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W.P.No.28533 of 2022 etc.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.07.2024

CORAM:

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

W.P.Nos.28533, 29349, 29350, 29351 & 30181 of 2022

and

W.M.P.Nos.27846, 28659, 28663, 28666 & 29616 of 2022

W.P.No.28533 of 2022:-

N.Balamurugan

... Petitioner

Vs

1. The State of Tamil Nadu,
Rep. by its Principal Secretary
to Government,
School Education Department,
Secretariat, Fort St. George,
Chennai – 600 009.

2. The Commissioner,
Directorate of School Education,
DPI Campus, College Road,
Chennai – 600 006.

3. The Chairman,
Teacher Recruitment Board,
4th Floor, EVK Sampath Maaligai,
DPI Campus, College Road,
Chennai – 600 006.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India
praying to issue a Writ of Certiorarified Mandamus, to call for the



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records relating to the impugned amendment notification issued by the third respondent in Notification No.01E/2022 dated 17.09.2022 and to quash the same and consequently direct the respondents to select and appoint the petitioner in the post of P.G. Assistant in Indian Culture as per the notification No.01/2021 dated 09.09.2021 issued by the third respondent, in accordance with the selection already conducted and as per the marks secured by the petitioner in the selection under SC reserved category.

For Petitioner : Mr.G.Sankaran
Senior Counsel
For Mr.S.Nedunchezhiyan

For Respondents
For R1 & R2 : Mrs.S.Mythreye Chandru
Special Government Pleader
For R3 : Mr.R.Neelakandan,
Additional Advocate General
Assisted by Mr.C.Kathirvan
Standing Counsel.

COMMON ORDER

All the writ petitions have been filed challenging the amendment notification issued by the third respondent dated 17.09.2022, thereby stated that there is no vacancy in the post of P.G. Assistant in Indian Culture and Political Science.



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2. The issues involved in all the writ petitions are similar in nature and therefore, this Court is inclined to pass common order in all the writ petitions.

3. The petitioners are qualified to be appointed as P.G. Assistant in the subject of Indian Culture and Political Science. While being so, the third respondent issued notification dated 09.09.2021, thereby invited application for direct recruitment for the post of P.G. Assistant in various subjects. As per the notification, four vacancies were notified for the post of P.G. Assistant Indian Culture and 22 vacancies have been notified for the post of P.G. Assistant Political Science including the backlog vacancies. Accordingly, the petitioner in W.P.No.28533 of 2022 had applied for the post of P.G. Assistant in Indian Culture and other petitioners had applied for the post of P.G. Assistant in Political Science. They had written the examinations and they secured good marks in their written examinations and as such they were called for certificate verification to be held on 02.09.2022. The petitioners had appeared for the certificate verification and produced all



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certificates relevant to their educational qualification and the same were duly verified by the authorities.

4. Thereafter, the third respondent published provisional selection list, based on the marks secured by them on 17.09.2022. But, the third respondent has not published the provisional selection list for the post of P.G. Assistant in Indian Culture and Political Science. On the other hand, the third respondent issued amendment notification dated 17.09.2022, thereby amended the earlier notification dated 09.09.2021. As per the amendment, the post of P.G Assistant in Indian Culture declared as zero vacancy. Insofar as the subject of Political Science is concerned, it was declared as three vacancies in backlog and one vacancy in Chennai Corporation School. After having been published the provisional selection list, the third respondent issued amendment to the earlier notification thereby declared zero vacancy in the subject of Indian Culture and no current vacancy in the subject of Political Science. Aggrieved by the same, the petitioners filed the present writ petitions.



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5. The learned Senior Counsel appearing for the petitioners submitted that as per the earlier notification dated 09.09.2021, eight vacancies were notified as backlog vacancies and 14 vacancies were notified as current vacancies for the post of P.G. Assistant Political Science and one vacancy for Chennai corporation. The said vacancies were notified only based on the existing sanctioned post lying vacant and need to be filled up in the interest of the students welfare. All over Tamil Nadu, all the schools are conducting D Group/Arts Group, which includes the subject of Political Science and Indian Culture. There are vacancies available in 40 schools in respect of Political Science and Indian Culture. After having been published provisional selection list, the third respondent unilaterally cannot cancel the notification on the ground of no vacancy. In the written examination, the petitioners had secured high marks and they were provisional selected to the post of P.G. Assistant in Political Science and Indian Culture respectively.

5.1. The learned Senior Counsel appearing for the petitioners also produced the information obtained under the Right to Information Act, with regard to vacancy position in respect of P.G. Assistant in



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Political Science. In fact, some of the schools are running with part time teachers in which, two of the petitioners are working as part time teachers in the subject of Political Science and they were appointed by the Parents-Teachers Associations. Therefore, cancellation of earlier notification would cause grave prejudice and deprive their opportunity to get employment.

