

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT****DATED: 15 .06.2016****CORAM:****THE HONOURABLE SMT. JUSTICE PUSHPA SATHYANARAYANA****W.P. (MD) NO.8439 OF 2015****AND M.P. (MD) NOS.2 AND 3 OF 2015**

R.Thiyagarajan

.. Petitioner

Vs.

1.The State of Tamil Nadu

Represented by the Secretary to Government  
School Education Department  
Secretariat, Chennai.

2.Teachers Recruitment Board

Represented by its Chairman  
4<sup>th</sup> Floor, EVK Sampath Maaligai,  
DPI Compound, College Road,  
Chetpet, Chennai.

3.The Director of Teacher Education

Research and Training, College Road,  
Chennai.

4.K.Bhaskar

.. Respondents

**PRAYER:** Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of Writ of Certiorarified Mandamus, to calling for the records pertaining to the provisional selection list published by the 3<sup>rd</sup> respondent to the post of Senior Lecturer in Botany in Directorate of Teacher Education Research and Training (DTERT) and District Institutes of Education and Training (DIET) Called for vide advertisement No.03 dated 31.12.2011 and quash the same and consequently directing the respondents to consider petitioner's candidature for the said post.

For Petitioner

:Mr.R.Narayanan

For Respondents

:Mr.V.Muruganandam

1 to 3

:Additional Government Pleader

For Respondent -4

:Mr.Ajmal Khan

Senior Counsel for M/s.Ajmal  
Associates

**ORDER**

The writ petitioner is a Lecturer under the third respondent at District Institute of Education and Training (DIET), Madurai from 05.01.2007, having been appointed through direct recruitment. The School Education Department framed *adhoc* rules of Tamil Nadu Teacher Education Service Rules, which was approved by the Government and published in the Gazette vide G.O.(Ms)No.133, dated 14.06.2007. The said rules prescribed qualifications for various posts. The Government also included some provisions, which have been inadvertently omitted earlier with respect to the qualifications of Senior Lecturer recruitment, and the said amendment was made vide G.O(Ms) No.261, dated 07.09.2010.

2. While so, the second respondent called for applications for direct appointment of Senior Lecturer, vide Advertisement No.03 dated 31.12.2011. The said notification prescribed the qualifications for the said post as per the amended rules. One of the requisite qualification is that the candidate should possess teaching experience of five years as Lecturer in Directorate of Teacher's Education, Research and Training (DTERT) or District Institute of Education and Training (DIET) in the State of Tamil Nadu or in the recognized Teacher Training Institute (TTI) mentioned in Clause 4(B)(3) of the said advertisement of the second respondent. As the petitioner is already a Lecturer in DIET, T.Kallupatti, Madurai District from 2007, with teaching experience of more than eight years, applied for the said post of Senior Lecturer. A competitive written examination was held on 04.03.2012. The second respondent, after proper certificate verification, published the results, in which, the name of the petitioner was in the second place, in the subject category of Botany. The first place went to the fourth respondent herein, though he did not have the requisite qualification, as mandated by the prescribed rules.

3. It is the case of the petitioner that the fourth respondent was working in a school and he did not have the teaching experience as Lecturer either in DTERT or in DIET. Therefore, he could not be appointed to the post of Senior Lecturer in Botany. However, after the revised certificate verification, the second respondent published a provisional selection list on 10.04.2015, mentioned only the name of the fourth respondent and the name of the petitioner was omitted. Though the petitioner possessed all the required qualifications, for the post of Senior Lecturer, he was not selected and this would be the last opportunity for the petitioner. Hence, the petitioner has moved this Court challenging the appointment of the fourth respondent contending that the fourth respondent did not have the requisite qualifications as per the rules. The relaxation granted to the fourth respondent for the above appointment is also



assailed by the petitioner.

