



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Judgment reserved on : 15-12-2016

Judgment delivered on : 11 -01 - 2017

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBBIAH

and

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

W.A(MD).No.1221 of 2016

and

C.M.P.(MD).No.8106 of 2016 in W.A.(MD).No.1221 of 2016

and

C.M.P.(MD).No.11934 of 2016 in W.A.(MD).SR.No.47454 of 2016

and W.A.(MD).SR.No.47454 of 2016

K.Bhaskar .. Appellant in W.A.(MD).No.1221 of 2016/R4

1. State of Tamil Nadu,
Represented by its Secretary to Government,
School Education Department,
Secretariat, Chennai.

2. Teachers Recruitment Board,
Represented by its Chairman,
4th Floor, EVK Sampath Maaligai,
DPI Compound, College Road,
Chetpet, Chennai.

3. The Director of Teacher Education,
Research and Training,
College Road, Chennai.

.. Appellants in W.A.(MD).SR.No.47454 of 2016
/R1 to R3

Vs.

1. R.Thiyagarajan

2. The State of Tamil Nadu,
Rep. by the Secretary to the Government,
School Education Department,
Secretariat, Chennai.

3. The Teachers Recruitment Board,
Represented by its Chairman,
4th Floor, EVK Sampath Maaligai,
DPI Compound, College Road,
Chetpet, Chennai.



4. The Director of Teacher Education,
Research and Training,
College Road, Chennai.

.. Respondents No.2 to 4 in W.A.(MD).No.1221 of 2016
/R1 to R3

1. R.Thiyagarajan

2. K.Bhaskar .. Respondents in W.A.(MD).SR.No.47454 of 2016

Writ Appeal (MD).No.1221 of 2016 and Writ Appeal (MD).SR.No.47454 of 2016 filed under Clause 15 of the Letters Patent against the order, dated 15.06.2016 passed by the learned single Judge in W.P.(MD).No.8439 of 2015 on the file of this Court.

C.M.P.(MD).No.11934 of 2016 in W.A.(MD).SR.No.47454 of 2016 filed under Section 5 of the Limitation Act to condone the delay of 127 days in filing appeal against the order, dated 15.06.2016 in W.P.(MD).No.8439 of 2015 on the file of this Court.

Prayer in WP(MD).8439/2015 : Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Certiorarified Mandamus calling for records pertaining to the provisional selection list published by the 3rd respondent to the post of Senior Lecturer in Botany in Directorate of Teacher Education Research and Training (DTERT) and District Institutes of Education and Training (DIET) called for vide advertisement No.03 dated 31.12.2011 and quash the same and consequently directing the respondents to consider petitioners candidature for the said post.

Prayer in WA SR.No.47454 of 2016 : Petition filed under clause 15 of letter patent this Court may be pleased to setaside the order dated 15.06.2016 passed in WP.No.8439 of 2015

For appellants : Mr.M.Ajmal Khan, Senior Counsel
for M/s.Ajmal Associates
in W.A.(MD).No.1221 of 2016

Mr.V.R.Shanmuganathan, Spl.G.P.
in W.A.(MD).SR.No.47454 of 2016

For respondents : Mr.R.Narayanan for R-1
in W.A.(MD).No.1221 of 2016
Mr.V.R.Shanmuganathan, Spl.G.P.
for RR-2 to 4
in W.A.(MD).No.1221 of 2016

**COMMON JUDGMENT****R. SUBBIAH, J**

Since W.A.(MD).No.1221 of 2016 and W.A.(MD).SR.No.47454 of 2016 arise out of the same judgment, they are disposed of by this common judgment.

2. Aggrieved by the order dated 15.06.2016 passed by the learned single Judge in W.P.(MD).No.8439 of 2015, the fourth respondent in W.P.(MD).No.8439 of 2015 has filed W.A.(MD).No.1221 of 2016 and the State has preferred W.A.(MD).SR.No.47454 of 2016, along with the petition for condonation of delay of 127 days in filing the appeal in C.M.P.(MD).SR.No.11934 of 2016.

3. By the said order dated 15.06.2016, the learned single Judge has allowed the Writ Petition filed by the first respondent herein, by setting aside the provisional selection list published by the third respondent in the Writ Petition, i.e. the Director of Teacher Education, Research and Training (DTER) to the post of Senior Lecturer in Botany in DTER and District Institute of Education and Training (DIET), called for vide Advertisement No.03, dated 31.12.2011 and consequently, the respondents 1 to 3 in the said Writ Petition were directed to consider the writ petitioner's candidature for the said post.

4. For the sake of convenience, the parties are referred to as they are ranked in W.P.(MD).No.8439 of 2015.

5. It is the case of the writ petitioner that he is working as a Lecturer under the third respondent-DTER at DIET, Madurai. He has been appointed as such by the proceedings dated 05.01.2007 issued by the third respondent and appointed by the DTER through direct recruitment in accordance with the prescribed Rules.

6. With regard to the appointment of Senior Lecturer in DIET, the School Education Department framed Ad-hoc Rules, namely Tamil Nadu Teacher Education Service Rules, which was approved by the Government and the same was also published in the Gazette, vide G.O.Ms.No.133, School Education Department, dated 14.06.2007. In the said Rules, the qualifications for various posts have been prescribed by the Government. The Government included some provisions which have been inadvertently omitted earlier in the qualifications of Senior Lecturer recruitment, by way of amendment, vide G.O.Ms.No.261, School Education Department, dated 07.09.2010 with effect from the same day. In this situation, the second respondent called for applications for direct appointment of Senior Lecturer in DIET under the third respondent, vide Advertisement No.3, dated 31.12.2011. In



the said Advertisement/Notification, the qualification for the direct recruitment of Senior Lecturer was mentioned as prescribed by the Government under the said Ad-hoc Rules, as amended in the said G.O.Ms.No.261. One of the said prime qualification is that the candidate should possess teaching experience of five years as Lecturer in DTERT/DIET in the State of Tamil Nadu / recognised Teacher Training Institute mentioned in Clause 4(B) (3) of the said Advertisement issued by the second respondent. This qualification is prescribed under Rule 5(b) of the Tamil Nadu Teacher Education Service Rules.

7.It is the further case of the writ petitioner that he was working as Lecturer in DIET, T.Kallupatti, Madurai District from 08.01.2007 and having teaching experience of more than 8 years, and therefore, he is a qualified person to be appointed as Senior Lecturer. Pursuant to the said Advertisement in Notification No.3, dated 31.12.2011, the second respondent conducted written competitive examination on 04.03.2012. The second respondent, after conducting certificate verification, published the results, in which, the writ petitioner's name was included in the 2nd place in the subject category of Botany. The fourth respondent (writ appellant) who does not have the requisite qualifications mandated by the prescribed Rules as per the said Advertisement of the second respondent, was placed in the 1st place in the subject category of Botany. It is further stated by the writ petitioner that the fourth respondent had been working in a school and does not have the teaching experience as Lecturer in DTERT/DIET/recognised aided or self-financing Teacher Training Institutes (TTIs)/Junior Lecturer in the Government TTIs. Therefore, the fourth respondent could not be appointed to the post of Senior Lecturer in Botany in the DTERT and DIET.

