
(2014) 08 MAD CK 0163

In the Madras High Court

Case No : Writ Appeal Nos. 370 to 388, 420 and 421 of 2013

The Secretary, Tamil Nadu Public Service Commission

APPELLANT

Vs

T. Maheswaran

RESPONDENT

Date of Decision : 14-08-2014

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2014) 6 MLJ 513

Hon'ble Judges : N. Paul Vasantha Kumar, J; Meenakshi Sundaram
Sathyanarayanan, J

Bench : Division Bench

Judgement

1. The appellant, namely the Secretary, Tamil Nadu Public Service Commission (TNPSC), Chennai-3, is one of the official respondents in all the writ petitions. The respective respondents made a challenge to the impugned publication of the provisional selection list dated 02.08.2012 and 17.08.2012, G.O. (Ms). No. 118, Environment and Forests (FR-2) Department dated 20.08.2010, Notification No. 254 issued by the appellant dated 24.11.2010 and the list of candidates provisionally admitted for oral test pertaining to the recruitment to the post of Forest Apprentice in the Tamil Nadu Forest Subordinate Service, included in Group VI Services for the years 2006-07, 2007-2008 and 2008-2009, published on 02.08.2012 and quash the same and consequently direct the appellant/TNPSC to prepare a fresh list by including the names of the writ petitioners and to conduct fresh oral test and appoint them to the said post. All the writ petitions, after contest, came to be disposed of with certain directions, vide common order dated 04.01.2013 and aggrieved by the same, TNPSC has preferred these writ appeals.

2. Facts leading to the filing of these writ petitions as well as the grounds of challenge made to the impugned notification/proceedings have been narrated in detail and in extenso in the impugned common order dated 04.01.2013 made in W.P. No. 23073/2012 etc., batch and to avoid repetition, the entire facts are not

narrated and it would suffice to state few relevant facts for the disposal of these writ appeals.

3. As the issues involved in these writ appeals are common, these appeals are disposed of by this common judgment. For the sake of convenience, the array of parties as referred to in the writ petitions are adopted in these writ appeals also.

4. The appellant, namely TNPSC has issued an advertisement/Notification No. 254 dated 24.11.2010, inviting applications upto 5.45 p.m. on 23.12.2010 for direct recruitment to the post of Forest Apprentice in the Tamil Nadu Forest Subordinate Service included in Group-VI Services to the vacancies for the years 2006-07, 2007-08 and 2008-09. Number of vacancies for which the recruitment is being made is 79 vacancies plus 1 carry forward vacancy for Scheduled Caste/Scheduled Tribe. The date of the notification was 24.11.2010 and the last date for receipt of the application was 23.12.2010 and the date of the written examination was between 21.02.2011 and 05.03.2011 (except 26.02.2011 and 27.02.2011). The following particulars, given in the above said notification/advertisement, are relevant and necessary for the purpose of deciding these writ appeals:

4. GENERAL INFORMATION:-

A. (i) The rule of reservation of appointments is applicable to this recruitment and the distribution of vacancies will be as per the rules in force.

(ii) In G.O.Ms. No. 145, Personnel and Administrative Reforms (S) Department, dated 30.09.2010, the Government have issued orders to fill up 20% of all vacancies in direct recruitment on preferential basis to persons studied in Tamil Medium, Clarification in this regard is awaited from the Government hence, distribution of vacancies is not announced.

...

D. If no qualified and suitable women candidates are available for selection against the vacancies reserved for them those vacancies will be filled by male candidates belonging to the respective communal categories.

E. Reservation of appointment to Destitute Widows, Ex-Serviceman and Physically Handicapped will not apply to this recruitment.

F. Even after filling up of the posts reserved for SC (Arunthathiyars) on preferential basis, if more number of qualified Arunthathiyars are available, they shall be entitled to compete with the Scheduled Castes other than Arunthathiyars in the inter-se-merit among them and if any posts reserved for Arunthathiyars remain unfilled for want of adequate number of qualified candidates, it shall be filled up by Scheduled Castes other than Arunthathiyars.

5. QUALIFICATIONS:-

..

B. EDUCATIONAL QUALIFICATION:

Candidates should possess the following or its equivalent qualifications on the date of this Notification (viz 24.11.2010).