4. In response to the same, the fourth respondent has filed his counter affidavit contending that the petitioner had got less marks than him, in the competitive examination conducted on 04.03.2012. It is his case that he is a B.T. Assistant in School Education Department, possessing M.Sc., M.Ed., M.Phil., and Ph.D., in addition to have cleared UGC [National Eligibility Test in Education, Adult Education, Women Studies] and State Eligibility Test (Botany). According to the fourth respondent, the State Government issued orders in G.O.(1D) No.15, School Education Department, dated 19.01.2000, fixing qualifications for appointment of Senior Lecturers in DIET, wherein, five years teaching experience in a recognized school was sufficient. Later, it was modified by G.O.(Ms) No.133, School Education Department, dated 14.06.2007 that the said teaching experience should be five years in DIET / TTI.

5. Therefore, the fourth respondent along with two others filed writ petitions before the Principal Seat of this Court in W.P.Nos.1632 of 2008 etc., batch and the said writ petitions were disposed of on 15.07.2010, based on a communication from the Director of Teacher's Education, Research and Training, addressed to the Principal Secretary to Government, School Education Department, in Na.Ka.No.13003/A2/2006 dated 12.07.2010, wherein the Director of Teacher's Education, Research and Training recommended to the Government for granting permission to the writ petitioners, who had challenged the notification to appear in the next recruitment for the post of Senior Lecturer. This was granted as an "one time measure". Recording the said communication, a direction was given to the first respondent to pass orders on the proposal submitted by the Director of Teacher's Education, Research and Training, within a period of four weeks from the date of receipt of a copy of the said order.

6. In the light of the above directions, the State Government, vide Letter No.3537/U-2/2008-8 dated 15.11.2011 granted permission to the fourth respondent herein, and the other two writ petitioners in W.P.Nos.1632 of 2008 etc., batch, to appear in the next recruitment for the post of Senior Lecturer, as an "one time measure", considering their five years experience in the school. Accordingly, the fourth respondent applied for the post and was allowed to sit for the examination. The fourth respondent had secured 87 marks which is the first mark in the category of Senior Lecturer (Botany). Based on the marks, the fourth respondent was selected and the petitioner herein was not selected. The fourth respondent was also called for certificate verification on 10.04.2015 and a provisional list of selection was published on 22.04.2015.



7. It is the contention of the fourth respondent that he was permitted to appear for the selection, only based on the order issued by this Court in W.P.Nos.1632 of 2008 etc., batch, pursuant to which, the Government had given a letter of relaxation, enabling the fourth respondent to appear in the selection process. By virtue of the order of this Court, followed by the Government letter, the requirement of teaching experience in DTERT / DIET is not necessary and the teaching experience in a recognized school itself is sufficient. Other than the said experience, the fourth respondent claims to have got better qualification, than the petitioner, as he secured first mark in the written examination and also more qualified than the writ petitioner. Hence, he prayed for the dismissal of the writ petition.

8. Heard the submissions made on either side and perused the materials available on record.

9. The only question that arises for consideration is as to whether the Government can use its executive powers to circumvent the requirement of statutory recruitment rules.

10. The learned counsel for the petitioner submitted that the service rules applicable to the teaching and administrative posts, in School Education Department was applicable for members and staff working in the TTIs', DIET and Directorate staff also. Later, the Government of Tamil Nadu had formed the separate Directorate for Teacher Education and recruitments were made through TRB. As per the separate recruitment and service rules, framed under Article 309 of the Constitution of India vide G.O. (Ms) No.133, dated 14.06.2007, the qualifications are specifically prescribed for the post of Senior Lecturer. Rule 4 specifically mentions the qualifications required for Senior Lecturer, namely, (a) Master's degree with not less than 50% marks; (b) M.Ed., Degree with not less than 55% marks and (c) teaching experience for a period of not less than five years in a recognized Teacher Training Institute (TTI) or District Institute of Education and Training (DIET) or Directorate of Teacher's Education, Research and Training in the State (DTERT). The said five years experience as Lecturer is the point to be considered.