8.While so, the second respondent-TRB published a provisional selection list after revised certificate verification held on 10.04.2015, in which the fourth respondent's name is mentioned in the subject category of Botany and the writ petitioner's name was omitted. The writ petitioner came to know that the second respondent, knowingly or unknowingly was going to appoint the fourth respondent (who does not possess the required qualification), as Senior Lecturer in the available vacancy of one post in the General Turn. Hence, the writ petitioner has filed the present Writ Petition seeking for issuance of a Writ of Certiorari/Mandamus to quash the said provisional selection list in the subject category of Botany for the post of Senior Lecturer published by the second respondent and to direct the respondents to consider the writ petitioner's candidature for appointment to the said post.



9. The writ petition was resisted by the fourth respondent (writ appellant) by filing a detailed counter affidavit.

10. After hearing both sides, the Writ Petition was allowed by the learned single Judge, against which, Writ Appeal in W.A. (MD).No.1221 of 2016 is preferred by the fourth respondent in the Writ Petition and the State has preferred W.A.(MD).SR.No.47454 of 2016.

11. Learned Senior Counsel appearing for the appellant/fourth respondent submitted that the appellant is working as B.T. Assistant in the School Education Department and he possesses M.Sc. (Botany), M.Ed. (Education), M.Phil (Education), Ph.D. (Education) and has also passed UGC (National Eligibility Test (Education)), UGC (National Eligibility Test (Adult Education)), UGC (National Eligibility Test (Women Studies)) and State Eligibility Test (Botany). He is fully eligible for appointment as Senior Lecturer in DTERT/DIET. Learned Senior Counsel further submitted that with regard to the appointment of Senior Lecturer in DTERT/DIET, earlier, in the year 2000, the State Government has issued G.O.(1D).No.15, School Education Department, dated 19.01.2000 fixing the qualification for appointment of Senior Lecturer in DIET and five years teaching experience in a recognised school was prescribed therein. While so, the second respondent-TRB issued the Notification, dated 19.08.2006, wherein the qualification for Senior Lecturer is notified stating that the candidates should possess M.A/M.Sc. with at least 50% marks, M.Ed. with 55% marks and teaching experience of at least five years in any recognised Teacher Training Institute/DIET in the State and provided that holders of M.Ed. Degree with less than 55% marks, apart from the possession of experience of 5 years in DIET/TTIs, should also have an experience for a further period of five years in Elementary Schools or in handling Standards VI to VIII in a recognised School. But, in G.O.(1D).No.15, dated 19.01.2000, the qualification prescribed for Senior Lecturer is M.A. or M.Sc. with a pass in 50%, M.Ed., M.Phil or Ph.D. with five years teaching experience in any recognised School. Hence, the learned Senior Counsel submitted that the qualification prescribed in the Notification, dated 19.08.2006 is contrary to the earlier G.O. issued in G.O.(1D).No.15.

12. Learned Senior Counsel appearing for the appellant/fourth respondent further submitted that later, by G.O.Ms.No.133, School Education Department, dated 14.06.2007, Ad-hoc Rules to the Tamil Nadu Teacher Educational Service, were framed, in which, the qualification prescribed for the post of Senior Lecturer by promotion and recruitment by transfer is that the candidate should possess Master's Degree with not less than 50%



marks, M.Ed. Degree with not less than 55% marks and teaching experience for a period of not less than five years as Principal in any recognised Teacher Training Institute (TTI) or Lecturer in DTER and DIET in the State. Since the Notification, dated 19.08.2006 is contrary to G.O.(1D).No.15, dated 19.01.2000, three Writ Petitions came to be filed before the Principal Seat of this Court in W.P.Nos.30321 of 2006, 5376 of 2007 and 1632 of 2008. Among these three Writ Petitions, W.P.No.1632 of 2008 was filed by the present appellant. The prayer in W.P.No.1632 of 2008 is for issuance of a Writ of Declaration to declare that Rule 5 of the Tamil Nadu Higher Secondary Education Service Rules issued in Notification 3, dated 19.08.2006, framed for the post of Senior Lecturer and the consequential Notification issued by the TRB in Advertisement No.2/2006-07, dated 19.08.2006 and published in Dinakaran Newspaper, dated 19.08.2006 as null and void and unconstitutional and to direct the respondents 1 to 3 therein (respondents 2 to 4 herein) to conduct fresh selection for the post of Senior Lecturer in History, Botany as per the new Special Rules issued in G.O.Ms.No.133, School Education Department, dated 14.06.2007. During the course of hearing of the said three Writ Petitions, the learned Special Government Pleader appearing for the respondents 2 to 4 herein (respondents 1 to 3 therein) took time to get instructions and subsequently, he produced a proposal, dated 12.07.2010, before Court, wherein recommendation was made by the DTER to the Government for granting permission to all the writ petitioners therein to appear for the next recruitment to the post of Senior Lecturer as one time measure. Recording the said proposal, those three Writ Petitions were disposed of on 15.07.2010, with a direction to the first respondent-State to pass orders on the said proposal submitted by the DTER Training, Chennai.

13.Learned Senior Counsel appearing for the appellant further submitted that in the meantime, G.O.Ms.No.261, School Education Department, dated 07.09.2010, was issued, amending Rule 5 with regard to the teaching experience. As per the said amendment, for direct recruitment, the teaching experience was amended as not less than five years as Lecturer in DTER or DIET in the State of Tamil Nadu or approved Lecturer in any recognised Aided or self-financing Teacher Training Institute in the State of Tamil Nadu or Junior Lecturer in a Government Teacher Training Institute in the State of Tamil Nadu. However, in the said G.O.Ms.No.261, it has been specifically provided under the proviso clause in the said Rule 5 that "provided nothing contained in these Rules shall adversely affect the persons who have been recruited and appointed through the Teachers Recruitment Board's Notification No.2/2006-2007, dated the 19th August 2006." Therefore, the said amendment made in



G.O.Ms.No.261, has no application to the case of the appellant herein. Moreover, pursuant to the order passed by this Court on 15.07.2010 in W.P.No.1632 of 2008, etc., the Government through School Education Department, has issued letter dated 15.11.2011, permitting the appellant/fourth respondent to write the examination with the teaching qualification of five years in any recognised School, as one time measure, in the next recruitment. Therefore, so far as the appellant is concerned, no experience of five years as Lecturer as stated in G.O.Ms.No.261, is necessary.

