

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.01.2017

CORAM

THE HONOURABLE MR.JUSTICE NOOTY. RAMAMOHANA RAO
and
THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

W.A.No.866 of 2015
and M.P.No.1 of 2015

- 1.The Director of School Education,
DPI Campus,
College Road,
Chennai - 600 006.
 - 2.The Teachers Recruitment Board
represented by its Chairman,
DPI Campus,
College Road,
Chennai - 600 006. .. Appellants/Respondents
- Vs.
- S.Prabu ..Respondent/Petitioner

Writ Appeal filed under Clause 15 of the Letters Patent against the order dated 08.09.2014 made in W.P.No.22699 of 2014. Petition filed under Article 226 of the constitution of India praying to issue a writ of Mandamus, to directing the second respondent Board to consider the petitioner as eligible for appointment to the post of P.G. Assistant English by accepting the certificates produced by the petitioner along with the representation dated 21.06.2014 which was issued pursuant the proceedings of the second respondent in Na.Ka.No. 693/A3/2013 dated 09.06.2014 in proof of the fact that the petitioner had not undergone M.A. Degree programme and B.Ed. Programme simultaneously and consequently direct the second respondent to select and appoint the petitioner to the post of P.G. Assistant (English) for the examination conducted in the year 2011-2012.

For Appellants : Mr.K.Venkatramani,
Additional Advocate General - VII
Assisted by
Mr. P.S. Sivashanmugasundaram,
Spl. Government Pleader,

For Respondent : Mrs.Dakshayani Reddy

J U D G M E N T

(Judgment of the Court was made by NOOTY.RAMAMOohana RAO,J.)

This in-house appeal is preferred under Clause-15 of the Letters Patent by the Director of School Education as well as the Teachers Recruitment Board calling in question the correctness of the order and judgment rendered by the learned Single Judge on 08.09.2014 in W.P.No.22699 of 2014.

2.The respondent/Writ Petitioner had to institute the above said Writ Petition as his candidature for recruitment to the post of Post Graduate Assistant (English) has been rejected. According to the Writ Petitioner, he passed 10th Standard in March 1999, 12th Standard in the year 2001 and thereafter, obtained Diploma in Teacher Education by studying the course between the years 2002-2004. He sought for admission in Under Graduate Degree course of the Madras University in the year 2004 and completed the said course in 2007. It is thereafter that he enrolled as a student under the Distance Education mode of Annamalai University for the Post Graduate M.A. (English) Degree course. During the academic session 2007-2008, he completed 1st year of the said Post Graduation course and dropped out and discontinued the said course. He got admission to B.Ed., course during the year 2008-2009 and after completing B.Ed., course, he got readmission to the 2nd year of the Post Graduation course of M.A. (English) of Annamalai University and completed the said course in the year 2010. He therefore, claimed that he is eligible for selection and recruitment to the post of Post Graduate Assistant in English subject, having possessed M.A. (English) and B.Ed., Degrees.

3.The Special Rules for the Tamil Nadu Higher Secondary Educational Services have prescribed the following qualifications as the eligibility criteria for recruitment to the post of Post Graduate Assistant by the method of direct recruitment:

i) must have obtained a Master's Degree and Bachelor's Degree in the same subject or its equivalent in respect of which recruitment is made; and

ii) B.T., or B.Ed., Degree of University in the State or a Teaching Degree of equivalent standard.

4.The Teachers Recruitment Board has issued Notification/ Advertisement No.03/2012 dated 28.02.2012 inviting applications upto 30.03.2012 for direct recruitment to various vacancies of Post Graduate Assistants for the year 2011-12.

5. Out of as many as 2895 vacancies so notified, 349 vacancies are to be filled up in English subject alone. The applications are required to be submitted latest by 05.30 p.m. on 30.03.2012 and the written test was slated to be conducted on 27.05.2012 between 10.00 a.m. and 01.00 p.m.

6. Paragraph no.6 of the Notification prescribed the qualifications required to be possessed by the candidates. The candidates should possess M.A.,/M.Sc.,/M.Com., in the relevant subject with B.Ed. It is also specified that the candidate should have studied the same subject in Bachelor's Degree and Master's Degree. In other words, if a candidate is competing for recruitment to the post of Post Graduate Assistant in English language, the candidate is required to have studied English as one of the main subjects of study or Literature at the Graduate and Post Graduate levels also. There is no dispute on this count with regard to the eligibility of the Writ Petitioner.

