



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 22.11.2016
DELIVERED ON : 24.11.2016

CORAM:

THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN
AND
THE HONOURABLE MRS.JUSTICE J.NISHA BANU

W.A. (MD) No.31 of 2016
and
C.M.P (MD) Nos.229 and 2679 of 2016

K.Nagu Thevan @ Ashok Kumar

... Appellant/
Petitioner

Vs.

1.The Chairman,
Teachers Recruitment Board,
4th Floor, E.V.K.Sampath Maligai,
D.P.I.Complex, College Road,
Chennai - 600 006.

2.The Member Secretary,
Teachers Recruitment Board,
4th Floor, E.V.K.Sampath Maligai,
D.P.I.Complex, College Road,
Chennai - 600 006.

3.R.Ananda Kumaran

4.S.Anasuya

... Respondents/
Respondents

PRAYER: Appeal filed under Clause 15 of the Letters Patent, against the order passed in W.P(MD)No.6043 of 2015, dated 15.12.2015.

Prayer in WP(MD). 6043/ 2015 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a writ of Certiorarified Mandamus calling for the records pertaining to the selection of the 3rd and 4th respondents to the post of Assistant professor (History) Tamil Medium as per the impugned Provisional List of Candidates selected after oral interview dated 8.4.2015 published by the 1st and 2nd respondent, and quash the same and consequently direct the respondents to appoint the petitioner in the post of Assistant Professor (history) Tamil Medium .

For Appellant

: Mr.K.P.S.Palanivel Rajan

<https://hcservices.ecourts.gov.in/hcservices/>

For Respondents

: Mr.A.K.Baskarapandian,

Special Government Pleader for R.1 & R.2



Mr.K.P.Jeyapalan for R.3
Mr.S.Chellapandian for R.4

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JUDGMENT

M. SATHYANARAYANAN, J.

The appellant/writ petitioner made a challenge to the selection of the respondents 3 and 4 as Assistant Professors (History) Tamil Medium by filing W.P(MD)No.6043 of 2015 and vide order dated 15.12.2015, the said writ petition was dismissed and challenging the same, the appellant/writ petitioner has filed this writ appeal.

2. Facts necessary for the disposal of this writ appeal, are as follows:

2.1. The appellant/writ petitioner would state that he passed Secondary School Leaving Certificate (S.S.L.C) in Tamil Medium in the year 1989 and thereafter, passed the Higher Secondary Examination in Tamil Medium in 1991, B.A.(History) in Tamil Medium in the year 1996, M.A.(History) in Tamil Medium in 1998 and also successfully completed M.Phil. (History) in the year 2008 and in the very same year, passed State Level Eligibility Test/National Level Eligibility Test (in short 'SLET/NET') and obtained the certificates and he also belongs to Most Backward Community, namely, Denotified Community and as per the Employment Exchange Registration, he belongs to General Turn (GT) also.

2.2. The appellant/writ petitioner would further state that the second respondent has issued a Notification/Advertisement on 28.05.2013 inviting the application for filling the post of Assistant Professor(s) (History) in the Tamil Nadu Collegiate Educational Service for Government Arts and Science Colleges and as per the qualification prescribed, the candidates should have obtained a degree from the recognised University and also obtained Ph.D., besides passing SLET/NET and the total number of posts sought to be filled up was 1093 posts and insofar as the subject of History is concerned, number of vacancies is 80.

2.3. The appellant/writ petitioner in response to the said Notification/Advertisement, submitted his application and the second respondent has sent a communication dated 14.11.2013 informing that the Certificate Verification would be conducted on 27.11.2013 and accordingly, he appeared and produced his certificates. Thereafter, the second respondent has published the list of marks and eligibility of all candidates through website on 26.01.2014 and in the said list, his name was found in Sl.No.425 and his initial selection was based on his communal quota, i.e. MBC/DNC-GT. Similarly, the names of the respondents 3 and 4 appeared in Sl.Nos.430 and 79 respectively. The seat reserved for



MBC/DNC-GT (Tamil Medium) was one post and similarly, the posts reserved for women candidate (Tamil Medium) were two posts as per the communal roster.

2.4. The candidates who were successful in Certificate Verification, like the appellant/writ petitioner, were called for Oral Interview on 06.12.2014 and his name was found in Sl.No.315 and since he has performed better, he expected his selection under MBC/DNC - GT - Male candidate. Similarly, the names of the respondents 3 and 4 were found in Sl.Nos.323 and 129.

2.5. It is the specific case of the appellant/writ petitioner that he is the only candidate eligible to be appointed as Assistant Professor (History) under the said category, but, to his shock and surprise, the name of the third respondent was found in the selected list of candidates, though in the provisional list, there was no indication that he studied in Tamil Medium.

