

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.11.2017

CORAM

THE HON'BLE Mr. JUSTICE S.M.SUBRAMANIAM

W.P.No.19656 of 2012

and

M.P.No.1 of 2012

V.Srinivasulu

... Petitioner

Vs

The Chairman,
Teacher Recruitment Board,
College Road, Chennai - 6.

... Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus, to direct the respondent to appoint the petitioner as Telugu Teacher for Secondary School.

For Petitioner : Mr.V.Raghavachari

For Respondent : Mr.R.Vijayakumar
Additional Government Pleader

O R D E R

The relief sought for in this writ petition is for a direction to the respondent to appoint the petitioner as Telugu Teacher for Secondary Grade School.

2.The learned counsel appearing for the writ petitioner made a submission that the writ petitioner is hailing from an agricultural and economically backward family. The petitioner had completed 10th standard in March, 1989 and thereafter joined Telugu Vidwan Course conducted by Sri Venkateswara University, in the year 1992. It is a four years course and the petitioner completed the same in year 1995. The petitioner underwent one year training course conducted by the Commissioner for Government Examination and the said training includes Child Nature and School Administration and the methods of teaching in Telugu. In August, 1996, the petitioner had completed the one year Telugu Pandit Training course and the certificate was also issued to that effect. Thereafter, the petitioner registered his name with the District Employment Exchange, Krishnagiri, in the year 1996 and he is periodically renewing the employment registration without any default. The grievance of the writ petitioner is that the respondent has not considered his name for appointment to the

post of Telugu teacher, in spite of the fact that the writ petitioner has registered his name long back. As per the petitioner his turn for appointment as Telugu teacher was from the year 2012 onwards. The petitioner received a communication from the respondent calling upon him for certificate verification. Accordingly, the writ petitioner appeared in Sri Venkateswara Higher Secondary School, Vellore on 23.06.2012, at 10.00 a.m. The certificates of the petitioner was verified by the competent authorities. However, no order of appointment was issued, in spite of the fact that the selection list was published by the respondents on 19.7.2012. In the remarks column it was mentioned that the petitioner was passed +2, in the year 2009 itself. When the petitioner sought for the reason, he was informed that he has completed his higher secondary course in the year 2009 and accordingly he is not eligible for appointment. Thus, it is made clear that during the relevant point of time the writ petitioner was not possessing the required educational qualification of pass in +2.

3. An appointment can never be claimed as a matter of right. All the appointments to the public post are to be made only by following Recruitment Rules in force. Equal opportunity in public employment is a constitutional mandate and there cannot be any dilution either by the competent authorities or by the constitutional Courts. The qualifications prescribed under the service rules cannot be dispensed with either by the Courts or by the authorities. The qualifications are prescribed only on certain deliberation by the experts committee and others may not have any option, except to follow the same scrupulously. In this regard the learned counsel Mr.V.Raghavachari, appearing for the writ petitioner urged this Court by stating that a direction may be issued to the Government, if necessary to relax the Rules.

4. Relaxation is a power vested with the Government to be used only on exceptional circumstances to mitigate the injustice if any caused. The power of relaxation cannot be used in a routine manner, even by the Government, by exercising the power of relaxation. The right of the eligible candidates cannot be denied nor they be or deprived. All the youth of this great nation are entitled to participate in the open competitive process to secure public employment. Such being the constitutional perspective there cannot be any dilution or relaxation of rules in favour of some individuals, so as to deprive the eligible candidates from securing public employment in accordance with the recruitment Rules in force.

5. The Rule 48 of the Tamil Nadu State and Subordinate Service Rules, reads as follows :

"Not withstanding anything contained in the Special Rules for various State and Subordinate Services, where the normal method

of recruitment to any service, class or category is neither solely by direct recruitment nor solely by recruitment by transfer but is both by direct recruitment and by recruitment by transfer,

(a) the proportion or order in which the special rules concerned may require vacancies to be filled by direct recruitment and by recruitment by transfer shall be applicable only to vacancies in the permanent cadre;

(b) a person shall be recruited direct only against vacancy in such permanent cadre, and only if the vacancy is one which should be filled by a direct recruit under the special rules referred to in clause (a); and

(c) recruitment to all other vacancies shall be made by recruitment by transfer. Provided that any temporary post, which is in existence for more than five years, shall be treated as a permanent post for the purpose of this section."

