

Case relating relaxation of Rules:

Parties : V. Mohankumar Versus The Chairman, Tamil Nadu Public Service Commission & Others

Court : High Court of Judicature at Madras

Case No : W.P.Nos. 14169, 14170, 9687, 10413, 10824, 10825, 10909, 10959, 10960, 11036, 11037, 11038, 11039, 11040, 11094, 11095, 11157, 11158, 11159, 11160, 11161, 11246, 11247, 11248, 12397, 12931, 12932, 13229, 13244, 13245, 13283, 13284, 13297, 13341, 13342, 13344, 13345, 13346, 13348, 13352, 13376, 13377, 13378, 13379, 13380, 13381, 13382, 13383, 13386, 13576, 13635, 13636, 13725, 13879, 13880, 14519, 14915 and 15335 of 2008 and connected Miscellaneous Petitions.

Judges: THE HONOURABLE MR. JUSTICE N. PAUL VASANTHAKUMAR

Appearing Advocates : For the Petitioner : N.R. Chandran, Senior Counsel, N. Umapathi, M. Elango, K. Venkataramani, Senior Counsel, M. Muthappan, A. Kalaiselvan, N. Subramaniyan, D. Krishnakumar, K. Rajkumar, R. Govindasamy, S. Xavier Felix, V. Venkatasamy, S. Mani, P.R. Dinesh Kumar, S. Doraisamy, V. Harikrishnan, S.P.B. Dhuraishamy, Advocates. For the Respondent : A. Arul, Standing Counsel for TNPSC, R2 & R3, P.S. Raman, Addl. Adv. General, assisted by Lita Srinivasan, Government Advocate.

Date of Judgment :

14-07-2008 **Head**

Note :-

Tamil Nadu State and Subordinate Service Rules, 1955 - Section 10(a)(i)(1)- Motor Vehicles Act, 1988 - Section 213 - Constitution of India - Article 226 - Writ of Certiorarified mandamus - selection to the post of Motor Vehicle Inspectors Grade-II on contract basis – recruitment process held for the post – pending the final result fresh notification issued requiring higher qualification for recruitment to the post under contract basis – hence the writ petitions filed challenging the notifications – held, prescribing higher qualification is unreasonable – to be treated as inconsistent with the statutory provisions - will create an anomalous situation as the Diploma holders will be in a position to replace the Degree holders on their selection through TNPSC – the impugned order proposing to select and appoint Motor Vehicle Inspectors Grade-II on contract basis when regular selection process through TNPSC is in progress is impermissible and the impugned Government Order and the circular issued by the Transport Commissioner are liable to be set aside and accordingly set aside - not entitled to proceed with selection process - there is urgency in the selection of Motor Vehicle Inspectors Grade-II - the TNPSC is directed to publish the written test results immediately and complete the selection process and submit the list of selected candidates -the writ petitions are disposed of with the directions.

Cases referred: -AIR 1991 SC 284 = 1992 Supp (1) SCC 272 (Keshav Chandra Joshi v. Union of India) (2006) 4 SCC 1 (Secretary, State of Karnataka vs. Umadevi) (2005) 3 MLJ 538 (M.Saravanakumar vs. Secretary to Government, Education Department, Chennai) Ram Ganesh Tripathi and Others vs. State of U.P. and others, (AIR 1997 SC 1446 = (1997) 1 SCC 621), Punjab Water Supply and Sewerage Board vs. Ranjodh Singh, (2007) 2 SCC 491)

Comparative

Citation: 2008 (3)

TLNJ 199 (Civil)

Judgment :-

Common Order:

(Prayer: This writ petition is filed under Article 226 of Constitution of India, praying this Court to issue a writ of Certiorarified mandamus calling for the records of the third respondent pertaining to the notification dated nil, published in Newspaper "Thinakaran" on 13.4.2008 in pursuance of the order of the 2nd respondent made in G.O.Ms.No.324 Home (Tr.II-A) Department, dated 6.3.2008 and quash the same, consequently direct the second and third respondents to consider the name of the petitioner for the post of Motor Vehicle Inspector, Grade-II by contract as per section 10(a)(i)(1) of Tamil Nadu State and Subordinate Service Rules, 1955).

This batch of 58 cases are filed challenging in entirety the G.O.Ms.No.324 Home Department, dated 6.3.2008 or in part of the said Government order by the petitioners, seeking further direction to consider the name of the petitioners for selection to the post of Motor Vehicle Inspectors Grade-II on contract basis as per section 10(a)(i) of the Tamil Nadu State and Subordinate Service Rules, 1955.

2. As the issue involved in all the writ petitions are one and the same, all the 58 writ petitions are disposed of by this common order. For the sake of convenience, W.P.No.14169 of 2008 is taken as lead case and the parties in this common order are referred accordingly.

3. The case of petitioners are that they have completed Diploma in Mechanical Engineering and gained experience of more than one year in the Government approved and reputed Automobile Workshops and they are having valid driving licence for driving Motor vehicles, Heavy Goods Vehicles and Heavy Passenger Motor Vehicles. The Tamil Nadu Public Service Commission issued notification in advertisement No.107 for filling up 49 vacancies estimated in February, 2007, pursuant to which the petitioners herein applied for the above said posts, as according to them, they are all qualified candidates. Written test was conducted on 29.7.2007 by the TNPSC for preliminary selection and the petitioners are awaiting for results.