14.Learned Senior Counsel appearing for the appellant further submitted that the first respondent herein (writ petitioner) has challenged the provisional selection list only on the ground that the appellant did not have the teaching experience as Lecturer in DIET/DTER, etc., but the learned single Judge, by accepting the submissions made by the learned counsel for the first respondent/writ petitioner, has come to the conclusion that the Government has no power to grant relaxation of Rules and even if the Government has such power, it can only be for promoting the objects of the Rules and not to flout the already existing Rules and thus, the Writ Petition was allowed.

15.In the above context, learned Senior Counsel appearing for the appellant submitted that the learned single Judge did not consider the fact that the Government has given relaxation in respect of the qualification of five years teaching experience in DIET/DTER, by letter dated 15.11.2011, only pursuant to the order passed by this Court in the said W.P.No.1632 of 2008, etc., and in the amendment of the Rules issued in G.O.Ms.No.261, it is been clearly stated that nothing contained in these Rules shall adversely affect the persons appointed by Notification No.2/2006-2007, dated 19.08.2006. Since the said Notification was earlier challenged by the appellant herein, pursuant to the order passed by this Court in W.P.No.1632 of 2008, dated 15.07.2010, the Government, by letter dated 15.11.2011, has relaxed the condition by permitting those Writ Petitioners, one of whom is the appellant herein, to appear for the next recruitment as one time measure. Thus, the learned Senior Counsel appearing for the appellant submitted that the learned single Judge has lost sight of the factual aspects of the matter and allowed the Writ Petition on an erroneous reason that the Government has no power to grant relaxation.

16.In support of his contentions, learned Senior Counsel appearing for the appellant relied on a judgment of the Supreme Court reported in 2007 (7) SCC 689 (Commissioner, Karnataka Housing Board Vs. C.Muddaiah), wherein it has been held that



when once a direction is issued by a competent Court, it has to be obeyed and implemented without any reservation and if an order passed by a Court of Law is not complied with or is ignored, there will be an end to the rule of law. If a party against whom such order is made, has grievance, the only remedy available to him is to challenge the order by taking appropriate proceedings known to law. But it cannot be made ineffective by not complying with the directions on a specious plea that no such directions could have been issued by the Court.

17.Learned Senior Counsel appearing for the appellant further submitted that out of the three writ petitioners in the earlier Writ Petitions quoted supra, to whom, the relaxation was granted by the Government by virtue of the order passed by this Court in those Writ Petitions, the writ petitioner N.Sadatcharavel was selected and he has been working now, and hence, there is no justification in granting relief to one person by leaving the other. The benefit granted to one person should also be extended to all others who are similarly placed. Thus, the appellant being similarly placed as that of the said N.Sadatcharavel, the same benefit should also be extended to the appellant herein. In this regard, the learned Senior Counsel appearing for the appellant relied on a judgment of the Supreme Court reported in 2015 (1) SCC 347 (State of U.P. Vs. Arvind Kumar Srivastava), wherein the Supreme Court observed that the normal rule is that when a particular set of employees is given relief by the Court, all other identically situated persons need to be treated alike by extending that benefit and not doing so would amount to discrimination and would be violative of Article 14 of the Constitution of India; this principle needs to be applied in service matters more emphatically as the service jurisprudence evolved by the Supreme Court from time to time postulates that all similarly situated persons should be treated similarly, and therefore, the normal rule would be that merely because other similarly situated persons did not approach the Court earlier, they are not to be treated differently.

18.Learned Senior Counsel appearing for the appellant further submitted that the first respondent/writ petitioner has not challenged the order dated 15.07.2010 passed in W.P.No.1632 of 2008 and the consequential order of the Government, dated 15.11.2011, and therefore, he cannot challenge the provisional selection list in the Writ Petition. In this regard, learned Senior Counsel appearing for the appellant relied on a judgment of the Supreme Court reported in 2010 (1) SCC 756 (Edukanti Kistamma Vs. S.Venkatareddy), wherein it has been held that the challenge to the consequential order without challenging the basic order/statutory provision on the basis of which the order has been passed, cannot be entertained; therefore, it is a legal



obligation on the part of the party to challenge the basic order and only if the same is found to be wrong, consequential order may be examined (vide P.Chitharanja Menon Vs. A.Balakrishnan (1977 (3) SCC 255), H.V.Pardasani Vs. Union of India (1985 (2) SCC 468) and Govt. of Maharashtra Vs. Deokar's Distillery (2003 (5) SCC 669). Hence, for all these reasons, learned Senior Counsel appearing for the appellant prayed for allowing the Writ Appeal and to set aside the impugned order passed by the learned single Judge.

19.Countering the above submissions, learned counsel for the first respondent/writ petitioner submitted that the TRB called for direct appointment to the post of Senior Lecturer in DIET, by Notification, dated 31.12.2011 from eligible candidates who possess required qualifications as per the existing separate recruitment and service Rules framed under Article 309 of the Constitution of India, vide G.O.Ms.No.133, dated 14.06.2007 of the School Education Department and by the said G.O.Ms.No.133, Ad-hoc Rules were framed, and Rule 5 mandates that no person shall be eligible for appointment to the post of Senior Lecturer by direct recruitment, unless he possesses the teaching experience for a period of not less than five years as Lecturer in DTERT or DIET in the State of Tamil Nadu or approved Lecturer in any recognised Aided or self-financing Teacher Training Institute in the State of Tamil Nadu or Junior Lecturer in a Government Teacher Training Institute in the State of Tamil Nadu.

20.Learned counsel for the first respondent further submitted that the first respondent possessed educational qualification and also has five years experience at the time of applying to the post of Senior Lecturer, vide Notification, dated 31.12.2011. The appellant does not possess the requisite qualification as per the statutory Rules and the Advertisement/Notification. Now, the appellant is making the claim of appointment to that post based on the concession given by the Government by letter dated 15.11.2011 based on the order passed by this Court in W.P.Nos.30321 of 2006, 5376 of 2007 and 1632 of 2008, dated 15.07.2010. The learned counsel further submits that this Court never gave any positive direction by the said order dated 15.07.2010. This Court has only recorded the proposal of the DTERT, dated 12.07.2010. Based on the said proposal, this Court has disposed of those Writ Petitions with a direction to the first respondent-State therein, to pass orders on the said proposal submitted by the DTERT. Subsequently, the Government has granted permission, vide letter dated 15.11.2011, to the writ petitioners to appear for the next recruitment to the post of Senior Lecturer as one time measure. Taking note of all the above facts, the learned single Judge has come to the

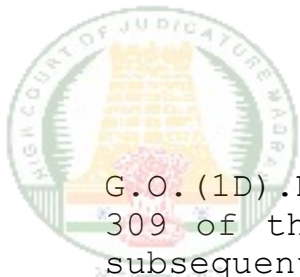


conclusion that the Government has no power to relax the Rules and the Government cannot take unlimited power to grant relaxation to anyone who seeks such relaxation from any of the requirements of the Rules and even if the Government has such power, it could only be for promoting the objects of the Act and not to flout the already existing Rules. Hence, the learned single Judge has rightly quashed the provisional selection list, which may not be interfered with.

