

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 25.2.2015

CORAM:

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN

W.P.Nos.31815 of 2013 and 24205 of 2014

N.Sankar

...Petitioner in both writ petitions

versus

1. The Joint Director,
(Teachers Recruitment Board),
Department of School Education,
EVK Sampath Maligai, 4th Floor,
DPI Compound, College Road,
Chennai 600 006.
2. The Chief District Educational Officer,
Thiyagi Annamalai Government Higher
Secondary School Compound,
Tiruvannamalai District. ...Respondents in both the Petitions

W.P.No.31815 of 2013 filed under Art.226 of the Constitution of India praying for a Writ of Certiorarified Mandamus to call for the records of the impugned order dated 23.10.2013 issued by the 1st respondent herein, quash the same and subsequently select the petitioner as the Post Graduate Teacher for the Government Higher Secondary School 2013.

W.P.No.24205 of 2014 filed under Art.226 of the Constitution of India praying for a Writ of Certiorarified Mandamus to call for the records of the Impugned order dated 25.08.2014 downloaded from the Internet issued by the 1st respondent herein and quash the same and consequently and direct the respondents include the petitioner's name in the professional selection list released in the internet on 25.8.2014 and appoint the petitioner herein for Post Graduate Assistant in Government Schools 2012-2013.

For petitioner

Mr.Dalit Tiger C.Ponnusamy

For respondents

Mr.M.S.Ramesh, Addl. Government Pleader

COMMON ORDER

The application for appointment to the post of P.G. Assistant submitted by the petitioner was rejected after publishing the marks secured by him in the written test, on the ground that he obtained the professional qualification only after the cut-off date.

The basic facts:-

2. The petitioner submitted application for appointment to the post of P.G.Assistant, pursuant to the notification dated 9 May 2013 issued by the Teachers Recruitment Board.

3. The petitioner, pursuant to the call letter issued by Teachers Recruitment Board (hereinafter referred to as the Board), appeared for the written examination. Thereafter, his certificates were verified. The Board having found that the petitioner obtained B.Ed., Degree only after the cut-off date, rejected his candidature. This made the petitioner to file these two Writ Petitions.

4. The Board in its counter affidavit contended that the notification was issued on 9 May 2013, calling for applications for appointment to the post of P.G. Assistant (Economics). The last date for submission of application was on 14 June 2013. The petitioner was one among the candidates who applied for the said post. However, on certificate verification, it was found that the petitioner obtained B.Ed. Degree only on 1 August 2013. Since the petitioner was not qualified as on the last date, his candidature was rejected.

Submissions :-

5. The learned counsel for the petitioner contended that the petitioner has disclosed the fact that he has appeared for B.Ed examination, even at the time of submitting his application. Still the Board permitted him to attend written test. The petitioner secured good marks and thereafter, his certificates were verified. It was only at that point of time, the Board has come up with a contention that he was not qualified as on the cut off date and as such, he cannot be appointed. The learned counsel contended that the impugned order proceeds as if the petitioner failed to obtain B.Ed. Degree as on 14 June 2013 notwithstanding the fact that he was permitted to appear for the examination and the related selection process.

6. The learned Government Pleader submitted that the applicant should possess qualification as on 14 June 2013. The petitioner obtained B.Ed. Degree only on 1 August 2013 and as such, his candidature was rightly rejected by the Board.

Discussion:-

7. The petitioner submitted application for appointment to the post of P.G. Assistant (Economics), against quota reserved for persons who studied in Tamil Medium. The advertisement was issued on 9 May 2013. The Board wanted the applicants to submit applications on or before 14 June 2013.

8. Clause 13(b) of the application form called upon the applicants to declare the year of passing / appearing. The petitioner has stated in his application that he appeared for B.Ed. Degree examination in 2013. According to the petitioner, the Board made it appear as if those who are appearing for the examination can also apply.

9. The Board has taken up a very strange contention that they would permit all the applicants to appear for the written examination without testing their eligibility and thereafter they would be called for certificate verification. According to the Board, in case, on certificate verification, it is found that the candidate is not having the required qualification as on the last date, such applications will be summarily rejected.

10. The Board is correct in its contention that the petitioner obtained B.Ed. Degree 45 days after the cut off date. Even then, the Board allowed him to appear for the written examination. It is a matter of record that as on the date on which the Board called upon the petitioner to produce certificates, he has obtained the degree in B.Ed. Therefore, it is clear that the petitioner was qualified as on the date on which his certificates were verified by the Board. The Board is correct in its contention that the candidates should be eligible, taking into account the last date prescribed in the application. However, in the case on hand, knowing very well that the petitioner obtained B.Ed. Degree after the cut off date, the Board permitted him to take part in the written examination. The petitioner secured 88 marks out of 150. He is therefore, eligible for appointment, taking into account his rank position and the category under which he has made the application.

11. The core question is whether the petitioner should be denied appointment only on the ground that he obtained B.Ed. Degree after the cut off date.