4. In the meanwhile, the Government issued G.O.Ms.No.324, Home Department, dated 6.3.2008 and invited applications for appointment of 65 Motor Vehicle Inspectors Grade-II on contract basis till the regular recruitment process is completed by the TNPSC. In the said Government Order, the respondents prescribed the qualification as pass in B.E. degree in Automobile Engineering or related branches of Engineering. It is further stated that the said appointments will be initially for a period of one year from the date of joining or till the date of the regularly appointed candidates join duty and the contract may be extended further at the discretion of the Contract Appointment Committee/Government, depending upon the performance and need. The further condition prescribed are that the persons to be appointed shall adhere to the working hours assigned to the regular Motor Vehicle Inspectors and discharge all other duties and responsibilities assigned to the post. The post of Contract Motor Vehicle Inspector Grade-II shall carry consolidated pay of Rs.8,000/- per month. Since the post involve heavy money transaction, production of bank guarantee or suitable security to the tune of Rs.5,00,000/- (Rupees Five Lakhs) is also insisted. It is further stated that the performance of the candidates will be assessed on quarterly basis.

5. Pursuant to the said Government Order, the Transport Commissioner issued further instructions on 13.4.2008 wherein minimum age of 21 and upper age limit of 32 is prescribed and for BC, MBC, SC & ST candidates, relaxation of five years upto 37 years is also given. It is also prescribed that the candidate must also possess experience of six months after obtaining Heavy Motor Vehicle licence. The total seats are distributed based on reservation

norms. The Government also invited applications through advertisement dated 13.4.2008.

6. The said orders of the respondents are challenged in this batch of 58 writ petitions either in toto or some of the clauses on the ground that the notification is contrary to Section 213 of the Motor Vehicles Act, 1988, and the notification issued by the Central Government prescribing minimum qualification through S.O.443(E) dated 12.8.1989. The said notification is also in violation of Rule 10(a)(i) of the Tamil Nadu State and Subordinate Service Rules, 1955, particularly with regard to the prescription of qualification and by permitting the respondents to proceed with the impugned selection, petitioners' right to get selected based on the Diploma qualification and one year experience certificate, will be affected. It is further stated that directing to produce bank guarantee/security for a sum of Rs.5 lakhs is arbitrary and the said condition deprives the rights of several qualified candidates and it is in violation of Articles 14 and 16 of the Constitution of India. The right of the BC, MBC, SC and ST candidates are affected as Rule 12(d) of the Tamil Nadu State and Subordinate Service Rules, 1955, enables the said candidates to apply without reference to age restriction.

7. The Special Commissioner and Transport Commissioner, Chepauk, Chennai-5, filed counter affidavit wherein it is contended as follows:

(a) The Motor Vehicle Inspectors Grade-II post is coming within the purview of the TNPSC. The transport department of the Government is periodically sending proposal for filling up of vacancies through TNPSC. The estimate of vacancies for the years from 2000 to 2008 (from 1.5.2000 to 30.4.2008) are 122 and out of this, only 8 appointment pertaining to 2000-2001 was made through the TNPSC during September, 2007. The subsequent request of the Government to fill up the vacancies numbering 49 was notified by the Government in February, 2007. For 49 vacancies, till date the selection process is not completed and at present out of 139 sanctioned posts of Motor Vehicle Inspectors Grade-II, 91 posts amounting to nearly 66% are lying vacant.

(b) The TNPSC is likely to take not less than 8 to 10 months to complete the selection process and to meet the immediate requirements, the Government thought fit to appoint Motor Vehicle Inspectors Grade-II on contract basis, pending selection by the TNPSC. The Grade-II Motor Vehicle Inspector post is the feeder category post for other higher level technical cadres and therefore it is impossible to complete the day to day works in the department. Since the post is coming within the purview of the TNPSC and the TNPSC is taking time due to their internal lengthy procedures, alternative and expeditious measures are to be found out and therefore the Government had to explore the possibility of filling up of these 65 vacancies on contract basis. The selected candidates may have to attend to the following important items of works:

- a) Conduct of driving tests and issue of driving licences;
- b) Inspection of vehicles for registration, for issue/renewal of Fitness Certificates;
- c) Inspection of vehicles involved in accidents; and
- d) To enforce the provisions of the Motor Vehicles Act & Rules so as to detect the irregularities resulting in collection of fine/tax/ compounding fee due to the Government and also to curb other irregularities.

Pointing out the said urgency, the respondents are justifying the issuance of the impugned orders.

(c) Insofar as the contention that the Government has no power to appoint Motor Vehicle Inspectors Grade-II on contract basis, according to the respondents, Rule 11 of the Tamil Nadu State and Subordinate Service Rules, 1955, empowers the Government to make such

contract appointments. Rule 10(a)(i) of the Tamil Nadu State and Subordinate Service Rules, 1955, also empowers the respondents to call for a list from the employment exchange and make temporary appointment. Following the said rules, application from eligible candidates were called for by fixing last date as 30.4.2008 through advertisement in prominent newspapers like 'The Hindu, The Indian Express, Dina Thandhi and Dinakaran' and 419 applications were received upto 30.4.2008 by 5.45 p.m.