21.Learned counsel for the first respondent/writ petitioner further submitted that the Rule was amended as per G.O.Ms.No.261, School Education Department, dated 07.09.2010. No doubt, in the said G.O.Ms.No.261, a proviso has been inserted, by stating that, 'provided nothing contained in these rules shall adversely affect the persons who have been recruited and appointed through the Teachers Recruitment Board's Notification No.2/2006-2007, dated the 19th August 2006'. So far as the appellant is concerned, he has not been recruited or appointed pursuant to the said Notification, dated 19.08.2006. Therefore, the appellant cannot take advantage of the same, because, the same will not apply to him.

22.Learned counsel for the first respondent/writ petitioner further contended that the appellant/fourth respondent, by playing fraud and by misleading the Court, had obtained the order of relaxation from the Government. In this regard, the learned counsel submitted that the Writ Petition in W.P.No.1632 of 2008 was filed by the appellant/fourth respondent challenging the Notification, dated 19.08.2006 and pursuant to the said Notification, the appointments were completed during January 2007. The appellant filed the said Writ Petition only in 2008 and he has cleverly and wrongly tagged it along with the other two writ petitions, namely W.P.Nos.30321 of 2006 and 5376 of 2007.

23.Learned counsel for the first respondent further submitted that the appellant is seeking relaxation of five years teaching experience in recognised TTI/DIET and requested to permit him to appear in the selection process based on five years teaching experience in recognised schools as per G.O.(1D). No.15, School Education Department, dated 19.01.2000. But the appellant did not possess even such qualification of five years teaching experience in recognised School at the time of issuance of the Notification, dated 19.08.2006 or filing of the earlier Writ Petition in 2008. The appellant joined as B.T. Assistant only on 06.01.2006 and hence, he did not possess even such qualification. Further, the appellant is qualified with Botany subject, but he challenged the post of English subject without required academic qualification and M.Phil or Ph.D., as per



G.O.(1D).No.15. After the recruitment Rules framed under Article 309 of the Constitution of India came into existence, only the subsequent recruitment will be governed by the said recruitment Rules, and therefore, the entire exercise of the appellant during the earlier Writ Petition is camouflaging and misleading this Court and the State Government to obtain favourable order, since he has no locus-standi and no bona-fide claim.

24.With regard to the submission made by the learned Senior Counsel appearing for the appellant that the first respondent/writ petitioner has not challenged the order dated 15.07.2010 passed by this Court in W.P.Nos.30321 of 2006, 5376 of 2007 and 1632 of 2008 and also the subsequent letter issued by the Government on 15.11.2011 giving concession to the first respondent/writ petitioner, it is submission of the learned counsel for the first respondent/writ petitioner that the relaxation order is void-ab-initio and is in violation of the fundamental rights guaranteed under Articles 14 and 16 of the Constitution of India in the matters of public employment and it can be attacked either directly or collaterally when it is relied upon for enforcement.

25.Learned counsel for the first respondent further submitted that when once statutory rules have been made, the appointment shall be only in accordance with the rules. The Executive power could be exercised only to fill the gaps, but the instructions cannot and should not supplant the law, but only supplement the law. Hence, for all the above reasons, the learned counsel for the first respondent/writ petitioner submitted that there is no infirmity warranting interference in the impugned order passed by the learned single Judge and prayed for dismissing the Writ Appeal.

26.In support of the above submissions, the learned counsel for the first respondent/writ petitioner relied on the following decisions:-

(a) W.A.Nos.1634 and 1635 of 2009, dated 17.08.2016 (Division Bench of this Court) (Secretary to Government, Information and Tourism Department, Fort St.George, Chennai and another Vs. A.K.Perumal and others);

(b) AIR 1974 SC 1471 (Nawabkhan Vs. State of Gujarat);

(c) 1985 (Vol.22) ELT 27 (Mad) (Division Bench of Madras High Court) (Gemini Metal Works Vs. Union of India and others);

(d) 1994 (2) SCC 630 (J & K Public Service Commission Vs. Dr.Narinder Mohan);

(e) 1999 Writ L.R. 122 (Madras High Court) (Sundaram Aided Elementary School, Kodiakkadu Vs. State of T.N. and another);

<https://hcservices.ecourts.gov.in/hcservices/>

(f) 2004 (7) SCC 112 (A.Umarani Vs. Registrar,Co-op. Societies);



- (g) AIR 2006 SC 1806 (Secretary, State of Karnataka Vs. Umadevi);
- (h) W.P.No.211 of 2016, dated 20.07.2016 (Madras High Court) (Deepti Ahuja Vs. The Chief Controlling Revenue Authority-cum-Inspector General of Registration and others);
- (i) 1993 Supp (3) SCC 575 (Syed Khalid Rizvi Vs. Union of India) and
- (j) MANU/UP/1877/2004 (Allahabad High Court) (Smt.Rohini Srivastava Vs. Director, Pension Directorate).

27.Learned Special Government Pleader appearing for the respondents 2 to 4 in W.A.(MD).No.1221 of 2016 and for the appellants in W.A.(MD).SR.No.47454 of 2016 submitted that the relaxation was given by the Government only pursuant to the order passed by this Court on 15.07.2010 in the said three Writ Petitions. The learned single Judge, without considering the said aspect, has passed the impugned order, as if the Government has no power to relax the Rules and hence, the learned Spl.G.P. prayed for dismissal of W.A.(MD).No.1221 of 2016 and allowing W.A.(MD).SR.No.47454 of 2016.

28.Keeping in mind the above submissions made by the learned counsel on both sides, I have carefully considered the same and perused the materials available on record.

29.Though very many contentions have been raised by either side on the factual aspects of the matter, it is seen that the entire case rests upon the order passed by this Court in the earlier Writ Petitions in W.P.Nos.30321 of 2006, 5376 of 2007 and 1632 of 2008, dated 15.07.2010 and the relaxation/concession given by the Government by letter dated 15.11.2011, which was issued pursuant to the said order of this Court, dated 15.07.2010, and by the said letter, dated 15.11.2011, the Government, as one time measure, permitted the writ petitioners in those Writ Petitions to participate in the subsequent recruitment.

