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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 03.10.2013

CORAM:

THE HONOURABLE MR. JUSTICE S.NAGAMUTHU

W.P.(MD)Nos.533, 534 and 1072 of 2013
and
M.P.(MD)No.1 of 2013

W.P.(MD)No.533 of 2013:

S.Shanmugavel

... Petitioner

Vs.

1.The Secretary to the Government,
Government of Tamil Nadu,
Department School Education,
St.George Fort, Secretariate,
Chennai.

2.The Chairman,
Teacher Recruitment Board,
College Road, DPI Campus,
Chennai.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Declaration to declare that the G.O.Ms.No.252 dated 05.10.2012 passed by the 1st respondent is illegal and unjust and consequently, to direct the 2nd respondent to follow G.O.No.181 issued by the 1st respondent and include the petitioner's name in the selection list for the post of Graduate Assistant (B.T.) Teacher in the discipline of B.Sc., Chemistry pursuant to the selection list issued by the 2nd respondent and issue the appointment order to the petitioner favour for the post of Post Graduate Assistant (B.T.) Teacher. W.P.(MD)No.534 of 2013:

W.P.(MD)No.534 of 2013:

M.Mangaiyarkarasi

... Petitioner

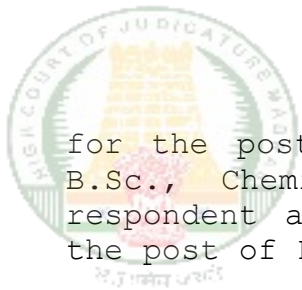
Vs.

1.The Secretary to the Government,
Government of Tamil Nadu,
Department School Education,
St.George Fort, Secretariate,
Chennai.

2.The Chairman,
Teacher Recruitment Board,
College Road, DPI Campus,
Chennai.

... Respondents

[https://www.myservices.gov.in/myservices/](https://www.myservices.gov.in/myservices)
PRAYER: Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Declaration to declare that the G.O.Ms.No.252 dated 05.10.2012 passed by the 1st respondent is illegal and unjust and consequently, to direct the 2nd respondent to follow G.O.No.181 issued by the 1st respondent and include the petitioner's name in the selection list



for the post of Graduate Assistant (B.T.) Teacher in the discipline of B.Sc., Chemistry pursuant to the selection list issued by the 2nd respondent and issue the appointment order to the petitioner favour for the post of Post Graduate Assistant (B.T.) Teacher.

W.P. (MD) No.1072 of 2013:

M.Kriba Esther Selvarani

... Petitioner

Vs.

1.The Teachers Recruitment Board,
College Road,
Through its President,
Chennai 600 006.

2.The State through,
The Secretary,
School Education Department,
Secretariat,
Chennai 5.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Declaration, declaring that in so far as fixing of 90 marks as cut off marks in the examination namely Tamil Nadu Teachers Eligibility Test supplementary 2012 conducted by the 1st Respondent Teachers Recruitment Board to be appointed as B.Ed. Assistant by the Respondents in any of the Government Schools in Tamil Nadu for the petitioner of Backward Class candidate is concerned is illegal, invalid, void and consequently directing the Respondents to consider the Petitioner's claim for appointment as Teacher as Backward Class candidate bearing Roll No.12 TE 20654390 in the said examination.

For Petitioner : Mr.P.Senthur Pandian in WP1072/2013

For Petitioners : Mr.V.Muthuvelan
in Wp553 and 534 oe 2013

For Respondents : Mr.S.Kumar AGP for R1
Mr.N.S.Karthikeyan, AGP for R2
(In Cell Wps)

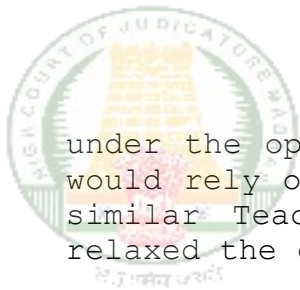
COMMON ORDER

Since common issues are involved in these writ petitions, they were heard together and they were disposed of by a common order.