(d) Regarding prescription of educational qualification is concerned it is stated that Motor Vehicle Inspectors Grade-II require persons with higher qualification due to modernisation of industry, due to the change in the circumstances like manufacturing of hi-tech vehicles, etc., the department has to fully equip itself to meet the challenges of the present situation. It is also contemplating to acquire latest technologies such as introduction of smart-card system, high security number plates, various E-Governance measures in collection of taxes, fees and other administrative matters and the present officers are unable to cope up with the said challenges due to lesser educational qualification. Therefore the Government prescribed a pass in B.E.(Automobile Engineering) or related branch of Engineering for contract appointments.

(e) Insofar as the direction to produce security/bank guarantee of Rs.5 lakhs from the selected candidates it is stated that the selected candidates shall have to handle huge amount of cash while checking vehicles, collecting taxes/fine/ compounding fees, etc. The said amount will have to be remitted to the Government account either on the same day or on the next day and some times, due to intervening holidays, the amount collected could not be remitted immediately and due to the said facts, there is possibility of misappropriation of amounts so collected and if it happens, the loss could be compensated from the security to be furnished, as no other action could be taken against the selected persons, who are holding temporary posts for a period of one year for whom service rules are not applicable.

(f) Insofar as not prescribing the minimum experience is concerned, it is stated that to verify the genuineness of the experience certificate it will take enormous time, which will cause unnecessary delay in appointment. Pointing out the above reasoning the impugned order is sought to be justified by the respondents.

8. Heard Mr.N.R.Chandran, learned Senior Counsel, Mr. K. Venkataramani, learned Senior Counsel, Mr.A.Kalaiselvan, Mr.N.Subramaniyan, Mr.D.Krishnakumar, Mr.K.Rajkumar, Mr.R.Govindasamy, Mr.S.Xavier Felix, Mr.V.Venkatasamy, Mr.S.Mani, Mr.P.R.Dinesh Kumar, Mr.S.Doraisamy, Mr.V.Harikrishnan and Mr.S.P.B.Dhuraishamy, learned counsels on behalf of the petitioners and Mr.A.Arul, learned Standing Counsel for the TNPSC/1st respondent and Mr.P.S.Raman, learned Additional Advocate General, for the State of Tamil Nadu/respondents 2 and 3.

9. The learned Senior Counsels and other counsels appearing for the petitioners submitted that the impugned order is contrary to Section 213 of the Motor Vehicles Act, 1988, as well as to the notification issued under the Central Motor Vehicles Rules, wherein Diploma in Mechanical Engineering and working experience of at least one year with possession of driving licence to drive Motor Vehicles, Heavy Goods Vehicle and Heavy Passenger Motor Vehicles are prescribed. It is further contended that under Rule 10(a)(i) of the Tamil Nadu State and Subordinate Service Rules, 1955, only qualified persons with prescribed qualification under the recruitment rules can be appointed temporarily, if there is undue delay in selecting persons regularly. The notification issued is contrary to the recruitment rules and therefore the proposed appointments cannot be treated as under Rule 10(a)(i). In the TNPSC notification issued for selecting candidates for the very same post, there is no age limit fixed for B.C., MBC, SC and ST candidates in terms of Rule 12(d) of the Tamil Nadu State and

Subordinate Service Rules, 1955, and in the impugned orders only five years relaxation i.e, upto the age of 37 is given to such categories of candidates and therefore the rights of the said candidates are affected. The learned counsels also pointed out that in the Government order, no minimum or upper age limit is fixed, whereas the Transport Commissioner in his order dated 13.4.2008 prescribed minimum age as 21 and upper age as 32 years and with relaxation 37 years of age to the said categories of the candidates and the said action of the Transport Commissioner is contrary to the Government Order and therefore the same is illegal. Mr.N.R.Chandran, learned Senior Counsel submitted that Rule 11 of the Tamil Nadu State and Subordinate Service Rules, 1955, cannot be applied for appointments and appointments are to be made only under Rule 10(a)(i) and conditions of service alone can be fixed by agreement. The learned Senior Counsel further submitted that even if there is urgency, since the notification issued by the TNPSC is of the year 2007 and written test also having been conducted, directions could be issued to the TNPSC to complete the selection process within a given time, so that the contractual appointments through the impugned order can be avoided.

