

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on 03.08.2018	Delivered on 21 .08.2018
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CORAM:

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN
AND
THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN
W.A.Nos.1496 to 1498 of 2015
and
M.P.Nos.1, 2 and 2 of 2015

1.The Chairman,
Teachers Recruitment Board,
4th Floor, EVK Sampth Building,
DPI Campus,
College Road,
Chennai 600 006.

2.The Director of School Education,
DPI Campus, College Road,
Chennai - 600 006.

...Appellants in all the Writ Appeals

Vs.

A. Valarmathi

... Respondent in W.A.No.1496/2015

D.Pushpalatha

... Respondent in W.A.No.1497/2015

V.Devasena

... Respondent in W.A.No.1498/2015

PRAYER in W.A.No.1496/2015: Appeal filed against the order passed by this Court dated 11.09.2014 passed in W.P.No.19447 of 2014.

PRAYER in W.A.No.1497/2015: Appeal filed against the order passed by this Court dated 11.09.2014 passed in W.P.No.19810 of 2014.

PRAYER in W.A.No.1498/2015: Appeal filed against the order passed by this Court dated 11.09.2014 passed in W.P.No.19875 of 2014.

W.P.No.19447 of 2014

Writ Petition No.19447 of 2014 filed under Article 226 of the constitution of India for issuance of a writ of certiorarified Mandamus to call for the records relating to the impugned communication released in the official website of 1st Respondent dated 14.07.2014 and to quash the same and insofar as ineligible for selection and appointment to the post of BT Assistant(History) and consequently direct the respondents to select and appoint the petitioner to the post of BT Assistant (History) based on the marks secured by the petitioner in the written examination(Teacher Eligibility Test) and the weightage marks awarded and on merits with consequential and other attendant benefits within a time frame.

W.P.No.19810 of 2014

writ Petition No.19810 of 2014 filed under Article 266 of the constitution of India for issuance of a writ of certiorarified Mandamus To call for the records relating to the impugned communication released in the official website of 1st Respondent dated 14.07.2014 and to quash the same and insofar as ineligible for selection and appointment to the post of BT Assistant (Tamil) and consequently direct the Respondents to select and appoint the Petitioner to the post of BT Assistant (Tamil) based on the marks secured by the Petitioner in the written examination (Teacher Eligibility Test) and the weightage marks awarded and on merits with consequential and other attendant benefits within a time frame.

W.P.No.19875 of 2014

Writ Petition No.19875 of 2014 filed under Article 226 of the Constitution of India for issuance of a writ of declaration declaring the petitioner eligible for consideration of appointment as B.T. Assistant English based on the marks obtained by her pursuant to the Teacher Eligibility Test conducted by the 1st Respondent on 18.08.2013 and the subsequent awarding of weightage marks and consequently direct the respondents to appoint the petitioner as B.T. Assistant English at appropriate vacancy based on TNTET marks awarded by the 1st respondent to the petitioner.

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For Appellants : Mr.K.Karthikeyan,
Government Advocate in all W.As

For Respondents : Mr.R.Sathish Kumar in W.A.No.1498/2015
Mr.G.Sankaran in W.A.Nos.1496 & 1497/15

J U D G M E N T

R.SUBRAMANIAN, J.

1. The challenge in these intra-Court appeals is to the common order of the learned Single Judge made in W.P.No.19447, 19810 and 19875 of 2014, wherein, the respondents herein had challenged the rejection of their candidature vide communication released in the official website of the 1st respondent on 14.07.2014, insofar as it declares that the respondents are ineligible for the selection and appointment for the post of B.T Assistants and consequently direct the appellants to select and appoint the respondents as B.T Assistants in the respective subjects.