7. The scheme of the examination has been spelt out in Paragraph no.12, which comprises of a written test for 150 marks, out of which, 110 marks are set apart for the main subject, while 30 marks for educational methodology and 10 marks for General Knowledge. For the short listed candidates, who have been called for verification of the certificates, weightage marks would be added depending upon the number of years of their wait after registration in the Professional/Executive Employment Office. For such of those candidates, who have waited for 10 years and beyond, maximum of 4 marks would be added; those who have spent 5 to 10 years of waiting period, 3 marks; for those who have spent 3 years and below 5 years, 2 marks would be awarded and those who have spent 1 to 3 years would be awarded one mark.

8. Similarly, experience of teaching gained at 11th & 12th Standard in any recognised School would also fetch additional weightage marks. For 1 to 2 years experience, one mark; for 2 to 5 years experience, 2 marks and for experience gained beyond 5 years, 3 marks would be granted.

9. The Writ Petitioner has appeared for the selection test and the results were also published. The Writ Petitioner was declared to have obtained 96 marks and hence, he was short listed. He was called for certificate verification on 04.08.2012 and though he attended the certificate verification, in the final merit list of candidates published on 13.12.2012, his name did not appear therein. In the provisional merit list his name was figuring at Serial No.306. In that view of the matter, when the Writ Petitioner made enquiries, he was informed that he was not eligible for being recruited as a Post Graduate Assistant in English for the reason that he had simultaneously pursued the Post Graduate Degree of M.A. (English) and B.Ed., courses. It is in this backdrop, the Writ Petition came to be instituted.

10.It is the contention of the Writ Petitioner that he has not simultaneously studied the Post Graduate course of M.A. (English) and B.Ed., courses and on the other hand, after having passed B.A., Degree from the University of Madras in the year 2007, he sought for admission in M.A. (English) course and he was enrolled for the Post Graduate M.A. (English) correspondence course in Annamalai University in the year 2007. He had appeared for the 1st year end examinations of M.A. (English) in the year 2008. But however, it is the specific assertion of the Writ Petitioner that he had discontinued the said Post Graduate Course and instead, opted for admission to B.Ed., course and hence, he had stopped pursuing M.A. (English) - 2nd year course and switched over to pursue B.Ed., programme during the year 2008. After obtaining the pass certificate in B.Ed., examinations, according to the petitioner, he solicited admission, afresh, in M.A. (English) 2nd year course and Annamalai University granted him such a permission during the year 2009. He pursued 2nd year course and appeared for the 2nd year end examinations in the year 2010 and was declared to have passed the said examinations in the year 2010. Hence, it is contended that the Writ Petitioner has not pursued two courses simultaneously, but one after the other and hence, non-selection of the Writ Petitioner for the post of Post Graduate Assistant (English) is not proper.

11.The learned Additional Advocate General would contend that no student should pursue 2 academic programmes simultaneously. In the instant case, the Writ Petitioner has been admitted by the Annamalai University to its Post Graduate programme of M.A. (English) during the academic year 2007-08 and if the Writ Petitioner has dropped out from the said course, he ought to have produced the discontinuance certificate from the said University or the Transfer Certificate, whereas, he has not produced any such certificate of discontinuance.

12.It is also contended by the learned Additional Advocate General that the petitioner has not even obtained Transfer Certificate from Annamalai University. But however, without properly and correctly disclosing all the relevant facts, secured admission, improperly in B.Ed., course and pursued the said course during the academic session 2008-09. The learned Additional Advocate General would further contend that the Post Graduate M.A. (English) course is of 2 years duration. It must be pursued at one go. No student can study the 1st year during one academic session and then drop out from the College only to come back and pursue the 2nd year course not in the immediate succeeding academic session, but in some other subsequent year. Such an attempt on the part of the student is impermissible. The Post Graduate study programme cannot be disrupted and truncated. No student can study half of the said programme and pursue some other Degree course. Any

such attempt of students pursuing another Degree course, would amount to pursuing 2 academic programmes simultaneously.