5.2. In support of his contention, he relied upon the following judgments:-

(i) (2010) 7 SCC 285 -East Coast Railway & another Vs. Mahadev Appa Rao & ors

(ii) SLP (Civil) DiaryNo.21319/2022 – Union of India Vs. Uzair Imran & ors

(iii) (2024) SCC Online AP1721 – Shaik Mahaboob John & ors Vs. High Court of Andhra Pradesh Rep. by its Registrar General & ors.

6. The third respondent filed counter and the learned Additional Advocate General appearing for the third respondent submitted that following the earlier notification dated 09.09.2021, the amendment notification was issued by the third respondent on



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03.08.2022 to increase the vacancies from 2207 to 3237. At the time of first notification, there was vacancy in the post of P.G. Assistant Political Science and Indian Culture. Subsequently, there was no student in the subject of Political Science as well as in Indian Culture. Therefore, as requested by the user department viz., the second respondent, the third respondent issued amendment notification.

6.1. The learned Additional Advocate General further submitted that as per the notification third respondent has jurisdiction and power to issue amendment notification, thereby increase notified vacancy as well as decrease the vacancy, depends upon the request made by the user department. He also pointed out the relevant clause of the notification that the estimated number of vacancies given in the notification is tentative and subject to modification and inclusion of new posts as per the request made from the user department for the same academic year. The general information clause of the notification stated that number of vacancies notified is only tentative and it is liable for modification with reference to vacancy position of user department before finalization of selection. Therefore, the petitioners have not accrued any right to compel



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the respondents to recruit them in the post of P.G. Assistant Political Science and Indian Culture.

7. The second respondent filed counter and the learned Special Government Pleader submitted that the vacancies notified in the direct recruitment is subject to change at any time due to variation in students enrolment and staff fixation based on Teacher-Pupil ratio. Mere participation in the certificate verification process itself does not confer any right for appointment as teachers. During the year 2022-2023, the enrolment of student reduced considerably and taking into account of students strength as on 01.08.2021, staff fixation was exercised based on Teacher-Pupil ratio (1:40) in accordance with Government order in G.O.No.525 Education Department dated 29.12.1997.

7.1. Insofar as the subject of Political Science and Indian Culture, the students had shown lack of interest to join in the said subjects. Therefore, the vacancies for the post of P.G. Assistant in the subject of Political Science and Indian Culture were found surplus. Therefore, the earlier notification is required to be amended by



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issuance of amendment notification. Further merely due to acquiring the qualification in any particular subject no one can claim appointment as a matter of right. She further submitted that if any vacancy arose, it will be filled up by way of promotion and not by direct recruitment.

8. Heard the learned counsel appearing on the either side and perused the materials placed before this Court.

9. The only issue to be decided in these writ petitions is that the candidates who were called for certificate verification and published provisional selection list in the particular subject as per the original notification, subsequently whether the amendment notification can be issued as Nil vacancy due to surplus posts and non joining of students?

10. Admittedly, the petitioners are qualified and secured very good marks in the written examination to the post of P.G. Assistant Political Science and Indian Culture in their respective category. They were called for certificate verification and provisional selection list was also published in which they were selected provisionally for the post of



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P.G. Assistant Political Science and Indian Culture, respectively. At that juncture, the second respondent has requested the third respondent to publish amendment notification thereby declared that no vacancy in the post of P.G. Assistant in Indian Culture and no current vacancy in the post of Political Science.

11. The learned Senior Counsel appearing for the petitioners relied upon the judgment reported in **(2010) 7 SCC 678** in the case of **East Coast Railway & anr Vs. Mahadev Appa Rao & ors**, in which the Hon'ble Supreme Court of India held as follows:-

“13. A Constitution Bench of this Court in Shankarsan Dash v. Union of India (1991) 3 SCC 47 had an occasion to examine whether a candidate seeking appointment to a civil post can be regarded to have acquired an indefeasible right to appointment again such post merely because his name appeared in the merit list of candidates for such post. Answering the question in the negative this Court observed:

"It is not correct to say that if a number of vacancies are notified for appointment and adequate number of candidates are found fit, the successful candidates acquire an indefeasible right to be appointed which cannot be legitimately denied. Ordinarily the



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notification merely amounts to an invitation to qualified candidates to apply for recruitment and on their selection they do not acquire any right to the post. Unless the relevant recruitment rules so indicate, the State is under no legal duty to fill up all or any of the vacancies. However, it does not mean that the State has the licence of acting in an arbitrary manner. The decision not to fill up the vacancies has to be taken bona fide for appropriate reasons. And if the vacancies or any of them are filled up, the State is bound to respect the comparative merit of the candidates, as reflected at the recruitment test, and no discrimination can be permitted. This correct position has been consistently followed by this Court, and we do not find any discordant note in the decisions in the State of Haryana v. Subhash Chander Marwaha 1974 (3) SCC 220; Neelima Shangla (Miss) v. State of Haryana 1986(4) SCC 268 or Jitender Kumar v. State of Punjab 1985 (1) SCC 122."