(a) Must possess a Bachelor's degree in Forestry or its equivalent degree of any recognized University

OR

(b) Must possess the Bachelor's degree or its equivalent degree of any recognized University in any one of the following subjects:

1. Agriculture
2. Botany
3. Chemistry
4. Computer Applications/Computer Science
5. Engineering (Agriculture/Chemical/Computer/Electrical/Electronics/Mechanical)
6. Environmental Science
7. Geology
8. Horticulture
9. Mathematics
10. Physics
11. Statistics
12. Veterinary Science
13. Zoology

Provided that only if candidates with the qualifications referred to in item (a) are not available for selection, candidates with qualifications referred to in item (b) will be considered for selection.

Note:

(1) The qualification prescribed for this post should have been obtained by passing the required degree course in the order of studies 10th, HSC, Bachelor's degree.

(2) Persons claiming equivalence of qualification should enclose evidence for such claim failing which their application will be summarily rejected. For further details refer para-9 of the instructions etc., to candidates.

....

6(A).SCHEME OF WRITTEN EXAMINATION (OBJECTIVE TYPE) AND ORAL TEST:-

.....

The question papers in the following subjects will be set both in Tamil and in English.

Botany, Chemistry, Mathematics, Physics, Statistics and Zoology.

For the following 15 subjects the question paper will be set in English only. Agriculture, Agricultural Engineering, Computer Application, Computer Science, Chemical Engineering, Civil Engineering, Computer Science and Engineering, Electrical Engineering, Electronics Engineering, Geology, Mechanical Engineering, Environmental Science, Forestry, Horticulture and Veterinary Science.

8. PROCEDURE OF SELECTION

Selection will be made in three successive stages i.e., (i) Written Examination (ii) Physical Test (Walking Test) and (iii) Oral Test in the shape of an interview. Final selection will be made on the basis of the total marks obtained by the candidates at the Written Examination and Oral Test taken together subject to the rule of reservation of appointments and subject to qualifying Physical Test. Appearance in each subject of the Written Examination, Physical Test and Oral Test is compulsory. A candidate who has not appeared in any of the subjects or the Physical Test will not be considered for Oral Test, even if he/she secures qualifying marks in the Written Examination. (For further details please refer paragraph 22(b) of the instructions etc., to candidates).

10. ENCLOSURES TO BE SENT ALONG WITH APPLICATION:

Candidates should enclose attested copies of all certificates (including evidence for Educational Qualification i.e., S.S.L.C., H.S.C., and Degree/Provisional Certificate possessed by them) as mentioned in para 15 of the Commission's Instructions etc to candidates and item 26 under part-II of Information Brochure along with a Postal receipt to the value of Rs. 100/- (Rupees One Hundred Only) pasted in the column provided in the application, unless exemption of fee is claimed. Original Certificates should not be sent. Those applying Online please refer sub para D of para 13 of this Notification/Advertisement.

In addition to the above said enclosures evidence for having studies in Tamil Medium should be enclosed if the candidates claim reservation for PSTM (Persons Studied in Tamil Medium).

Applications received without the attested copies of certificates as specified above will be rejected.

5. In all the writ petitions, the respective writ petitioners claim that though they passed the written test, they have not been called for oral test and having successfully cleared the written examination as well as the physical measurement and walking test, the writ petitioners should have been called for oral interview, but the appellant/TNPSC did not do so and the writ petitioners

further claim that though the said fact was brought to the knowledge of the TNPSC by means of written representation, no response was forthcoming and they further contended that as per the notification, final selection will be made only on the basis of total marks obtained in written and oral test together, but the act of TNPSC in adopting some other ratio or methodology to deprive them to attend the oral interview, on the face of it, is unsustainable. It is further contended that the midst of the selection proceedings, an amendment was brought to the Special Rules for the Tamil Nadu Forest Subordinate Service and admittedly prospective effect was given with effect from 20.08.2010 and since for the notified vacancies for the years between 2006-2009, amended rules cannot be applicable, however, TNPSC sought to do so. The writ petitioners also took a stand that though they are non Forestry candidates, their curriculum included subject of Forestry also and since all other things are equal, there is no rhyme or reason to give preference to holders of Forestry Degree and therefore, their claim should also be considered along with persons holding degree in Forestry.