30.It is the main contention of the learned Senior Counsel appearing for the appellant that there is no need for the appellant to have five years teaching experience in DIET as per the amended Rules in G.O.Ms.No.261, since pursuant to the said order of this Court, dated 15.07.2010 in those Writ Petitions, as one time measure, the first respondent-writ petitioner was permitted to participate in the subsequent recruitment. Since the said concession/relaxation is granted by the Government based on the said order of this Court, dated 15.07.2010, we are of the opinion that it would be appropriate to extract the relevant portion of the said order passed by this Court:



"5. On the basis of the submission, the learned Special Government Pleader took time to get instructions during the last hearing and today the learned Special Government Pleader produced a communication from the Director of Teacher Education Research and Training addressed to the Principal Secretary, School Education Department, Chennai-9 in Na.K.No.13003/A2/2006, dated 12.07.2010, wherein the Director of Teacher Education Research and Training recommended to the Government for granting permission to the petitioners to appear in the next recruitment to the Senior Lecturer posts as one time measure. For proper appreciation the said communication is extracted here:-

ஆசிரியர் கல்வி ஆராய்ச்சி மற்றும் பயிற்சி இயக்ககம்,
சென்னை-600 006

அனுப்புநர் முனைவர் ரெ.இளங்கோவன், இயக்குநர் ஆசிரியர் கல்வி ஆராய்ச்சி மற்றும் பயிற்சி இயக்ககம், சென்னை 600 006.	பெறுநர் அரசு முதன்மை செயலாளர் பள்ளி கல்வித் துறை தலைமைச் செயலகம் சென்னை 600 009.
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ந.க.எண்.13003/அ2/2006 நாள் 12.07.2010

அய்யா,
பொருள் - ஆசிரியர் கல்வி ஆராய்ச்சி மற்றும்
பயிற்சி இயக்ககம், சென்னை-6 - பணியாளர்
தொகுதி - முதநிலை விரிவுரையாளர் நேரடி நியமனம் -
W.P.No.30321/2006 Thiru.D.பாஸ்கரன்
மற்றும் இருவர் - வழக்கு தொடுத்தது -
சார்பு.

பார்வை - 1. சென்னை-9, பள்ளிக் கல்வித் துறை,
முதன்மைச் செயலர் கடிதம் ந.க.எண் 3537,
யு.2.2008-3, நாள் 18.01.2010

2. சென்னை-104, உயர்நீதிமன்றம் அரசு சிறப்ப
, வழக்குரைஞர் கடிதம் நாள் 09.07.2010

W.P.No.30321/2006 வழக்கில் திரு.D.பாஸ்கரன் என்பாரும்
W.P.No.5376/2007 வழக்கில் திரு.N.சடாச்சர வேலு என்பாரும்
W.P.No.1632/2008 வழக்கில் திரு.K.பாஸ்கரன் என்பாரும் 2006-2007ம்
ஆண்டில் முதநிலை விரிவுரையாளர் நேரடி நியமனத்தினை எதிர்த்து
வழக்கு தொடுத்துள்ளனர்.

15.07.2010 அன்று இவ்வழக்கு கோப்புக்கு வரும்போது

உயர்நீதிமன்றத்தில் தெரிவிப்பதற்காக தனது 09.07.2010 நாளிட்ட
கடிதத்தில் அரசு சிறப்பு வழக்கறிஞர் கீழ்க்கண்டவாறு தகவல்
கோரியுள்ளார்.



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'Having regard to the fact that there are certain difficulties in the impugned notification which is under challenge in the Writ Petition, it will be appropriate for the respondent to take a decision regarding the suggestion for allowance the petitioners to participate in the further selection as one time measure without insisting the experience in recognised Teacher Training Institutes' என்று தெரிவித்துள்ளார்.

மேற்குறிப்பிட்டுள்ள முவரும் பணியமைப்பு விதிகள் எண்.133/ பள்ளிக் கல்வித் துறை (யு2) நாள் 14.06.2007ன் படி முதநிலை விரிவ ,ரையாளர்களுக்கான காலிப் பணியிடத்திற்கு நேரடி நியமனம் செய்த விண்ணப்பங்கள் வரவேற்கப்படும்போது "as one time measure" அரசாணை 15-ல் தெரிவித்துள்ள கல்வித் தகுதியின் அடிப்படையில் ஒரு முறை மட்டும் (one time measure) விண்ணப்பிக்க அனுமதிப்பது சார்ந்து அரசின் வழிகாட்டுதல் ஆணை பணித்து வேண்டப்படுகிறது.

இணைப்பு. சென்னை 104, உயர்நீதிமன்ற அரசு சிறப்பு வழக்குரைஞர் கடிதம் நாள் 09.07.2010

இயக்குநர் "

6. Learned counsel for the petitioners submitted that the petitioners are agreeable for the disposal of these writ petitions by recording the said proposal submitted by the Director of Teacher Education Research and Training and if such permission is granted the petitioners are not pressing the prayers in these writ petitions. The submissions made by the learned counsel for the petitioners are recorded.

7. In the light of the above submissions, these writ petitions are disposed of with a direction to the first respondent to pass orders on the proposal submitted by the Director of Teacher Education Research and Training, Chennai-6 dated 12.07.2010 within a period of four (4) weeks from the date of receipt of a copy of this order. No costs. Connected M.Ps. are closed."

31.From a reading of the above order of this Court, dated 15.07.2010, it could be seen that this Court has not given any positive direction to relax the Rules, but this Court has just recorded the proposal of the DTERT, and directed the first respondent-State to pass orders based on the said proposal. The rights of the parties were not adjudicated in the said order and this Court has only recorded the submissions made by the parties with regard to the consideration of the proposal of the DTERT. That being the position, if the relaxation given by the Government is against law, definitely, the same cannot be sustained.



32. So far as the present case is concerned, the recruitment Rules were framed under Article 309 of the Constitution of India. When once the Rules are framed under Article 309 of the Constitution of India, the subsequent recruitment will be governed only by the said recruitment Rules. Furthermore, in the instant case, there is no provision made for relaxation of qualification in the said recruitment Rules. Therefore, as observed by the learned single Judge in the impugned order, the order of the State Government granting such relaxation is in total violation of the said recruitment Rules framed under Article 309 of the Constitution of India, and it is also in violation of Articles 14 and 16 of the Constitution of India in the matters of public employment. Therefore, the learned single Judge has correctly placed reliance on the judgment of this Court reported in 1999 Writ L.R. 122 (Sundaram Aided Elementary School, Kodiakkadu Vs. State of Tamil Nadu and another) in paragraph 14(a) of the impugned order and has come to the conclusion that the power of relaxation exercised in the present case, is ultra-vires of the recruitment Rules and the relaxation extended to the appellant / fourth respondent by the third respondent-DTERT has taken away the legitimate expectation of the first respondent-writ petitioner, who possessed all qualifications.

33. In the above background, it is appropriate to notice the relevant paragraphs of the judgments relied on by the learned counsel for the first respondent/writ petitioner:

(a) W.A.Nos.1634 and 1635 of 2009, dated 17.08.2016 (Division Bench of this Court) (Secretary to Government, Information and Tourism Department, Fort St. George, Chennai and another Vs. A.K.Perumal and others):

"8. Relaxation of rules is an exception to the rules and cannot be the rule itself. What the appellants are doing is in fact nullifying the rules by repeatedly exercising the power of relaxation, even though the eligible candidates on merit are available, in order to facilitate the recruitment of persons who are otherwise not eligible under the rules. This is completely impermissible."

