



Mr.P.R.Dinesh Kumar,  
Mr.S.Doraisamy,  
Mr.V.Harikrishnan, and  
Mr.S.P.B.Dhuraishamy

For 1st Respondent/TNPSC: Mr.A.Arul,  
Standing Counsel for TNPSC

For Respondents 2 & 3/ : Mr.P.S.Raman, Addl. Adv. General  
State of Tamil Nadu assisted by  
Mrs.Lita Srinivasan,  
Government Advocate

#### COMMON ORDER

This batch of 58 cases are filed challenging in entirety the G.O.Ms.No.324 Home

2. As the issue involved in all the writ petitions are one and the same, al

3. The case of petitioners are that they have completed Diploma in Mechanic

4. In the meanwhile, the Government issued G.O.Ms.No.324, Home Department,

5. Pursuant to the said Government Order, the Transport Commissioner issued

6. The said orders of the respondents are challenged in this batch of 58 wr

7. The Special Commissioner and Transport Commissioner, Chepauk, Chennai-5,

(a) The Motor Vehicle Inspectors Grade-II post is coming within the purview

(b) The TNPSC is likely to take not less than 8 to 10 months to complete the

a) Conduct of driving tests and issue of driving licences;

b) Inspection of vehicles for registration, for issue/renewal of Fitness

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 impugn

(c) Insofar as the contention that the Government has no power to appoint Mo

(d) Regarding prescription of educational qualification is concerned it is s

(e) Insofar as the direction to produce security/bank guarantee of Rs.5 lakh

(f) Insofar as not prescribing the minimum experience is concerned, it is st

8. Heard Mr.N.R.Chandran, learned Senior Counsel, Mr.K.Venkataramani, learn

9. The learned Senior Counsels and other counsels appearing for the petitio

10. The learned Additional Advocate General appearing for the respondents 2

11. The learned counsel appearing for the TNPSC/first respondent on instruct

12. I have considered the rival submissions made by the respective counsels

13. From the narration of above facts and the arguments advanced on behalf o

1) Whether candidates can be appointed on contract basis in violation of the qualif

- 2) Whether the respondents 2 and 3 are justified in passing the impugned order in
  - 3) Whether the respondents 2 and 3 are justified in prescribing Rs.5 lakhs as bank
  - 4) Whether the respondents 2 and 3 are justified in issuing the impugned order when
  - 5) Whether the action of the respondents 2 and 3 amounts to encouraging back door
14. The qualification prescribed for the post of Motor Vehicle Inspectors Gr
213. Appointment of motor vehicles officers.- (1) The State Government may,
- (2) Every such officer shall be deemed to be a public servant within the mea
  - (3) The State Government may make rules to regulate the discharge by officer
  - (4) The Central Government may, having regard to the objects of the Act, by
  - (5) In addition to the powers that may be con ferred on any officer of the M
  - (a) make such examination and inquiry as he thinks fit in order to ascertain
  - (b) with such assistance, if any, as he thinks fit, enter, inspect and search
- Provided that,-
- (i) any such search without a warrant shall be made only by an officer of the rank o
  - (ii) Where the offence is punishable with fine only the search shall not be made afte
  - (iii) where the search is made without a warrant, the Gazetted Officer concerned shall
  - (c) examine any person and require the production of any register or other d
  - (d) seize or take copies of any registers or documents or portions thereof a
  - (e) launch prosecutions in respect of any offence under this Act and to take
  - (f) exercise such other powers as may be prescribed:

Provided that no person shall be compelled under this sub-section to answer any

- (6) The provisions of Code of Criminal Procedure, 1973 (2 of 1974) shall, so far as
- (Emphasis supplied)

The Central Government, bearing in mind the duties to be performed by the Motor Vehicle Inspectors, the following qualifications shall be prescribed:-

- (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

- (3) working experience of at least one year in a reputed automobile workshop
- (4) must hold a driving licence authorising him to drive motor cycle, heavy

The statutory rule viz., Tamil Nadu Transport Subordinate Service Rules which came into

"5. Qualifications- (a) Age - (i) No person shall be eligible for appointment to category

- (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

Provided further that the minimum age limit of 21 years prescribed above shall a

- i. The age limit prescribed in this rule shall be reckoned so far as direct recruit
- ii. Other Qualifications: No person shall be eligible for appointment to the categ

TABLE

Sl. Category Method Qualifications No. (1) (2) (3)

1.	Motor Vehicles Grade-I	Promotion	(i) Must be an approved probationer in the post	Inspector
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(ii) Must have served for a total period of not less four years in out of which not less than one year should be in the flying squad or in the checking squad.

Provided that this rule shall not apply to appointments by promotion made prior to the 1st January, 1988.

2. Motor Vehicles Inspectors Grade-II Direct Recruitment

i) Minimum General Educational Qualification prescribed in the Schedule to the General Rules for the Tamil Nadu State and Subordinate Service.

ii) A Diploma in Automobile Engineering (3 years) or a diploma in Mechanical by the State Board of Technical Education and Training, Tamil Nadu.

iii) Experience of having worked for a period of not less than one year, both on vehicles fitted with petrol engines and vehicles fitted with diesel engines on a full time basis in an Automobile Workshop which undertakes repairs of light motor vehicles, heavy goods vehicles and heavy passenger motor vehicles."

iv) Must hold a driving licence authorising him to drive motor cycle, heavy goods vehicle and heavy passenger motor vehicles and must have experience in driving heavy transport vehicles for a period of not less than "six months".

Provided that, other things being equal preference shall be given to those who possess Post Graduate Diploma in Automobile Engineering awarded by the State Board of Technical Education and Training, Tamil Nadu.

Explanation: 'Automobile Workshop' for the purpose of entry (iii) above means,

- a) An Automobile Workshop owned by the Government or the State Transport Corporation; or
  - b) and Automobile Workshop recognized or approved or certified by the Transport Commissioner or the Director, Motor Vehicles Maintenance Department for carrying out all kinds of repairs."
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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, dehors 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, "10. Temporary appointments:-a(i)(1) where it is necessary in the public interest owing to an emergency which has arisen to fill immediately a vacancy in a post borne on the cadre of a service, class or category and there would be undue delay in making such appointment in accordance with these rules and the Special Rules, the appointing authority may temporarily appoint a person, who possesses the qualifications prescribed for the post otherwise than in accordance with the said rules.

Provided that no appointment by direct recruitment under this clause shall be made of any person other than the one sponsored by the Tamil Nadu Public Service Commission from its regular or reserve list of successful candidates to any of the posts within the purview of the Tamil Nadu Public Service Commission.

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 de hors to the rules in the decision reported in (2006) 4 SCC 1 (Secretary, State of Karnataka v. 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 v. 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 v. 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 v. 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 v. 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.

vr To

1. The Chairman, Tamil Nadu Public Service Commission, Chennai - 600 002.
2. The Secretary to Government, Home Department, Secretariat, Chennai - 600 009.
3. The Special Commissioner & Transport Commissioner, Chepauk, Chennai 600 005