

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.10.2017

CORAM

THE HONOURABLE MR.JUSTICE HULUVADI G. RAMESH
and
THE HONOURABLE MR.JUSTICE RMT. TEEKAA RAMAN

W.A.No.1040 of 2017
and
CMP.No.14776 of 2017

The Chairman
Teachers Recruitment Board
College Road,
Chennai - 600 006.

... Appellant

Vs.

K.Veeramani

... Respondent

Writ Appeal filed under Clause 15 of the Letters Patent against the order dated 25.07.2017 passed by a learned Single Judge of this Court in W.P.No.32316 of 2013.

Prayer in W.P.No.32316 of 2013:

Writ petition filed under Article 226 of the constitution of India to issue a Writ of Mandamus, directing the respondent to award one mark for the answer attended by the petitioner in question No 107 (D Type) (Paper II) and publish the correct result in so far as it relates to the petitioner.

For Appellant : Mr.K.Venkataramani, AAG assisted by
Mr.P.S.Sivashanmuga Sundaram, SGP

For Respondent : Mr.C.Prakasam

JUDGMENT

(Order of the Court was made by HULUVADI G. RAMESH, J.)

Feeling aggrieved over the order dated 25.07.2017 passed by a learned Single Judge in W.P.No.32316 of 2013, the respondent-Board has filed the instant intra court appeal.

2.For the sake of convenience, the parties are referred to, as per the rank assigned to them, in the writ petition i.e., the appellant herein as the respondent and the respondent herein as the petitioner.

3. Brief facts, as are borne out from the records of the present intra court appeal, are as follows:

3.1 The petitioner passed B.A.(History) and B.Ed. Degree. He participated in the Teacher Eligibility Test (TET) conducted by the respondent on 18.08.2013 for the post of B.T. Assistant and he secured 89 marks, but, the minimum marks for eligibility is 90. When he verified his answers with the final answer key published by the respondent, he came to understand that the respondent has not properly awarded marks to some questions, particularly, Question No.107 (D-series) in Paper-II, which reads as follows:

"In which language, the song "Vande Matharam" was written first?

- | | |
|------------|--------------|
| A. Bengali | B. Urdu |
| C. Marathi | D. Sanskrit" |

The answer provided in the final key answer book is Sanskrit (option D), whereas, according to the petitioner, the correct answer is Bengali (option A). Since the petitioner required one more mark to become eligible for the post of B.T. Assistant and he wrote the answer correctly for the said question, he made a representation to the respondent on 13.11.2013, which was not considered. Hence, the petitioner filed a writ petition in W.P.No.32316 of 2013 seeking a writ of mandamus directing the respondent to award one mark for the answer attended by him in Question No.107 (D-Series) in Paper-II and publish the correct result insofar as it relates to him.

3.2 The respondent-Board filed its counter refuting the averments made in the writ petition.

3.3 The learned Single Judge has gone into the issue in detail and ultimately concluded that the song "Vande Matharam" was originally penned down as "Bondey Matorom" by Bongkim Chondro Chottoapadhyay in Bengali; it was later translated into Sanskrit as "Vande Matharam"; though Sanskrit has been used in the song, the native language, in which the song was written, is Bengali; therefore, the answer to the said question is Bengali (option A).

3.4 The said fact was also accepted by the learned Advocate General representing the respondent stating that there was a mistake on the part of the respondent in not awarding one mark for the petitioner, though he has answered the question as "Bengali" (option A). However, it has been communicated by the respondent that even if the petitioner is granted one additional mark as claimed by him, he would still have a cut off of only 58.57, which is 0.16 mark lesser than the prescribed cut-off marks for SC(G).

3.5 However, by the impugned order, the learned Single Judge allowed the writ petition, the operative portion of the which, runs thus:

"Considering the submissions made by the learned counsel appearing for the petitioner and also considering the fact that the petitioner is only 0.16 marks below that cut-off marks as claimed, the respondent is directed to accommodate the petitioner in any vacancy that has arisen in the SC (G) category and consequently, issue appointment order as B.T. Assistant, if otherwise eligible within a period of four weeks from the date of receipt of a copy of the order."

Questioning the legality and validity of the same, the respondent-Board has come up with the present intra court appeal.

4. After hearing the submissions made by the learned counsel on either side and on a perusal of the materials on record, including the impugned order, the issues, which emerge for consideration in this intra court appeal are as under:

(i) Whether the answer for Question No.107 (D series) in Paper-II is "Bengali" (option A) or "Sanskrit" (option D)?

(ii) If the petitioner is awarded one mark for the question in dispute, Whether he is eligible to be accommodated for the post of B.T. Assistant?

Issue No.1:

5. On a careful reading of the order impugned herein, it is manifest that with regard to the origin of the song 'Vande Matharam', the learned Single Judge, apart from hearing the respective submissions of the parties, sought the assistance of some other learned counsel from the bar, who voluntarily came forward and took painstaking efforts in making research and in collecting information from National Encyclopedia of Bangladesh, extract from the book 'Interpretation of Vande Matharam' and other records collected from the native of Bankim Chandra Chatterjee, which would undoubtedly, go to show that the song 'Vande Matharam' was originally written in the native language of Bengali and it was later on, translated into Sanskrit.

