
(1999) 07 MAD CK 0108

In the Madras High Court

Case No : Writ Petition No. 18542 of 1998

S. Thiruvaranga Ramalingam and Others

APPELLANT

Vs

Tamil Nadu Public Service Commission and Another

RESPONDENT

Date of Decision : 15-07-1999

Acts Referred:

Administrative Tribunals Act, 1985 — Section 9
Constitution of India, 1950 — Article 14, 309

Citation : (1999) 07 MAD CK 0108

Hon'ble Judges : A.C. Agarwal, C.J;K. Sampath, J

Bench : Division Bench

Advocate : Nalini Chidambaram for S. Silambanan, for the Appellant; V.T. Gopalan for Patty B. Jeganathan, for the Respondent

Final Decision : Dismissed

Judgement

1. The prayer in the writ petition is for a certiorarified mandamus to call for the records of the second Respondent Tamil Nadu Administrative

Tribunal relating to the order dated 10.11.1998 passed in O.A. No. 8966 of 1998, quash the same and direct the first Respondent Tamil Nadu

Public Service Commission to conduct the Group-1 Services preliminary examination afresh by having a common test without any optional

subjects after the preliminary examinations conducted by the first Respondent for Group-1 Services in the State of Tamil Nadu on 7.6.1998 or set

aside on the following allegations.

2. The Petitioners who are 60 in number applied for direct recruitment to the posts of Deputy Collector, Deputy Superintendent of Police, etc.,

included in Group-1 services pursuant to a notification dated 7.1.1998 and appeared in the preliminary examination conducted on 7.6.1998. The

results were published on 26.9.1998. The Petitioners found that they had not been selected for the main examination. They made enquires and

learnt that out of 840 candidates selected for the main examination approximately 600 students had chosen Tamil Language and Literature as their

optional subject. They also learnt that out of 67,000 who had applied for the examination 45,000 appeared for the examination and out of 45,000

candidates 3,750 candidates had opted for Tamil Language and literature. The selection of 600 students out of these 3,750 worked out to 16%.

Applicants who had opted for other subjects did not get selected 6,000 students opted for Commerce, 3,000 for Economics, 2,750 for

Mathematics, 2,000 for Physics, 850 for Management and none get selected. In Geography, English and Philosophy two in each got selected. Out

of 8,700 candidates who opted for History only 49 got selected. In Sociology 35 out of 900 got selected. There had been a lopsided selection.

3. It would thus be apparent that the applicants who had opted for Tamil Language and Literature had gained undue advantage in the selection

process. Apparently the question papers in Tamil Language and Literature were deliberately made easy to enable more of those candidates to get

selected for the main examination. Under these circumstances the Petitioners approached the State Administrative Tribunal u/s 9 of the

Administrative Tribunals Act seeking to set aside the Group-1 Services preliminary examination to consequently forbear the first Respondent from

conducting the main examination for Group-1 services with regard to the preliminary examination conducted by it on 7.6.1998 and to direct it to

conduct Group-1 Services Preliminary examination afresh by having a common test and without any optional subject. The Petitioners also sought

for an interim injunction restraining the first Respondent from conducting the main examination pending disposal of the original application.

4. The tribunal by its order dated 10.11.1998 after observing that the grievance of the Petitioners was not without substance dismissed the original

application on the ground that the main relief sought for by the Petitioners partook the character of Public Interest Litigation which was beyond the

powers of the Tribunal. The writ petition came to be filed in the said circumstances.