2.The petitioners in these Writ petitions claim that they had appeared in the Tamil Nadu Teacher Eligibility Test held on 14.10.2012. The Teachers Recruitment Board had fixed 90 marks as cut off mark. The petitioners had secured less than 90 marks and thus, they were not qualified for Teacher Eligibility. The grievance of the petitioners is that the cut off mark for backward class should have been reduced by 5% by relaxing the same by the Government.

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

3.It is the contention of the learned counsel for the petitioners that in this State, since reservation policy is available for the backward class candidates, who have appeared for the Teacher Eligibility Test, the same cut off mark which has been prescribed for the candidates, who come



under the open category, should not have been fixed. The learned counsel would rely on the cut off mark prescribed by the Government of Assam in a similar Teacher Eligibility Test, wherein the Government of Assam has relaxed the cut off marks for backward class by 5 marks.

4. The learned Additional Government Pleader appearing for the 1st respondent would oppose the above contention. According to him, the Teacher Eligibility Test is not a competitive examination and the same is only a qualifying examination. The learned Additional Government Pleader would further submit that fixing the cut off mark is the policy of the Government and the same cannot be interfered with by this Court. The learned Additional Government Pleader would further submit that a Division Bench of this Court in ***W.P. (MD) Nos. 11746 and 12549 of 2013, dated 30.07.2013, in P. Sivagami Vs. Government of Tamil Nadu, rep. by the Secretary to Government, Department of School Education, Chennai and another***, has held that it is beyond the scope of the judicial review of this Court to issue a direction to the Government to relax the cut off mark. Therefore, according to the Additional Government Pleader, these Writ petitions are liable to be dismissed.

5. I have considered the above submissions and also perused the records carefully.

6. At the outset, I have to state that the Teacher Eligibility Test is not a competitive examination for employment and it is only a qualifying examination. As per the Right of Children to Free and compulsory Education Act, 2009, and as per the notification issued by the Central Government, a person, who has passed the Teacher Eligibility Test alone is qualified for appointment as Teacher. Those who have not passed the Teacher Eligibility Test, are not eligible to get appointment as Teachers. Thus, the Teacher Eligibility Test is undoubtedly a qualifying examination and not a competitive examination. After getting qualified in the Teacher Eligibility Test, the candidate can hold the certificate for the period of 5 years. During the said period, the candidate can get employment as he/she has got the necessary qualification. Getting appointment based on the Teacher Eligibility Test certificate is by means of competition. Therefore, the Teacher Eligibility Test itself cannot be construed as a competitive examination for employment.

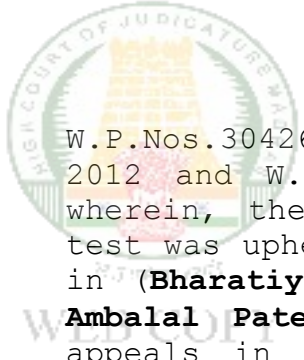
7. It is needless to point out that in a qualifying examination, one cannot enforce the policy of the reservation. It is like prescribing 25 marks for Scheduled caste candidates, 30 marks for backward class candidates and 35 marks for open category in the Secondary Grade Examination. Such course is not at all possible.

8. Of course, it is true that the Government of Assam had relaxed the cut off marks for backward class candidates. It is undoubtedly a policy decision to be taken by the Government. This Court in its power of judicial review cannot interfere in such policy matters to be taken by the Government. That is what has been held by the Division Bench of this Court in ***P. Sivagami's*** case, as referred to above.