13.It is the policy of the State not to encourage the students to take to 2 different academic programmes simultaneously. If any such candidate is guilty of pursuing 2 academic programmes simultaneously, such candidates can be disqualified from seeking benefit or advantage of either of the 2 courses. Since in the instant case, both M.A. (English) as well as B.Ed., Degree are essential qualifications for recruitment to the post of Post Graduate Assistants, if the Writ Petitioner is to be treated to have pursued 2 academic programmes simultaneously, he is not liable to take advantage of either of these 2 courses and consequently, he becomes disqualified for recruitment, as he would lack the essential qualification to hold the post of Post Graduate Assistant (English) by not having the credit of either M.A. Degree or B.Ed., Degree.

14.The learned Additional Advocate General also brought to our notice that there are several such candidates, who have simultaneously pursued the courses and all such candidates have not been considered as eligible. They were filtered. There are 62 such instances, which have come to be noticed by the Teachers Recruitment Board for the recruitment session 2011-12. Insofar as the Post Graduate Assistant in English is concerned, there are 17 candidates, who were found to have simultaneously pursued 2 academic programmes. Out of the 17 candidates, 11 of them have secured marks within the cut off range. Out of 7 candidates, 4 of them, namely, D.Bhuvana, P.Shivani, P.Vijayalakshmi and G.Nasrin Begum, who have secured more marks than the Writ Petitioner have not been considered for selection. The remaining 3, namely, A.Renuka, M.Suba and S.Prabu have secured equal marks as that of the Writ Petitioner. They were also not considered by the Recruitment Board. In that view of the matter, the learned Additional Advocate General would contend that the present case is not the one where the Court should exercise discretion in favour of the Writ Petitioner, as he was not singled out.

15.The learned Additional Advocate General would also contend that pursuant to the Notification No.3/2012 issued on 28.02.2012, the written test was conducted on 27.05.2012 and the tentative list of candidates called for certificate verification was announced on 23.10.2012 and the revised provisional list of selected candidates was published on 18.01.2013 after due verification of the certificates produced by them. The present Writ Petition is instituted only on 19.09.2014 and in the meantime, another recruitment process for the subsequent year 2012-13 had also been initiated, in which, the vacancies, which were notified during the year 2011-12, but remained unfilled, have also been added and that the Notification No.2/2013 was published on 09.05.2013, pursuant to which the written examination was conducted on

21.07.2013 and the provisional list of candidates called for certificate verification was published on 11.10.2013 and the final list of the selected candidates including for the Post Graduate Assistant (English) was published on 10.08.2014 and hence, the institution of the Writ Petition, belatedly, on 24.08.2014 should be viewed to have been hit by delay and laches, as 3rd party interests have accrued in the meantime.

16. There is no gainsaying that students cannot pursue 2 academic programmes simultaneously. The students are required to pursue one academic programme after the other. In the instant case, the Writ Petitioner has pursued B.A. and after obtaining the said Degree, secured admission in the Post Graduate M.A. (English) course by Distance Education mode from the Annamalai University. He joined the said course during the academic year 2007-08, but however, he dropped out. He got admission for the one year B.Ed., course during the academic year 2008-09 and hence, he pursued the said B.Ed., course. During this academic session 2008-09, the Writ Petitioner has not pursued the 2nd year Post Graduate Degree course of M.A., (English). In other words, there was an interruption in his academic programme relating to Post Graduate course of M.A. (English). He again got readmission to the 2nd year of the Post Graduate programme of M.A. (English) course for the academic session 2009-10 (i.e.) after completing the B.Ed., academic programme. In this context, it would be appropriate to notice the meaning of the word "simultaneous": an adjective that has been described or said in Concise Oxford English Dictionary as occurring, operating, or done at the same. If 2 programmes are pursued at the same time, such a student can be described to have pursued both the academic programmes simultaneously. In other words, if the Writ Petitioner had pursued his 2nd year Post Graduate Degree course of M.A. (English) and also B.Ed., during the same academic session 2008-09, that would amount to pursuing 2 academic programmes simultaneously. If on the other hand, he has dropped out from the Post Graduate Degree course of M.A. (English) after completing 1st year course and then pursued B.Ed., course during the whole of the academic session 2008-09 and then goes back for the next academic session to pursue the 2nd year of the Post Graduate course of M.A. (English), it does not, in our opinion, amount to pursuing 2 academic courses simultaneously.