5. In the grounds it is stated as follows:

The Tribunal failed to see that the Petitioners were not strangers, but were aggrieved by the arbitrary selection process adopted for selecting candidates for Group-I Services Final Exam and the Original Application was not filed as a Public Interest Litigation. All the candidates who had appeared for the preliminary examination but were not selected for the final examination had filed it. It was not a Public Interest Litigation. The only argument advanced on behalf of the first Respondent was that a candidate had been given the freedom to choose any optional subject and the Petitioners could have chosen Tamil Language and Literature as their optional subject and in those circumstances the plea of violation of Article 14 of the Constitution could not be sustained. The Tribunal failed to note that given a choice of 28 subjects, candidates could be expected to choose the optional subject in which they had proficiency and they could not be expected to choose Tamil Language and Literature as the optional subject. Once the choice was wide open, there should be equality of opportunity. Again while 150 marks are allotted for General Studies common to all candidates, 300 marks are allotted for optional subjects and for the 28 optional subjects different question papers were set and there could not have been any uniform standard for testing the ability of the candidates. There was no comparable standards on the basis of which the relative merits of the students could be judged. It would be wholly unjust to select the candidates by assessing their relative merits with reference to the marks obtained by them, not at the same qualifying examination where standard of judging would be uniform but at different qualifying examinations with 28 different optional subjects where the standard of judging would necessarily vary and not be the same. This is clearly violative of Article 14 and the concept of equality enshrined in the Constitution. When the Tribunal had appreciated that the Tamil Language and Literature students had distinct advantage over the other candidates who had opted for other subjects, ought to have held that there was denial of equality and equal opportunity before law. The Tribunal ought to have directed that the selection for main examination should have been based on evaluation of relative merit based on a common test. The Tribunal should have appreciated that the UPSC is following the same pattern as TNPSC for preliminary examination, but is giving scaling down of marks in various subjects to give equality of opportunity to all the students in order to achieve

comparable standard in selection process even where candidates take varied optional subjects. The first Respondent should have adopted the same procedure. Until 1992 there was only one common test.

6. A counter has been filed on behalf of the first Respondent by its Secretary and it is to the following effect:

The preliminary examination is meant to serve as a screening test only. The marks obtained in the preliminary examination by the candidates who

are declared qualified for admission to the main written examination will not be counted for determining their final order of merit. The number of

candidates to be admitted to the main written examination would be approximately 10 times the number of candidates to be recruited having

regard to the rule of reservation of appointments. The optional subject for which the maximum marks fixed is 450 need not necessarily be the

subject the candidates have studied in their Degree/P.G. Degree. They can choose any one of the 28 subjects mentioned in notification. The

number of questions to be answered in the General Studies paper is 150 and one mark is allocated to each question. The number of questions to

be answered in all the optional subjects excepting Mathematics is 120 and the marks allocated to each question is 2.5. The questions both in the

General studies and in the optional subjects are all objective type and they have to be answered in the optional Mark Reader (OMR), by shading

the boxes given therein using ball point pen. The answered OMR sheets are valued by scanning through scanner in the first Respondent

Commission and the marks obtained by the candidates are recorded in the computer. On the basis of the marks obtained both in the General

studies and in the optional subjects a ranking list is drawn, as per the marks obtained by the candidates. Based on the ranks and also having regard

to the rule of appointments required number of candidates at the ratio of 1:10, that is, at the rate of 10 candidates for one vacancy are selected for

admission to the main written examination. The number of vacancies, the number of candidates who appeared for each of the optional subjects and

the number of candidates who got selected for admission to the main written examination are furnished in the Annexure-1. The applicants did not

qualify for selection for admission to the main written examination. Of the 60 Petitioners Serial No. 40 Thiru R. Sam Edison had initially filed a writ

petition, then withdrawn it and filed an Original Application in O.A. No. 8435 of 1998 before the Tamil Nadu Administrative Tribunal along with

three others and the same is still pending. He had also filed another Original Application in O.A. No. 8966 of 1998 before the said Tribunal in the

same matter along with 59 others and the same having been dismissed the present writ petition has been filed. Serial No. 53 K.V.S. Kumar and

Serial No. 24 N. Navin Sona have also filed an Original Application in O.A. No. 8435 of 1998 along with R. Sam Edison and the same is still

pending. The preliminary examination was conducted on 7.6.1998 and the results were announced by publication in the dailies on 26.9.1998. The

details regarding the number of candidates who appeared for the subjects and the number of candidates who got selected are furnished in