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9. In the said judgment in paragraph Nos. 2 to 5 it has been held as follows:

"2. The very same issue regarding fixation of minimum qualifying marks and seeking concession was already considered by this Court in



W.P.Nos.30426, 31002, 31306, 31706, 31468, 32325, 34495, 34730, 34910 of 2012 and W.P.Nos.1687 and 1705 of 2013, vide order dated 23.01.2013, wherein, the uniformity of cut off marks to pass Teacher's eligibility test was upheld, by following the judgment of the Honourable Supreme Court in **(BharatiyaSevasamaj Trust through President and another vs Yogeshbhai Ambalal Patel and another)**, reported in **(2012) 9 SCC 310**. Two writ appeals in W.A.Nos.819 and 820 of 2013 were filed against the above mentioned common order before a Division Bench of this Court and the same were dismissed by a common order dated 19.04.2013. In paragraph Nos.7 to 9, the Division Bench has held thus:

"7.A contention also was raised by the appellants before the learned Single Judge that the persons, who belong to other than the General Category, must be given weightage/relaxation. The learned Single Judge negating the said contention held in para-10 as follows:

"In the instant case, for conducting the test, two Government Orders came to be passed. A committee was appointed pursuant to the direction issued by this Court, which had gone into the issue. It was decided not to relax the standard from the minimum pass percentage. As rightly stated in the counter affidavit, the qualifying marks for a pass in the Tamil Nadu Eligibility Test has been fixed at 60% and above and the Teachers Eligibility Test is only a pre-requisite eligibility test for appointment as a teacher. The qualifying marks are fixed in order to get quality education to teach the children. The State Government has taken a policy decision not to compromise on the quality of teachers and decided not to grant relaxation. When such a decision has been taken by the State Government, this Court is not inclined to consider the submissions made by the learned counsel for the petitioners and no such direction can be issued by this Court to the respondents to relax the standard or lower the standard, as contended by the petitioners."

8.The contention of the learned senior counsel appearing for the appellant before us is that the State Government has not granted any relaxation in respect of percentage of marks to be obtained in the Teacher Eligibility Test for selection to the post of Teachers in the State irrespective of the fact that the NCTE has given discretion to the State Government to give concession for Schedules Castes/Scheduled Tribe, Backward Class and Physically Challenged persons, and in spite of the same, the State Government has not granted relaxation.

9.In our view, this Court cannot give any direction to the State Government to grant relaxation/concession of marks and the decision has to be taken by the State Government itself, as it one of policy. Hence, the discretion given to the State Government by the NCTE will not give any right to the appellants to file writ petitions and pray for grant of relaxation. Thus, we are not inclined to interfere with the order passed by the learned Single Judge. The writ appeals are dismissed. No costs."

3.As the Division Bench of this Court has already taken a decision regarding the very same issue i.e granting of concession in minimum cut off marks for teachers Eligibility Test to reserved categories of candidates and the petitioners are also praying for reduction of cut off marks for reserved category, we are not inclined to grant the relief, as the matter in issue was already held against the petitioners in the said Division Bench judgment.

4.When the learned Special Government Pleader was asked as to whether the Government has any proposal to reduce the cut off marks, for the reserved category candidates, he submitted that the Government has not



taken any decision to reduce the minimum marks for any of the reserved categories. In the light of the same, we are not unable to take any different view. 5. Accordingly, these writ petitions are dismissed. Consequently, connected M.P.Nos.1 & 2 of 2013 in each writ petition are also dismissed. No costs."

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10. I am bound to follow the view taken by the Division Bench. In my view also it is the policy of the Government to fix the cut off mark into which this Court cannot interfere with under the guise of power of judicial review. Therefore, I hold that all these Writ petitions deserve only to be dismissed as per the judgment of the Division Bench, cited supra.

11. In the result, all the Writ petitions are dismissed. No costs. Consequently, connected M.P. Is closed.

Sd/-

Assistant Registrar

/True Copy/

Sub Assistant Registrar

To

1. The Chairman, Teachers Recruitment Board, College Road, DPI Campus
Chennai 600 006.

2. The Secretary to Government School Education Department,
Secretariat, Chennai 9.

+1cc to Special Government Pleader in SR.No. 49620.

TS/25.10.2013/5P-4C

W.P. (MD) Nos. 533, 534 and 1072 of 2013

03.10.2013