(b) 1994 (2) SCC 630 (J & K Public Service Commission Vs. Dr.Narinder Mohan):

"7. The executive power is co-extensive with legislative power of the State ... It is settled law that once statutory rules have been made, the appointment shall be only in accordance with the rules. The executive power could be exercised only to fill in the gaps but the instructions cannot and should not supplant the law, but only supplement the law. The



Governor exercising the power under proviso to Section 125 (Article 309 of the Constitution of India) made the rules which do not expressly give the power to the State Government to make ad hoc appointments. No such rule has been brought to our notice. No express power was conferred and in fact cannot be conferred to relax the rules of recruitment."

(c) 1999 Writ L.R. 122 (Madras High Court) (Sundaram Aided Elementary School, Kodiakkadu Vs. The State of Tamil Nadu and another):

"4. In a similar case, this Court has held that the experience prescribed by the School is not a matter which could be overlooked or given an exemption and only those candidates who were fully qualified at the time when vacancy arose could be considered for appointment.

5. It has been so held by Jayasimha Babu, J in W.P.Nos.6607 of 1991 and 17963 and 18718 of 1992 (P.Singaravan etc. Vs. Government of Tamil Nadu). In that case, the learned Judge has held that neither the Act nor the Rules contain any provision conferring power on the Government or any of the authorities to relax any of the provisions of the Act or of the Rules. It is further said in that decision that even assuming that it was open to the Government to relax the rule, such power could only be exercised for promoting the objects of the Act and not to condemn the wilful and deliberate flouting of the Statutory Rules. The object of prescribing the qualification is to ensure that only such persons who possess the requisite knowledge and experience are appointed to the post. The said legal position declared by the learned Judge was followed by P.Sathasivam, J in W.P.Nos.11257 of 1995, 13099 of 1995, 15441 of 1995 and 3818 of 1997 - Order dated 30.08.1997 (J.Deivakadatcham Vs. The Joint Director of Elementary Education, DPI Compound, Madras -6). The decision of P.Sathasivam, J was taken on appeal in W.A.No.418 of 1998. But the Writ appeal was dismissed by judgment dated 26.3.1998."

(d) 2004 (7) SCC 112 (A.Umarani Vs. Registrar, Co-op. Societies):

"35. No appointment, therefore, can be made in deviation of or departure from the procedures laid down in the said statutory rules.

. . .



39. It is also now well settled that an appointment made in violation of the mandatory provisions of the statute and in particular, ignoring the minimum educational qualification and other essential qualification would be wholly illegal. Such illegality cannot be cured by taking recourse to regularisation. (See State of H.P. Vs. Suresh Kumar Verma - 1996 (7) SCC 562).

40. It is equally well settled that those who come by back door should go through that door. (See State of U.P. Vs. U.P. State Law Officers Assn - 1994 (2) SCC 204).

.. ..

52. Even recently in Suraj Parkash Gupta Vs. State of J & K - 2000 (7) SCC 561, this Court opined: (SCC p.582, para 28):

"28. The decisions of this Court have recently been requiring strict conformity with the Recruitment Rules for both direct recruits and promotees. The view is that there can be no relaxation of the basic or fundamental rules of recruitment."

(e) AIR 2006 SC 1806 (Secretary, State of Karnataka Vs. Umadevi):

"30. In Union Public Service Commission Vs. Girish Jayanti Lal Vaghela and others (2006 (2) SCALE 115 = 2006 AIR SCW 844 - Para 10), this Court answered the question who was a Government servant and stated:

"Article 16 which finds place in Part III of the Constitution relating to fundamental rights provides that there shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State. The main object of Article 16 is to create a constitutional right to equality of opportunity and employment in public offices. ... "

(f) W.P.No.211 of 2016, dated 20.07.2016 (Madras High Court) (Deepti Ahuja Vs. The Chief Controlling Revenue Authority-cum-Inspector General of Registration and others):

"17. It is trite to note that an executive or administrative instructions can neither supplement nor override the statutory provision or Rules or Regulations. It is seen from the impugned order passed by the first respondent that reliance was placed on



Circular No.18 dated 02.07.2009 and Instruction No.65 dated 27.10.2010 to negate the claim of the petitioner for exemption of stamp duty. When Section 3(3) of the Indian Stamp Act provides that no duty shall be chargeable in respect of an instrument executed by a Developer or Co-developer in connection with any land or building situated within the SEZ, it cannot be nullified by placing reliance on the Circular issued by the administrators. The respondents ought not to have placed reliance on such Circulars, which have no statutory force. This was the view taken by the Full Bench of the Supreme Court of India in (Union of India and another Vs. Charanjit S.Gill and others) (2000) 5 SCC 742 which was relied on by the learned Senior counsel for the petitioner wherein it was held that administrative instructions issued or the notes attached to the Rules, which are not referable to any statutory authority cannot be permitted to bring about a result which may take away the rights vested in a person governed by the Act."

(g) 1993 Supp (3) SCC 575 (Syed Khalid Rizvi Vs. Union of India):

"28. ... So unequals cannot be treated as equals offending Articles 14 and 16(1) of the Constitution."

(h) MANU/UP/1877/2004 (Allahabad High Court) (Smt.Rohini Srivastava Vs. Director, Pension Directorate):

"12. It is well settled that when no statutory rules are made regulating recruitment or conditions of service, the State Government always can in exercise of its executive power issue administrative instructions and laid down conditions of service, vide B.N.Nagarajan Vs. State of Mysore MANU/SC/0043/1966 : (1967) I LLJ 698 SC and Sant Ram Sharma v. State of Rajasthan MANU/SC/0330/1967 : (1968) II LLJ 830 SC.

13. New condition of service cannot be brought into effect by an executive order if it is not inconsistent with the rules. (Sitaram Vs. Ramjibhai MANU/SC/0388/1987 : (1987) II LLJ 133 SC). Where there are no statutory rules, appointment to a post can be regulated by executive instructions J & K Public Service Commission v. Narender Mohan AIR 1994 SC 1803, but once rules are made they cannot be by passed through exercise of executive power.



14. Executive Instructions shall be inoperative if these are contrary to provisions of the statutory rules. Union of India Vs. Shyama Pada Sidhanta MANU/SC/0662/1991 : 1991 (1) SCC 542.

15. The Executive Instructions may be issued to fill up gaps and supplement the rule:- (i) "There can be no quarrel with the proposition that if the statutory rules, framed by the Governor or any law enacted by the State Legislature under Article 309 is silent on any particular point, the Government can fill up the gap and supplement the rule by issuing administrative instructions not inconsistent with the statutory provisions already framed or enacted. The Executive instruction in order to be valid must run subservient to the statutory provisions." District Registrar, Palghat v. M.B. Koyyakutty AIR 1979 SC 1060. (ii) It is now well-settled law that even if there are no statutory rules in force on a particular subject or even if the rules exist, they are silent on a particular point, it is competent for the Government to fill in the lacuna while making an administrative order. Union of India Vs. H.R. Patankar MANU/SC/0301/1984 : [1985] 1 SCR 400.

