

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 20.07.2018

CORAM

THE HONOURABLE MR. JUSTICE SATRUGHANA PUJAHARI

WP.No.24155 of 2017
and WMP No.25493& 25494 and 34639 of 2017

V.Tharani

.. Petitioner

Versus

- 1.The State of Tamil Nadu,
Rep. By its Secretary,
School Education Department,
Secretariat, Chennai.
 2. The Chairman,
Teachers Recruitment Board,
4th Floor, EVK Sampath Maligai,
DPI Compound, College Road,
Chennai
 3. The Director of School Education,
Fort St. George, Chennai
- ...Respondents

Prayer : Writ petition filed under Article 226 of the Constitution of India praying for a writ of Mandamus directing the respondents to award marks to the petitioner for C-series question Nos.55, 54, 83, 70, 89, 94, 107, 109, 114 on the ground that all the key answers are wrong and for question No.109 and direct the respondents to declare the petitioner as passed and grant the petitioner with appointment to the post of PG Assistant (Chemistry) under the notification issued by the respondent Board in Advertisement No.3 of 2017 dated 09.05.2017.

For Petitioner : Mr.L.Chandrakumar
For Respondents: Mrs.P.Kavitha
Government Advocate

ORDER

The grievance of the petitioner in this writ petition is that the petitioner appeared in the examination conducted by the Teachers Recruitment Board for the post of Post Graduate

Assistant (Chemistry) on 02.07.2017 and at the time of correction, key answers were prepared for correction wrongly and even if the petitioners had answered questions correctly as such not awarded with marks. In such circumstances, the petitioner filed this writ petition with a prayer to direct the respondents to award marks for the said questions and consequently, direct the 1st respondent to call the petitioners for certificate verification, inasmuch as, the respondents have denied marks for certain correct answers.

2. Counter affidavit has been filed indicating therein that after publication of the key answers, representations were invited from the respective candidates with regard to objections for evaluation of the answer sheet on such key answers and an expert committee was constituted to address such representations. Accordingly on receipt of such representations against such key answers, the expert committee examined the representations and in appropriate cases, where the key answers were said to have been wrongly set, the candidates answering the same have been awarded marks. It appears that the petitioner's answer sheet was also evaluated correctly considering his representation and the marks awarded to him found to be correct. Therefore, the writ petition is devoid of merits.

3. The learned counsel appearing for the petitioner would submit that since this Court in similar facts and situations in writ petition vide WP(MD) No.16165 of 2017 and some more writ petitions in respect of the Post Graduate Assistant (Chemistry) found the evaluation to have not been done properly, inasmuch as, though some of the candidates had answered properly but not awarded marks as stated by expert present in the Court, allowed their writ petitions with award marks to them and call for the certificate verification. The W.A.No.194 to 1999 and 209 to 212 of 2018 carried against the said order before a Division Bench of this Court in Madurai Bench, have also been dismissed. Therefore direction be given to the petitioner to give benefit of the revaluation of the answer sheet in the light of the aforesaid decisions and give her call for certificate verification, is the submission of the counsel for the petitioner.

4. The learned counsel for the respondents submits that in the aforesaid case taking note of expert present in the Court, this Court directed the revaluation of the answer script of the petitioner in writ petitions therein, in which six of the writ petitioners benefited. But the same being bereft of jurisdiction inasmuch as the court cannot appoint expert committee and take up the revaluation, carried writ appeals to the Division Bench. In the writ appeals against the said orders though, a Hon'ble Division Bench of this Court in Madurai did not approve the same but did not interfere with the orders in the peculiar facts and

circumstances of the case. However forecloses the cases of other who were then not before this Court. In such premises, it cannot be said that the said order enure to the benefit of the petitioner in any manner. Hence, submits to dismiss the writ petitions.