10. The learned Additional Advocate General appearing for the respondents 2 and 3 submitted that even though notification was issued through the TNPSC for selection of 49 Motor Vehicle Inspectors Grade-II and written test was conducted on 29.7.2007, there is delay in completion of the selection process and there are 91 vacancies available for the post as on date and to cope up with the work as stated in the counter affidavit, the impugned procedure is prescribed by the Government under Rule 11 of the Tamil Nadu State and Subordinate Service Rules, 1955, for recruiting 65 Motor Vehicle Inspectors Grade-II/Examiners, and the Government is vested with such power under Rule 11 and therefore there is no illegality in the said Government Order. The learned Additional Advocate General also submitted that a degree in Mechanical Engineering was prescribed as the qualification due to the nature of the work they have to perform even though the recruitment rules are yet to be amended and by virtue of the said prescription of the qualification, higher qualified persons are ordered to be selected than the prescribed qualification mentioned in the recruitment rules. Insofar as the fixing of minimum age of 21 by the Transport Commissioner is concerned, the Government order nowhere prescribed the said minimum age or upper age and therefore the Transport Commissioner is not right in fixing the minimum age. With regard to the condition that the selected candidates must produce bank guarantee or suitable security to the tune of Rs.5 lakhs, the same is insisted on the basis of the duties to be performed by the selected candidates including handling of huge amounts and as no disciplinary control is vested with the department, the said bank guarantee or suitable security is insisted upon to realise the amount collected, if there is non-remittance or misappropriation and the same cannot be treated as unreasonable. The learned Additional Advocate General further submitted that the selected candidate will not get any vested right by virtue of their selection and they will be permitted to continue to work only till the regularly selected candidates, by the TNPSC in accordance with the recruitment rules, assume office/join duty.

11. The learned counsel appearing for the TNPSC/first respondent on instructions submitted that the TNPSC will be in a position to publish the written test results conducted on 29.7.2007 within one month and thereafter final selection could be completed. According to the learned counsel, the delay in completing the selection is only on the part of the Transport Commissioner in completing the verification of the experience certificates with regard to the experience of the candidates and immediately on receipt of the report of the genuineness of the said certificates from the Transport Commissioner, final selection would be made. The learned counsel also submitted that except the 49 vacancies which are notified in the year 2007, no other vacancy position was intimated by the respondents 2 and 3 to the TNPSC for issuing notification inviting applications and therefore there is no delay on the part of the first

respondent in conducting selections.

12. I have considered the rival submissions made by the respective counsels for the petitioners and the respective counsels for the respondents.

13. From the narration of above facts and the arguments advanced on behalf of the petitioners as well as respondents, the following issues arise for consideration in these cases.

1) Whether candidates can be appointed on contract basis in violation of the qualifications prescribed in the Motor Vehicles Act, 1988, and the recruitment rules viz., Tamil Nadu Transport Subordinate Service Rules ?

2) Whether the respondents 2 and 3 are justified in passing the impugned order invoking Rule 11 of the Tamil Nadu State and Subordinate Service Rules, 1955 ?

3) Whether the respondents 2 and 3 are justified in prescribing Rs.5 lakhs as bank guarantee or security from the selected candidates for their engagement as Contract Motor Vehicle Inspectors Grade-II?

4) Whether the respondents 2 and 3 are justified in issuing the impugned order when Tamil Nadu Public Service Commission has notified 49 vacancies and recruitment process is in progress ?

5) Whether the action of the respondents 2 and 3 amounts to encouraging back door entry in public employment ?

14. The qualification prescribed for the post of Motor Vehicle Inspectors Grade-II under Motor Vehicles Act, 1988, in section 213 reads as follows:

213. Appointment of motor vehicles officers.- (1) The State Government may, for the purpose of carrying into effect the provisions of this Act, establish a Motor Vehicles Department and appoint as officers thereof such persons as it thinks fit.

(2) Every such officer shall be deemed to be a public servant within the meaning of the Indian Penal Code (45 of 1860).

(3) The State Government may make rules to regulate the discharge by officers of the Motor Vehicles Department of their functions and in particular and without prejudice to the generality of the foregoing power to prescribe the uniform to be worn by them, the authorities to which they shall be subordinate, the duties to be performed by them, the powers (including the powers exercisable by police officers under this Act) to be exercised by them, and the conditions governing the exercise of such powers.

(4) The Central Government may, having regard to the objects of the Act, by notification in the Official Gazette, prescribe the minimum qualifications which the said officers or any class thereof shall possess for being appointed as such.

(5) In addition to the powers that may be conferred on any officer of the Motor Vehicles Department under sub-section (3), such officer as may be empowered by the State Government in this behalf shall also have the power to,-(a) make such examination and inquiry as he thinks fit in order to ascertain whether the provisions of this Act and the rules made there under are being observed;

(b) with such assistance, if any, as he thinks fit, enter, inspect and search any premises which is in the occupation of a person who, he has reason to believe, has committed an offence under this Act or in which a motor vehicle in respect of which such offence has been committed is kept: Provided that, - (i) any such search without a warrant shall be made only by an officer of the rank of a Gazetted Officer;

(ii) Where the offence is punishable with fine only the search shall not be made after sunset and before sunrise;

(iii) where the search is made without a warrant, the Gazetted Officer concerned shall record in writing the grounds for not obtaining a warrant and report to his immediate superior that such search has been made;

(c) examine any person and require the production of any register or other document maintained in pursuance of this Act, and take on the spot or otherwise statements of any person which he may consider necessary for carrying out the purposes of this Act;

(d) seize or take copies of any registers or documents or portions thereof as he may consider relevant in respect of an offence under this Act which he has reason to believe has been committed;

(e) Launch prosecutions in respect of any offence under this Act and to take a bond for ensuring the attendance of the offender before any Court;

(f) Exercise such other powers as may be prescribed:

Provided that no person shall be compelled under this sub-section to answer any question or make any statement tending to incriminate himself.