Annexure-1. The number of candidates who opted for Tamil Language and Literature and got selected was 595 being 16% of the candidates who

appeared in the said discipline. The percentage of the same as against the total candidates who appeared for the preliminary examination in all

subjects is 1.31%. The first Respondent Commission has nothing to do with regard to the selection of optional subjects by the candidates. It is

their free will and wish. There is no stipulation that the optional subject to be chosen by the candidates should be one which they have studied at

the Degree/Post Graduate Degree level. Out of 595 candidates who got selected only 104 were Tamil Literature graduates and the rest were

graduates in various other subjects, as set out in Annexure-II. The Commission has always insisted that the question papers be set strictly

according to the standard specified in the syllabus published. The Commission cannot dictate to the examiners who set the question papers to

either set the question papers easily or "toughly", as it would amount to interference in the activities of the experts in the fields. The question papers

thus set by the experts in the fields concerned for each subject are moderated by a separate set of independent experts. At least three or more sets

of moderated question papers are got prepared and kept in separate sealed covers which are not perused or accessed at any stage by anybody

else even by the higher-ups of the Commission's office. From among the sealed covers, cover is picked out at random and sent for printing. Equal

weightage is given to all the subjects and no discrimination in setting up question paper for particular subject is shown by the Commission. The

contents of the question papers sent to the printing would be known to the Commission only on the date of examination, that too some time after the commencement of the examination.

7. Steps are also taken at every stage through manual and cross verification to see that no mistakes occurred in scanning the answers. After feeding

the key answers in the OMR machine, print outs are taken and verified to ensure that the key to the answers are fed into the OMR machine

correctly. No malpractice of any kind can take place either in the setting of question papers or in the valuation. All the activities of the first

Respondent Commission would be based on records which are subject to judicial scrutiny at any time. The contention of the Petitioners that the

questions were deliberately made easy in respect of Tamil Language and Literature paper in order to enable more candidates who had chosen

Tamil Language and Literature to get selected is baseless, imaginary and untenable. The writ petition is the outcome of their frustration due to non-

selection. Again marks obtained by the candidates in the optional subjects alone are not the deciding factor for selection to the admission for the

main written examination. No doubt, in O.A. No. 8234 of 1998 filed by a similarly placed candidate Thiru R. Raja the Tribunal had passed interim

orders permitting him to sit for the main written examination at the same time withholding of the result till the disposal of the original application, it

cannot be said that similar relief should be given to the Petitioners also. All candidates were given equal opportunity to take part in the examination

and no discrimination was shown among the candidates. Again, the candidates who had sent the application and taken the examination without any

protest at the stage of sending their application or at the stage of taking part in the examination cannot blame the system merely because that they

have not been selected and this is clearly an after thought. The Tribunal was satisfied that the first Respondent Commission had acted fairly and

strictly according to the rules did not give any orders adverse to the first Respondent Commission. The practice has been in vogue since 1995. No

undue preference was shown to the Tamil Language and Literature candidates. No hidden classification between Tamil Language and Literature

candidates and Non-Tamil Language and Literature candidates was made. There are no merits in the writ petition.

8. An additional counter has been filed by the first Respondent. In the additional counter it is stated that the Original Application No. 8435 of 1998

filed by applicants R. Sam Edison, K.V.S. Kumar and N. Navin Sons was dismissed based on the orders passed in O.A. No. 8966 of 1998

which is impugned in the present writ petition. O.A. No. 8234 of 1998 filed by Thiru Raja was also dismissed on 30.11.1998 at its counsel's

request as the application and the facts therein were similar to those in O.A. No. 8966 of 1998.

