

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.08.2017

CORAM :

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.23154 of 2017 and
WMP Nos.24257 and 24258 of 2017

P.Rajkumar

...Petitioner

Vs.

- 1.The Chairman,
Teachers Recruitment Board,
EVK Sampath Maaligai,
4th Floor, DPI Compound,
College Road, Chennai - 600 006.
- 2.The Member Secretary,
Teachers Recruitment Board,
EVK Sampath Maaligai,
4th Floor, DPI Compound,
College Road, Chennai - 600 006.
- 3.The Principal Secretary to School Education,
Secretariat, St.George Fort,
Chennai.
- 4.The Director of School Education,
The Directorate of School Education,
Chennai - 600 006.

...
Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus, calling for records relating to impugned notification vide No.05/2017 dated 26.07.2017 issued by the first respondent for filling up the post of Special Teacher (Non Teaching) and quash the same as highly illegal, unlawful, arbitrary, unreasonable, unconstitutional and violative of Article 14, 16, 21 and 309 of Constitution of India and consequentially direct the respondent Nos.1 to 4 to issue fresh Notifications and fill up the vacancies, which arose before 17.11.2014 as per old/earlier method of Recruitment which was in force at that time i.e., based on Employment Exchange Registration Seniority and also inviting Applications from open market by effecting Publication/Advertisement in the newspapers and fill up the vacancies, which arose on or after 17.11.2014 based on marks obtained in Written Competitive Examination and Interview by

following G.O.(Ms) No.185 dated 17.11.2014 issued by the Principal Secretary to Government, School Education Department.

For Petitioner : Mr.Prakash Adiapadam

For Respondents : Mr.K.Dhananjayan
Special Government Pleader

O R D E R

The relief sought for in this writ petition is to quash the Notification No.05/2017, dated 26.07.2017, for filling up the post of Special Teacher (Non Teaching), as highly illegal, unlawful, arbitrary, unconstitutional and violative of Articles 14, 16, 21 and 309 of the Constitution of India and for a consequential direction, to direct the respondents 1 to 4 to issue a fresh Notification and fill up the vacancies, which arose before 17.11.2014 as per old/earlier method of Recruitment, which was in force at that time based on Employment Exchange Registration Seniority and also inviting Applications from open market by effecting Publication/Advertisement in the newspapers and fill up the vacancies, which arose on or after 17.11.2014 based on the marks obtained in Written Competitive Examination and Interview by following G.O.(Ms) No.185 dated 17.11.2014 issued by the Principal Secretary to Government, School Education Department.

2.At the outset, on a reading of the prayer, the writ petitioner moved this writ petition to follow the old method of recruitment, which was subsequently modified. The writ petitioner has contemplated a procedure prevailing earlier in order to suit his convenience and in support thereof, he submits that the vacancies arose before 17.11.2014, to be filled by adopting the old method of recruitment.

3.First of all, the right of the writ petitioner in this regard itself is questionable. The candidates including the writ petitioner shall not have any right to choose the method of recruitment. The method of recruitment is within the competency of the authorities concerned. However, if the method of recruitment is contrary to the Constitutional Principles or if the same violates the Statutory Rules or creates any discrimination in this regard warranting action, then the judicial review can be exercised by this Court by exercising the power under Article 226 of the Constitution of India. In the absence of any such illegality, the question of interfering with the method of recruitment or the Notification does not arise at all.

4.The petitioner pleads that he belongs to Scheduled Caste Community and completed Higher Secondary Course in September, 2010. Further, he has completed the course of Drawing from the Department of Government Examinations, Government of Tamil Nadu and obtained Technical Teacher's Certificate (Drawing) on 10.01.2003. He got registered his name before the Employment Exchange in the year 2003 and thereafter he completed B.A.(Litt) in Annamalai University in May, 2016.