6. The appellant/TNPSC filed a preliminary affidavit dated 05.02.2012 stating among other things that in respect of educational qualification, degree in Forestry or 13 other equivalent degrees is prescribed as eligible qualification, however, in the matter of ultimate selection, it is specifically prescribed that if candidates with Bachelor Degree in Forestry or its equivalent degree of any recognized University are not available for selection, candidates with 13 Non-Forestry degree holders could be considered for selection in terms of Para 5(B) of the notification. Reliance was also placed to para 22(b) of Instruction etc., to Candidates and it has been further contended that as per the procedure adopted by them, marks to be obtained by the candidates in the oral test is based on various factors like personality, efficiency, presentation, attitude, aptitude, IQ etc., and the publication of mark at the intermittent stage will probably adversely affect the relative merit of the candidates. It is further stated in the said affidavit that since the selection in a two successive stage process is a confidential one at every stage, the relative disclosure will be made only at the appropriate stage, after completion of selection and the said procedure is in conformity with principles of confidentiality and transparency and reliance was also placed on the decisions rendered by a Division Bench of this Court in Dr. M. Vennila Vs. Tamil Nadu Public Service Commission, and Dr. S. Bhuvaneshwar Karthik Vs. The Tamil Nadu Public Service Commission and Tamil Nadu Dr. MGR. Medical University, , wherein it has been held that notification, instruction etc., to the candidates have the force of law and the terms and conditions of instructions etc., to candidates and information brochure have to be strictly followed and this Court, in exercise of its jurisdiction under Article 226 of the Constitution of India, cannot make any modification or relaxation of such conditions.

7. Insofar as the claim made by Non-Forestry degree holders are concerned, TNPSC took a stand that their claim for consideration comes only after the consideration of 131 Forestry degree holders as per the qualification rule to hold

the post of Forest Apprentice and having participated in the selection process in terms of the notification/advertisement, it is no longer open to the writ petitioners to make a turn around and challenge the vires of the very same notification and by doing so, they want to stall the publishing of select list. TNPSC has also filed further affidavit in W.P. No. 22624/2012, drawing the attention of this Court to various interim orders passed during the pendency of that writ petition and submitted that in terms of the various interim directions, the exercise shall be completed on or before 17.09.2012 and final selection shall not be published until further orders from this Court. It is further stated that Rule 5 was introduced by G.O.Ms. No. 118, Environment and Forest Department, dated 20.08.2010 and therefore, the previous notification was cancelled and the present impugned notification came to be made. TNPSC further stated that written examination was held between 21.02.2011 to 05.03.2011 (except 26.02.2011 and 27.02.2011) and the current recruitment is in consonance with the amended Rule 5 of Tamil Nadu Forestry Subordinate Service Rules. Insofar as preference to candidates holding Forestry degree are concerned, it is stated that only in the event of candidates with Forestry or its equivalent degree of any recognized University are not available for selection, candidates with 13 Non-Forestry degree referred to in education qualification could be considered for selection and once again placed heavy reliance upon para 22(b) of the instruction etc., to candidates.

8. The learned Judge, after taking into consideration the factual aspects and various decisions rendered by the Hon'ble Supreme Court of India, has disposed of all the writ petitions with certain directions, vide common order dated 04.01.2013 and it is relevant to extract part 53 of the said common order:

53. In view of the foregoing discussions, in the result, these writ petitions are disposed of in the following terms:-

(i) The provisional lists of candidates admitted to oral test as published by the Tamil Nadu Public Service Commission are hereby quashed.

(ii) The Tamil Nadu Public Service Commission shall apply the rule of reservation only for the final selection and not for shortlisting the candidates for oral test.

(iii) The Tamil Nadu Public Service Commission is directed to apply 100 point communal roster for the selection process in question.

(iv) The Tamil Nadu Public Service Commission shall treat the special reservations for Women and Tamil Medium candidates as horizontal reservations at the time of final selection.

(v) The Tamil Nadu Public Service Commission shall obtain clarification in respect of G.O.Ms. No. 145, Personnel and Administrative Reforms (S) Department, dated 30.09.2010 in respect of Tamil Medium candidates for the purpose of distribution of vacancies for such candidates as mentioned in the Notification itself.

(vi) The claim of the petitioner in W.P. No. 23074 of 2012 for consideration on preference on the ground of inter-caste marriage and the claim of the petitioner in W.P. No. 23073 of 2012 for preference on the ground of ward of freedom fighter are rejected.