14. It is evident from the above that while no candidate acquires an indefeasible right to a post merely because he has appeared in the examination or even found a place in the select list, yet the State does not enjoy an unqualified prerogative to refuse an appointment in an arbitrary fashion or to disregard the merit of the candidates as reflected by the merit list



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prepared at the end of the selection process. The validity of the State's decision not to make an appointment is thus a matter which is not beyond judicial review before a competent Writ court. If any such decision is indeed found to be arbitrary, appropriate directions can be issued in the matter.

15.....

16. Applying these principles to the case at hand there is no gainsaying that while the candidates who appeared in the typewriting test had no indefeasible or absolute right to seek an appointment, yet the same did not give a licence to the competent authority to cancel the examination and the result thereof in an arbitrary manner. The least which the candidates who were otherwise eligible for appointment and who had appeared in the examination that constituted a step in aid of a possible appointment in their favour, were entitled to is to ensure that the selection process was not allowed to be scuttled for malafide reasons or in an arbitrary manner.

17.It is trite that Article 14 of the Constitution strikes at arbitrariness which is an anti thesis of the guarantee contained in Articles 14 and 16 of the Constitution. Whether or not the cancellation of the typing test was arbitrary is a question which the Court shall have to examine once a challenge is mounted to



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any such action, no matter the candidates do not have an indefeasible right to claim an appointment against the advertised posts.”

Thus, it is clear that though the petitioners had no indefeasible or absolute right to seek an appointment, yet the same did not give a licence to respondents 2 & 3 to cancel the very recruitment in an arbitrary manner.

12. The learned Senior Counsel appearing for the petitioners also relied upon the judgment reported in **(2024) SCC Online AP 1721** in the case of ***Shaik Mahabood John & ors Vs. High Court of Andhra Pradesh Rep. by its Registrar General & ors.***, in which the High Court of Andhra Pradesh held as follows:-

“12. The Apex Court in Neelima Shangla v. State of Haryana first laid down the principle that pursuant to the completion of a process of selection, it would be open to the Government not to fill up all the vacancies for a valid reason. In Shankarsan Dash v. Union of India, the Apex Court held that if a number of vacancies are notified for appointment, the successful candidates do not acquire an indefeasible right to be appointed but the decision not to fill up the vacancies had to be taken



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up bona fide for appropriate reasons. What was stated by the Apex Court was thus:

"7 Ordinarily the notification merely amounts to an invitation to qualified candidates to apply for recruitment and on their selection they do not acquire any right to the post. Unless the relevant recruitment rules so indicate, the State is under no legal duty to fill up all or any of the vacancies. However, it does not mean that the State has the licence of acting in an arbitrary manner. The decision not to fill up the vacancies has to be taken bona fide for appropriate reasons. And if the vacancies or any of them are filled up, the State is bound to respect the comparative merit of the candidates, as reflected at the recruitment test, and no discrimination can be permitted."

13. In Union Territory of Chandigarh v. Dilbagh Singh, while following the principle of law laid down in Neelima Shangla (supra), the Apex Court upheld the decision of the Chandigarh administration ordering cancellation of the selection process for the post of conductors in Chandigarh Transport Undertaking (CTU) based upon primarily the fact that there was an inquiry conducted by the Chandigarh administration regarding the select list of 32 candidates prepared by the selection board, revealed that the members of the selection board has made use of interview marks



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awardable by them at interview to eliminate meritorious candidates from the list and had diverted demerit into merit.

14. In East Coast Railway v. Mahadev Appa Rao, the Apex Court emphasized the need to record a prima facie satisfaction before proceeding to order cancellation of a selection process. This was a case where the competent authority had ordered cancellation of a type test conducted for making selection to the post of Chief Typists based upon the allegation that to some of the unsuccessful candidates, defective typewriting machines were provided which had placed them at a disadvantage as against the candidates, who were declared successful. The Apex Court, in those circumstances, held: "29. There may be cases where an enquiry may be called for into the allegations, but there may also be cases, where even on admitted facts or facts verified from record or an enquiry howsoever summary the same maybe, it is possible for the competent authority to take a decision, that there are good reasons for making the order which the authority eventually makes. But we find it difficult to sustain an order that is neither based on an enquiry nor even a prima facie view taken upon a due and proper application of mind to the relevant facts. Judged by that standard the order of cancellation passed by the competent authority falls



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short of the legal requirements and was rightly quashed by the High Court."

15. In our opinion, while it may be true that the process of selection can be abandoned, yet the same can be done only for valid reasons. Following the principles of law as held in the cases of Neelima Shangla, Shankarsan Dash and East Coast Railway, we don't find any basis for sustaining the order of cancellation of the selection process in question. The order impugned, dated 25.04.2019, being unsustainable in law, is accordingly set aside. The respondents are directed to take the process of selection to its logical conclusion and issue orders of appointment in accordance with merit within a period of two months. The Writ Petitions are disposed of accordingly. No costs. Pending miscellaneous applications, including dispense with/leave to file counter, if any, shall stand disposed of."

