

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 24.04.2017

Delivered on : 28.04.2017

CORAM:

THE HON'BLE MR.JUSTICE K.K.SASIDHARAN

AND

THE HON'BLE MR.JUSTICE M.V.MURALIDARAN

W.P.No.39119 of 2015 and
M.P.No.1 of 2015

R.Esaiyarasi

vs.

...Petitioner

- 1.Union of India,
Rep. by Union Territory of Pondicherry,
Rep. by its Secretary to Government,
Education Department,
Chief Secretariat, Puducherry.
- 2.The Director of School Education,
Government of Puducherry,
Perunthalaivar Kamarajar Centenary,
Educational Complex,
100 Feet Road, Anna Nagar,
Puducherry - 605 005.
- 3.Central Administrative Tribunal,
Chennai Bench, Represented by its Registrar,
Chennai - 600 104.

...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying for a Writ of Certiorarified mandamus, to call for the records relating to O.A.No.310/01557/2015 dated 20.11.2015 passed by the third respondent Tribunal, quash the same and direct the 2nd respondent to appoint the petitioner to the post of Primary School Teacher (PST) by giving due weightage to the marks obtained by her in Teachers Eligibility Test with effect from 12.10.2015 with all consequential benefits.

For Petitioner : Mr.P.V.S.Giridhar
for M/s.Giridhar and Sai

For Respondents: Mr.R.Syed Mustafa
Spl.Govt.Pleader for R1 and R2

O R D E R

K.K. SASIDHARAN, J.

Introduction:

The petitioner submitted application for appointment to the post of Primary School Teacher, pursuant to the Notification issued by the Government of Union Territory of Puducherry, dated 26 May, 2015. The Notification was issued on the basis of the Government Order in G.O.Ms.No.60 dated 8 June, 2012, specifying the method of selection. The petitioner, having found that her name was not included in the merit list challenged the very Notification and the Select list on the ground that due weightage was not given to the marks obtained by her in the Teachers Eligibility Test (for short "TET"). The Madras Bench of the Central Administrative Tribunal (for short "Tribunal") dismissed the Original Application. Feeling aggrieved, the petitioner has come up with this writ petition.

The Relevant Facts:

2. The petitioner, after passing the course in Diploma in Teacher Education appeared for TET and secured 101 out of 150 marks. The petitioner submitted application for appointment to the post of Primary School Teacher, pursuant to the Notification issued by the Government of Puducherry, dated 26 May 2015. The selection was made in accordance with the Government Order in G.O.Ms.No.60 dated 8 June, 2012. The Government Order stipulated that 85% would be earmarked for the marks obtained in the qualifying examination and 15% for the Employment Exchange seniority. There was no stipulation regarding weightage marks for undertaking TET.

3. The Select List published by the second respondent does not contain the name of the petitioner. The petitioner, therefore, filed Original Application before the Tribunal in O.A.No.310/01557/2015, challenging the Select List and the Notification with a plea to direct the respondents 1 and 2 to appoint her by giving weightage to the marks obtained in TET.

4. The Tribunal dismissed the Original Application with an observation that Notification was issued strictly in accordance with the Recruitment Rules framed by the Government. The Tribunal observed that the petitioner participated in the selection with her eyes wide open and only after ascertaining

that her name was not in the Select List filed the Original Application challenging the Notification and the Select List.

Submissions:

5. The learned counsel for the petitioner contended that the Government of Union Territory of Puducherry was bound to follow the guidelines issued by the National Council for Teacher Education (for short "NCTE"), which mandates that due weightage should be given to the marks obtained by the candidates in the TET. According to the learned counsel, the Government of Puducherry, subsequent to the selection in question, issued an order in G.O.Ms.No.32 Directorate of School Education (Secretariat Wing), dated 8 December, 2016, giving weightage to the marks obtained in the TET. It was contended that the proposition that after undergoing the selection process, it is not permissible to challenge the selection notification, is not attracted in the subject case, in view of the failure on the part of the Government of Union Territory of Puducherry to follow the NCTE guidelines, which is statutory in nature. The learned counsel contended that the Government of Puducherry was aware of the NCTE guidelines stipulating weightage marks to be given taking into account the marks obtained in the TET and the same is evident by the subsequent order in G.O.Ms.No.32 dated 8 December, 2016. The learned counsel, therefore, wanted appropriate direction to be issued to the Government of Puducherry to consider the case of the petitioner, after giving weightage to her TET marks.