5.The learned counsel for the petitioner submits that the writ petitioner is fully qualified for appointment for the past 14 years; and the name of the writ petitioner stands attached in the seniority list of Employment Exchange and that on 04.04.2012, the second respondent-Member Secretary of Teachers Recruitment Board issued an interview Call letter to the writ petitioner in proceedings dated 04.04.2012. Accordingly, the writ petitioner was directed to appear for certificate verification for selection to the post of Special Teacher (Drawing) on 21.4.2012, at 10.00 a.m. along with all the Certificates in original. In response to the said communication, the writ petitioner appeared and participated in the certificate verification process along with all original certificates as per the Interview Call Letter and was waiting for an order of appointment from the respondent Board.

6.Under these circumstances, one Thiru P.Muthuvalan and another filed W.P.(MD) Nos.11663 of 2012 & 13235 of 2010, before the Madurai Bench of this Court, challenging the tentative provisional recruitment to the post of Special Teachers (Non Teaching) published by the respondent Board on certain grounds. The Madurai Bench of this Court passed an order on 12.10.2012, by allowing those writ petitions and quashed the tentative provisional selection list for the post of Special Teacher (Physical Education) of the respondent Board and further directed the respondent Board to fill up the post of Special Teacher (Physical Education) by notifying the application of eligible persons by effecting publication in Press in addition to the names sponsored by the Employment Exchange and thereafter select the candidates on merits.

7.On 8.5.2013, the second respondent issued an advertisement in Advt.No.1 of 2013, inviting Applications from the eligible candidates for recruitment to fill up 793 vacancies in the cadre of Special Teachers (non-teaching). The categories are Physical Education, Music, Drawing and Sewing. The learned counsel for the petitioner urged that since the process of selection had already been completed in respect of the writ petitioner by verifying his original certificates, inviting Applications afresh from the open market, cannot be accepted.

8.The Principal Secretary to Government, School Education Department issued G.O.Ms.No.185 dated 17.11.2014, by replacing the modified selection, selecting the candidates based on the employment seniority. On 6.8.2015, the second respondent issued a Notification in Advertisement No.1/15 on 6.8.2015, whereby they have withdrawn the earlier advertisement No.1/2013 dated 8.5.2013 and informed that fresh Notification will be issued in this regard separately. In that view of the matter, the first respondent issued a Notification No.5 of 2017 dated 26.7.2017, which is impugned in this Writ Petition, inviting Applications from the eligible candidates through 'On Line' for filling up 1325 posts of Special Teachers (Physical Education, Music, Drawing, Sewing) which arose between 2012 and 2016.

9.Thus, the learned counsel for the writ petitioner contended that the posts arose earlier in which a certificate verification was conducted, the writ petitioner cannot be forced to participate in the new method of selection and the earlier procedure of employment seniority alone to be followed for the purpose of filling up of those posts arose prior to the issuance of the modified fresh Notification inviting Applications from the open market.

10.The legal principles in the matter of selection is that the selection can never be claimed as a matter of right, so also the appointment. The process of selection has to be decided by the competent authorities and the legal requirement would be to adopt the procedure, which shall be not in violation of the constitutional principles and the statutory rules in force. The test of reasonableness also to be satisfied while issuing the Notification. However, the writ petitioner cannot seek a direction in this writ petition for adopting the old procedure in respect of recruitment. As already observed, appointment is not the right of the candidate and the earlier Notification in respect of filling up of the vacancies were the subject matter of the Writ Petitions filed before the Madurai Bench of this Court and the Court allowed those writ petitions and issued directions to redo the selection process. In that view of the matter, the respondents have issued a fresh Notification viz. Notification No.5/17 on 26.7.2017, which is impugned in this Writ Petition. Such being the factum of the case, now the writ petitioner cannot again file a writ petition with a prayer to follow the old procedure for the purpose of conducting recruitment in respect of the candidates participated in the Certification verification process.

11.The Courts have time and again emphasized that the Judicial review in the matter of selection is restricted and Courts cannot give any expert opinion on the method recruitment. It is for the competent committee /authorities

to prescribe the form of examinations/selections to be conducted in that regard. The Courts are bound to verify the reasonableness and the procedure to be adopted in the matter of selection. However, the Courts cannot interfere in each and every matter of selection where the opinion of the experts are very much required and such opinion offered by the experts in the field become final and the only test to be followed in this writ petition is to verify as to whether there is any violation with regard to principle of reasonableness.