6. The power of relaxation extended to the Government shall be exercised only on exceptional circumstances in order to redress the grievances, where there is an injustice caused to the candidates. Rule of relaxation cannot be exercised in a routine manner, so as to provide an appointment to a candidate, who is otherwise not eligible or qualified in accordance with rules in force.

7. The object of the power of relaxing the rules is obviously to neutralise the injustice as a result of operation of any rule. It has been described to be the reserve power to deal with the unforeseen situations or circumstances and it is to be exercised in the public interest with a view to maintain integrity and efficiency in service. It is conferred upon the Government to meet the emergent situations where injustice might have been caused to any individual candidate or class or group of candidates or where the working of the rule might have become impossible. Where the power of relaxation is conferred upon the Government (or the Governor), the Court cannot usurp the power directly or indirectly to effect a relaxation.

8. In interpreting provisions for relaxation, it has been pointed out that the power of relaxation even if generally included in the Service Rules could either be for the purpose of mitigating hardship or to meet a special and deserving situation. Any arbitrary exercise of such power must be guarded against and that the rule of relaxation must get pragmatic construction, so as to achieve effective implementation of good policy.

9. The Hon'ble Supreme Court of India, in the case of Suraj Prakash Gupta and Others Vs. State of J&K and Others [(2000) 7 SCC 561], reiterated the principles, in paragraph-32, as under:-

"32. On facts, the reasons given in the Cabinet note for granting relaxation are hopelessly insufficient. In fact, the letter of the Commission dated 25-11-1997, shows that the Commission was prepared to give its opinion in regard to regularisation of each promotee but the Government backed out when the Commission called for the records relevant for considering suitability for regular promotion. In our view, there can be no hardship for a person seeking appointment or promotion to go by the procedure prescribed therefor. The relevant Recruitment Rule for promotion cannot itself be treated as one producing hardship. Narender Chadha case [(1986) 2 SCC 157 : 1986 SCC (L&S) 226] must be treated as an exception and not as a rule. In fact, if such relaxation is permitted in favour of the promotees then the same yardstick may have to be applied for direct recruits. In fact the J&K Government has already started to do so and this has not been accepted by this Court in Narinder Mohan case [(1994) 2 SCC 630 : 1994 SCC (L&S) 723 : (1994) 27 ATC 56] and Dr Surinder Singh Jamwal case [(1996) 9 SCC 619 : 1996 SCC (L&S) 1296] referred to above. If it is to be held that direct recruitment can also be permitted without consulting the Service Commission (in case it is required to be consulted there will, in our opinion, be total chaos in the recruitment process and it will lead to backdoor recruitment at the whims and fancies of the Government). Such a blanket power of relaxation of Recruitment Rules cannot be implied in favour of the Government."

10. The Hon'ble Supreme Court of India, in the case of Shri Amrik Singh and Others vs. Union of India and Others [(1980) 3 SCC 393], discussed the principles regarding the rule of relaxation, His Lordship Hon'ble Mr. Justice V.R.Krishna Iyer, speaking for the Bench, emphatically ruled the legal principles as under:-

"Government must be satisfied, not subjectively but objectively, that any rule or regulation affecting the conditions of service of a member of the All India Services causes undue hardship, then the iniquitous consequence thereof may be relieved against by relaxation of the concerned Rule or Regulation. There must be undue hardship and, further the relaxation must promote the dealing with the case "in a just and equitable manner". These are perfectly sensible guidelines. What is more, there is implicit in the Rule, the compliance with natural justice so that nobody may be adversely affected even by administrative action without a hearing. We are unable to see anything unreasonable, capricious or deprivatory of the rights of anyone in this residuary power vested in the Central Government. Indeed, the present case is an excellent illustration of the proper exercise of the power. We are, therefore, satisfied that the Central Government was right in invoking its power to relax and regularize the spell of officiation, which was impugned as irregular or illegal. The consequence inevitably follows that the officer Ahluwalia was rightly assigned 1961 as the year of allotment."

11. Thus, this Court is also of the opinion that the power to grant and exemption, cannot be exercised in a manner to destroy the general provision from which the exemption is granted. For example, where the number of exemptees is far in excess of vacancies and render the chances of qualifiers illusory.

12. This Court is of the firm opinion that if a rule of relaxation is invoked in a routine manner it will amount to neutralizing and degrading the recruitment rules in force. A striking balance in between has to be adopted while exercising the powers of relaxation by the Competent Authorities. The process of recruitment and appointment shall be made only by following the recruitment rules in force. In other words all appointments are to be made strictly by adhering the recruitment rules in force. Thus, the rule of relaxation is an exception and such an exception is to be exercised cautiously and sparingly in order to rectify the injustice caused to a particular candidate or case. Thus, the relaxation cannot be claimed as a matter of right by the candidates.