6. The learned Special Government Pleader appearing on behalf of the Union Territory of Puducherry, justified the order passed by the Tribunal. According to the learned Special Government Pleader, the NCTE guidelines are not mandatory in nature and it was issued only to give an incentive to the candidates to undergo TET.

Discussion and Conclusion:

7. The Government of Union Territory of Puducherry framed Recruitment Rules for appointment to the post of Primary School Teachers. The Government issued an order in G.O.Ms.No.60 dated 8 June, 2012 indicating the mode of selection of various cadres of teaching and non-teaching staff in the Department of Education. As per the Government Order, 85% would be given for the qualifying examination and 15% for Employment Exchange seniority. There was no weightage given for marks obtained in TET. It was only thereafter NCTE issued guidelines for conducting TET under the Right of Children to Free and Compulsory Education Act, 2009. There was no amendment made to the selection procedure by the Government of Puducherry, even after issuing guidelines by NCTE.

8. The petitioner participated in the selection process pursuant to the Notification dated 26 May, 2015. In the said Notification, the Government made it clear that selection would be conducted in accordance with the procedure indicated in the Government Order in G.O.Ms.No.60 dated 8 June, 2012. It is not as if the petitioner was not aware of the method of selection or the guidelines issued by NCTE. The petitioner was well aware of the NCTE guidelines and the same is evident from the materials placed by her before the Tribunal. The petitioner, without challenging the selection criteria, submitted to the jurisdiction of the selection committee. It was only when she found that she was not selected, the petitioner took a U turn and challenged the Notification and the Select List on the ground that weightage was not given for TET marks in accordance with the guidelines issued by the NCTE.

9. The core question is as to whether the selection pursuant to the Notification dated 26 May, 2015 is bad in law on account of the failure to give weightage marks in accordance with NCTE guidelines.

10. The NCTE issued a Notification on 23 August 2010 prescribing a pass in the TET as the eligibility criteria for appointment to the post of Teacher. Subsequently, NCTE issued guidelines on 11 February, 2011. The guidelines issued for conducting TET is relied on by the petitioner to contend that failure on the part of the Government of Puducherry to give weightage marks would nullify the selection made subsequently.

11. The NCTE guidelines dated 11 February, 2011 was issued primarily for the purpose of prescribing pass in the TET as an eligibility criteria. It was only to give encouragement to take part in TET, NCTE indicated that due weightage should be given to the TET marks in the recruitment process. Though the stipulation that the candidates for selection to the post of Teachers must undergo TET is a mandatory requirement, weightage to the TET marks was in the nature of a recommendation made to the State and Union Territories.

12. The Government of Union Territory of Puducherry took a policy decision to change the method of selection and the same resulted in issuing the order in G.O.Ms.No.60 dated 8 June, 2012. The Notification for recruitment to the post of Primary School Teacher was issued only on 26 May 2015. The petitioner, for reasons best known never made an attempt to challenge the method of selection indicated in the Government Order in G.O.Ms.No.60 dated 8 June, 2012. It was only after publishing the Select List on 25 September, 2015, the petitioner submitted representation to the Education Department that her name should be considered taking into account the marks obtained in the TET.

13. It is the contention of the petitioner that the Government of Tamil Nadu allowed weightage marks by issuing Government Order taking into account the NCTE guidelines. There is no merit in the said contention. The Government of Tamilnadu, issued an order in G.O.Ms.No.71 School Education Department, dated 30 May 2014 pursuant to the direction given by the High Court in various writ petitions and not on account of the NCTE guidelines, dealing with weightage marks.