17. It would be a different matter whether at all the Writ Petitioner could have been granted admission in the B.Ed., for the academic session 2008-09 without, his producing the necessary and relevant certificates such as Transfer Certificate/Discontinuance Certificate. It would also be a different matter as to whether he could seek admission to B.Ed., course without producing the Transfer Certificate obtained from the Annamalai University. We are not concerned or pronouncing any opinion with regard to the validity or sustainability of any such event.

18.The contention canvassed by the learned Additional Advocate General that the Post Graduate Degree courses are of 2 years duration and they are required to be pursued one session after another, is not without any substance or merit. Once a student seeks admission to a Post Graduate course of 2 years duration, he is expected to pursue the said course year after year in 2 academic sessions, without any interruption in between. But however, there can be imponderable factors which might come in the way of a student in pursuing the Post Graduate course in 2 successive academic years. It is not difficult for one to imagine causes or factors such as one's own ill health or hospitalization for longer periods or compulsions to drop out of academic course due to factors which are equally important such as serious ailments/hospitalization of either of the parents or any other family member requiring his presence elsewhere than allowing him the freedom to pursue the Post Graduate course, etc. May be, even lack of financial wherewithal can force a candidate to drop out, for a while at least, after completing the 1st year of the 2 year Post Graduate courses. He may seek readmission in the next academic session and pursue the course after overcoming the difficulties thus encountered by him. Therefore, in the absence of any specific clause requiring the students to complete the 2 year Post Graduate course in 2 succeeding academic sessions, it will not be fair or reasonable to conclude that pursuing the Post Graduate course of M.A. (English) by the Writ Petitioner in 3 academic sessions amounts to an improper or illegal exercise. It is for the State Government, in consultation with the Universities concerned, to regulate as to how far such attempts of pursuing the Post Graduate courses truncatedly can be considered/regulated and prescribe the norms appropriate therefor.

19.As at present advised, in the absence of any such statutory restriction, which is demonstrated before us, the conduct of the Writ Petitioner in pursuing the Post Graduate Degree in M.A. (English) course during the academic session 2007-08 and 2009-10 cannot be pronounced as improper or illegal or would even amount to pursuing 2 academic programmes simultaneously.

20.The contention of the learned Additional Advocate General that the Writ Petition has been instituted belatedly and that too, after the selections for the next batch of recruitment were published on 10.08.2014 concerned, all we need to notice is that the Writ Petitioner has taken up the issue of his non-selection during the session 2011-12 with the State Government and it is the State Government which directed the Teachers Recruitment Board to take up the issue of verification of certificates of the Writ Petitioner. It is in that process, the Teachers Recruitment Board through its letter in RC.No.6923/A3/2013 dated 09.06.2014 (placed at page-27 of the paper book filed in the Writ Appeal) called upon the Writ Petitioner to furnish the following information:

1. The date of admission to 1st year M.A. Degree and date of left out (obviously leaving) and date of 2nd year admission and date of left out and date of examination and details of passing and copy of M.A., admission card.
2. The details of B.Ed., course studied and last date of examination and date of passing.

21. It is pursuant to this letter dated 09.06.2014, the Writ Petitioner has produced the necessary certificate from Annamalai University, Directorate of Distance Education dated 17.06.2014, wherein the said University clarified that the Writ Petitioner was admitted to M.A. (English) Degree programme with Enrolment No.0130705385 during the academic year 2007-08 and he has not continued the programme in 2008-09 and he was readmitted in 2nd year M.A. (English) Degree programme during the academic year 2009-10 and completed the said course in June 2010. It is also further cleared that he has applied for the Transfer Certificate on 20.12.2012 and the same was issued to him. On 18.06.2014, Annamalai University has also issued another certificate indicating that the 1st year M.A. (English) course examinations were conducted between 19th and 27th May 2008, while the 2nd year M.A. (English) examinations were conducted between 20th and 28th May 2010, where at the Writ Petitioner appeared. It is also pointed out that the Writ Petitioner appeared for an examination on 26.12.2009 for clearing a backlog subject of the 1st year M.A. (English) course. The Writ Petitioner has also produced the necessary certificate from the Principal of Dhivya College of Education where he pursued B.Ed., course. The said certificate clearly brought out that the Writ Petitioner was admitted to the B.Ed., course on 30.09.2008 and he completed the course on 24.06.2009 and he wrote B.Ed., Degree examinations between 27.05.2009 and 02.06.2009 and he appeared for the said examinations and passed the said Course in 1st class. Thus between 30.09.2008 and 02.06.2009, the Writ Petitioner has not pursued any other academic programme, much less the 2nd year Post Graduate course of M.A. (English) from Annamalai University.