16. The departmental instructions are issued only to regulate the rule and not to be inconsistent with the rules, which are valid. R.K. Anand, Lt. General Vs. Union of India MANU/SC/0150/1992 : AIR 1992 SC 763. The 'executive instructions' can not be issued in the field occupied by laws and rules. The executive power of the State cannot be exercised in the field which is already occupied by the laws made by the legislature. It is settled law that any order, instruction, direction or notification issued in exercise of the executive power of the State which is contrary to any statutory provisions, is without jurisdiction and is a nullity." State of Sikkim Vs. Dorjee Tshering Bhutia AIR 1991 SC 2148, para 15.

17. The executive Power of the State Government under Article 162 of the Constitution extends to all matters with respect to which the State Legislature has power to make laws and accordingly the State Government can act in exercise of executive power in relation to any matter with respect to which the State Legislature has power to make laws, even if there is no legislation to support such executive action, but such executive section must not infringe the right of any person. If



the executive action taken by the State Government encroaches upon any private rights, it would have to support by the legislative authority for under the rule of law which prevails in our country, every executive action which operates to the prejudice of any person must have authority of law to support it. (Raj Sahib Ram Jawaya Kapoor Vs. State of Punjab MANU/SC/0011/1955 : [1955] 2 SCR 225 ; Bernet Coleman and Company Vs. Union of India MANU/SC/0038/1972 : [1973] 2 SCR 757 ; State of Madhya Pradesh Vs. Thakur Bharat Singh AIR 1967 SC 1170, Naraindas Indurkha Vs. State of M.P. MANU/SC/0066/1974 : [1974] 3 SCR 624 ; Dr. Ram Ji Dwivedi Vs. State of Uttar Pradesh 1982 Lab & 1C 1130 (Alld.) and State of M.P. Vs. Km. Nivedita Jain MANU/SC/0093/1981 : [1982] 1 SCR 759.

25. Executive instructions cannot override modify or amend the rules made under Article 309 of the Constitution MANU/SC/0500/1970 : (1970) II LLJ 284 SC.

26. There can be no dispute with the proposition that a rule framed under the proviso to Article 309 of the Constitution cannot be modified by an executive order or instruction. State of Maharashtra Vs. Chandra Kant AIR 1981 SC 990. The Executive instruction cannot override the rules under the proviso to Article 309 of the Constitution as they are equated with the act of a legislature. Thus an administrative instruction under the proviso to Article 309 cannot supplement them. Bhagat Singh Vs. Union of India 1981 Lab.I.C 1309 : (1983) 1 SCR 686. If the statutory rules framed by the Governor or any law enacted by the State Legislature under Article 309, is silent on any particular point, the State Government can fill up that gap and supplement the rule by issuing administrative instructions nor inconsistent with the statutory provisions already framed or enacted.

29. The executive instructions in order to be valid must run subservient to the statutory provisions. District Registrar Vs. M.B. Koyakutty MANU/SC/0043/1966 : (1967) I LLJ 698 SC ; Bishun Deo Mahto Vs. State of Bihar 1982 Lab.I.C. 1446; Sant Ram Vs. State of Rajasthan MANU/SC/0330/1967 : (1968) II LLJ 830 SC ; Union of India Vs. N.R. Sunderam 1982 Lab.I.C. 1185 and Gurdial Singh Fiji Vs. State of Punjab 1979 SCC (L & S) 179.

30. No power to issue executive instructions in the sphere occupied by the statutory rules. In the sphere occupied by a statutory rule, there is no scope for executive or administrative instructions. Chacko Vs. State of Kerala 1974 KLT 215; D.P. Pathak Vs. State



of Punjab 1980 Lab.and I.C. 676, P.K.Nambiar Vs. K.P.Gopal Nair 1978 Lab.and I.C. 409.

33. Where no statutory rules are made regulating recruitment or conditions of service, the State Government can, in exercise of its executive power, issue administrative instructions providing for recruitment and conditions of service. B.N. Nagarajan Vs. State of Mysore AIR 1967 SC 1941; Sant Ram Sharma Vs. State of Rajasthan MANU/SC/0330/1967 : AIR 1967 SC 1910; Mallinath Jain Vs. Municipal Corporation 1973 (1) SLR 413; S.B. Pantnayak Vs. State of Orissa 1974 (1) SLR 171; Amerjeet Singh Vs. State of Punjab, 1975 (1) SLR 171; Lalit Mohan Deo Vs. Union of India AIR 1972 SC 1995 : 1989 SLJ (SC) 149 .

35. Administration instruction can be modified by other administrative instructions.- The State Government is competent to amend, alter or modify the service conditions based on administrative instruction, but cannot amend, alter, or modify the service conditions incorporated under statutory rules. Instrument or change should be of the same type as the original instrument governing conditions of service. Dubey Singh Vs. Municipal Council 1977 (2) SLR 677 and D.K. Gupta Vs. Municipal Corporation 1979 (3) SLR 4160.

38. In case of conflict between the rules and the executive order rules would prevail.- Where there is conflict between the provisions of a rules made under proviso to Article 309 and the Government order made in exercise of the executive power under Article 162 of the Constitution, the former would prevail over the latter. N.M.Kutty Vs. High Court of Kerala (FB) MANU/KE/0017/1978 : (1978) I LLJ 333 Ker (FB).

39. Executive order cannot override rules framed under Article 309 - When rules framed under Article 309 are enforced no regularisation of an appointee is permissible in exercise of the executive power of the State under Article 162 in contravention of the rules. Any act done in exercise of the executive power cannot overrule the rules framed under Article 309 of the Constitution. Nagarajan Vs. State of Karnataka MANU/SC/0450/1979 : (1979) II LLJ 209 SC . However, where new posts are created and the same are not covered by the rules, the qualifications etc., in respect of such posts can be laid down through executive instructions, Ajit Kumar Vs. State of Punjab and Haryana 1979 (3) SLR 161."



have been made, the appointment shall be made only in accordance with the said statutory Rules. Unless some express power is conferred to relax the Rules, the Rules cannot be relaxed. In the instant case, no such power is vested with the Government to relax the Rules. Therefore, in the absence of any specific direction by this Court to relax the Rules as well as in the absence of any vesting of such power to the Government for relaxation of the Rules, the concession given by letter, dated 15.11.2011, is not legally sustainable. We do not find any infirmity in the reasons assigned by the learned single Judge to set aside the provisional selection list.