(6) The provisions of the Code of Criminal Procedure, 1973 (2 of 1974) shall, so far as may be, apply to any search or seizure under this section as they apply to any search or seizure under the authority of any warrant issued under section 94 of the Code."

(Emphasis supplied)

The Central Government, bearing in mind the duties to be performed by the Motor Vehicle Inspectors and the powers conferred under Section 213(A) prescribed the minimum qualification for the class of officers consisting of the category of Inspector of Motor Vehicles or Assistant Inspector of Motor Vehicles as follows:

"Qualifications.

(1) Minimum general educational qualification of a pass in X standard; and

(2) A diploma in Automobile Engineering (3 year course) or a diploma in Mechanical Engineering awarded by the State Board of Technical Education (3-year course); and

(3) working experience of at least one year in a reputed automobile workshop which undertakes repairs of both light motor vehicles, heavy goods vehicles and heavy passenger motor vehicles fitted with petrol and diesel engine; and

(4) must hold a driving licence authorising him to drive motor cycle, heavy goods vehicles and heavy passenger motor vehicles."

The statutory rule viz., Tamil Nadu Transport Subordinate Service Rules which came into force from 1981 enables only direct recruitment of Motor Vehicle Inspectors Grade-II. Rule 5 prescribes the educational qualification/experience and the age qualification which reads as follows:

"5. Qualifications- (a) Age - (i) No person shall be eligible for appointment to category-2 by direct recruitment, unless he possesses the qualifications specified below, namely: - (1) Must have completed 21 years of age; (2) Must not have completed 32 years of age:

Provided that a person belonging to the Scheduled Caste/Scheduled Tribe shall be eligible for appointment by direct recruitment by category 2 if he has not completed 37 years of age.

Provided further that the minimum age limit of 21 years prescribed above shall apply also to the candidate belonging to scheduled caste, scheduled tribes and Backward classes.

i. The age limit prescribed in this rule shall be reckoned so far as direct recruits are concerned with reference to the first day of July of the year in which the selection for appointment is made;

ii. Other Qualifications: No person shall be eligible for appointment to the category specified in column (1) by the method specified in column (2) of the table below unless he possess the qualifications specified in the corresponding entries in the column (3) thereof: -15. Following the above said statutory rules and on the basis of intimation given by the Government, the TNPSC issued advertisement No.107 for filling up 49 posts of Motor Vehicle Inspectors Grade-II in February, 2007, fixing the last date as 23.5.2007 and the scale of pay was notified as Rs.5500-175-9000. In the said notification the age qualification is also stated as between 21 to 32 years as on 1.7.2007. Age relaxation is given to BC, MBC, SC & ST candidates is given in terms of Rule 12(d) of the Tamil Nadu State and Subordinate Service Rules, 1955. One experience certificate is also required to be produced apart from driving licence. Preference is also given to those who possess Diploma in Automobile Engineering, awarded by the State Board of Technical Education and Training, Tamil Nadu. The written test was proposed to be conducted on 29.7.2007 and the same was also conducted and results are awaited.

16. Thus, it is evident that the respondents 2 and 3 are also following the qualifications prescribed under the statutory recruitment rule as well as the Motor Vehicles Act, 1988. For the post of Motor Vehicle Inspectors Grade-II B.E. degree is not the prescribed qualification however the same is prescribed as the only qualification in the impugned order for selection to the Motor Vehicle Inspectors Grade-II on contract basis. Thus, the Diploma holders, who are having one year experience with driving licence and who are eligible to be appointed as Motor Vehicle Inspectors, Grade-II as per the recruitment rules are prevented from applying for the very same post now sought to be filled up on contract basis. The legitimate expectation of such candidates are very much affected due to the enhancement of the qualification fixed in the impugned order that too without amending the rules. At this juncture, it is to be noted that for regular and permanent appointment of Motor Vehicle Inspectors Grade-II, Diploma Holders are found eligible. However, for the appointment to the very same post on contract basis, they are found ineligible. The said prescription of qualification by the respondents 2 and 3 is unreasonable and also to be treated as inconsistent and it will create an anomalous situation as the Diploma holders will be in a position to replace the Degree holders on their selection through TNPSC.

17. Insofar as the contention that Rule 11 of the Tamil Nadu State and Subordinate Service Rules, 1955, empowers the Government to appoint persons on contract basis, as rightly contended by the learned counsels for the petitioners, the contract appointments can be made even for a specific period only from among the qualified persons. The respondents cannot contend that merely because they have got power to appoint persons on contract

basis, debars the rules they are entitled to fix higher qualification, thereby denying the right of the qualified candidates to compete. For proper appreciation, Rule 11 of the Tamil Nadu State and Subordinate Service Rules, 1955, is extracted hereunder:

"11. Appointment by agreements. (1) When in the opinion of State Government Special provisions inconsistent with any of these rules or of any other rules made under the proviso to article 309 of the Constitution of India or continuing by Article 313 of that Constitution (hereinafter referred to in this rule as the said rules) are required in respect of conditions of service, pay and allowances, pension, discipline and conduct with reference to any particular post, or any of them, it shall be open to the State Government to make an appointment to such post otherwise than in accordance with these rules or the said rules and to provide by agreement with the person so appointed for any of the matters in respect of which in the opinion of the State Government special provisions are required to be made and to the extent to which such provisions are made in the agreement, nothing in these rules or the said rules shall apply to any person so appointed in respect of any matter for which provision is made in the agreement:

Provided that in every agreement, made in exercise of the powers conferred by this rule it shall further be provided that in respect of any matter in respect of which no provision has been made in the agreement the provisions of these rules or of the said rules shall apply.