(vii) The Tamil Nadu Public Service Commission shall refer the question as to whether M.Sc., applied Life Biology (vide W.P. No. 27500 of 2012) is equivalent to Bachelor's Degree in Forestry to the Government and the Government shall consider the same by referring the said issue to the Equivalence Committee and issue appropriate certificate.

(viii) For the purpose of shortlisting the candidates for oral test and for final selection, Forestry graduates and equivalent graduates shall be segregated and subjected to oral test and final selection. After having made such selection of Forestry graduates and equivalent graduates, the remaining vacancies, if any, shall be filled up from and out of Non-Forestry graduates as indicated supra.

(ix) The selection and appointment to be made in this process shall be subject to the outcome of W.P. (MD). No. 9756 of 2006 pending before the Madurai Bench of Madras High Court as indicated in the notification itself.

9. Mr. R. Muthukumarasamy, learned Senior Counsel assisted by Mr. N.S. Nandakumar, learned Standing Counsel appearing for the appellant/TNPSC has invited the attention of this Court to the following facts:

Total number of candidates applied for the post:

10911

Total number of candidates appeared for written examination:

3642

Total number of candidates sent for Physical Test:

1200

Total number of candidates qualified in the Physical Test:

716

Total number of candidates having Degree in Forestry qualified in Physical Test:

131

Total number of candidates in Non-Forestry degree qualified in the Physical Test

1069

Written Examination held on:

12.02.2011 to 05.03.2011 FN & AN

Result published in the official website of the Commission on

02.08.2012 & 17.08.2012

Physical Test conducted by the Forest Department:

From 18.06.2012 to 23.06.2012

Number of candidates summoned for Oral Test of all branches in degree qualification including Forestry:

170

Number of candidates attended Oral Test of all branches in degree qualification

169

Oral Test conducted on

22.08.2012 and 23.08.2012.

The learned Senior Counsel appearing for the appellant, on facts, made further submission that by applying rule of reservation for 80 vacancies (79 + 1 for SC/ST-carry forward vacancy), totally 170 candidates who possess Forestry degree as well as Non-Forestry degree were arranged on merit basis on descending order and were called upon to attend the interview for final selection and that out of 131 Forestry degree candidates appeared for written examination, qualification, physical endurance test, 88 candidates having degree in Forestry were called upon to attend the interview for final selection and the balance 82 candidates are Non-Forestry candidates.

10. The learned Senior Counsel appearing for the appellant would further contend that the writ petitioners did not reach the zone of consideration for appearing in the oral test and it is in conformity with paras 5 and 8 of the impugned notification r/w para 22(b) of Instruction etc., to candidates and the petitioners did not make out any case of violation of the procedure for selection, especially not calling them for oral test. It is the further submission of the learned Senior Counsel appearing for the appellant that M.Sc., Wild Life Biology awarded by Bharathidasan University is equivalent to the B.Sc., degree in Forestry, the said issue was considered by the 47th Equivalence Committee Meeting held on 05.03.2014, wherein a resolution came to be passed stating that the said Post Graduate degree is not equivalent to B.Sc., degree in Forestry and it has also been forwarded to the Higher Education Department of Government of Tamil Nadu and orders are awaited in that regard and to that effect, produced a letter dated 08.03.2014, written by TNPSC to the learned Standing Counsel for TNPSC.

11. Insofar as the findings rendered by the learned Judge that the reservation for Tamil Medium candidates or Women Candidates shall be treated only as horizontal reservation cutting across the vertical reservation and the same shall never be treated as vertical reservations, learned Senior Counsel appearing for the appellant submitted that in para 4(A) of the impugned notification/

