek to implead themselves in these writ petitions.

58. Therefore, in fine, all the writ petitions and miscellaneous petitions are disposed of, on the following lines:

(i) The writ petitions W.P.(MD)Nos. 11731 of 2008, 12390 of 2008 and 63 of 2009 and W.P. Nos. 30738 of 2008, 30739 of 2008, 30744 of 2008, 450 of 2009 and 787 of 2009 filed by candidates who have come up for the first time before Court, irrespective of whether their challenge is to the preliminary examination or the main written examination, are dismissed. No costs.

(ii) The writ petitions W.P.Nos. 29831 of 2008, 30794 of 2008, 30796 of 2008, 30798 of 2008 and 3130 of 2009 filed by candidates who came to Court earlier, who wrote the main written examination by virtue of the orders of this Court and who got qualified in the preliminary examination by the evaluation of the Expert Committee, but who failed in the main written examination, are also dismissed. W.P.Nos. 30770 and 30771 of 2008 are also dismissed in so far as 2 petitioners namely, M.Selvaraj and V.Karthikeyan are concerned. No costs.

(iii) The writ petitions W.P.Nos. 29832 of 2008, 30554 of 2008, 30740 of 2008, 30742 of 2008, 30743 of 2008, 30795 of 2008, 30900 of 2008, 989 of 2009, 3131 of 2009, W.P.(MD) No. 231 of 2009 filed by candidates belonging to category-3, namely those who came to Court earlier and who are now failed by the Expert Committee in the preliminary examination, are allowed partly to the extent indicated hereunder. W.P.Nos. 30770 and 30771 of 2008 are also allowed to the same extent in so far as the petitioners V. Balasubramaniam, C. Sanghu and V. Arivukkanan, alone are concerned. That is, there will be a limited direction to the Tamil Nadu Public Service Commission to evaluate the answer papers of these candidates in the main written examination, in the same manner as they have done for others. If after such evaluation, any of these candidates are found to have qualified in the main written examination, they may also be called for oral interview. It is needless to say that if any of them get selected ultimately in the oral interview, his/her name shall be included in the select list of candidates. The Public Service Commission is directed to complete the process of valuation of the answer papers of these candidates in the main written examination, within a period of 15 days. Thereafter, the oral interview shall be held within a week thereof, if any of them is selected in the evaluation. Within a further period of one week, the final list of selected candidates may be released by the Service Commission. The benefit of this order is also restricted only to the third category of candidates in the present batch of writ petitions alone and the benefit of this order shall not be available to the remaining candidates who came earlier but who have not come now to Court, since they are guilty of delay and laches and

of allowing things to drift away.

(iv) All the impleading petitions are dismissed.