12. The Board is justified in its contention on law that candidates should be qualified before the cut off date. I have therefore no hesitation to accept the case of the Board on merits. Even then, I am not inclined to exercise my discretion in favour of the Board in view of the subsequent events relating to the appearance

of the petitioner in the written examination and the further action taken by the Board to verify his certificates taking into account the marks secured by him.

Discretionary Jurisdiction:

13. The jurisdiction under Article 226 of the Constitution of India is extraordinary in nature. It is otherwise called as equity jurisdiction. The Court is not bound to exercise the discretion in favour of a party, merely because law is in its favour. In appropriate cases, it is open to the Court to refuse grant of relief after declaring the law on the subject. The Court can also mould the relief to do substantial justice.

Supreme Court on discretionary relief:

14. The Supreme Court in *State of Maharashtra and others v. Prabhu* (1994) 2 SCC 481 indicated the scope and ambit of equity jurisdiction.

"5. ... It is the responsibility of the High Court as custodian of the Constitution to maintain the social balance by interfering where necessary for sake of justice and refusing to interfere where it is against the social interest and public good."

15. The Supreme Court in *G.M., O.N.G.C. Ltd., v. Sendhabhai Vastram Patel* JT 2005(7) SC 465 observed that it is not always necessary to strike down a wrong decision only because it would be lawful to do so. The Supreme Court said:

"23. It is now well-settled that the High Courts and the Supreme Court while exercising their equity jurisdiction under Articles 226 and 32 of the Constitution as also Article 136 thereof may not exercise the same in appropriate cases. While exercising such jurisdiction, the superior courts in India even may not strike down a wrong order only because it would be lawful to do so. A discretionary relief may be refused to be extended to the Appellant in a given case although the Court may find the same to be justified in law."

16. The Supreme Court in *Eastern Coalfields Ltd. v. Bajrangi Rabidas* (2013) 12 Scale 69 held that jurisdiction under Article 226 of Constitution of India being discretionary is not to be exercised whenever there is an error of law. The Supreme Court observed :

"17.It is well settled in law that jurisdiction of the High Court under Article

226 of the Constitution is equitable and discretionary. The power of the High Court is required to be exercised "to reach injustice wherever it is found". In Sangram Singh v. Election Commissioner, Kotah and another, (1995) 2 SCR 1, it has been observed that jurisdiction under Article 226 of the Constitution is not to be exercised whenever there is an error of law. The powers are purely discretionally and though no limits can be placed upon that discretion, it must be exercised along recognized lines and not arbitrarily and one of the limitations imposed by the courts on themselves is that they will not exercise jurisdiction in such class of cases unless substantial injustice has ensued or is likely to ensue. That apart, the High court while exercising the jurisdiction under Article 226 of the Constitution can always take cognizance of the entire facts and circumstances and pass appropriate directions to balance the justice. The jurisdiction being extraordinary it is required to be exercised keeping in mind the principles of equity."

17. Similar issue came up for consideration before the Division Bench of this Court in W.A.No.1281 of 2014 and W.P.No.23374 of 2014. The Division Bench agreed with the contention taken by Jawaharlal institute of Post Graduate Medical Education and Research, the appellant in the appeal, to the effect that the 1st respondent therein was not eligible to apply under the category reserved for "Backward class" in Puducherry. The Division Bench was pleased to declare the law to the effect that only persons belonging to Kongu Vellalar community, notified as Other Backward Class, and included in the list published by the Government of India, alone are eligible to apply under such category. Even after laying down the law, the Division Bench refused to interfere with the order passed by the learned Single Judge directing JIPMER to give admission to the concerned student.

18. In view of the background facts and circumstances of the case, I am of the view that the case of the petitioner should be favourably considered by the first respondent.

Disposal :-

19. In the result, the impugned order dated 23 October 2013 is set aside and the matter is remitted to the first respondent for fresh consideration. The first respondent is directed to consider the

case of the petitioner for appointment, taking into account the marks obtained by him, meaning thereby, the application should not be rejected on the ground that he failed to pass B.Ed. Course on or before 14 June 2013. Such exercise shall be completed within a period of two weeks from the date of receipt of a copy of this order.

20. The Writ Petitions are allowed to the extent indicated above. No costs. Consequently, M.P.Nos.1 of 2013 and 2 of 2014 are closed.

Sd/-
Asst. Registrar

/true copy/

Sub Asst. Registrar.

TAR

To

1. The Joint Director,
(Teachers Recruitment Board),
Department of School Education,
EVK Sampath Maligai, 4th Floor,
DPI Compound, College Road,
Chennai 600 006.
2. The Chief District Educational Officer,
Thiyagi Annamalai Government Higher
Secondary School Compound,
Tiruvannamalai District.

+2cc to M/s.Dalit Tiger C.Ponnusamy, Advocate, S.R.No.10553

UG(CO)
CA(04/03/2015)

W.P.Nos.31815/2013 & 24205/2014

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