2. The respondent in W.A.No.1496 of 2015 / the petitioner in W.P.No.19447 of 2014 had applied for being appointed as a B.T Assistant (History) based on the advertisement made by the 1st appellant viz., Teachers Recruitment Board on 22.05.2013. She also participated in the Teacher Eligibility Test conducted by the 1st appellant on 18.08.2013. She had secured 93 marks in the said test and was declared qualified for appointment for the post of B.T Assistant. According to her, she was also called for certificate verification and she had attended the same on 24.01.2014. After the certificate verification, the 1st appellant published the results in its official Website on 14.07.2014. By the impugned communication, it was declared that the petitioner in W.P.No.19447 of 2014 was not eligible, since she had not completed Higher Secondary Course before she had obtained B.A. Degree. Therefore, according to the 1st appellant, the petitioner in W.P.No.19447 of 2014 is not qualified for appointment as a B.T Assistant.

3. Insofar as the respondent in W.A.No.1497 of 2015/ the petitioner in W.P.No.19810 of 2014 is concerned, her claim was that she had passed SSLC in March 2002, thereafter she had underwent Preparatory Programme Entrance Examination for admission to B.A. (Tamil) Degree in University of Madras through Distance education in the Academic year 2006-07 and completed

the course and obtained degree in December 2009. Thereafter, she applied for Higher Secondary Course (+2) in March 2011 and completed the same. She has also completed B.Ed., degree from the Tamil Nadu Teachers Education University in May 2012. She had appeared for Teacher Eligibility Test conducted on 18.08.2013, having obtained marks above the cutoff marks, she was qualified for being appointed as teacher. The 1st appellant had issued an advertisement calling for applications for appointment of B.T Assistants on 22.05.2013 for the Tamil Nadu Teachers Eligibility Test to be conducted by it. The 1st appellant had directed the respondent in W.A.No.1497 of 2015/ the petitioner in W.P.No.19810 of 2014 to appear for certificate verification on 12.05.2014 and after verification of the certificates the 1st appellant had published the results in the website on 14.07.2014. By the said publication, the 1st appellant had rejected the candidature of the respondent in W.A.No.1497 of 2015 on the ground that she had passed her higher secondary examination after having completed B.A., degree. Therefore, she is not qualified for being appointed as a B.T Assistant.

4. The respondent in W.A.No.1498 of 2015/ the petitioner in W.P.No.19875 of 2014 had completed X standard in April 1994 and joined +2. Though she had completed the course, she had failed in one subject viz., Mathematics, thereafter, in the year 2008, she had joined B.A., degree course in English at the Tamil Nadu Open University and she was also successful in completion of the said course in 2011. Thereafter, she joined Tamil Nadu Teachers Education University and pursued B.Ed., degree and was awarded a degree in Bachelor of Education during the year 2012-13. With the above qualifications she had applied for Teacher Eligibility Test and she was also allowed to write test and she has obtained 95 marks in the Teacher Eligibility Test which was above the cutoff marks. Therefore, she was called for certificate verification on 14.05.2014, after verification of the certificates, the 1st appellant by the impugned communication uploaded in the website rejected the candidature of the respondent in W.A.No.1498 of 2015 on the ground that she did not possess the required qualification as she had not passed XII standard. In the above circumstances, all the petitioners approached this Court seeking to quash the impugned rejection and for direction to appoint them pursuant to the selection.

5. The Writ Petitions were resisted by the Teachers Recruitment Board contending that the qualifications prescribed in advertisement dated 22.05.2013 are very clear. In order to qualify, a candidate must have obtained a bachelors degree from a recognized University under 10+2+3 pattern and a Bachelors degree in Education. Therefore, the required qualification for being appointed as a B.T Assistant is that the candidate should have obtained a degree from a recognized University under the

10+2+3 pattern that is to say that a pass in X Standard and a pass in XII Standard before obtaining an undergraduate qualification. Therefore, according to the Teachers Recruitment Board none of the respondents in these appeals are qualified inasmuch as they have obtained the qualifications in reverse direction or that they have obtained the degree without completing XII Standard which is mandatory.

6. The learned Single Judge who heard the Writ Petitions did not go into the merits of the rival claims. The learned Single Judge followed the judgment of this Court in W.P.Nos.13742 of 2010 (batch cases) and allowed the Writ Petitions directing the appellants to appoint the petitioners. Aggrieved, the Teachers Recruitment Board as well as the Director of School Education has come forward with these Appeals.