9. Mrs. Nalini Chidambaram learned Senior Counsel appearing for the writ Petitioners submitted that the records clearly disclosed a bias for Tamil

Language and Literature, that the first Respondent must have followed the moderation system practiced by the UPSC and if it had been done

many of the Petitioners would have secured entry for appearing for the final examination. The learned Senior Counsel made pointed reference to

the figures relating to the number of candidates who opted for Tamil Language and Literature as opposed to the candidates who had opted for

other disciplines. The learned Senior Counsel also relied on the judgments of the Rajasthan High Court in W.P. Nos. 2684 of 1994 etc., rendered

on 19.8.1994 upholding moderation and normalisation and Dinesh Kumar and Others Vs. Motilal Nehru Medical College, Allahabad and Others,

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10. Mr. V.T. Gopalan learned Senior Counsel for the first Respondent submitted that there was no hank pank about the procedure that the

candidates were at liberty to chose whatever subjects they wanted out of 28 optional offered. Having chosen their own subjects, having taken the

preliminary examination and having failed they cannot now turn round and blame the system. According to the learned Senior Counsel nothing

prevented the candidates from opting for Tamil Language and Literature and in fact not all the candidates who opted for Tamil Language and

Literature had studied Tamil Language and Literature as the optional subject in their Degree or P.G. Degree courses. The learned Senior Counsel

further submitted that out of nearly 3, 712 candidates who had opted for Tamil Language and Literature and appeared, only 595 were successful a

bare 16%. The system regarding the setting of question papers, answering method and valuation of marks has been made fool proof and absolutely

no bias or preference to Tamil Language and Literature could be spelt out. The learned Senior Counsel also submitted that the notification had not been challenged and the writ petition is therefore to be dismissed. The learned Counsel submitted that unless arbitrariness is writ large or mala fides attributed the courts cannot interfere. The Courts have to show reference to legislative wisdom. The learned Senior Counsel relied on the following judgments in support of his various contentions.

- (i) Om Prakash Shukla Vs. Akhilesh Kumar Shukla and Others, .
- (ii) Mohinder Sain Garg v. State of Punjab and Ors. (1991) 1 SLR 546.
- (iii) Anzar Ahmed Vs. State of Bihar and others, .
- (iv) Madan Lal and Others Vs. State of Jammu and Kashmir and Others, .
- (v) Secy. (Health) Deptt. of Health and F.W. and Another Vs. Dr. Anita Puri and Others, .
- (vi) Kuldip Chand Vs. State of H.P. and others, and
- (vii) M. Palanisamy v. The Tamil Nadu Public Service Commission, Rep. by its Secretary 1997 (III) CTC 698.

11. Mrs. Nalini Chidambaram learned Senior Counsel in reply submitted that there is no question of estoppel as the Petitioners did not know at the stage of notification whether the authorities are going to scale down or not, that reasonable opportunity had been denied to the Petitioners violating Article 14, that even if they are to take the subsequent examinations successfully 8 to 9 years of seniority would be lost, that the Rajasthan decision should be followed and scaling down done and the Petitioners given suitable relief. The learned Senior Counsel also relied on the order of the Supreme Court in SLP No. 15251 of 1986 dated 11.3.1987 in Surajit Kumar Das etc. v. Chairman, U.P.S.C. and Anr. approving moderation of marks adopted and followed by the U.P.S.C. in evaluating the performance of the candidates appearing for the Civil Services Examination as not vitiated by arbitrariness or illegality of any kind.

12. The Petitioners had opted for subjects other than Tamil Language and Literature and failed in their bid to qualify for taking the main examination. May be the notification did not specify about scaling or moderation and normalisation so called. If there had been no reference that would only mean that it was not there. Therefore for the Petitioners to say that

they did not know about there not being moderation and consequent normalisation would be meaningless. This is particularly so when after they had taken the examinations in their own choice of optional subjects. They are indeed estopped from putting forward this plea.

13. In *Om Prakash Shukla Vs. Akhilesh Kumar Shukla and Others*, the Petitioner before the Supreme Court challenged the validity of competitive examination after appearing for the examination without protest. He filed the petition only after he had perhaps realised that he would not succeed in the examination. The Supreme Court observed that the Petitioners was not entitled to the relief of quashing the examination.

