

HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN
AND
HON'BLE SRI JUSTICE G.SHYAM PRASAD

Writ Petition No.24963 of 2015

Order: (per V.Ramasubramanian, J.)

The State has come up with the above writ petition challenging an order passed by the Andhra Pradesh Administrative Tribunal, Hyderabad, allowing a review application and modifying its previous order.

2. Heard the learned Government Pleader for Services-I (Andhra Pradesh) and Mr. M.Surender Rao, learned Senior Counsel for the 1st respondent.

3. The 1st respondent herein who completed Intermediate in the year 1991 and a course known as Teacher's Certificate Higher (TCH) course in the year 1993, applied for recruitment to the post of Secondary Grade Teacher pursuant to a Notification DSC-2008 issued on 06-12-2008. He was not selected on the ground that the TCH course undergone by him in the State of Karnataka was before the cut-off date, namely, 31-10-1994 and that therefore there was an impediment in the form of a Circular of the Government of Andhra Pradesh dated 11-02-2004. Therefore, challenging his non-selection, the 1st respondent filed an application in O.A.No.7949 of 2010 on the file of the Tribunal. The Tribunal dismissed the application by an order dated 01-11-2012, holding that after the advent of the National Council for Teacher Education, the prescription of

such a cut-off date and non-consideration of persons who acquired the qualification of a pass in TCH course before the cut-off date could not be found fault with.

4. Aggrieved by the said order, the 1st respondent filed an application for review before the Tribunal, placing heavy reliance upon the decision of the Supreme Court in **State of U.P. v. Bhupendra Nath Tripathi** (AIR 2011 SC 63). Accepting the said stand, the review application was allowed by the Tribunal. It is against the said order that the State is before us.

5. The Circular Memo issued by the Government on 11-02-2004, which formed the foundation for the dismissal of the original application filed by the 1st respondent requires to be extracted, as the contentions revolve mainly around the Circular Memo. Hence it is extracted as follows:

“The Commissioner & Director of School Education, Hyderabad has stated in his letter that Government have issued orders extending the benefit to prospective T.T.C., holders of Karnataka State and also the equivalence of Karnataka T.T.C., obtained to that of T.T.C of Andhra Pradesh to the applicants who possess Karnataka T.T.C., obtained prior to 31-10-1994 and they are eligible to appear only for D.S.C., 1999. Further he has stated that vide reference 2nd cited, Government have extended the benefit of eligibility of the applicants who possess Karnataka T.T.C., prior to 31-10-1994 to appear for D.S.C., 2000. Subsequently, Government have extended the said benefit to the candidates appeared for D.S.C. 2001 and 2002 also in the reference 3rd and 4th. He further stated that certain candidates who are appearing for D.S.C-2003 have represented the Commissioner & Director of School Education to extend the order issued vide Govt. Memo.4th cited so as to enable them to appear for D.S.C. 2003. He has requested to Government to examine the issue and pass suitable orders extending the benefit of eligibility to the applicants to appear to DSC-2003 who possess Karnataka TTC obtained prior to 31-10-1994 and also who passed T.C.H with 02 years intermediate of Karnataka State beyond 31-10-1994 of elementary stage including Urdu candidates, subject to conditions that the candidates

should obtain Teacher Education Certificate at the elementary level from the institutions recognized by NCTE, Bangalore.

2. The Government have examined the matter and hereby order extending the benefit of eligibility to the applicants to appear to DSC who possess Karnataka T.T.C., obtained prior to 31-10-1994 and also who passed T.C.H., with 02 years Intermediate of Karnataka State beyond 31-10-1994 of elementary stage including Urdu candidates, subject to conditions that the candidate should obtained Teacher Education certificate at the elementary level from the institutions recognized by NCTE, Bangalore.”

6. The 1st respondent went before the Tribunal seeking a review of its earlier order on the ground that the Circular Memo issued by the Government with particular reference to a selection of one particular year, namely, DSC-2003 cannot be elevated to the status of a statutory instruction or rule to govern all future selections and that therefore the cut-off date stipulated without a statutory backing, as denounced by the Supreme Court in its decision in **Bhupendra Nath Tripathi** (*supra*) ought to have been ignored by the Tribunal.

7. But unfortunately, the Tribunal while considering the application for review, did not take note of one important factor. A reading of the Circular Memo dated 11-02-2004 would show that from time to time, the Government was extending a benefit to persons who had completed the TCH course before 31-10-1994. In the Notifications for recruitment DSC-1999, DSC-2000, DSC-2001 and DSC-2002, the Government had passed orders similar to the one dated 11-02-2004 which relates to DSC-2003.

8. The effect of all those orders that culminated in the Circular Memo dated 11-02-2004 is that a concession was

granted to persons who had completed TTC course, in the selections of the years DSC-1999 up to DSC-2002. For the first time, a concession was granted to TCH holders in DSC-2003 in the Circular Memo dated 11-02-2004.

9. Therefore, in the absence of such a similar Circular for DSC-2008, the petitioner cannot seek the extension of the benefit that was conferred under the Circular Memo dated 11-02-2004 to TCH holders.

10. In any case, the only ground on which the Tribunal allowed the review application was the decision in **Bhupendra Nath Tripathi** (*supra*). The decision in **Bhupendra Nath Tripathi** (*supra*) was rendered even before the decision rendered in the original application. Therefore, that a decision of the Tribunal was contrary to law, could not have been a ground to seek a review of the order. On the contention that there cannot be a cut-off date with reference to the degrees obtained from the institutions existing before the enactment of the National Council for Teacher Education (NCTE) Act, 1993, it must be stated that the benefit of a person having undergone a course before the enactment of the NCTE Act, 1993, is something for the employer to take a call. In any case it cannot be a ground for allowing a review application. Therefore, we are of the considered view that the order of the Tribunal passed especially in review cannot be sustained.

11. A contention was raised that 18 candidates who were similarly placed were appointed in Chittoor District and

13 candidates with identical qualifications were appointed in the previous selection in Guntur District. Therefore, Article 14 of the Constitution of India is sought to be pressed into service.

12. But unfortunately, there cannot be equality in illegality. It is claimed by the Government that disciplinary action has been initiated against those responsible for such appointments. We are not expressing any opinion on the said aspect. But the fact remains that the improvement of the standards of education, which is one of the fundamental objects of the education, cannot allow the Tribunal to permit any dilution of standards. Therefore, the writ petition is allowed. The order of the Tribunal in the review application is set aside. The miscellaneous petitions, if any, pending in this writ petition shall stand closed. No costs.

V.RAMASUBRAMANIAN, J.

G.SHYAM PRASAD, J.

09th November, 2016.

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Note:-

Issue C.C. in three days.

(B/o)

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HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN
AND
HON'BLE SRI JUSTICE G.SHYAM PRASAD

Writ Petition No.24963 of 2015
(per VRS, J.)



09th November, 2016.
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