advertisement issued by TNPSC, the Government had issued orders in G.O.Ms. No. 145, Personnel and Administrative Reforms (S) Department dated 30.09.2010 to fill up 20% of all vacancies in direct recruitment on preferential basis to persons studied in Tamil Medium and clarification in that regard is awaited from the Government and hence, distribution of vacancies is not announced and would further submit that even prior to the impugned notification, Tamil Nadu Ordinance No. 3 of 2010 was promulgated by the Excellency, The Governor of Tamil Nadu on 05.09.2010, which provides for preference in appointment in the services under the State to persons who have obtained the education qualification prescribed for direct recruitment through Tamil medium of instructions and as per Section 6, notwithstanding anything contained in Section 3, where adequate number of qualified and suitable persons studied in Tamil medium are not available for appointment in the preferential vacancies, such unfilled vacancies shall be filled up with persons studied in other mediums within the respective category. It is the submission of the learned Senior Counsel appearing for the petitioner that B.Sc., degree in Forestry is taught only in English medium and para 6(A) of the impugned notification also makes it clear that in respect of 15 subjects which include Forestry, the question paper will be set in English only and the fact remains that as against 80 vacancies, 88 B.Sc., Forestry degree candidates have been admitted to oral test and therefore, the question of calling Non-Forestry candidates to oral interview does not arise at all for consideration.

12. It is also submitted by the learned Senior Counsel appearing for the appellant that during the arguments, this Court sought clarification as to whether the qualification prevail over reservation or reservation would prevail over qualification in respect of persons studied in Tamil medium, the Personnel and Administrative Reforms Department, Government of Tamil Nadu, sent a clarification, vide letter dated 26.03.2014 to the learned Special Government Pleader (Forest), wherein it has been stated that qualification prescribed in the Special Rules for the Tamil Nadu Forest Subordinate Service is the fundamental pre-requisite for appearing for the competitive examination conducted for the post and therefore, the necessity of accommodating Tamil Medium candidates for selection does not arise at all and further invited the attention of this Court to the amendment made to the Special Rules for Tamil Nadu Forest Subordinate Service Rules, vide G.O.Ms. No. 76 dated 10.07.2014, wherein amendments have been made to various provisions in Special Rules and as per the amendment made to Rule No. 5, the candidates possessing Forestry and Non-Forestry degree are treated equal and since the said amendment came into effect with effect from 09.07.2014, it cannot be made applicable to the impugned notification dated 24.11.2010 and therefore, on that ground also Non-Forestry candidates are not eligible to be called for oral interview, though they were successful in the written/endurance test. Lastly it is submitted by the learned Senior Counsel appearing for the appellant that all the writ petitioners/Non-Forestry candidates had secured much less marks than the candidates appeared

for oral test and on that ground also, they are ineligible to participate in the oral interview and therefore, prays for interference.

13. Per contra, the respective learned counsel appearing for the private respondents made a vehement and forceful submission by drawing the attention of this Court to the reasons assigned in the impugned common order and would submit that the learned Judge, on a thorough consideration of factual aspects and correct application of legal principles, has rightly arrived at a decision to quash the provisional list of candidates admitted to oral test and further directed the appellant to apply 100 point communal roaster for the selection process in question and therefore, the said finding warrants no interference.

14. The learned Special Government Pleader (Forest) has supported the stand taken by the learned Senior Counsel appearing for the appellant.

15. This Court paid its anxious consideration and best attention to the submissions made by the learned Senior Counsel appearing for the appellant/TNPSC and the respective learned counsel appearing for the private respondents and also perused and scrutinized the materials placed before it. This Court before advertng to the facts of the case has taken note of the submission made by the learned counsel appearing for the private respondents that the impugned notification came to be issued subject to the result of W.P. (MD) No. 9756 of 2006 on the file of the Madurai Bench of this Court and the said writ petition was also closed, vide order dated 18.02.2013.

16. Admittedly, all the private respondents/writ petitioners participated in the selection process in terms of the impugned Notification No. 254 dated 24.11.2010 for direct recruitment to the post of Forest Apprentice in the Tamil Nadu Forest Subordinate Service included in Group-VI Services to the vacancies for the years 2006-07, 2007-08 and 2008-09.

17. The Hon''ble Supreme Court of India in the decision in Union of India (UOI) and Others Vs. S. Vinodh Kumar and Others, has held that those candidates who had taken part in the selection process knowing fully well the procedure laid down therein were not entitled to question the same and the posts advertised were public posts and they did not have any vested right for appointment.

18. This Court, keeping in mind the said legal position, which has been followed in a catena of subsequent decisions, has scrutinized the impugned notification/advertisement and in earlier paragraph has also extracted the relevant clauses.