14. In *M. Palanisamy v. The Tamil Nadu Public Service Commission, rep. by its Secretary 1997 (III) CTC 698* a Division Bench of this Court under similar circumstances as in the case before the Supreme Court refused to quash the examination already conducted. In the course of the judgment the Division Bench in paragraphs-19 and 20 observed as follows:

Para-19: The Petitioners knowing full well the procedure of selection, appeared for the written examination and he was aware that the candidates will be called for viva voce examination in the ratio of 1:3. If the Petitioner was really serious about it i.e., the procedure according to him was illegal or contrary to the rules, he could have challenged the procedure contained in paragraph-8 of the memorandum above stated, and could have urged all the contentions that are sought to be urged in this writ petition.

Para-20: There are two impediments in the way of the writ Petitioner, viz., (i) he has not passed in two papers. Unless he was successful in all the four papers, securing minimum marks prescribed for pass, he was not at all eligible to be called for viva voce examination, irrespective of the ratio, whether it is 1:3 or 1:6; and (ii) having appeared for the written examination and failed, no relief can be granted to the Petitioner....

15. It is also seen from the counter filed on behalf of the first Respondent that a fool proof method has been evolved in the setting up of question papers by experts again pruned by another set of experts. It will be worthwhile to extract paragraphs-15(3) and 15(4) of the counter.

Para-15(3): It is also submitted that the Commission has never had the intention of setting question papers of varying standards on the other hand it insists that the question papers be set strictly according to the standard specified

in the syllabus which is published. The Commission cannot dictate the examiners, who are invited for setting the question papers, to set the question papers either easily or toughly since the same would amount to interference in the activities of the experts in the fields. The question papers thus set by the experts in the fields concerned for each subjects are moderated by a separate set of independent experts. Thus atleast three or more, sets of moderate question papers are got prepared and kept in separate sealed covers which are not perused or accessed at any stage by anybody else even by the higher-ups of the Commission's office. From among the sealed covers, a cover is picked out at random and sent for printing. The same equal weightage is given for all the subjects and no discrimination in setting up question paper for a particular subject is shown by the Commission. The contents of the question papers which are sent for printing would be known to the Commission only on the date of examination, that too after some time after the commencement of the examination.

Para-15(4): The candidates for the preliminary examination for all the recruitment's conducted by the Commission are required to answer the papers in the General Studies and in the optional subjects wherever optional subjects are prescribed for preliminary examination in OMR sheets by shading the relevant boxes therein and they are evaluated by scanning through OMR machines in the Tamil Nadu Public Service Commission and marks thus secured are calculated automatically by computers directly. Necessary steps are also taken at every stage through manual cross verification to see that no mistake occurs in scanning the answers. Further after feeding the key answers in the OMR machines, print outs are taken and verified to ensure that the key to the answers are fed into the OMR machines correctly. In view of the procedure followed by the Commission no malpractice of any kind can take place either in the setting of question papers or in the evaluation. Further, the Commission being the recruiting agency entrusted with the job of selecting suitable persons for appointment in public service cannot resort to such kind of things since all the activities of the Commission would be based on records which are subject to judicial scrutiny at any time. As such the contention of the applicants that the questions were deliberately made easy in respect of the question paper

in Tamil Language and Literature in order to enable more

candidates who had chosen the said subject to get selected is baseless and an imaginary one and hence it is not tenable. Out of frustration due to

the non-selection for admission to the main written examination, the Petitioners who have appeared for the preliminary examination and did not

reach their turn for selection on the basis of the marks obtained by them therein, have chosen to blame the Commission.

The method adopted by the first Respondent cannot be faulted by the Court. The first Respondent Commission knows its job. Unless mala fides,

bias and authorities are alleged and substantiated the courts will be loathe to step in.

16. In *Minor A. Peeriakaruppan and Sobha Joseph Vs. State of Tamil Nadu and Others*, the Supreme Court refused to uphold the plea of mala

fides on the basis of mere probabilities though in that case according to the Supreme Court, the circumstances were undoubtedly disturbing.

16(a). In *Ajay Hasia and Others Vs. Khalid Mujib Sehravardi and Others*, the chart submitted, according to the Supreme Court, did create a

suspicion that the marks awarded at the viva voce examination might have been manipulated with a view of favouring the candidates who ultimately

came to be selected, but "suspicion cannot take the place of proof and the plea of mala fides cannot be held to be established.