Thus it is clear that the process of selection can be abandoned, yet the same can be done only on valid ground.

13. In the case on hand, after issuance of provisional selection list for the post of P.G. Assistant in Political Science and Indian Culture, by way of amendment notification, declared as zero vacancy in Indian



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Culture and no current vacancy in Political Science. The reasons stated by the second and third respondents are not satisfactory and as such, the petitioners have right to challenge the amendment notification thereby declaring no vacancy in the post of P.G. Assistant in Political Science and Indian Culture. The learned counsel appearing for the respondents also relied upon the judgment passed by the Hon'ble Division Bench of this Court in a batch of writ petitions in **W.P.No.4827 of 2012 etc.**, dated **03.11.2015** in the case of **T.S.Anbarasu & ors Vs. The State of Tamil Nadu**, which held as follows :-

“(xvii) Further, the Hon'ble Supreme Court in K.Jayamohan vs. State of Kerala, reported in (1997) 5 SCC 170, held that it is settled legal position that merely because a candidate is selected and kept in the waiting list, he does not acquire any absolute right to appointment and it is open to the Government to make the appointment or not. It was further held that even if there is any vacancy, it is not incumbent upon the Government to fill up the same, but the Appointing Authority must give reasonable explanation for non-appointment. Further, the Hon'ble Supreme Court in All India SC&ST Employees' Assn., vs. A.Arthur Jeen, reported in (2001) 6 SCC 380, held that merely because the names of the candidates were included in the panel



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indicating their provisional selection, they did not acquire any indefeasible right for appointment even against the existing vacancies and the State is under no legal duty to fill up all or any of the vacancies as laid down by the Constitution Bench of the Hon'ble Supreme Court after referring to earlier cases in Shankarsan Dash vs. Union of India, reported in (1991) 3 SCC 47. Thus, the rules of the selection have not been changed in the midst of the selection process nor there is any arbitrariness in denying employment to the petitioners. In the light of the above, it is held that the petitioners have no right to claim in perpetuity to secure an appointment and Question No.5 is answered against the petitioners/appellants.”

14. Further the learned Special Government Pleader appearing for the second respondent contended that if there is any vacancy arose in future, it will be filled up by promotion. When it being so, there is absolutely no necessity for the second respondent to declare vacancy in the subject of Political Science as well as Indian Culture and issued notification dated 09.09.2021 by the third respondent. In pursuant to the said notification, the petitioners had applied for and secured very good marks in the written examination and they were provisionally selected in



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their respective posts. All of sudden, on the request of the second respondent, the third respondent issued amendment notification, thereby declared no vacancy in the Indian Culture and no current vacancy in the subject of Political Science.

15. On perusal of the information obtained by the petitioners under the Right to Information Act, there are vacancies in the post of P.G. Assistant Political Science as follows :-

முதுகலை அரசியல் அறிவியல் பாடம் காலிப்பணியிட விவரம்

வ. எண்	பள்ளியின் பெயர், முகவரி	காலிப் பணியிடம்	மாணவர்களின் எண்ணிக்கை		
			2020-2021	2021-2022	2022-2023
1.	அறிஞர் அண்ணா அரசு மேல்நிலைப்பள்ளி, வெள்ளகோவில், திருப்பூர்	ஆம்	85	89	61
2.	அரசு ஆண்கள் மேல்நிலைப்பள்ளி, ஆலங்குடி, புதுக்கோட்டை	ஆம்	83	87	77
3.	அரசு ஆண்கள் மேல்நிலைப்பள்ளி, வெள்ளியணை, கரூர்	ஆம்	192	209	171
4.	அரசு ஆண்கள் மேல்நிலைப்பள்ளி, வலங்கைமான், திருவாரூர்	ஆம்	84	88	56
5.	அரசு ஆண்கள் மேல்நிலைப்பள்ளி, நன்னிலம், திருவாரூர்	ஆம்	73	91	73