(2) A person appointed under sub-rule (1) shall not be regarded as a member of the service in which the post to which he is appointed is included and shall not be entitled by reason only of such appointment to any preferential claim to any other appointment in that or any other service."

Rule 10(a)(i)(1) of the very same Rules enables the respondents to make temporary appointments due to public interest owing to an emergency, if there is undue delay in making appointments in accordance with the rules. Person, who possess the qualification prescribed for the post alone can be appointed. The said Rule 10(a)(i)(1) reads thus,

Provided that in every agreement, made in exercise of the powers conferred by this rule it shall further be provided that in respect of any matter in respect of which no provision has been made in the agreement the provisions of these rules or of the said rules shall apply.

(2) A person appointed under sub-rule (1) shall not be regarded as a member of the service in which the post to which he is appointed is included and shall not be entitled by reason only of such appointment to any preferential claim to any other appointment in that or any other service."

Rule 10(a)(i)(1) of the very same Rules enables the respondents to make temporary appointments due to public interest owing to an emergency, if there is undue delay in making appointments in accordance with the rules. Person, who possess the qualification prescribed for the post alone can be appointed. The said Rule 10(a)(i)(1) reads thus,

Provided further that the reserve list of successful candidates shall be in force until the regular list of successful candidates is drawn up subsequently; and that candidates shall be allotted from such reserve list for the vacancies in the place of those who have not joined duty.

Provided also that appointment by direct recruitment under this clause (1) in respect of posts within the purview of Tamil Nadu Public Service Commission shall be made, only where new posts with new qualifications are created temporarily and where the Tamil Nadu Public Service Commission does not have a regular or reserve list of successful candidates for sponsoring."

(Emphasis supplied)

Thus, it is clear that qualified persons according to the recruitment rules can be appointed even temporarily to meet the emergent situation warranting immediate appointment and they shall be replaced by regularly selected candidates.

18. By a harmonious reading of Rules 10(a)(i)(1) and 11, extracted above, it could be safely concluded that even under Rule 11, only a qualified person who can be appointed in the permanent post, can be appointed on contract basis and unqualified persons, who cannot compete for the regular selection, cannot be permitted to apply for the post, merely because their appointment is on the basis of the agreement/contract. If the interpretation given by the respondents 2 and 3 are accepted, the recruitment rules can be ignored and unqualified persons can be appointed on contract basis in the sanctioned vacancies, which will be in contravention of the statutory rules framed under Article 309 of the Constitution of India. It is the consistent case of the respondents that as and when regular candidates are appointed through TNPSC, the persons to be appointed on contract basis shall vacate their seats. Therefore the said stand of the respondents is also unreasonable and liable to be rejected.

19. (a) The Honourable Supreme Court considered the validity of appointment made dehors to the rules in the decision reported in (2006) 4 SCC 1 (Secretary, State of Karnataka vs. Umadevi). In paragraphs 11 and 12 the Supreme Court held thus:

"11. the equality clause represented by Article 14 of the Constitution, Article 16 has specifically provided for equality of opportunity in matters of public employment. Buttressing these fundamental rights, Article 309 provides that subject to the provisions of the Constitution, Acts of the legislature may regulate the recruitment and conditions of service of persons appointed to public services and posts in connection with the affairs of the Union or of a State. In view of the interpretation placed on Article 12 of the Constitution by this Court, obviously, these principles also govern the instrumentalities that come within the purview of Article 12 of the Constitution. With a view to make the procedure for selection fair, the Constitution by Article 315 has also created a Public Service Commission for the Union and the Public Service Commissions for the States. Article 320 deals with the functions of the Public Service Commissions and mandates consultation with the Commission on all matters relating to methods of recruitment to civil services and for civil posts and other related matters. As a part of the affirmative action recognised by Article 16 of the Constitution, Article 335 provides for special consideration in the matter of claims of the members of the Scheduled Castes and Scheduled Tribes for employment. The States have made Acts, rules or regulations for implementing the above constitutional guarantees and any recruitment to the service in the State or in the Union is governed by such Acts, rules and regulations. The Constitution does not envisage any employment outside this constitutional scheme and without following the requirements set down therein.

12. In spite of this scheme, there may be occasions when the sovereign State or its instrumentalities will have to employ persons, in posts which are temporary, on daily wages, as additional hands or taking them in without following the required procedure, to discharge the duties in respect of the posts that are sanctioned and that are required to be filled in terms of the relevant procedure established by the Constitution or for work in temporary posts or projects that are not needed permanently. This right of the Union or of the State Government cannot but be recognised and there is nothing in the Constitution which prohibits such engaging of persons temporarily or on daily wages, to meet the needs of the situation. But the fact that such engagements are resorted to, cannot be used to defeat the very scheme of public employment. Nor can a court say that the Union or the State Governments do not have the right to engage persons in various capacities for a duration or until the work in a particular project is completed. Once this right of the Government is recognised and the mandate of the constitutional requirement for public employment is respected, there cannot be much

difficulty in coming to the conclusion that it is ordinarily not proper for the Courts whether acting under Article 226 of the Constitution or under Article 32 of the Constitution, to direct absorption in permanent employment of those who have been engaged without following a due process of selection as envisaged by the constitutional scheme."