7. We have heard Mr.K.Karthikeyan, learned Government Advocate appearing for the appellants in all the appeals and Mr.R.Suresh Kumar, learned counsel appearing for the respondent in W.A.No.1498 of 2015 and Mr.G.Sankaran, learned counsel appearing for the respondents in W.A.Nos.1496 and 1497 of 2015.

8. Mr.K.Karthikeyan, learned Government Advocate appearing for the appellants would invite our attention to the qualifications prescribed in the advertisement issued by the appellant Board on 22.05.2013 which explicitly makes it clear that the candidate must have passed Bachelors degree from a recognized University under 10+2+3 pattern and a Bachelors degree in Education from a recognized University. Therefore, according to Mr.K.Karthikeyan, a candidate in order to be appointed as a B.T Assistant must have passed X Standard, XII Standard and thereafter obtained an Undergraduate degree before he/she could seek an appointment as B.T Assistant.

9. Per contra Mr.G.Sankaran, learned counsel appearing for the respondents in W.A.No.1496, 1497 would submit that the undergraduate degrees granted by the Universities under the relevant Distance Education Programmes are valid once those degrees are held to be valid by the University Grants Commission, then no matter as to whether the candidates who obtained those degrees will be entitled to seek appointment as B.T Assistants, irrespective of their completing X or XII Standards. He would also rely upon the Full Bench Judgment of this Court in P.Raji Vs. The Secretary, Bar Council of Tamil Nadu and Puducherry and another in W.P.Nos.44242 of 2016 (batch case), wherein, the Hon'ble Full Bench had held that the Bar Council cannot reject the candidature of persons who had passed XII Standard privately. Mr.G.Sankaran, would also invite our attention to the judgment of a Division Bench of this Court in Teachers Recruitment Board and another Vs. M.Stanly Parnapas, in

W.A.No.370 of 2015, wherein, a person who had completed three years diploma course had joined B.A., History and thereafter had obtained B.A. Degree was held to be qualified.

10. Mr.R.Suresh Kumar, learned counsel appearing for the respondent in W.A.No.1498 of 2015 would invite our attention to the judgment of the Division Bench of this Court in M.Rathinavel Vs. The Registrar General and another in W.P(M.D).No.11111 of 2016, wherein, this Court had concluded that an undergraduate degree in history obtained after passing the entrance examination without passing higher secondary will be a sufficient qualification for appointment as Office Assistant.

11. We have considered the rival submissions. The question that would arise in these appeals is as to whether, the three petitioners have the qualifications prescribed by the Teachers Recruitment Board in its advertisement dated 22.05.2013. It is the settled law that the Court cannot relax or substitute the qualifications that are prescribed by the employer viz., the Teachers Recruitment Board. The notification/ advertisement dated 22.05.2013 in respect of B.T Assistants is very clear, the same reads as follows:

"b. Candidates who have passed a Bachelor's Degree (B.A./ B.Sc./ B.Litt.) with Tamil, English, Mathematics, Physics, Chemistry, Botany, Zoology, History and Geography or a Degree with any one of the equivalent subjects (Regarding equivalent subject, Government orders issued prior to the date of this notification alone will be considered) from a Recognized University under 10+2+3 Pattern and a Bachelor's Degree in Education (B.Ed.) from a Recognized University and seeking an appointment as Teacher for classes VI to VIII can write paper II."

12. In R.Tirunavukkarasu Vs. State of Tamil Nadu reported in 2012 (5) CTC 129, this Court had traced the various instances where the persons with lesser qualification or degrees obtained by shortcut methods had attempted to get recruited as teachers and the same has been scuttled by the Teachers Recruitment Board and the Government. The learned Single Judge after considering the regulations of the Teachers Recruitment Board had held that,

- A student cannot be admitted to a 1st degree course unless he has successfully completed 12 years of schooling.
- No student will be eligible for 1st degree unless he has successfully completed a three years course.