16(b) In *Lila Dhar Vs. State of Rajasthan and Others*, the Supreme Court observed as follows:

Ordinarily recruitment to public services is regulated by rules made under proviso to Article 309 of the Constitution and we would be usurping a

function which is not ours, if we try to redetermine the appropriate method of selection and the relative weight to be attached to the various tests. If

we do that we would be rewriting the rules.... No doubt the Supreme Court went on to say but we guard ourselves against being understood as

saying that we would not interfere even in cases of proven or obvious oblique motive.

17. These are matters for experts and as observed by the Supreme Court in *Anzar Ahmed Vs. State of Bihar and others*,

The Court does not possess the necessary equipment and it would not be right for the Court to pronounce upon it, unless to use the words of

Chinnappa Reddy, J. In Lila Dhar case "exaggerated weight has been given with proven or obvious oblique motives".

18. In Secy. (Health) Deptt. of Health and F.W. and Another Vs. Dr. Anita Puri and Others, the Supreme Court had this to say that when the

Public Service Commission is required to select some candidates out of a number of applicants for certain posts, the sole authority and discretion is

vested with the Commission. The Commission is required to evolve the relative fitness and merit of the candidate and then select candidates in

accordance with such evaluation. If for that purpose the Commission prescribes marks for different facets and then evaluates the merit, the process

of evaluation cannot be considered to be arbitrary unless marks allotted for a particular facet is on the face of it excessive, Weightage to be given

to different facets of a candidate as well as to the viva voce from service to service depending upon the requirement of the service itself. It is too

well settled that when a selection is made by an expert body like the Public Service Commission which is also advised by experts having technical

experience and high academic qualification in the field for which the selection is to be made, the courts should be slow to interfere with the opinion

expressed by experts unless allegations of mala fide are made and established. It would be prudent and safe for the courts to leave the decisions of

such matters to the experts who are most familiar with the problems they face than the courts.

19. In Madan Lal and Others Vs. State of Jammu and Kashmir and Others, it has been held as follows:

Unless there is anything to show that the entire selection process was vitiated on account of mala fides or bias or that the interview committee

members had acted with an ulterior motive from the very beginning and the whole selection process was a camouflage the selection process cannot

be questioned.

Indeed there are no allegations of arbitrariness and mala fides made in the present writ petition except saying that the question paper in Tamil

Language and Literature had been deliberately set easy to give undue advantage to the students opting for the said subject. There are no materials

to substantiate this allegation. It is claimed that the percentage of success in this discipline is 70% in the total selection. May be it is so but it should

not be lost sight of that only 16% of the total number of candidates who opted for Tamil Language and Literature were successful. The figures also show that not all those who opted for Tamil were Tamil Literature students. Nothing prevented the Petitioners from opting for Tamil Language and literature. It is seen that a whopping 6,000 candidates had opted for Commerce. The percentage of success in Commerce was poor. In our view the system cannot be faulted for the short-comings or inadequacies of the candidates. As already observed for all practical purpose it should be assumed that an expert body like the first Respondent know its job and the courts will not lightly interfere.

20. In *Kuldip Chand Vs. State of H.P. and others*, the Supreme Court has observed as follows:

The decision of the Selection Committee can be interfered with only on limited grounds, such as illegality or patent material irregularity in the constitution of the Committee or its procedure vitiating the selection or proved mala fides affecting the selection etc.

The High Court will be exceeding in its jurisdiction if an attempt is made to interfere with the process of selection on mere conjectures.