12.The fact remains that the earlier recruitment process was stalled without finalising the Selection List. Thus, mere participation in the selection will not confer any right on the candidates to say that next selection also to be conducted on the basis of the same procedure in which they have participated.

13.Even on a perusal of the order passed by the Madurai Bench of this Court in W.P.(MD) Nos.11663 of 2012 & 13235 of 2010 dated 12.10.2012, learned Judge has made some observations, as extracted hereunder:

"32.Notwithstanding the basic mandate of Article 16 that there shall be equality of opportunity for all citizens in matters relating to employment for appointment to any office under the State, the spoil system which prevailed in America in 17th and 18th centuries has spread its tentacles in various segments of public employment apparatus and a huge illegal employment market has developed in the country adversely affecting the legal and constitutional rights of lakhs of meritorious members of younger generation of the country who are forced to seek intervention of the court and wait for justice for years together."

26. This view was again reiterated in STATE OF ORISSA AND ANOTHER ..VS. MAMATA MOHANTY (2011 (2) S.C.T. 718) laying down as under:

"APPOINTMENT/EMPLOYMENT WITHOUT ADVERTISEMENT:

18. At one time this Court had been of the view that calling the names from Employment Exchange would curb to certain extent the menace of nepotism and corruption in public employment. But, later on, came to the conclusion that some appropriate method consistent with the requirements of Article 16 should be followed. In other words there must be a notice published in the appropriate manner calling for applications and all those who apply in response thereto should be considered fairly. Even if the

names of candidates are requisitioned from Employment Exchange, in addition thereto it is mandatory on the part of the employer to invite applications from all eligible candidates from the open market by advertising the vacancies in newspapers having wide circulation or by announcement in Radio and Television as merely calling the names from the Employment Exchange does not meet the requirement of the said Article of the Constitution. (Vide: Delhi Development Horticulture Employees' Union v. Delhi Administration, Delhi & Ors., AIR 1992 SC 789; State of Haryana & Ors. v. Piara Singh & Ors., AIR 1992 SC 2130; Excise Superintendent Malkapatnam, Krishna District, A.P. v. K.B.N. Visweshwara Rao & Ors., (1996) 6 SCC 216; Arun Tewari & Ors. v. Zila Mansavi Shikshak Sangh & Ors., AIR 1998 SC 331; Binod Kumar Gupta & Ors. v. Ram Ashray Mahoto & Ors., AIR 2005 SC 2103; National Fertilizers Ltd. & Ors. v. Somvir Singh, AIR 2006 SC 2319; Telecom District Manager & Ors. v. Keshab Deb, (2008) 8 SCC 402; State of Bihar v. Upendra Narayan Singh & Ors., (2009) 5 SCC 65; and State of Madhya Pradesh & Ors. v. Mohd. Ibrahim, (2009) 15 SCC 214).

19. Therefore, it is a settled legal proposition that no person can be appointed even on a temporary or ad hoc basis without inviting applications from all eligible candidates. If any appointment is made by merely inviting names from the Employment Exchange or putting a note on the Notice Board etc. that will not meet the requirement of Articles 14 and 16 of the Constitution. Such a course violates the mandates of Articles 14 and 16 of the Constitution of India as it deprives the candidates who are eligible for the post, from being considered. A person employed in violation of these provisions is not entitled to any relief including salary. For a valid and legal appointment mandatory compliance of the said Constitutional requirement is to be fulfilled. The equality clause enshrined in Article 16 requires that every such appointment be made by an open advertisement as to enable all eligible persons to compete on merit."

27. This Court in P.M.MALATHI ..VS.. STATE OF TAMIL NADU AND OTHERS (2012 (3) M.L.J. 669) also held, that it is not permissible for the State to fill up the posts, only by calling names from the employment exchange, and thereby denying right of consideration, to other eligible persons, who are not registered with employment exchange.