35. Yet another submission made by the learned Senior Counsel appearing for the appellant is that the first respondent/writ petitioner has not challenged the letter dated 15.11.2011 of the Government, nor the order of this Court dated 15.07.2010 passed in those Writ Petitions. In the absence of any positive direction by this Court to relax the Rules, as observed earlier, absolutely, there is no need for the first respondent/writ petitioner to challenge the said order of this Court, dated 15.07.2010 or the said letter dated 15.11.2011. The rights of the parties have not been adjudicated to challenge the said order, dated 15.07.2010. So far as the said letter dated 15.11.2011 is concerned, we are of the opinion that if the relaxation order is void-ab-initio and also in violation of the fundamental rights guaranteed under Articles 14 and 16 of the Constitution of India, it can be attacked either directly or collaterally, when it is relied upon for enforcement. Furthermore, the relaxation order, vide letter dated 15.11.2011 is only an internal communication and it is only an Executive instruction, and the Executive instructions cannot over-ride statutory Rules when the recruitment Rules framed under Article 309 of the Constitution of India occupies the field. Therefore, we are of the considered opinion that the Government has no limited power to relax the Rules framed under Article 309 of the Constitution of India and hence, the said relaxation order is not valid, void and cannot be relied upon by the appellant. In this regard, a reference could be placed to the following decisions:

(a) AIR 1974 SC 1471 (Nawabkhan Vs. State of Gujarat):

"6. The constitutional perspective must be clear in unlocking the mystique of 'void' and 'voidable' vis-a-vis orders under the Act. The Act is a constraint on a fundamental right and so the scheme of Article 19 must be vividly before our minds if extraordinary controls over human rights statutorily vested in administrative tribunals are to be held in constitutional leash.

<https://hcservices.ecourts.gov.in/hcservices/>

10. All these lines of approach have received judicial blessings from the House of Lords to the



landmark case of Ridge Vs. Baldwin (1963) 2 All.E.R. 66. The legal choice depends not so much on neat logic but the facts of life -- a pragmatic proposition. Where the law invests an authority with power to affect the behaviour of others what consequence should be visited on abuse or wrong exercise of power is no abstract theory but experience of life and must be solved by practical considerations woven into legal principle. Verbal rubrics like illegal, void, mandatory, jurisdictional, are convenient cloaks but leave the ordinary man, like the petitioner here, puzzled about his remedy. Rubinstein poses the issue clearly:--

"How does the validity or nullity of the decision affect the rights and liabilities of the persons concerned? Can the persons affected by an illegal act ignore and disregard it with impunity? What are the remedies available to the aggrieved parties? When will the courts recognize a right to compensation for damage occasioned by an illegal act? All these questions revert to the one basic issue; has the act concerned ever had an existence or is it merely a nullity?

Voidable acts are those that can be invalidated in certain proceedings; these proceedings are especially formulated for the purpose of directly challenging such acts On the other hand, when an act is not merely voidable but void, it is a nullity and can be disregarded and impeached in any proceedings, before any court or Tribunal and whenever. It is relied upon. In other words, it is subject to 'collateral attack'.

20. But we do hold that an order which is void may be directly and collaterally challenged in legal proceedings."

(b) 1985 (Vol.22) ELT 27 (Mad) (Division Bench of Madras High Court) (Gemini Metal Works Vs. Union of India and others):

"4. The question is, whether the appellant is entitled to attack the validity of the order of cancellation of the licence dated 15-12-1970 collaterally in these proceedings which are directed against the order passed by the first respondent on 13-12-1973. It is well settled by now that an order which is found to be void for violation of the principles of natural justice can be attacked in a collateral proceeding initiated on the basis of such void order. A casual reference to the decision of the Supreme Court



in *Nawabkhan Abbaskhan Vs. State of Gujarat* - AIR 1974 SC 1479-1480, is sufficient to sustain the above proposition. The Supreme Court, while meeting the contention that there should be a direct attack against an order said to violate the principles of natural justice and there cannot be an collateral attack, observed as follows:

"But we do hold that an order which is void may be directly and collaterally challenged in legal proceedings. An order is null and void if the statute clothing the administrative tribunal with power conditions it with the obligation to hear, expressly or by implication. Beyond doubt, an order which infringes a fundamental freedom passed in violation of audi alteram partem rule is a nullity. When a competent Court holds such official act or order invalid, or sets it aside, it operated from nativity, i.e. the impugned act or order was never valid."

36. From the dictum laid down in the decisions cited supra, it could be seen that if the Executive order is voidable, the same can be questioned even in collateral proceedings. Therefore, we do not find any substance in the submission made by the learned Senior Counsel appearing for the appellant that the first respondent/writ petitioner, without challenging the order of this Court, dated 15.07.2010 passed in those Writ Petitions or the letter of the Government, dated 15.11.2011, cannot question the provisional selection list.

37. Further, it is the specific submission made by the learned counsel for the first respondent that the appellant is seeking relaxation of five years teaching experience in recognised TTI/DIET and requesting to permit him to appear in the selection based on five years teaching experience in recognised Schools, as per G.O.(1D).No.15, School Education Department, dated 19.01.2000. Further, the appellant does not even possess such qualification, namely teaching experience of five years in a recognised school at the time of issuance of the Notification/Advertisement, dated 19.08.2006 or at the time of filing of the earlier Writ Petition in the year 2008 in W.P.No.1632 of 2008. The appellant joined as B.T. Assistant only 06.01.2006 and hence, he did not even possess such qualification of five years.

38. The above submission of the learned counsel for the first respondent/writ petitioner is not rebutted by the learned Senior Counsel appearing for the appellant by producing any tangible evidence before this Court. Therefore, we are of the opinion that looking at from any angle, the appellant's claim is not bona-fide.



39. For all the above reasons, we do not find any merit in the Writ Appeal in W.A.(MD).No.1221 of 2016, which is accordingly dismissed. No costs.

40. In view of the dismissal of W.A.(MD).No.1221 of 2016, it is not necessary to entertain C.M.P.(MD).No.11934 of 2016 filed to condone the delay in filing W.A.(MD).SR.No.47454 of 2016. Accordingly, C.M.P.(MD).No.11934 of 2016 is closed and W.A.(MD).SR.No.47454 of 2016 is not entertained. The official respondents are directed to comply with the order of the learned Single Judge within a period of four weeks from the date of receipt of the order.

No costs. Consequently, C.M.P.(MD).No.8106 of 2016 is closed.

Sd/-

Assistant Registrar(CS I)

/True Copy/

Sub Assistant Registrar

To

1. Secretary to Government,
School Education Department,
Secretariat, Chennai.
2. Teachers Recruitment Board,
Represented by its Chairman,
4th Floor, EVK Sampath Maaligai,
DPI Compound, College Road,
Chetpet, Chennai.
3. The Director of Teacher Education,
Research and Training,
College Road, Chennai.

+2cc to M/s.R.Narayanan, Advocate in SR No.2622

+1cc to M/s.Ajmal Associates, in SR No.2434

W.A(MD).No.1221 of 2016

and

W.A. (MD).SR.No.47454 of 2016

11- 01 -2017

CS

anr/ss3/sar1/20.01.2017/25p/7c