11. The third respondent seems to have called for direct appointment for the post of "Senior Lecturer" in DIET, from eligible candidates, as per the separate Recruitment and Service Rules framed vide G.O.Ms.No.133, dated 14.06.2007. If that is so, any candidate applying for the said post, should possess five years teaching experience as prescribed above. It is the direct attack of the petitioner that the fourth respondent did not have the five years teaching experience in TTI or DIET or DTERT, but had only teaching experience in school. The said qualification was relaxed with respect to the fourth respondent and two others, by virtue of the Government letter dated 12.07.2010, after the fourth



respondent had challenged Rule 5 of the Tamil Nadu Higher Secondary Education Service Rules, issued in Notification No.3, dated 19.08.2006. It was also specifically mentioned that it would be only on "one time measure". Based on the same, the fourth respondent was considered and was selected for appointment, which is now challenged by the writ petitioner herein.

**12.** No doubt, the petitioner was not a party to the proceedings in W.P.Nos.1632 of 2008 etc., batch, nor was he aware of the communication from the Director of Teacher's Education, Research and Training, in Na.Ka.No.13003/A2/2006 dated 12.07.2010. Therefore, it cannot be stated that the same are binding on the petitioner. As the petitioner was also not aware of these proceedings, he could not have possibly challenged the order of this Court or the communication by the Director. In such circumstances, it is to be seen whether the Government can exercise its executive power to circumvent requirements of statutory recruitment rules. Any amendment to the rules by way of administrative orders, can only supplement and cannot supplant the statutory rules.

**13.** Admittedly, in this case, adhoc rules were issued vide G.O.Ms.No.133, dated 14.06.2007. When the statutory rules have been made and notified, any appointment should be made in accordance with those rules only. Any executive power may be exercised only to fill in the gaps. While so, the third respondent had issued the letter Na.Ka.No.13003/A2/2006 dated 12.07.2010 for the simple reason that fourth respondent and two others had separately challenged the direct recruitment of the post of Senior Lecturer. Based on the above letter, the petitioners agreed for the disposal of the writ petition giving up their challenge to the Rule 5 of the Tamil Nadu Higher Secondary Education Service Rules issued in Notification No.3 dated 19.08.2006. Accordingly, the fourth respondent herein as petitioner in W.P.No.1632 of 2008 was allowed to participate in the further selection as one time measure without insisting the experience in recognised Teacher Training Institute. When there is no power conferred on the Government to relax any of the provisions of the Rules, the Government cannot take unlimited power to grant relaxation to anyone who seeks such relaxation from any of the requirements of the rules. There's no statutory provisions conferring the power to relax qualification. As stated earlier, even if the Government has such power, it could only be for promoting the objects of the Act and not flout the already existing Rules. No doubt, the object of prescribing necessary qualification is to ensure that the right persons with required qualifications, knowledge and experience alone are appointed. This principle has been reiterated by this Court in several judgments. Following the said legal position when applied to the facts of the case, the fourth respondent should not have been allowed to participate in the selection process by





relaxing the rules, though he may have more qualification than the experience required. Therefore, the conditions prescribing five years teaching experience as Lecturer in Directorate of Teacher's Education, Research and Training (DTERT) / District Institute of Education and Training (DIET) in the State of Tamil Nadu / Recognised Teacher Training Institute (TTI) mentioned in Clause 4 (B) (3) of the said advertisement of the second respondent should not have been relaxed by the third respondent to accommodate the fourth respondent.