21. The learned Senior Counsel for the Petitioners submitted relying on the order of the Supreme Court in *Surajit Kumar Das etc. v. Chairman*

U.P.S.C. in SLP No. 15251 of 1986 dated 11.3.1987 and the decision of a Bench of the Rajasthan High Court in *Mahesh Kumar Khandelwal*

and 16 Ors. *v. State of Rajasthan and Ors. in W.P. Nos. 2685, etc. of 1994 dated 19.8.1994* that the Supreme Court upheld the view expressed

by a Division Bench of the Delhi High Court that the system of moderation of marks adopted and followed by the UPSC in evaluating the

performance of the candidates appearing for the Civil Services Examination cannot be said to be vitiated by the arbitrariness or illegality of any

kind. The Bench of the Rajasthan High Court after analysing the merits of the moderation and normalisation system observed as follows:

...Scaling would be necessary where marks obtained by different candidates in diverse subjects have to be compared. As noticed already, the

candidates at the examination in question had a choice of as many as 22 optional subjects. How to compare the merit of a student opting a

particular subject with the merit of another student opting an altogether different subject was a real problem faced by the RPSC. To our mind, to

bring uniformity in evaluation, devising of a common scale, on which comparative assessment could be made as an absolute must, in such a situation how do you otherwise compare the merit of a candidate opting history with a candidate opting for physics, chemistry or for that matter any other subject say, English Literature or Philosophy. Even in the same subject, one examiner may be more liberal in awarding marks while the other may be quite stingy and strict. Hence, in our opinion, resorting to scaling, normalisation or moderation was quite proper and it cannot be said to be illegal because the rules did not specifically make provision for this exercise. To our mind, if there was no scaling, meaning thereby that no common scale was to be devised for candidates opting for different optional subjects, comparative assessment of their merit would have been a farce because then it would have amounted to assessment of merit on the basis of unequal scales.

22. In both the cases the merits of demerits of a system akin to the one followed by the first Respondent herein did not come up for consideration.

They only upheld the moderation and normalisation system adopted by the respective Public Service Commissions. In our view, the said two decisions do not in any way help the case of the Petitioners in the present context, particularly, when they had accepted the system obtaining as per the notification appeared for the examination and courted failure.

23. It is also to be noticed that the candidates who were successful in the preliminary examination had also taken the final examination though the results have not been announced owing to the pendency of the present writ petition.

24. In *Dinesh Kumar and Others Vs. Motilal Nehru Medical College, Allahabad and Others*, relied on by the learned Senior Counsel the Supreme

Court after holding that the selection made by some States or Universities on the basis of marks obtained in qualifying examinations held by the

different States or Universities in case of MBBS Courses and on the basis of the marks obtained at different MBBS examinations in case of Post

Graduate Courses as unjust and invalid being violative of Article 14 of the Constitution ultimately declined to strike down the admission which had

already been made in that case for two reasons:

In the first place, the students who have already been admitted are not parties

to the present writ petition and it would not be right to make any order striking down their admissions without giving them an opportunity of being heard. Secondly, the admissions have been made as far back as January 1985 pursuant to an order of High Court and the students were being admitted and their prosecuting their studies since the last about 3 months and it would cause them immense hardship if their admissions were now to be disturbed.

25. In the instant case the successful candidates have taken the final examination and they have also not been made parties in the present writ petition. The decision of the Supreme Court will squarely apply to the case on hand.

26. In *Mohinder Sain Garg v. State of Punjab and Ors.* 1991 (1) SLR 546 the selection for some posts had already been made and the selected candidates had also joined the course and they were not also impleaded as parties before the High Court as well as before the Supreme Court. In those circumstances, the Supreme Court observed as follows:

It would be doing injustice to such candidates, who have already been selected and have joined the posts, to quash their selections even if we hold that 25 per cent marks kept for viva voce test were excessively high.

27. To sum up the notification did not specify that there would be scaling or moderation and consequent normalisation. The candidates knew what they were in for. They had a very wide choice of 28 subjects. The writ Petitioners appeared for the preliminary examination but were unsuccessful.

It would be too late in the day for them to question the system which has been evolved by an expert body like T.N.P.S.C. They are estopped from questioning the process. Scaling or moderation and normalisation had not been advocated by the first Respondent at least with regard to the examinations conducted in the year 1998. The Commission knows its job. No mala fides or bias is alleged and substantiated. Consequently, the writ petition fails and the same is dismissed. However, there will be no order as to costs. Consequently, W.M.P. No. 28136 of 1998 is closed.