19. Education qualification prescribed for selection is that a candidate shall possess (a) a Bachelor's degree in Forestry or its equivalent degree of any recognized University, on the date of notification viz., 24.11.2010 or (b) must possess a Bachelor's degree or its equivalent degree of any recognized University in any one of the following subjects, namely Agriculture, Botany, Chemistry, Compute Applications/Computer Science, Engineering (Agriculture/Chemical/Civil/Compute/Electrical/Electronics/Mechanical), Environmental

science, Geology, Horticulture, Mathematics, Physics, Statistics, Veterinary Science and Zoology. As per the proviso, only if candidates with the qualifications referred to in item (a) are not available for selection, candidates with qualifications referred to in item (b) will be considered for selection.

(emphasis supplied).

20. Insofar as equivalence of qualification, note (2) appended to 5(B) of the impugned notification speaks that persons claiming equivalence of qualification should enclose evidence for such claim failing which their application will be summarily rejected and therefore, attention was drawn to further details to refer to para-9 of the Instructions etc. to candidates.

21. It is the vehement submission of the respective learned counsel appearing for the private respondents that each Non-Forestry candidates were successful in the written examination and also in physical/endurance test and in fact some of them were also called for oral test and therefore, they are having right to be considered for selection along with Forestry candidates. Per contra, it is the submission of the learned Senior Counsel appearing for the appellant/TNPSC that after written and Physical/Endurance Test, 88 candidates with degree in Forestry got eligible to attend oral interview and 82 candidates with Non-Forestry degree became successful and as per 5(B) preference would be given to candidates with Bachelor's degree in Forestry and admittedly, selection is in respect of 80 (79 + 1 for SC/ST carry forward vacancy) and since more number of candidates with Forestry degree are available, the claim made by the respondents/Non-Forestry graduates cannot be considered.

22. This Court, during the pendency of these writ appeals, directed the appellant to produce a tentative selection list consisting the Forestry Graduates based on the written marks obtained by them and the appellant has submitted the said detail in a sealed cover and it would disclose that for oral interview, 87 Forestry Graduates were summoned, out of which 86 had attended the interview and taking into consideration the marks awarded in the oral interview, there may not be any vacancy left for Non-Forestry candidates except a very few vacancy available for some reserved categories.

23. The Hon'ble Supreme Court of India in Surinder Singh Vs. Union of India (UOI) and Others, , has considered the issue relating to Essential Qualification and Preferential Qualification and in para 16, held as follows:

16. In our view, in service jurisprudence the prescription of preferential qualification not only refers to numeric superiority but is essentially related to better mental capacity, ability and maturity to shoulder the responsibilities, which are entrusted to the candidates after their selection to a particular post. All the more, it is important for efficient and effective administration. The basic object of prescribing a minimum qualification is to put a cut-off level for a particular job in accordance with the minimum competency required for the performance of that job. The object of prescribing preferential qualification is to select the best

amongst the better candidates who possess more competence than the others. Sub-clause (iv) of Clause 2 puts a limit with respect to preferential qualification by way of a clear stipulation that no preference should be given to the qualification above matriculation. Hence, the preferential qualification was considered to be more effective and efficient and also it was a clear assumption that a candidate possessing the same is best suited for the post in question.

24. In terms of the impugned notification, candidates with Forestry degree have first preference as it was the decision of the concerned authority at the relevant point of time that they are well suited to adorn the said post and only in the event of non-availability of required number of candidates possessing degree in Forestry are not available, the claim of the petitioners/Non-Forestry candidates can be considered. The submission made by the learned Senior Counsel appearing for the appellant/TNPSC would disclose that more than sufficient number of Forestry candidates are available to fill up the said post and therefore, the claim made by the private respondents cannot be considered. The respective learned counsel appearing for the private respondents made a faint attempt by contending that as per the amendment to Special Rules for Tamil Nadu Forest Subordinate Service, vide G.O. (Ms). No. 76, Environment and Forests (FR. 2) Department dated 10.07.2014, Non-Forestry candidates are also eligible to be considered for selection to the said post along with Forestry graduates and since the selection has not reached finality, the amendment can be made applicable to the present case also. In the considered opinion of the Court, the said submission lacks merit and is liable to be rejected for the reason that as per the said Government Order, the said amendment came into force with effect from 09.07.2014, whereas the impugned notification is dated 24.11.2010 and since the amended rules has not been given any retrospective effect, it cannot be made applicable to the selection made under the impugned notification and the rules that were available/applicable on the date of the impugned notification would have application to the said selection.

