

**Case relating to Fitment in roster:**

**Parties :** A. Saravanan Versus Tamil Nadu Public Service Commission & Another

**Court :** High Court of Judicature at Madras

**Case No :** Writ Petition No.28501 of 2008

**Judges:** THE HONOURABLE MR. JUSTICE S.J. MUKHOPADHAYA & THE HONOURABLE MR. JUSTICE V. DHANAPALAN

**Appearing Advocates :** For the Petitioner: K. Elango, Advocate. For the Respondents: C.N.G. Ezhilarasi, Standing Counsel for T.N.P.S.C., Advocate.

**Date of Judgment :**

16-12-2008 **Head**

**Note :-**

Constitution Of India – Article 226 - Petition filed under Article 226 of the Constitution of India to issue a writ of certiorarified mandamus calling for the records relating to the order passed by the 1st respondent in his Proceedings, publishing the list of register numbers of candidates who have been selected provisionally for appointment by direct recruitment to the post of Civil Judge (Junior Division) in the Tamil Nadu State Judicial Service, 2004-2008, insofar as the candidates selected under Backward Class (other than B.C. Christians and B.C. Muslims) (General) alone, to quash the same and consequently direct the respondents to conduct an interview for the petitioner - It appears that there is no specific rule/guideline laid down as to who amongst equals should be called for the viva voce test if they obtain the same marks in the written test. We are of the view that in the absence of any specific rule or guideline, it is always open to the selecting authority, the Tamil Nadu Public Service Commission herein, to adopt a reasonable criteria which will not be arbitrary or in violation of Article 14 of the Constitution of India. In cases where more candidates obtain the same marks in the written test, if the person of a higher age is given preference over another person of a lesser age in being called for to appear in the viva voce test on the basis of the candidate and post ratio, it cannot be held to be arbitrary.

**Judgment :-**

(Prayer : Petition filed under Article 226 of the Constitution of India to issue a writ of certiorarified mandamus calling for the records relating to the order passed by the 1st respondent in his Proceedings No.Nil dated 3.11.2008, publishing the list of register numbers of candidates who have been selected provisionally for appointment by direct recruitment to the post of Civil Judge (Junior Division) in the Tamil Nadu State Judicial Service, 2004-2008, insofar as the candidates selected under Backward Class (other than B.C. Christians and B.C. Muslims) (General) alone, to quash the same and consequently direct the respondents to conduct an interview for the petitioner.)

S.J. Mukhopadhaya , J.

The petitioner, a member of the Backward Class Community, appeared in the written test pursuant to the advertisement dated 10.5.2008 issued by the Tamil Nadu Public Service Commission for appointment to the post of Civil Judge (Junior Division) in the Tamil Nadu State Judicial Service. He appeared in the written examination conducted by the Commission on 2nd and 3rd August, 2008, but having not been called to attend the viva voce test, he has preferred this writ petition. The grievance of the petitioner is that though persons having obtained the same mark in the written test, i.e., a total of 191 marks, belonging to the same category (Backward Class Community), have been called to appear in the viva voce test, the petitioner has not been called for such appearance.

2. A counter affidavit has been filed on behalf of the respondent-Tamil Nadu Public Service Commission, wherein a specific plea has been taken that the petitioner has secured a total of 191 marks in the written examination. It is further stated that with reference to the marks obtained by the petitioner, and having regard to the Rule of Reservation of appointment and with respect to the Commission's Subsidiary Rules, the petitioner did not reach his turn for admission to the oral test. The details of marks secured by the candidates who were selected for admission to the viva voce test and the reasons for calling them to the viva voce test have been shown in the counter affidavit as follows :-

TABLE

The stand of the Commission is that if more persons obtain the same mark in the written test, then among those persons, persons who are higher in age are called for the viva voce test and are given preference over those who are lesser in age.

3. Learned counsel for the petitioner submitted that the Commission's Subsidiary Rules talk of preparation of a merit list pursuant to the written test and viva voce test. According to him, if two persons have obtained the same marks both combining the written test and the viva voce test, then the person who is higher in age can be given preference over the person who is lesser in age. But, there is no provision to follow such a criteria in the matter of calling the candidates to appear in the viva voce test.

4. We have heard the learned counsel for the parties and noticed the rival contentions.

5. It appears that there is no specific rule/guideline laid down as to who amongst equals should be called for the viva voce test if they obtain the same marks in the written test. We are of the view that in the absence of any specific rule or guideline, it is always open to the selecting authority, the Tamil Nadu Public Service Commission herein, to adopt a reasonable criteria which will not be arbitrary or in violation of Article 14 of the Constitution of India. In cases where more candidates obtain the same marks in the written test, if the person of a higher age is given preference over another person of a lesser age in being called for to

appear in the viva voce test on the basis of the candidate and post ratio, it cannot be held to be arbitrary.

6. We find no merit in this writ petition, which is accordingly dismissed. There shall be no order as to costs. Consequently, M.P. Nos.1 to 3 of 2008 are closed.