**14.** The learned counsel for the petitioner relied on the judgment of the Honourable Supreme Court in **J & K PUBLIC SERVICE COMMISSION AND OTHERS VS. DR.NARINDER MOHAN AND OTHERS [1994 (2) SCC 630]** and para 10 of the judgment is extracted hereunder:

"10. The next question is whether the direction given by the High Court to regularise the services of the respondents is valid in law. It is true that the ad hoc appointees have been continuing from 1986 onwards but their appointments are de hors the Rules. Rules prescribe only two modes of recruitment, namely, direct recruitment or promotion by selection. As regards the lecturers are concerned, it is only by direct recruitment. The mode of recruitment suggested by the High Court, namely, regularisation by placing the service record of the respondents before the PSC and consideration thereof and PSC's recommendation in that behalf is only a hybrid procedure not contemplated by the Rules. Moreover, when the Rules prescribe direct recruitment, every eligible candidate is entitled to be considered and recruitment by open advertisement which is one of the well accepted modes of recruitment. Inviting applications for recruitment to fill in notified vacancies is consistent with the right to apply for, by qualified and eligible persons and consideration of their claim to an office or post under the State is a guaranteed right given under Articles 14 and 16 of the Constitution. The direction, therefore, issued by the Division Bench is in negation of Articles 14 and 16 and in violation to the statutory rules. The PSC cannot be directed to devise a third mode of selection, as directed by the High Court, nor be mandated to disobey the Constitution and the law. "

**14 (a).** The learned counsel for the petitioner also relied on the judgment of this Court in **SUNDARAM AIDED ELEMENTARY SCHOOL, KODIAKKADU VS. STATE OF TAMIL NADU AND ANOTHER [1999 Writ LR 122]** and para 5 of the same is extracted hereunder:

"5. It has been so held by Jayasimha Babu, J. in W.P.Nos.6607 of 1991 and 17963 and 18718 of 1992 (P.Singaravan, etc. V. Government of Tamil Nadu) . In that case, the learned Judge has held that neither the Act nor the Rules contain any provision conferring power on the Government or any of the



authorities to relax any of the provisions of the Act or of the Rules. All regular appointees to the posts set out in the Rules must necessarily possess the prescribed qualifications. The learned Judge further said that it is not possible to take the view that the Government has unlimited power to grant relaxation to anyone who seeks relaxation from any of the requirements of the Act or Rule or the qualification prescribed in the Act and / or the Rules. The learned Judge further went on to say that in the absence of a specific Statutory Provision conferring the power to relax the qualification, such qualification cannot be relaxed. It is further said in that decision that even assuming that it was open to the Government to relax the rule, such power could only be exercised for promoting the objects of the Act and not to condemn the wilful and deliberate flouting of the Statutory Rules. The object of prescribing the qualification is to ensure that only such persons who possess the requisite knowledge and experience are appointed to the post....."

Reliance was placed on the judgment of the Honourable Supreme Court in **A.UMARANI VS. REGISTRAR, COOPERATIVE SOCIETIES AND OTHERS [2004 (7) SCC 112]** also.

15. From the principle laid down in the above decisions, it is clear that the power of relaxation exercised in the present case is ultra vires the recruitment rules. The relaxation extended to the fourth respondent by the third respondent has taken away the legitimate expectation of the petitioner who possessed all qualifications.

16. It is also submitted that the fourth respondent may have the chance of being appointed as Senior Lecturer later, whereas, the writ petitioner, if not selected now, will not have another opportunity.

17. **In fine, the writ petition is allowed setting aside the impugned order.** The third respondent is directed to consider the case of the petitioner, on merits and in accordance with law. However, in the circumstances of the case, there shall be no order as to cost. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(Records)

/TRUE COPY/

Sub Assistant Registrar



To

WEB COPY

- 1.The Secretary to Government  
Government of Tamil Nadu  
School Education Department  
Secretariat, Chennai.
- 2.The Chairman  
Teachers Recruitment Board  
4<sup>th</sup> Floor, EVK Sampath Maaligai,  
DPI Compound, College Road,  
Chetpet, Chennai.
- 3.The Director of Teacher Education  
Research and Training  
College Road,  
Chennai.

+1cc to M/S.Ajmal Associates Advocate in SR.31055

tk-vs

JA-SKS-RR/22.6.2016/8P-5C

W.P (MD) NO.8439 OF 2015  
15 / 06 / 2016