(Emphasis Supplied)

(b) A Division Bench of this Court in the decision reported in (2005) 3 MLJ 538 (M.Saravanakumar vs. The Secretary, to Government, Education Department, Chennai) considered the question of appointing Guest Lecturers in various Government Colleges in the State of Tamil Nadu, who were appointed dehors the recruitment rules for years together. In paragraphs 31 to 33 the Division Bench held as follows:

"31. However, before parting with these cases we wish to observe that it was not proper for the State Government to keep making appointments of guest lecturers year after year since the year 2000. This is demeaning to the lecturers who are treated almost like casual or daily wage employees, and are given remuneration on an hourly basis and that too without even giving them any formal appointment order. What interest in their work will such teachers take, and what commitment will they have? There is no security of tenure for such teachers. Also, they are paid a paltry sum upto a maximum of Rs.4,000 per month. Is this the way to treat the gurus of our youth? Even a peon in government service often gets more than Rs.4,000 per month. Should our teachers be treated worse than peons?

32. It is also not in the interest of the students or the public to appoint guest lecturers on a large scale, because teachers who are given such appointments are not likely to take much interest in their work. They will not be able to work with a free mind and will feel all the time that there is a Damocle Sword hanging over their heads. Surely the students in Tamil Nadu deserve good teachers. Good education is of paramount importance for the progress of society in the modern age.

33. We fail to understand why for the past 5 years no regular recruitment has been made through the teachers recruitment board, and instead this policy of appointing guest lecturers has been continued year after year. The teachers are the gurus of society, and they must be given proper respect, proper status, and a secure job, so that they can function with a free mind and take interest in their work. This policy of making appointments of guest lecturers is not conducive to this end, and must now be revoked."

(c) Whether the Government can issue directions to make contract appointment by issuing Government Order under Article 162 of the Constitution of India was also considered by the Supreme Court in the decision reported in (2007) 2 SCC 491(Punjab Water Supply and Sewerage Board v. Ranjodh Singh). In the said judgment it is held that a scheme issued under Article 162 cannot prevail over the statutory rules framed under Article 309 of the Constitution of India. The policy decision adopted by the State Government under Article 162 would be illegal and without jurisdiction if it is contrary to the statutory rule framed under Article 309 of the Constitution of India.

20. In the impugned order, the respondents 2 and 3 have imposed a further condition that the selected candidates must give a bank guarantee or security worth Rs.5 lakhs. By imposing the said condition, the qualified candidates, without means to give bank guarantee or security worth Rs.5 lakhs, are prevented from participating in the selection for public employment and the said action of the respondents is arbitrary and violative of Articles 14 and 16 of the Constitution of India. By imposing the said condition, the respondents are restricting the choice of participants/applicants, and only affluent class of candidates can apply and the same is impermissible as it is violative of Article 14 and 16 of the Constitution of India. Even

assuming that the impugned order is sustained by permitting the respondents to select B.E. Degree Holders for appointment on contract basis, only the B.E. Degree holders having sufficient means can apply and participate in the selection process. Therefore, such a condition imposed in the impugned order is arbitrary and unsustainable. Similar method adopted to impose ban on appointment and make massive appointment on the above basis dehors to the rules and then resorting to regularise such appointments by issuing Government Orders, was considered illegal by the Honourable Supreme Court in the decision reported in AIR 1991 SC 284 = 1992 Supp (1) SCC 272 (Keshav Chandra Joshi v. Union of India), which was followed by the Supreme Court in the subsequent decision reported in (AIR 1995 SC 586 = 1995 (Supp) 1 SCC 572). In paragraphs 21 and 22, the Supreme Court held as follows:

"21. It was reiterated in Keshav Chandra Joshi case and it is common experience that it is a vicious circle that initially Governments impose ban on recruitment and make massive ad hoc appointments dehors the rules giving a go-by to make recruitment in accordance with the rules and then resort to regularisation of such appointments exercising the power under Article 320(3) proviso or Article 162 to make them the members of the service. This practice not only violates the mandates of Articles 14 and 16 but also denies to all eligible candidates, their legitimate right to apply for and stand for selection and get selected. In State of Orissa v. Sukanti Mohapatra and J & K Public Service Commission v. Dr Narinder Mohan it was held that appointments made in violation of recruitment rules violate Articles 14 and 16. Therefore, as stated earlier, the Administrative Tribunal has rightly expressed unhappiness on the exercise of the power by the State Government by resorting to proviso to clause (3) of Article 320 to make massive departure to make recruitment in accordance with the Rules. We agree with Shri Guru Raja Rao, the learned counsel for PSC candidates that the PSCs must be made more functional and its efficacy be streamlined appointing people of eminence, experience and competence with undoubted integrity to recruit the candidates in accordance with rules for appointment to the posts and back-door entry by nepotism be put an end. Free play of exercise of the power under proviso to clause (3) of Article 320 would undermine the efficacy of constitutional institution i.e. PSCs. Be that as it may, we have to consider whether the regularisation of the service of the temporary appointees is in accordance with the special rules and the rules vis-à-vis condition (iii) of the Order under GOMs No. 413, dated 29-8-1983.