- The students cannot seek admission to Masters course in any of the faculties unless he has successfully pursued the 1st degree of three years duration.
- Wherever a degree course of duration of less than three years was in existence at the time of 1985 regulations these institution can award degrees of a duration of two years only as a transitive measure. However, these persons will be eligible for admission to masters course only if they had undergone a one year bridge course.

13. The learned Single Judge also went on to conclude that in view of the statutory Rules that prescribe the qualification for appointment as B.T Assistant, the same cannot be diluted by the Court in order to accommodate persons who are not otherwise qualified. The same learned Single Judge [Justice V.Ramasubramanian] had in S.Jagadeeswari vs. The Chairman, Teachers Recruitment Board, Chennai and another in W.P.No.30299 of 2012 held that simultaneous acquisition of degrees or acquisition of a lower qualification after acquiring a higher qualification [reverse degrees] cannot be recognized as a proper qualification for the purpose of appointment as B.T Assistants. The judgment in S.Jagadeeswari case in W.P.No.30299 of 2012 was confirmed in Writ Appeal W.A.No.845 of 2013.

14. Mr.K.Karthikeyan would also draw our attention to the judgment of a Division Bench in Chairman, TRB and another Vs. Kanimozhi, wherein, the Division Bench had after considering the judgment in W.P.No.13572 of 2010, 13054 of 2010 batch [which has been followed by the learned Single Judge in the orders impugned in these appeals] held that unless the candidate had obtained a Bachelors Degree by going through regular education under the 10+2+3 system he/ she will not be qualified for appointment as secondary grade teacher. The impact of University Grants Commission regulations which recognize these degrees issued by the Open Universities was also considered by the Division Bench. The Division Bench while rejecting the claim of the respondent in the said case to the effect that since the degree obtained by her has been recognized by the University Grants Commission, the Teachers Recruitment Board cannot deny her appointment on the basis that she is not qualified for being appointed, the Division Bench had observed as follows:

" 5.6. The issue of recognition of a degree is different from a qualification fixed in service matters. An eligibility criteria fixed cannot be said to be an indirect way of de-recognizing a degree or diploma. To put in differently, such a degree cannot be termed as an

eligible qualification for a particular post. Therefore, we are of the view that though scope and ambit of Regulation 2 of the University Grants Commission has not been considered by the learned Single Judge, the same is not required to be considered in favour of the respondent in view of the express terms as provided in the G.O passed in G.O.(Ms.)No.107 Personnel and Administrative Reforms (M) Department, dated 18.08.2009. In this connection, a useful reference can be made to the Full Bench Judgment of the Rajasthan High Court in Shanker Lal Verma and 13 others Vs. Rajasthan State Electricity (1993(3) LLJ 796), wherein the following passage is apposite:

" 32. It is also to be noted that these are not the cases of derecognition of a degree, diploma or certificate issued by a particular institution because of some fault on the part of the Institution awarding the same. The case of derecognition of particular Institutions and consequently derecognition of the degrees, diplomas and certificates issued by such Institutions have to be distinguished from service matters in which certain qualifications are deleted from the rules. Removing or deleting a qualification from eligibility criteria cannot be said to be derecognition of that qualification or a degree, diploma or certificate. It only means that the degree, diploma or certificate has ceased to be the eligibility qualification for a particular post. It does not take away from the candidate, the degree, diploma or certificate conferred by the Institutions. For example, if the eligibility qualification for a particular post was earlier 'Graduate' and by amendment, it is raised to 'Postgraduate', it does not mean that degree possessed by the candidates are derecognised. What it simply means is that the eligibility qualification are enhanced and a higher qualification is now required. It is also to be taken into account that purpose behind amendment to

the rule was not to derecognise any degree,

diploma or certificate, it was only to delete certain qualifications from the eligibility criteria. This may be because of the changed situation in which the employer may find that candidates who have passed the Secondary School Examination from the Statutory Boards and Universities are available in sufficient numbers and it was not necessary to consider the candidates having equivalent qualifications. The respondents cannot be forced to accept equivalence of certain qualifications and to accept such equivalence for all times to come." "