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வ. எண்	பள்ளியின் பெயர், முகவரி	காலிப் பணியிடம்	மாணவர்களின் எண்ணிக்கை		
			2020-2021	2021-2022	2022-2023
6.	அரசு மகளிர் மேல்நிலைப்பள்ளி, கோவில்பட்டி	ஆம்	155	155	162
7.	அரசு மேல்நிலைப்பள்ளி, அனகாபுத்தூர், செங்கல்பட்டு	ஆம்	35	70	52
8.	அரசு மகளிர் மேல்நிலைப்பள்ளி, திருக்கழுக்குன்றம்	ஆம்	120	91	67
9.	அரசு பெண்கள் மேல்நிலைப்பள்ளி, ஓரத்தநாடு, தஞ்சாவூர்	ஆம்	55	52	37
10.	அரசு மகளிர் மேல்நிலைப்பள்ளி, வலசையூர், சேலம்	ஆம்	47	49	39
11.	அரசு ஆண்கள் மேல்நிலைப்பள்ளி, காவேரிப்பட்டினம், கிருஷ்ணகிரி	ஆம்		36	36
12.	அரசு ஆண்கள் மேல்நிலைப்பள்ளி, புதுப்பேட்டை, கடலூர்	ஆம்	93	94	91
13.	அரசு மேல்நிலைப்பள்ளி, வைத்தீஸ்வரன் கோவில், மயிலாடுதுறை	ஆம்	18	17	9
14.	KENC அரசு மேல்நிலைப்பள்ளி, மணவாளநகர், திருவள்ளூர்	ஆம்	108	111	80
15.	SR அரசு மகளிர் மேல்நிலைப்பள்ளி, வளவனூர், விழுப்புரம்	ஆம்	62	55	56
16.	அரசு மேல்நிலைப்பள்ளி,	ஆம்	42	50	49



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வ. எண்	பள்ளியின் பெயர், முகவரி	காலிப் பணியிடம்	மாணவர்களின் எண்ணிக்கை		
			2020-2021	2021-2022	2022-2023
	தேவூர், நாகப்பட்டினம்				
17.	KLK அரசு ஆண்கள் மேல்நிலைப்பள்ளி, கும்மிடிப்பூண்டி, திருவள்ளூர்	ஆம்			24
18.	ஏ ஆர் ஆர் நகர மேல்நிலைப்பள்ளி, கும்பகோணம், தஞ்சாவூர்	ஆம்			
19.	அரசு பெண்கள் மேல்நிலைப்பள்ளி, பட்டுக்கோட்டை, தஞ்சாவூர்	ஆம்			
20.	அரசு மாதிரி மேல்நிலைப்பள்ளி, பட்டுக்கோட்டை, தஞ்சாவூர்	ஆம்			
21.	அரசு மேல்நிலைப்பள்ளி, திருநாகேஸ்கரம், தஞ்சாவூர்	ஆம்	41	36	66
22.	அரசு பெண்கள் மேல்நிலைப்பள்ளி, புவனகிரி, கடலூர்	ஆம்			
23.	ஐ சி ஐ அரசு ஆண்கள் மேல்நிலைப்பள்ளி, தென்காசி	ஆம்			
24.	அரசு மேல்நிலைப்பள்ளி, புல்லுக்கட்டு வலசை, தென்காசி	ஆம்			
25.	ஆ மாசே அரசு மேல்நிலைப்பள்ளி, கிரிவலம் வந்தநல்லூர், தென்காசி	ஆம்			
26.	அரசு மகளிர் மேல்நிலைப்பள்ளி, திருமங்கலம்	ஆம்			



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வ. எண்	பள்ளியின் பெயர், முகவரி	காலிப் பணியிடம்	மாணவர்களின் எண்ணிக்கை		
			2020-2021	2021-2022	2022-2023
27.	அரசு ஆண்கள் மேல்நிலைப்பள்ளி, தொண்டாமுத்தூர், கோயம்புத்தூர்	ஆம்			
28.	அரசு மகளிர் மேல்நிலைப்பள்ளி, மண்ணச்சநல்லூர், திருச்சி	ஆம்			
29.	அரசு மேல்நிலைப்பள்ளி, முசிறி, திருச்சி	ஆம்			
30.	அரசு மேல்நிலைப்பள்ளி, நிலக்கோட்டை, திண்டுக்கல்	ஆம்			
31.	அரசு ஆண்கள் மேல்நிலைப்பள்ளி, கன்னிவாடி, திண்டுக்கல்	ஆம்			
32.	அரசு ஆண்கள் மேல்நிலைப்பள்ளி, பல்லாவரம்	ஆம்			
33.	அரசு மகளிர் மேல்நிலைப்பள்ளி, குரோம்பேட்டை	ஆம்			
34.	அரசு ஆண்கள் மேல்நிலைப்பள்ளி, கிருஷ்ணகிரி	ஆம்			
35.	SRRSM அரசு மேல்நிலைப்பள்ளி, ஆலங்குளம், விருதுநகர்	ஆம்	131	101	66

16. Further as per the details submitted by the second respondent revealed that some of the petitioners are appointed in the post of P.G. Assistant in Political Science through Parents-Teachers



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Associations as part time teachers. Now the second respondent has contended that there is no vacancy. However, in the regular vacancy, part time teachers are working in the very same subject. On the sole ground, it cannot be said that there is no vacancy. If the contentions raised by the second respondent are accepted that no students are interested to join in the course of Political Science and Indian Culture and as such there are least number of students, why the second respondent has permitted the schools to admit the students in those subjects? Once the students are admitted, they should be taught by the concerned subject teacher. They cannot be let to without any teachers.