25. The learned Judge has held that Rule 22 of the Tamil Nadu State Subordinate Service Rule has application only at the time of final selection, that too after identification of number of vacancies earmarked for various categories and placed reliance upon his own judgment in K.R. Shanthi Vs. The Secretary to Government, Education Department, Fort St. George, Chennai 9 and The Chairman, Teachers Recruitment Board, 4th Floor, E.V.K. Sampath Maaligai, DPI Compound, College Road, Chennai 6, and other decisions rendered by the Hon"ble Supreme Court of India.

26. It is the submission of the learned Senior Counsel appearing for the appellant that in the case on hand, Clause No. 22(b) of Instruction etc., to candidates have application, wherein it has been stated that final selection will be made based on total marks obtained by the candidates in main written examination/written as the case may be and the oral test taken together, subject to the rule of reservation of appointment wherein it applies and the oral test is compulsory.

This Court, in the earlier paragraphs, held that it is not open to the private respondents to turn around and challenge the criteria for selection, after having participated in the selection process in terms of the impugned notification. It is to be pointed out at this juncture that the above said Clause 22(b) also forms part of the impugned notification, which clearly states that selection to be made on the basis of total marks obtained in written and viva voce, subject to the applicability of rule of reservation of appointment wherever it applies.

27. The Hon"ble Supreme Court of India in Sanjay Kumar and Others Vs. Narinder Verma and Others, held as follows:

16. Having heard the learned counsel on both sides for the different contending parties, we are of the view that the impugned judgment of the High Court needs to be interfered with. As already observed, there was no challenge to the Rules in the writ petition. The learned Single Judge was, therefore, justified in applying the Rules and upholding the selection process made by the State authorities. It was wholly unjustified on the part of the Division Bench to have interfered with the selection process on the basis of the criteria which were not laid down in the Rules and that too on an erroneous appreciation of the Rules. The High Court failed to see that the Rules made no distinction, whatsoever, between degree-holders and diploma-holders at the stage of recruitment for the purpose of minimum qualifications. In other words, no distinction was made between the two categories at the stage of recruitment, but a greater weightage was given to the degree-holders in the post-recruitment period in the form of a higher starting pay and also lesser number of years of service requirement for qualifying for promotion to the higher post. We agree with the contention expressed by the learned counsel for the appellants that there was sufficient inbuilt balance maintained between the two categories of candidates and the impugned judgment of the High Court completely throws the Rules out of balance. What the executive did not think fit to do by prescription in the Rules, could not have been done by a judicial fiat.

It is for the authority who does recruitment to prescribe necessary qualification and application of relevant rules, as the functioning of the concerned department depends upon the quality of the candidate selected.

28. In the light of para 22(b) of Instructions etc., to candidates coupled with the reservation policy followed in this State and various Government Orders issued in view of Rule 21(c), 22(c) and 35(a) read with Schedules III and IV of the Tamil Nadu State and Subordinate Service Rules and by taking into consideration the submission made by the learned Senior Counsel appearing for the appellant/ TNPSC that it is preparing selection list as per the communal roster prescribed under the Tamil Nadu State and Subordinate Services Rules based on the vacancies furnished by Heads of Department/Government and the adoption of 200 point roster based on marks secured by each candidates in written examination and viva voce, it cannot be faulted with and therefore, the findings rendered by the learned Judge that the question of applying the roster to the

rule of reservation will arise only at the time of final selection and not for shortlisting the candidates for the purpose of oral test is unsustainable and also the findings in respect of the adoption of 100 point communal roster. The learned Judge recorded the finding that as per Service Rules, 88 Forestry graduates should be given preference and they should be selected based on the marks secured in the written examination as well as oral test and then selection shall be made as against the remaining vacancies from Non-Forestry graduates by calling them for oral test separately. However, the question of arriving at such an opinion by the learned Judge does not arise at all for consideration for the reason that the result of the oral test is yet to be announced, because on account of the impugned common order passed in the writ petitions and as per Clause No. 8 of the impugned notification, final selection will be based on the written examination and oral test taken together, subject to the rule of reservation of appointments and also subject to qualifying physical test and the said stage is yet to reach and it is for the appellant to do the said exercise strictly in accordance with the impugned notification dated 24.11.2010.