15. The Division Bench found that the respondent in the said Writ Appeal viz., Kanimozhi had obtained a B.A. Degree in the Open University System and after B.Ed she had obtained M.A degree also. After passing M.A she had realized that she would not be able to secure an appointment as a teacher unless she passes +2. Accordingly, with that new wisdom that had occurred to her she had completed +2 course after securing B.A., B.Ed., and M.A., degrees. It is this method which was termed as reverse degrees in R.Tirunavukkarasu case cited supra. G.O.Ms.107 dated 18.08.2009 only seeks to curb this practice of completing bachelors degrees and obtaining postgraduation without completing XII Standard.

16. Insofar as the decision cited by the learned counsel for the respondents, the Full Bench judgment in P.Raji Vs. The Secretary, Bar Council of Tamil Nadu and Puducherry and another cited supra was not concerning recruitment. Further the Full Bench decision was based on the interpretation of Rules 5(a) and 5(b) of the Legal Education Rules which did not expressly require completion of 12th standard through regular stream. Further the Full Bench was concerned with the correctness of the decision of the Division Bench in S.R.Deepak v. The Tamil Nadu Dr.Ambedkar Law University and another, reported in 2016-2-L.W. 64, wherein it was held that in respect of the candidates who had obtained Secondary School leaving Certificate or Higher Secondary School Leaving Certificate without pursuing a regular course would be ineligible to three years L.L.B course even though the candidate had obtained a Secondary School leaving Certificate or Higher Secondary School Leaving Certificate from recognized board authorized to issue such certificates by appearing privately. While disagreeing with the Division Bench the Full Bench had observed as follows:

"54. With the greatest of respect to the Division Bench deciding S.R.Deepak, supra, we are unable to agree that a candidate who

obtains the Secondary Certificate or Higher Secondary Certificate without prosecuting a regular course would be ineligible for admission to the Three Year LLB Course, even though the candidate might have obtained a Secondary Certificate and a Higher Secondary Certificate from a recognized Board authorized to issue such certificates and have graduated from a recognized university whose degree in Law is recognized by the Bar Council of India for enrolment by successfully completing a regular course. "

17. Therefore, the proposition of law enunciated by the Full Bench on interpretation of Rules 5(a), 5(b) of the Legal Education Rules cannot be applied to recruitment where employer fixes a particular qualification. Insofar as the decision in M.Rathinavel case cited supra relied on by Mr.Sankaran it relates to the post of Office Assistant in this Court which required the qualification of a bachelor's degree and the Division Bench therefore held that the Bachelor degree awarded by the University in the Open University system would be valid for such appointment.

18. In Teachers Recruitment Board and another Vs. M.Stanly Parnapas, in W.A.No.370 of 2015, it was found that the respondent had completed a three years diploma course and thereafter joined B.A. History thus he had studied 10+3+3. This 3 years diploma course has been recognized as equivalent to HSC and therefore, the Division Bench had, while distinguishing the judgment in Kanimozhi case referred to supra, held the respondent therein had obtained diploma and thereafter completed bachelors degree is qualified.

19. We had extracted the qualifications of the respondents. The qualifications can be tabulated as follows:

Name	Case No.	Qualification			
		X	XII (HSC)	Bachelor's Degree	B.Ed.,
Valarmathy	W.A.No.1496/2015	1992	Failed in one subject. (Cleared Mathematics paper in 2002)	1996	2010
Pushpalatha	W.A.No.1497/2015	2002	Passed HSC in 2011	2009	2012
Devasena	W.A.No.1498/2015	1994	Failed in Mathematics	2011	2013

20. From the qualifications extracted above it could be seen

that none of the respondents have satisfied the requirement of the educational qualifications prescribed under the advertisement dated 22.05.2013. The advertisement very clearly states that the respondents should have obtained a bachelors degree from a recognized University under 10+2+3 pattern along with a bachelors degree in Education. While the respondent in W.A.No.1498 of 2015 has not even attempted to complete Higher secondary the respondents in W.A.Nos.1496, 1497 of 2015 have completed higher secondary course after having obtained their bachelors degree.