17. Insofar as the subject of Indian Culture is concerned, there are 20 schools are conducting D Group/Arts Group which includes the subject of Indian Culture. The details of the Schools are as follows :-

Sl. No.	Name of the Schools.
1.	Hindu Higher Secondary School, Tripicane, Chennai.
2.	Avichi Higher Secondary School, Saligramam, Chennai.
3.	Government Girls Higher Secondary School, Chengalpattu.
4.	Government Boys Higher Secondary School, Ponnery, Tiruvallore.
5.	Government Higher Secondary School, Ladavaram, Thiruvannamalai.



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Sl. No.	Name of the Schools.
6.	Government Higher Secondary School, Ongoor, Villupuram.
7.	Government Higher Secondary School, Ka. Ambapur, Ariyalur.
8.	Government Higher Secondary School, Thriupurambiyam, Thanjavur.
9.	Government Higher Secondary School, Peralam, Tiruvarur.
10.	Government Higher Secondary School, Thirumarugal, Tiruvarur.
11.	Government Higher Secondary School, Andipanthai, Panangudi, Tiruvarur,
12.	Government Higher Secondary School, Managudi, Nagapattinam.
13.	Government Higher Secondary School, Azhiyur, Nagapattinam.
14.	Government Girls Higher Secondary School, Pudhupalayam, Vazhapadi, Salem.
15.	Government Higher Secondary School, Magaboopalayam, Madurai.
16.	S.R. Government Higher Secondary School, Nanguneri, Tirunelveli.
17.	Government Higher Secondary School, Kazhugumalai, Tuticorin.
18.	V.O.C. Higher Secondary School, Ottapidaram, Tuticorin.
19.	Government Higher Secondary School, Kinathukadavu, Coimbatore.
20.	Kasthuri Reddy Higher Secondary School, Ottachatiram, Palani.

However contrary to the above records, by way of amendment notification, the third respondent declared that zero vacancy to the post of P.G Assistant in Indian Culture. It would affect the interest of the students at large.



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18. The Hon'ble Division Bench of this Court in a batch of writ petitions in ***W.P.No.26084 of 2023 etc.***, in the case of ***Parvatham & ors Vs. The State of Tamil Nadu & ors.***, by an order dated ***10.07.2024*** dealt with the issue that was the process of selection abandoned at the final stage, and if yes, was the same arbitrary, and against the legitimate expectation of the petitioner, and held as follows :-

“26. It is seen that as a fallout of the judgement of the Supreme Court on 09.11.2016, the State government had proceeded with the next selection in the year 2017 by calling for further candidates for certificate verification. It is also seen that during the process of certificate verification, the merit of the candidates was assessed by applying the method of selection as envisaged in G.O.Ms.No.71 dated 30.05.2014 and depending upon the number of available vacancies to be filled up, the selected candidates would be appointed on the basis of their merit ranking arrived at by application of the weightage method. It is pertinent to note that since GO Ms.No.71 came into force on 30.05.2014, it has been in vogue and been applied ever since including in 2017. As many as 10817 had applied in 2014 as per GO Ms.No.71 and those, who were not appointed in



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method selection existing immediately prior to the passing of the GO, after having defended the validity of the said method upto the Supreme Court.

28. Two important facts surface from the above narration. One, that the process of selection and appointment had commenced and should have been completed on the basis of the certificate verification by application of the weightage method; Two, such commencement of selection process was not taken to its logical end, the selection process was abandoned midway and the reason for the same has not been sufficiently and validly been explained by the State Government. It is trite law that the State is expected to behave in a consistent, transparent and predictable manner, that together will amount to reasonableness in State administrative action. After having taken a firm stand earlier that the method devised as per the previous method of selection is valid and legal, the rebounding in abandoning the said method, dropping the process of selection when it had reached its final stages, smack of arbitrariness that is rather too glaring to be sanctified under the pretext of being called a change in policy decision. Further, the fact that the State government did not choose to make any recruitment even pursuant to the 2018 Government order adopting a new selection method, is also of significance and has a bearing on the



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case at hand. It is also pertinent to point out that several of the candidates have undergone the process of certificate verification twice i.e., once in 2014 and again in 2017. Also, on the basis of the specific stand taken and promise given by the State Government in adopting the weightage method in GO Ms. No.71 School Education (TRB) Department dated 30.05.2014, several of the candidates have completed the Teacher Eligibility Test more than once to improve their score. However, the Government has now introduced a new method and not made any appointment on the basis of the earlier methods espoused by them. The State Government has not furnished any reason for not making appointments and changing the methods from time to time. The action of the State Government is clearly arbitrary and in the absence of any reason for not making the appointments while proceeding upto the stage of certificate verification, and in the absence of any overbearing public interest to substantiate the change in method of selection, when it is the government that has not made any direct recruitment in spite of availability of vacancies as well as availability of qualified candidates, the State's action fails test of reasonableness and non-arbitrariness, apart from being against the doctrine of legitimate expectation.