2.6. Insofar as the fourth respondent is concerned, on account of non-availability of Women-Tamil Medium candidates, she was accommodated, which is against Rule 21(a) of the Tamil Nadu State and Subordinate Service Rules. The appellant/writ petitioner also took a stand that even at the time of issuance of the Notification/Advertisement, even for Ph.D., holders, passing of SLET/NET is mandatory in the light of the judgment of the Honourable Supreme Court dated 16.03.2015 in Civil Appeals arising out of Special Leave Petition (Civil) Nos.36023-36032 of 2010, etc. and as such, the fourth respondent is not even qualified for applying for the said post and therefore, prayed for interference.

2.7. The second respondent took a stand that the appellant/writ petitioner has failed to get eligible marks in the Oral Interview and the above cited judgment of the Honourable Supreme Court dated 16.03.2015 came into being subsequent to the issuance of the Notification/Advertisement dated 28.05.2013 and as such, the prescription of the qualification of Ph.D., without SLET/NET is in order.

2.8. Insofar as the selection of the third respondent is concerned, he has also studied in Tamil Medium and he has secured 13 marks as against 10 marks secured by the appellant/writ petitioner and therefore, he was considered for the only one Tamil Medium vacancy earmarked for the General Turn (GT) category.

2.9. As regards the fourth respondent, it is contended by the second respondent that two posts were earmarked for the women candidates studied in Tamil Medium and only one candidate, namely, N.Parvathi [Roll No.13AP1639170] was available and therefore, she was considered for selection and in the remaining one vacancy kept for Tamil Medium category, the fourth respondent was considered for selection on account of non-availability of Tamil Medium



candidates in General or Women categories and she was also found meritorious and she had secured 22 marks and as such, she was selected and therefore, prayed for the dismissal of the writ petition.

2.10. The third respondent took a stand that since his performance was more meritorious, he was rightly selected and the fourth respondent also took a stand that her selection was done strictly in accordance with law and on merits also.

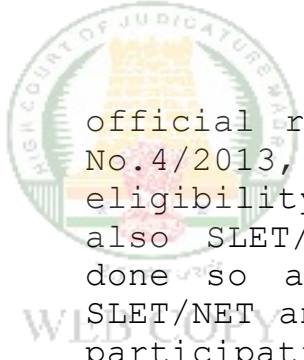
2.11. The learned Judge after taking note of the materials placed on record and upon considering the rival submissions, has accepted the stand of the second respondent and dismissed the writ petition, vide impugned order date 15.12.2015 and the appellant/writ petitioner aggrieved by the same, filed this writ appeal.

3. Mr.K.P.S.Palanivel Rajan, learned Counsel for the appellant/writ petitioner has drawn the attention of this Court to the above cited judgment of the Honourable Supreme Court dated 16.03.2015 in Civil Appeals arising out of Special Leave Petition (Civil) Nos.36023-36032 of 2010, etc. wherein the Honourable Supreme Court has categorically upheld the stand of the Central Government as to the mandatory passing of NET even for Ph.D., holders and would further add that as per UGC (Minimum Qualifications Required for the Appointment and Career Advancement of Teachers in Universities and Institutions Affiliated to it) (3rd Amendment), Regulation 2009, [in short 'UGC Regulation 2009'], the second amendment - Regulation 2006 was substituted with the following:

"NET/SLET shall remain the minimum eligibility condition for recruitment and appointment of Lecturers in Universities/Colleges/Institutions.

Provided, however, that candidates, who are or have been awarded Ph.D., Degree in compliance of the "University Grants Commission (minimum standards and procedure for award of Ph.D. Degree), Regulation 2009, shall be exempted from the requirement of the minimum eligibility condition of NET/SLET for recruitment and appointment of Assistant Professor or equivalent positions in Universities/Colleges/Institutions."

and would contend that the Honourable Supreme Court in paragraph 15 of the said judgment also observed that '... Merely because an additional eligibility condition in the form of a NET test is laid down, it does not mean that any vested right of the appellants is affected, nor does it mean that the regulation laying down such minimum eligibility condition would be retrospective in operation. Such condition would only be prospective as it would apply only at the time of appointment. It is clear, therefore, that the contentions of the private appellants before us must fail.' and thus, in the light of the said categorical pronouncement, the



official respondents while issuing the Notification/Advertisement No.4/2013, dated 28.05.2013, ought to have incorporated the eligibility conditions stating that the Ph.D., holders should have also SLET/NET qualification, but, unfortunately, they have not done so and admittedly, the fourth respondent is yet to pass SLET/NET and she should have been declared as 'ineligible' for her participation in the selection process and even otherwise, when no woman candidate is available under the category as per the proviso to Rules 21(a) and (d) of the Tamil Nadu State and Subordinate Service Rules, the claim of the appellant/writ petitioner ought to have been considered and therefore, he prays for interference.

4. Mr.A.K.Baskarapandian, learned Special Government Pleader appearing for the respondents 1 and 2 has produced the records and pointed out that the third respondent also studied in Tamil Medium and admittedly, he secured more marks than the appellant/writ petitioner in the selection process and hence, it is not open to the appellant/writ petitioner to challenge his selection.