5. To appreciate the contentions raised by the learned counsel appearing for the parties with regard to the merit of the writ petitions it would be opposite to have a look on the relevant version of the order passed in WA Nos.194 to 199 and 209 to 212 of 2018, which reads as thus:

3. The appellants resisted the prayer sought for in the writ petitions on the ground that the Teachers Recruitment Board has followed a proper procedure in the recruitment and the Notification dated 09.05.2017 and Revised Notification dated 30.06.2017 calling for applications for 387 posts of Post Graduate Assistants (Chemistry), clearly state that the key answers will be uploaded and objections from the candidates will be received and considered and accordingly, upon the key answers being uploaded, some of the candidates had filed their objections to the key answers as being incorrect and these objections are stated to have been dealt with by the Teachers Recruitment Board and they were rejected and it is only thereafter, the results were published. It is noteworthy to mention that the Notification dated 09.05.2017, was issued by the Teachers Recruitment Board to fill up 1663 vacancies in the post of Post Graduate Assistants / Physical Education Directors Grade-I in the Tamil Nadu Higher Secondary Educational Service. After the said number of posts, 387 posts were notified for P.G. Assistant in the subject (Chemistry). All the writ petitioners had applied for the Post of P.G. Assistant in Chemistry and they contended that the key answers for the above referred questions are incorrect and therefore, they should be awarded full marks for those questions. The appellants resisted the prayer sought for in the writ petitions contending that the Court has no jurisdiction to direct revaluation or adopt the process of referring the answer script to third party evaluators and ascertain the answers and then grant a relief and this exercise is wholly outside the jurisdiction of the Court. The said contention has been raised in the counter affidavit filed by the appellants in the writ petitions stating that even a cursory glance at the opinions given by the Subject Experts and the authoritative proof on which such opinions were formed which are filed in the typed set would evidently show that the petitioner has not

demonstrably proved the key answers of the second respondent Board to be wrong and also placing reliance on the decision of the Hon'ble Supreme Court in Kanpur University vs. Samir Gupta reported in A.I.R. 1983 SC 1230 and the decision of the Division Bench in Writ Appeal Nos.1097 and 1099 of 2014 dated 08.09.2014 and Writ Appeal No.1074 of 2014 dated 12.08.2014.

4. The learned Special Government Pleader appearing for the appellants would contend that the jurisdiction of the Court to undertake an exercise to invite subject experts to reevaluate to furnish key answers was specifically canvassed by him before the writ Court. However, we find in the impugned order passed in the writ petition, the said legal issue has not been dealt with. Be that as it may, it has to be seen as to whether this Court should undertake an exercise to test the correctness of the order in the writ petitions. We are of the considered view that the said exercise is not required on account of the peculiar facts and circumstances which has arisen after the writ petitions were disposed of. Be it noted that though the writ petitioners contended that the key answers for several questions were incorrect, the Court granted relief by directing the appellants to award one mark each to the question Nos.14, 43, 63 and 72 respectively for only six petitioners and in respect of the other questions, the claim made by the writ petitioners were negatived. Therefore, after the decisions rendered in the writ petitions, though there were 16 writ petitioners, it appears that only six of them would come within the zone of consideration namely J.Muthu Pandi, G.Santhi, S.Selvarani, S.Chandramary, T.Mariammal and A.Mari Selvam. Therefore, we hold that the order passed in the writ petitions need not be disturbed as the relief accrued only to six of the writ petitioners. That apart, we note that though several number of vacancies were notified, only 92 candidates have been found to be eligible and have joined. Therefore, the relief granted in the writ petitions can be extended to the aforementioned six writ petitioners alone.

5. The learned Special Government Pleader expressed an apprehension that the order passed in the writ petition would be a precedent for subsequent cases as well. There need not be any apprehension in this regard as this Court will make proper observation and direction in this order. That apart, as noted above, the writ Court has not decided the jurisdictional issue which has been specifically pleaded in the

counter affidavit filed in the writ petitions and stated to have been argued by the learned Special Government Pleader before the writ Court. Thus, necessarily the legal issue has to be left open and the order passed in the writ petition cannot be treated as a precedent nor could be extended to other persons, who participated in the same selection process and should be confined only to six of the writ petitioners, who are stated to come within the zone of consideration. Thus, for the above reasons, while confirming the order passed in the writ petition, we clarify that the directions/ methodology adopted by the writ Court cannot be treated as a precedent and the effect of the order impugned cannot be extended to any other candidates, except those six candidates whose name has been mentioned and the selection process have already been completed, no other new candidate, who has been unsuccessful can come before this Court pleading similar relief. Accordingly, these writ appeals stand disposed of. No costs. Consequently, the connected Miscellaneous Petitions are closed.