29. It is well-established that selection does not



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confer any indefeasible right to appointment. However, it is equally trite that in abandoning an on-going selection without taking it to its logical end, the State cannot act in an unreasonable, arbitrary, whimsical or capricious manner. When the State drops or abandons an on-going selection, the same must be supported by proper reason and such reason should stand the test of nonarbitrariness and proportionality in order to be legally sustainable. In the present case, after having applied the method of selection, when the candidates have been awaiting employment, the State arbitrarily and without any reason dropped the process of selection, and the selection could not be taken to its logical end. No appointment was made in 2017 or any time thereafter till date. It can therefore be said that arbitrariness is writ large in the State's action of abandoning the process of selection commenced in 2017. While not providing any legally sustainable reason for abruptly abandoning the process of selection, all appointments were stopped and there was no development whatsoever until G.O.Ms.No.149 School Education (TRB) Department dated 20.07.2018 came to be issued which spelt out a new method of selection. Nowhere was it mentioned in Go. Ms. No. 149 if it was to be applied for the future selection or for selection that had already commenced in 2017 which was simply not



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concluded. Since there was no clarity, predictability or information about the State's action, the necessity to challenge the validity of GO. Ms. No. 149, which contemplates a competitive examination, junking the weightage method, did not arise. The new method of selection may or may not be amenable to challenge in law. The case at hand is focused on the challenge to the State's action dehors the correctness, validity or otherwise of the new selection method embodied and introduced vide Go. Ms. No. 149 dated 20.07.2018. The contention of the Government that non-challenge to the GO Ms.No.149 dated 20.07.2018 is fatal to the present case, is liable to be rejected for this reason alone. On the contrary, it can be said that the action of the State in first issuing G.O. Ms. No.71 dated 30.05.2014 on the basis of the striking down of the earlier slab method of weightage in GO Ms.No.252 School Education (Q) Department dated 05.10.2012 by this Court, and thereafter defending the validity of G.O Ms.No.71 dated 30.05.2014 upto the Supreme Court whereby the Supreme Court by its judgment dated 09.11.2016 had upheld the validity of G.O. Ms.No.71 dated 30.05.2014, and where the State has specifically taken the stand that difference in the marking system of the different boards of education will not make the weightage method under GO Ms.No.71 arbitrary or bad in law and further, when



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the State itself made as many as 10,817 appointments in 2014 on basis of the said GO Ms.No.71 dated 30.05.2014, is arbitrary, and the selection process that began in 2017 cannot now be abandoned by the State and it cannot now adopt another method, taking shelter under the garb of it being a policy decision. In fact, the above narration of events has also given rise to a legitimate expectations to the participants to be considered under the method of selection, which was the established practice, to which they had been subjected to by the State. The peculiar factual background in which G.O. Ms.No.71 dated 30.05.2014 came to be applied by the State, its own stand before this Court and the Hon'ble Supreme Court, and its sudden abandoning of the said method of selection and dropping of the selection in 2017 without making any appointment whatsoever, are clear instances of arbitrariness and violation of doctrine of legitimate expectation.

30. At this juncture, it is relevant to extract recent exposition of the concept of legitimate expectation, non-arbitrariness and reasonableness in State's action, which reads as under:

(i) Food Corporation of India Vs. Kamdhenu Cattle Feed industries, (MANU/SC/0257/1993 = 1993 (1) SCC 71):

"8. The mere reasonable or legitimate expectation



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of a citizen, in such a situation, may not by itself be a distinct enforceable right, but failure to consider and give due weight to it may render the decision arbitrary, and this is how the requirement of due consideration of a Legitimate expectation forms part of the principle of non- arbitrariness, a necessary concomitant of the rule of law. Every legitimate expectation is a relevant factor requiring due consideration a fair decision making process. Whether the expectation of the claimant is reasonable or legitimate in the context is a question of fact in each case. Whenever the question arises, it is to be determined not according to the claimant's perception but in larger public interest wherein other more important considerations may outweigh what would otherwise have been the legitimate expectation of the claimant. A bona fide decision of the public authority reached in this manner would satisfy the requirement of non-arbitrariness and withstand judicial scrutiny. The doctrine of legitimate expectation gets assimilated in the rule of law and operates in our legal system in this manner and to this extent.

9. In Council of Civil Service Unions and Others v. Minister for the Civil Service, 1985 A.C. 374 (H.L.) the House of Lords indicated the extent to which the legitimate expectation interfaces with exercise of discretionary power. The impugned action was upheld



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as reasonable, made on due consideration of all relevant factors including the legitimate expectation of the applicant, wherein the considerations of national security were found to outweigh that which otherwise would have been the reasonable expectation of the applicant. Lord Scarman pointed out that 'the controlling factor in determining whether the exercise of prerogative power is subject to judicial review is not its source but its subject-matter'. Again in In re preston 1985 A.C. 835 (H.L.) it was stated by Lord Scarman that 'the principle of fairness has an important place in the law of judicial review' and 'unfairness in the purported exercise of a power can be such that it is an abuse of excess of power'. These decisions of the House of Lords give a similar indication of the significance of the doctrine of legitimate expectation. Shri A.K. Sen referred to Shanti Vijay & Co. etc. v. Princess Fatima Fouzia & Ors. etc., [1980] 1 S.C.R. 459, which holds that court should interfere where discretionary power is not exercised reasonably and in good faith."