22. Therefore, we are satisfied that he has not pursued 2 academic programmes simultaneously. Even his appearing for the supplementary/ backlog examinations of the 1st year M.A. (English) course took place on 26.12.2009 which is falling beyond the date of completion of his B.Ed., course. The Writ Petitioner was wrongfully denied selection to the post of Post Graduate Assistant (English).

23. This takes us to the next submission of the learned Additional Advocate General that there are several such candidates, who were also not selected for having pursued 2 academic programmes simultaneously and that some of those candidates have secured better marks than the Writ Petitioner. The complete details with regard to those candidates as to how

they pursued 2 different courses simultaneously are not brought on record. Except the statement that 7 candidates, who secured better or equal marks like that of the Writ Petitioner, have pursued 2 academic programmes simultaneously, there are no details furnished as to whether they have also dropped out during one particular academic session from any course and then moved on to pursue another course. If at all, any one of those 7 candidates has also dropped out of one academic programme or the other, as was done by the Writ Petitioner, they also deserve to be considered for recruitment to the post of Post Graduate Assistant. We are not confining granting the relief only to the Writ Petitioner because the entire issue is now revolving based upon a principle, but not on the basis of wrongful selection or refusal of selection of the Writ Petitioner alone. It is for the State and the Teachers Recruitment Board to revisit those 7 cases and in case any one of them had also dropped out of the academic programme in the same manner as the Writ Petitioner has done, such candidates also deserve to be considered for recruitment.

24. This takes us to the last issue as to how far the candidature of the Writ Petitioner has to be considered at this distant point of time. As we have already noticed, as soon as the selection for the year 2011-12 are published the Writ Petitioner approached the respondents to find out as to the reason for having not considered his candidature. When he has taken up the matter with the State Government, the State Government has rightly ordered for verification of the academic certificates of the Writ Petitioner and the Teacher Recruitment Board has taken up such an exercise through its letter dated 09.06.2014. In about 2 months time thereafter, the Writ Petition came to be instituted on 24.08.2014. Therefore, we cannot construe that there was any wanton or deliberate delay or laches attributable to the Writ Petitioner in moving this court for seeking the relief. Hence, the improper denial of selection has to be set right by us.

25. Mrs. Dakshayani Reddy, the learned counsel for the respondent/ Writ Petitioner has secured certain information and informed us that as on 09.11.2016, in Tiruvannamalai District alone, as many as 27 vacancies of Post Graduate Assistant (English) are available. Therefore, the fact that the vacancies, which remained unfilled, pursuant to the selections that were undertaken for 2011-12 were again notified for the next session 2012-13, does not really make a substantial difference, since there are several vacancies available till date and no rights of any other candidates are likely to be affected as there are vacancies available. Such a consideration was required to be spared only in the event of no vacancy being available and the resultant replacement of one of the selected candidates is required to be undertaken to accommodate the Writ Petitioner.

selected candidates has no right to seek appointment against the available vacancies, but however, whether the selection of the candidate have been improperly denied for no fault attributable to him, the relief must be granted to the Writ Petitioner. We, therefore, direct the State Government to take into consideration the case of the Writ Petitioner for appointment as Post Graduate Assistant (English) immediately. At best, he will be entitled to all benefits from the date of such appointment and may not be justifiably entitled for the benefits from the date on which the next most meritorious candidate than him came to be so appointed pursuant to the Notification for recruitment in the academic year 2011-12.

27. With these observations, the Writ Appeal stands disposed of. The exercise leading to the appointment of the Writ Petitioner shall be completed within a maximum period of 30 days from the date of receipt of a copy of this order. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

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1. The Director of School Education,
DPI Campus,
College Road,
Chennai - 600 006.

2. The Teachers Recruitment Board
represented by its Chairman,
DPI Campus,
College Road,
Chennai - 600 006.

+ 1 cc to Mr. Dakshayani Reddy, Advocate Sr.5672
+ 1 cc to Government Pleader SR.5935

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