6. A perusal of the aforesaid would go to show that this Court in the above Writ Appeal has confined the relief to six persons who had got benefit out of the order in the aforesaid writ petitions, while keeping the issue with regard to the competence of the Court to entertain an expert committee and get the paper re-evaluated. In view of such specific mandate of this Court that such benefits are not available to other new candidates as precedent who have been unsuccessful, therefore this Court is of the view that the prayer made by the petitioner in the writ petition seeking benefit of such order is devoid of merit, inasmuch as such a plea herein after cannot be entertained by this Court. But while parting with the writ petition, it being always the prerogative of the appointing authority to consider the grievance of the petitioner notwithstanding the order passed, if they so desired and it is the case of the petitioner that she has been denied marks even if she had answered correctly, the respondent authority is at liberty to consider such representation of the petitioner, if some vacancies have remained unfulfilled though advertised and the claim of the petitioner is that she has been ignored though more meritorious than the candidates appointed. Therefore, this Court give liberty to the respondents to consider such representation of the petitioner preferably within a period of six weeks from the date of receipt of copy of this order, if deem it fit and proper. However, the same should not be treated as a mandate of this Court to consider the representation of the petitioner in any particular manner.

7. With the aforesaid order, this writ petitions stand disposed of. No costs. Consequently, the connected miscellaneous petitions are also closed.

Sd/-

Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

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To

1.The Secretary,
School Education Department,
Secretariat, Chennai.

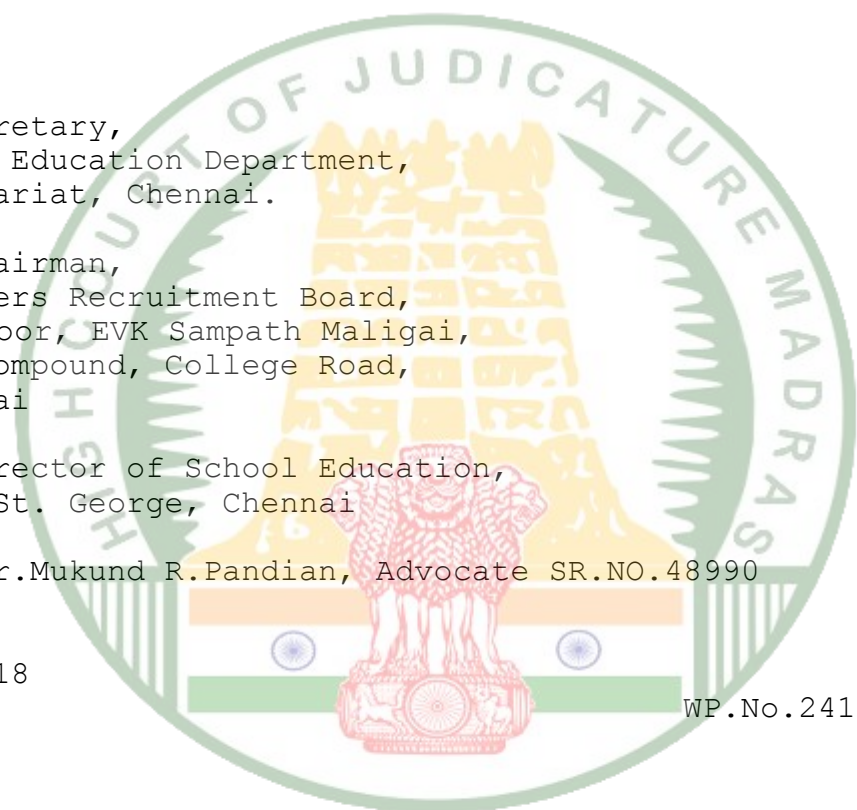
2. The Chairman,
Teachers Recruitment Board,
4th Floor, EVK Sampath Maligai,
DPI Compound, College Road,
Chennai

3. The Director of School Education,
Fort St. George, Chennai

+1cc to Mr.Mukund R.Pandian, Advocate SR.NO.48990

SJ(CO)
sm:7.9.2018

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