22. In R.N. Nanjundappa vs. T. Thimmiah, placitum C & D, dealing with the contention that Article 309 speaks of rules for appointment and general conditions of service, held that regularisation of appointment in exercise of executive power process notwithstanding any rule, cannot be a form or kind of appointment and if it is in infraction of the rules and if it has effect of the violation of the rules or the Constitution, illegality cannot be regularised. If it does not violate the law, it would be permissible. Otherwise the rule itself gets criticised on the ground that it is in violation of Articles 14 and 16(1)."

21. Insofar as the contention that to meet the emergent situation the impugned selection procedure is resorted also has no basis since as already stated, the TNPSC as early as in February, 2007, called for applications for selecting 49 Motor Vehicle Inspectors Grade-II for which written test was also conducted on 29.7.2007 itself and according to the learned counsel for the TNPSC, the first respondent TNPSC will be in a position to publish the results within a period of one month and that the delay in completing the selection process is on the part of the third respondent in not furnishing the report regarding the genuineness of the experience certificates produced by the applicants. The said delay on the part of the third respondent cannot be a sufficient reason to select the candidates on contract basis when regular selection for the very same post is under progress. It is also to be noted that for filling up the remaining vacancies so far no intimation is given by the respondents 2 and 3 to the TNPSC for notifying the vacancies. If really the respondents have taken effective steps and

still there is delay on the part of the first respondent to complete the process of selection then only the contract appointment/temporary appointment to meet the emergent situation can be resorted to. The TNPSC, having been created under Article 320 of the Constitution of India, is also having a constitutional obligation to complete the selection without delay. It is unfortunate that even after over 11 1/2 months, the TNPSC/first respondent has not chosen to publish the written test results. The selection process is not completed in spite of the expiry of about 17 months from the date of notification issued for selection of Motor Vehicle Inspectors Grade-II.

22. Finally, the learned counsels for the petitioners vehemently argued that permitting the respondents 2 and 3 to appoint the Motor Vehicle Inspectors Grade-II on contract basis, may lead to appointment through back door to public employment. Admittedly Motor Vehicle Inspectors Grade-II post is a public office/employment. If, pending finalisation of selection by the TNPSC without reference to the rules, persons are appointed on contract basis, there is possibility of seeking regularisation of their services by asking for relaxation of the recruitment rules. Hence I am of the view that by permitting the respondents 2 and 3 to fill up the posts of Motor Vehicle Inspectors Grade-II on contract basis, it may amount to encouraging back door entry in public employment. The said entry through back door method in public employment is condemned by the Supreme Court and this Court in very many decisions.

23. In *Ram Ganesh Tripathi and Others vs. State of U.P. and others*, reported in (AIR 1997 SC 1446 = (1997) 1 SCC 621), the Supreme Court observed that bye-passing the process of selection, regularisation of adhoc employees are not permissible. In *Punjab Water Supply and Sewerage Board vs. Ranjodh Singh*, reported in (2007) 2 SCC 491), the Supreme Court held thus,

" the State may have some control with regard to recruitment of employees to local bodies, but such control must be exercised by State strictly in terms of provisions of the Act. The statutory bodies are bound to apply the rules and regulation laid down under the statutory rule. Neither the statutory body could refuse to fulfil such conditional data nor could the State issue any direction contrary to or inconsistent with the constitutional principles adumbrated under Article 14 and 16 of the Constitution. Even a scheme issued under Article 162 of the Constitution would not prevail over statutory rules. In the aforesaid case of Punjab Water Supply & Sewerage Board (*supra*), the Supreme Court also noticed that the High Court did not issue a writ of mandamus on arriving at a finding that the respondent had a legal right in relation to their claim for regularisation, which it was not obligated to do. The Court proceeded to issue the direction only on the basis of the purported policy decision and failed to notice that any departmental letter or executive instruction cannot prevail over the statutory rule and constitutional provisions. The Supreme Court held that any appointment, thus, made without following the procedure would be *ultra vires*."

24. In the light of the above findings, I am of the view that the impugned order proposing to select and appoint Motor Vehicle Inspectors Grade-II on contract basis when regular selection process through TNPSC is in progress, is impermissible and the impugned Government Order and the circular issued by the Transport Commissioner/third respondent herein, are liable to be set aside and accordingly set aside.

25. In view of the order passed above setting aside the impugned order in toto, the respondents 2 and 3 are not entitled to proceed with selection process. Since there is urgency in the selection of Motor Vehicle Inspectors, Grade-II, the TNPSC is directed to publish the written test results held on 29.7.2007, before 29.7.2008 and complete the selection process and submit the list of selected candidates to the second respondent on or before 30.9.2008.

The writ petitions are disposed of with the above directions. No costs. Connected

miscellaneous petitions are closed.