(ii) Union of India and Ors. Vs. Hindustan Development Corp. and Ors.) [MANU/SC/0219/1994 = 1993 (3) SCC 499] :

"20. In Food Corporation of India v. M/s Kamdhenu Cattle Feed Industries JT (1992) 6 S.C. 259 Justice J.S. Verma Speaking for the Bench observed as



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under: "In contractual sphere as in all other State actions, the State and all its instrumentalities have to conform to Article 14 of the Constitution of which non-arbitrariness is a significant facet. There is no unfettered discretion in public law. A public authority possesses powers only to use them for public good. This imposes the duty to act fairly and to adopt a procedure which is fairplay in action'. Due observance of this obligation as a part of good administration raises a reasonable or legitimate expectation in every citizen to be treated fairly in his interaction with the state and its instrumentalities, with this element forming a necessary component of the decision making process in all State actions. To satisfy this requirement of non- arbitrariness in a State action, it is therefore, necessary to consider and give due weight to the reasonable or legitimate expectations of the persons likely to be affected by the decision or else that unfairness in the exercise of the power may amount to an abuse or excess of power apart from affecting the bonafides of the decision in a given case. The decision so made would be exposed to challenge on the ground of arbitrariness. Rule of law does not completely eliminate discretion in the exercise of power, as it is unrealistic, but provides for control of its exercise by judicial review. The mere reasonable or legitimate expectation of a citizen, in such a situation,



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may not by it self be a distinct enforceable right; but failure to consider and give due weight to it may render the decision arbitrary and this is how the requirement of due consideration of a legitimate expectation forms part of the principle of nonarbitrariness, a necessary concomitant of the rule of law. Every legitimate expectation is a relevant factor requiring due consideration in a fair decision making process. Whether the expectation of the claimant is reasonable or Legitimate in the context is a question of fact in each case. Whenever the question arises, it is to be determined not according to the claimant's perception but in larger public interest wherein other more important considerations, may outweigh what would otherwise have been the legitimate expectation of the claimant. A bonafide decision of the public authority reached in this manner would satisfy the requirement of non-arbitrariness and withstand judicial scrutiny. The doctrine of legitimate expectation gets assimilated in the rule of law and operates in. our legal system in this manner and to this extent." (emphasis supplied)

Accordingly, the non-furnishing or absence of reason for declaring no vacancy shows non transparency; not adopting a particular method of selection; and a change in a policy within close proximity of time after



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having itself defended it, clearly attracts glaring inconsistency. Thus, the action of the respondents has been most arbitrary, unreasonable, and opposed to the doctrine legitimate expectation, thus violating the petitioners' fundamental rights under Articles 14 & 16 of the Constitution of India.

19. Further after having been completed the certificate verification and after publication of provisional selection list, there cannot be any amendment to the original notification that too by declaring zero vacancy in the subject of Indian Culture and no current vacancy in the subject of Political Science, which is arbitrary, illegal and against law. Therefore, the contention raised by the respondents 2 & 3 that merely because the candidate selected and kept in waiting list, he does not acquire any absolute right to appointment and it is open to the government to make the appointment or not, cannot be accepted for the reasons stated supra.

20. In view of the above discussions, the amendment notification dated 17.09.2022 insofar as declaring no vacancy in the



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subject of Indian Culture and no current vacancy in the subject of Political Science is hereby quashed. The third respondent is directed to proceed with the selection process as per the original notification dated 09.09.2021, to the post of P.G. Assistant in Indian Culture and Political Science and complete the same within a period of eight weeks from the date of receipt of a copy of this order.

21. With the above directions, all the Writ Petitions are allowed. Consequently, connected miscellaneous petitions are closed. There shall be no order as to costs.

23.07.2024

Index : Yes/No
Speaking/Non Speaking order
Neutral Citation : Yes/No

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G.K.ILANTHIRAIYAN. J.

rts

To

1. The Principal Secretary
to Government,
State of Tamil Nadu,
School Education Department,
Secretariat, Fort St. George,
Chennai – 600 009.
2. The Commissioner,
Directorate of School Education,
DPI Campus, College Road,
Chennai – 600 006.
3. The Chairman,
Teacher Recruitment Board,
4th Floor, EVK Sampath Maaligai,
DPI Campus, College Road,
Chennai – 600 006.

W.P.Nos.28533, 29349, 29350, 29351 & 30181 of 2022
and W.M.P.Nos.27846, 28659, 28663, 28666 & 29616 of 2022

23.07.2024