21. Such a reverse qualification has been held to be invalid in R.Tirunavukkarasu case as well as in Kanimozhi case cited supra. We are in agreement with the views of the Division Bench as well as the learned Single Judge in R.Tirunavukkarasu case. We must also point out that the learned Single Judge in the orders impugned in these appeals had only followed the judgment of Justice Hariparandhaman in W.P.No.13054 of 2010 batch case. The said judgment has been considered by the Division Bench in Kanimozhi case and has been specifically overruled.

22. We are therefore of the considered opinion that, the orders of the learned Single Judge made in the Writ Petitions which are impugned in these appeals should be set aside and accordingly the Writ Appeals are allowed setting aside the orders of the learned Single Judge made in the Writ Petitions. The Writ Petitions will stand dismissed, however in the circumstances we make no order as to costs. Consequently, the connected Miscellaneous Petitions are also closed.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

सत्यमेव जयते
Sub Assistant Registrar

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To

1.The Chairman,
Teachers Recruitment Board,
4th Floor, EVK Sampth Building,
DPI Campus,
College Road,
Chennai 600 006.

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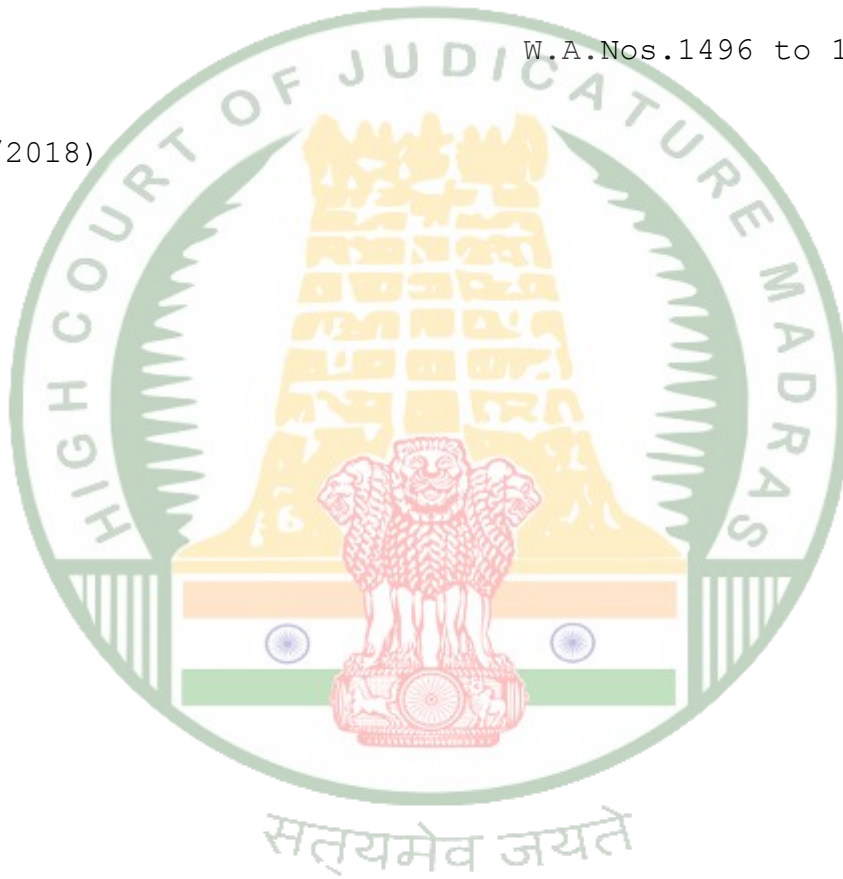
2.The Director of School Education,
DPI Campus, College Road,
Chennai - 600 006.

+1cc to Mr.G.Sankaran, Advocate, S.R.No.57586

+1cc to the Government Pleader, S.R.No.57658

W.A.Nos.1496 to 1498 of 2015

JP (CO)
GSP (07/09/2018)



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