29. In respect of candidates studied in Tamil medium, who also made a challenge in respect of their non-inclusion, the learned Judge has held that the procedure adopted by the appellant to shortlist the candidates based on reservation for Tamil medium without getting clarification from the Government is unsustainable and therefore, quashed the provisional list. However in the light of the Tamil Nadu Ordinance 3/2010 and later as Tamil Nadu Act 40 of 2010, especially in the light of Section 6 of the said Act which states that notwithstanding anything contained in Section 3, where adequate number of qualified and suitable persons in Tamil medium are not available for appointment in the preferential vacancies, such unfilled vacancies shall be filled up with persons studied in other mediums within the respective category, the quashment of the entire provisional list on that ground is unsustainable. However, it is made clear that in the light of Clause No. 6 in the impugned notification which says that in respect of 15 subjects which include Forestry, the question paper will be set in English only, the question of accommodating people studied in Tamil medium does not arise at all and if any future recruitment is made in terms of the amended Rule 5 of the Tamil Nadu Forestry Subordinate Service Rules, it is open to them to consider their claim subject to the fulfilment of other eligibility criteria.

30. Insofar as W.A. Nos. 420 and 421 of 2013 are concerned, the grievance of the appellant in respect of non-reservation of quota for freedom fighters and inter-caste marriage respectively, the learned Judge has rightly held that the impugned notification issued by the appellant herein does not provide any reservation for these two categories and the appellant in these appeals have not challenged the notification and they have participated in the selection process in terms of the impugned notification and were unsuccessful, it is too late for them to make such a challenge. In the considered opinion of the Court, the reasons assigned by the learned Judge in dismissing W.P. Nos. 23073 and 23074/2012 are sustainable in law and on facts and therefore, these writ appeals are liable to

be dismissed.

31. Insofar as equivalence degree is concerned, Mr. M. Ravi, learned counsel appearing for the respondent in W.A. No. 388/2013 would contend that in respect of Assistant Conservator of Forest, the appellant has issued a notification dated 02.05.2012 and as per 3rd Proviso to Clause 3(B), other thing being equal, preference will be given to candidates who possess a degree in Forestry or a Post Graduate Degree in Wild Life Biology and therefore, the impugned notification giving preference to candidates possessing Forestry degree cannot stand the scrutiny in the eye of law. However, this Court is unable to accept the said submission for the reason that the prescription of qualification is within the realm of the Government and the appellant in his communication dated 08.03.2014 addressed to the learned Standing Counsel for TNPSC has stated that as per the resolution passed in 47th Equivalence Committee Meeting held on 5.03.2014, M.Sc., Wild Life Biology awarded by Bharathidasan University is not equivalent to B.Sc., degree in Forestry and it has also been forwarded to the Higher Education Department of the Government and their response is awaited and therefore, unless and until, it has been clarified by the Government that M.Sc., Wildlife Biology is equivalent to P.G. degree in Forestry, this Court cannot issue any such direction in that regard and it may also amount to interfering in the selection process and experts in academics are competent to do so and they have also done so.

32. In the light of the reasons assigned above, W.A. Nos. 370 to 388/2013 are allowed and the impugned common order dated 04.01.2013 made in W.P. Nos. 22624, 22625, 22526 to 22530, 23461, 23559, 23560, 23458 to 23460, 22938, 23626, 24044, 24686, 27499 and 27500 of 2012 is set aside and consequently, the writ petitions are dismissed. However, it is made clear that since Bachelor's degree in Forestry is being taught in English medium only and in the light of Clause 6(A) r/w Section 6 of Tamil Nadu Act 40 of 2010, namely Tamil Nadu Appointment on Preferential basis in the Services under the State of Persons studied in Tamil Medium Act, 2010, Non-Forestry candidates studied in Tamil medium cannot be accommodated, as according to the appellant, sufficient number of Forestry graduates are available. No costs. Consequently, connected miscellaneous petitions are closed.

33. Insofar as non-availability of Forestry category of Scheduled Tribe and BC(Muslim) are concerned, it is open to the appellant to take appropriate decision in accordance with law and relevant rules and regulations.

34. W.A. Nos. 420 and 421 are dismissed, confirming the findings rendered in para 29 of the impugned common order dated 04.01.2013 made in W.P. No. 23073 and 23074/2012. No costs. Consequently, connected miscellaneous petitions are closed.