6. In such view of the matter, we have no hesitation to come to the conclusion that both the answers viz., "Bengali" (option A) and "Sanskrit" (option D) are correct. Therefore, the respondent-Board shall award one mark to the candidates, who answered it as "Bengali" as well as to the candidates, who answered it as "Sanskrit".

7. Accordingly, the petitioner is entitled to one additional mark to the question in dispute and this issue is answered in favour of the petitioner. Consequently, the order of the learned

Single Judge, insofar as it relates to the award of one additional mark to the petitioner for the disputed question, is confirmed.

Issue No.2:

8.The main thrust of the submissions of the learned Additional Advocate General representing the respondent-Board is that even if the petitioner is awarded one additional mark as claimed by him, his final score would only be 58.57, which is 0.16 mark lesser than the cut off marks for SC(G) category prescribed by the respondent for the post of B.T Assistant and as such, he is not coming within the zone of consideration and in that event, the question of accommodating the petitioner in any vacancy that has arisen in the SC(G) category for the post of B.T. Assistant, does not arise.

9.We are of the opinion that the manner in which the marks were awarded to the candidates, who participated in the TET and the selection process fall under the administrative domain of the Government. It is well settled that the Courts should not ordinarily interfere in the policy decision of the Government, unless there is clear violation of some Constitutional provision or the statute. We find no such violation in the case at hand. In the case of Tata Cellular v. Union of India reported in AIR 1996 SC 11, it has been held by the Supreme Court in unequivocal terms that there should be judicial restraint in administrative decision.

10.In such perspective of the matter, the contention of the learned counsel for the petitioner that one Elavarasan belonging to SC(G), who secured 54.12 marks lesser than the marks secured by the petitioner in the TET, was given appointment, cannot be countenanced.

11.Accordingly, this issue is answered in favour of the respondent-Board. We leave it open to the respondent-Board to deal with the case of the petitioner, after awarding one mark, on merits and in accordance with law. Consequently, the order impugned herein is set aside, insofar as it relates to directing the respondent to accommodate the petitioner in any vacancy that has arisen in the SC(G) category and issue appointment order as B.T. Assistant, if otherwise eligible.

12.As regards clauses (a) and (b) of Para 22 of the order of the learned Single Judge, which mention about singing of 'Vande Matharam' compulsorily in the educational institutions, Government Offices and private companies/Factories and Industries, we are of the view that since it is a policy decision to be taken by the State (by legislature or the Executive in implementation), in modification of the order of the learned Single Judge, we leave it to the discretion of the Government to take decision in the matter.

In fine, the intra court appeal stands allowed in part. No costs. Consequently, connected Miscellaneous Petition is closed.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

rk

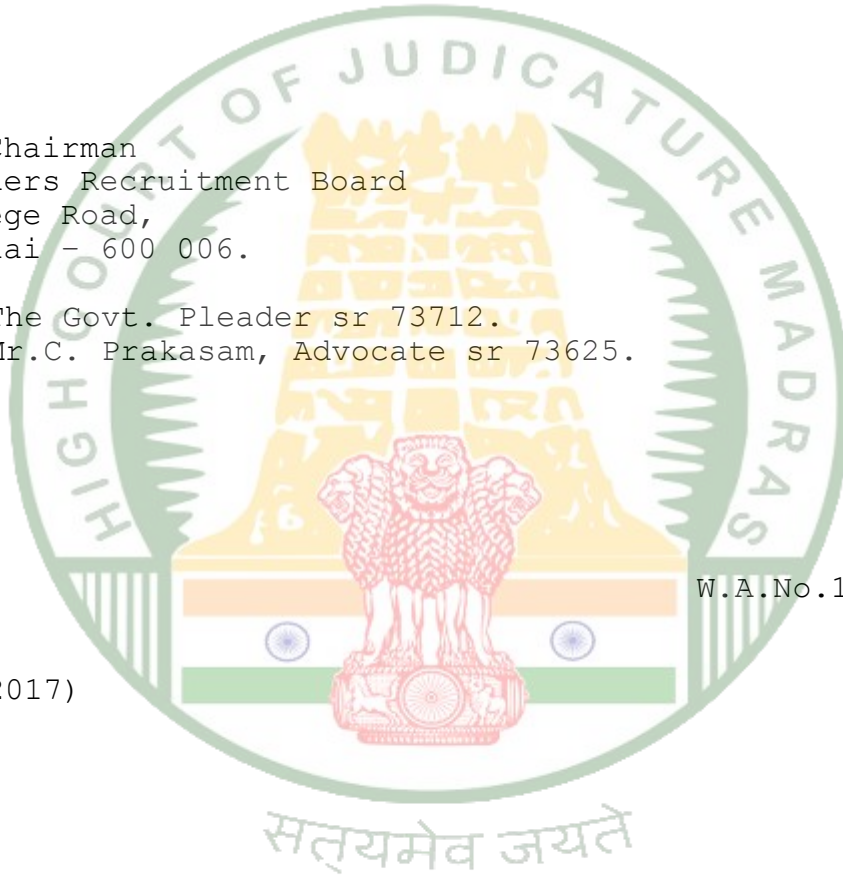
To

The Chairman
Teachers Recruitment Board
College Road,
Chennai - 600 006.

+1 CC to The Govt. Pleader sr 73712.
+1 Cc to Mr.C. Prakasam, Advocate sr 73625.

SS(CO)
SP(29/11/2017)

W.A.No.1040 of 2017



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