13. Rule of relaxation is a discretion granted to the Government and such a discretionary power has to be exercised judiciously and not in a routine manner. Relaxation being a discretionary power has to be exercised by the competent authorities by applying the facts in a particular case and not in a mechanical way to grant certain service benefits or appointments to the similarly placed persons. Granting relaxation in one case by the Government cannot be cited as a precedent in other cases. In view of the fact that the relaxation is an exception and cannot be followed as a routine affair. Thus, this Court is of the firm view that all the appointments, regularizations or permanent absorption ought to be made only by following the recruitment rules in force strictly and no relaxation can be granted by citing other cases and the Government also to be cautious while exercising the powers of relaxation under Rule 48 of the Tamil Nadu State and Subordinate Service Rules or under any other Rules.

14. The consequences of exercising the power of relaxation under an exceptional rule in a routine manner will affect the right of the eligible candidates, who are waiting and longing to secure public employment. Large number of youth of this great nation are waiting and burning their midnight lamps by putting hard labour to secure public employment only through participating in the open competitive process. This being the present day situation of our nation, the authorities competent are to be more responsible, accountable and transparent in the matter of process of selection and appointments.

15. This being the legal principles to be adopted by the constitutional Courts, while considering the relief in respect of grant of relaxation for appointment, the relief as such sought for in this writ petition is for a direction to appoint the petitioner as Telugu teacher for Secondary grade school, deserves no further consideration.

16. Accordingly, the writ petition stands dismissed. However, there shall be no order as to costs. Consequently connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (CS-IV)

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Sub Assistant Registrar

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To

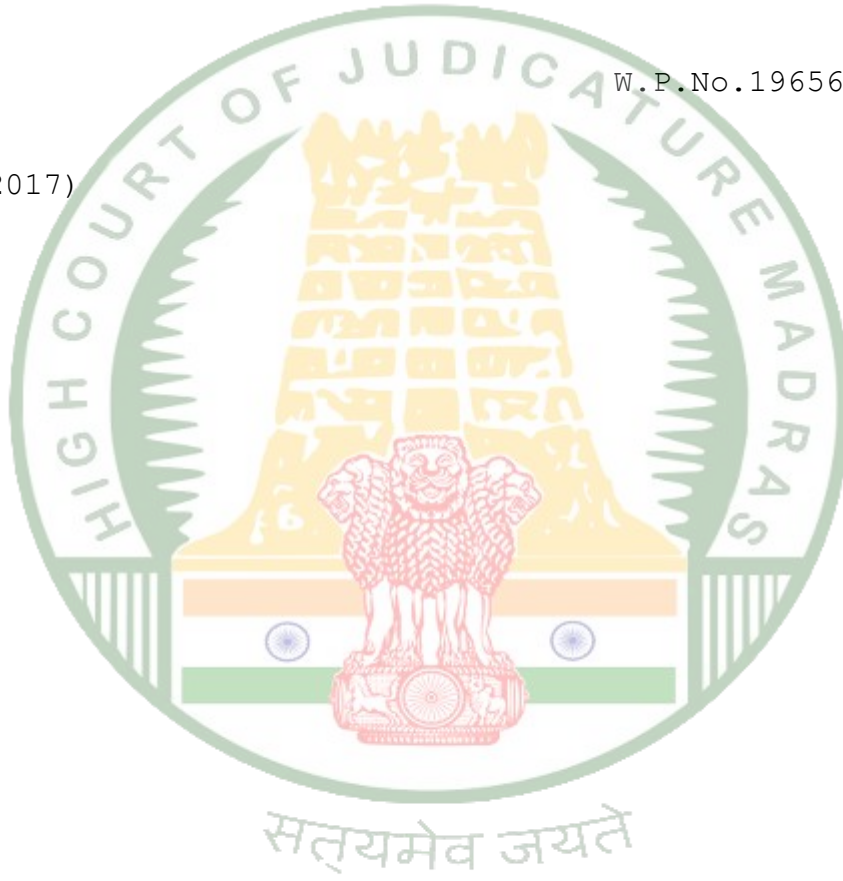
The Chairman,
Teacher Recruitment Board,
College Road, Chennai - 6.

+ 1 cc to Mr.V. Ragahavachari, Advocate SR.82944

+ 1 cc to Government Pleader Sr.82943

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