28. The Judgments of the Supreme Court is declaration of law and binding on all, including the State Government and the State agencies. Any rules or instructions by other authorities or State Government cannot have binding effect on the law declared by Hon'ble Supreme Court and the High Court. Reference in support can be made to the judgment of Hon'ble Supreme Court in COMMISSIONER OF CENTRAL EXCISE ..VS.. M/S. RATAN METAL AND WIRE INDUSTRY (2008 (13) SCALE 353).

29. Therefore, any appointment merely by inviting names from the Employment Exchange does not meet the requirement of Articles 14 and 16 of the Constitution of India, as it violates the mandate of Articles 14 and 16 of the Constitution of India; as it results in depriving of eligible candidates having the requisite qualification for the post from being considered.

30. The democratic progressive Government of Tamil Nadu in the best interest of eligible candidates and keeping in view the interest of the students constituted the Teachers' Recruitment Board, so as to select the best available talent for appointment as Teacher so that the future of the country is safe.

31. The first respondent, instead of achieving the great object of the State Government, is acting in a clerical manner in selecting the candidates merely based on employment seniority by mere verification of the certificates. This cannot be the job of Teachers Recruitment Board consisting of prominent people entrusted with the job of selecting Teachers who are the custodian of the future of the Nation.

32. The Teachers' Recruitment Board is under legal obligation to follow the law declared by the High Courts and Supreme Courts of India. Once the Full Bench of this Court, as well as the Honourable Supreme Court has laid down that the appointments

through Employment Exchange alone is violative of Article 14 and 16 of the Constitution of India. It is not understood how the first respondent has adopted unconstitutional method to select the Teachers merely based on employment exchange. The impugned tentative select list being violative of Article 14 and 16 of the Constitution of India. Therefore, cannot be sustained in law.

33. Consequently, this writ petition is allowed. The writ in the nature of certiorari is issued to quash the impugned tentative provisional list of candidates selected for appointment for the recruitment of Special Teachers through Employment Registration State Seniority 2010 -2011 and 2011 -12.

34. The writ in the nature of mandamus is also issued directing the respondents to fill up the post of Special Teacher (Physical Education) by inviting applications from all eligible persons by publication in press in addition to the names sponsored by the employment exchange and thereafter, select the candidates on merits. According to the criteria adopted by the first respondent, the criteria be decided before process of selection starts. It shall be open to respondent No.1 to have written test followed by interview/viva-voce.

35. This exercise be carried out within one month of the receipt of certified copy of this order. No costs. Consequently, the connected Miscellaneous Petitions are closed"

14.The Hon'ble Division Bench passed an order in Writ Appeal No.1027 of 2013 on 09.6.2014, wherein, while dismissing the Appeal filed by the State, directed the Government to follow the Judgment, while filling up of all public posts in future as directed, by complying with Articles 14 & 16 of the Constitution of India. The copy of the said Judgment was also communicated to the Chief Secretary to Government of Tamil Nadu.

15.Thus, the Government in compliance of the orders passed in the Writ Petitions, issued G.O.Ms.No.185 School Education (TRB) Department dated 17.11.2014. Under these circumstances, the impugned Notification which was issued by following the directions of this Court and the Government Orders subsequently issued in that regard cannot held to be irregular or illegal. Once again challenging the fresh notification issued by the respondents in compliance with the Constitutional Scheme, cannot be held to be illegal. The writ

petitioner cannot have any right to claim with regard to the recruitment procedure to be followed based on the mode of selection in which a certificate verification process has been conducted. Under these circumstances, the other grounds raised in this writ petition deserves no further consideration.

16. Accordingly the Writ Petition stands dismissed. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

To

1. The Chairman,
Teachers Recruitment Board,
EVK Sampath Maaligai,
4th Floor, DPI Compound,
College Road, Chennai - 600 006.
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4. The Director of School Education,
The Directorate of School Education,
Chennai - 600 006.

+1cc to Mr. Prakash Adiapadam, Advocate sr.62576

+1cc to Government Pleader sr.63057

W.P.No.23154 of 2017

sk(co)
ss(27/9/2017)