5. The learned Counsel for the appellant/writ petitioner, in response to the said submission, after going through the application form submitted by the third respondent, would contend that it is true that as far as the qualification is concerned, the third respondent is similarly placed and further sought to assail his selection on the ground that his performance in the Oral Interview was more meritorious.

6. However, this Court is not inclined to accept the said submission for the reason that the qualification wise as per the eligible qualifications, the appellant/writ petitioner as well as the third respondent are similarly placed and on account of meritorious performance of the third respondent, he was selected. Therefore, this Court is of the considered view that the appellant/writ petitioner is not entitled to be accommodated in the place of the third respondent.

7. The only remaining issue is as to the fulfilment of the minimum qualification prescribed for the selection for the post of Assistant Professor (History) on the part of the fourth respondent and her accommodation in Tamil Medium category - General Turn.

8. The learned Counsel for the appellant/writ petitioner is right in his submission that despite the UGC Regulation 2009 coupled with the above cited judgment of the Honourable Supreme Court, the second respondent ought to have prescribed the qualification for Ph.D., holders with 'SLET/NET qualification', but, unfortunately, they have failed to do so and the explanation offered is that the judgment of the Honourable Supreme Court was delivered on 03.03.2015, i.e. after the Notification/Advertisement dated 28.05.2013. However, this Court is unable to accept the said submission.



9. Be that as it may, the appellant/writ petitioner knowing the contents of the Notification/Advertisement dated 28.05.2013, had participated in the selection process and after becoming unsuccessful, it is not open to him to turn around and challenge the said Notification/Advertisement and the legal position is no longer res integra, in the light of the ratio laid down in the following decisions:

(i) Suneeta Aggarwal v. State of Haryana reported in AIR 2000 SUPREME COURT 1058; and

(ii) Dhananjay Malik v. State of Uttaranchal reported in (2008) 4 Supreme Court Cases 171.

As per the above cited decisions of the Honourable Supreme Court, once the concerned candidate had participated in the selection process without any demur, he/she is estopped from complaining that the selection process was not in accordance with the Rules and that he/she thinks so, they ought to have challenged the Notification/Advertisement and the selection process without participating in it.

10. In the case on hand, the appellant/writ petitioner had attended the Certificate Verification/Oral Interview without any demur and protest and having found that he was not selected, made a complete turn around and challenged the Notification/Advertisement dated 28.05.2013 itself and the same is not permissible.

11. It is also the grievance expressed by the appellant/writ petitioner that in the absence of a woman candidate available in Tamil Madium - General Turn (GT) category, he should have been selected and accommodated in the light of the proviso to Rule 21 (a) and (d) of the Tamil Nadu State and Subordinate Service Rules.

12. A perusal of the provisional list of candidates after Oral Interview would indicate that the fourth respondent also belongs to MBC/DNC and she has also secured 22 marks [13 marks in Certificate Verification and 9 marks in Oral Interview], as against 10 marks obtained by the appellant/writ petitioner [6 marks for Educational Qualification and 4 marks in Oral Interview]. The said two posts are meant for woman and after selection of one N.Parvathi, the remaining one post was vacant under Women category and the fourth respondent being more meritorious and being MBC/DNC was rightly selected and accommodated. The appellant/writ petitioner by making a challenge as to the selection of the fourth respondent, virtually wants this



Court to issue a Writ of Quo Warranto, however, in the considered opinion of this Court, the writ petition with such a prayer has not been filed so far and as such, it cannot test the competence or qualification of the fourth respondent, to participate in the selection process.

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13. It is also brought to the knowledge of this Court that the respondents 3 and 4 have already joined the posts and are working and as such, this Court is not inclined to interfere with the same at this distant point of time.

14. This Court, in the light of the reasons assigned above, is of the opinion that the writ appeal deserves dismissal and accordingly, this writ appeal is dismissed. However, in the facts and circumstances of the case, there shall be no order as to costs. Consequently, the connected civil miscellaneous petitions are dismissed.

Sd/-

Assistant Registrar(Writs)

/True copy/

Sub Assistant Registrar

To

1.The Chairman,
Teachers Recruitment Board,
4th Floor, E.V.K.Sampath Maligai,
D.P.I.Complex,
College Road,
Chennai - 600 006.

2.The Member Secretary,
Teachers Recruitment Board,
4th Floor, E.V.K.Sampath Maligai,
D.P.I.Complex,
College Road,
Chennai - 600 006.

+1cc to Mr.S.Chellapandian, Advocate SR.No.72088
+1cc to Mr.K.P.Jeyapalan, Advocate Sr.No.72419
+1cc to Mr.K.P.S.Palanivel Rajan, Advocate SR.No.72614
+1cc to special Government Pleader Sr.NO.72701

rsb

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JUDGMENT MADE IN
W.A.(MD)No.31 of 2016 and
C.M.P(MD)Nos.229 and 2679 of 2016
24.11.2016