14. The petitioner placed reliance on the Government Order in G.O.Ms.No.32 dated 8 December, 2016 to demonstrate that the Government of Puducherry followed the NCTE regulations subsequently. The subsequent decision to give weightage was pursuant to the policy decision taken by the Government and the same is indicated in the order dated 8 December, 2016. The fact that the Government of Puducherry issued a Notification subsequent to the selection in question would not give a right to the petitioner to contend that she should be selected by giving weightage to her TET marks.

15. The issue raised by the petitioner was considered by the Tribunal in its proper perspective and the claim was rightly rejected. We do not find any error or illegality in the order warranting interference by exercising judicial review.

16. In the up shot, we dismiss the writ petition. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS V)

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सत्यमेव जयते
Sub Assistant Registrar

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To

1.The Secretary to Government,
Education Department,
Chief Secretariat, Puducherry.

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2.The Director of School Education,
Government of Puducherry,
Perunthalaivar Kamarajar Centenary,
Educational Complex,
100 Feet Road, Anna Nagar,
Puducherry - 605 005.

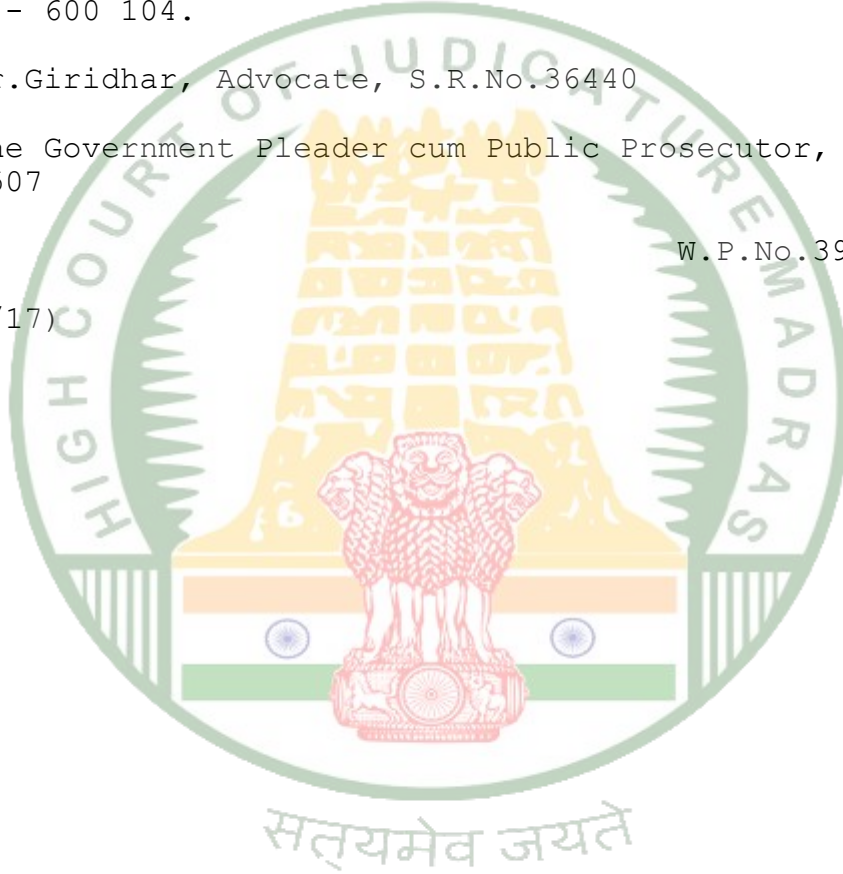
3.The Registrar,
Central Administrative Tribunal,
Chennai Bench,
Chennai - 600 104.

+1cc to Mr.Giridhar, Advocate, S.R.No.36440

+1cc to the Government Pleader cum Public Prosecutor, Pondy,
S.R.No.36507

W.P.No.39119 of 2015

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