

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.10.2018

CORAM

THE HONOURABLE Mr. JUSTICE S.M.SUBRAMANIAM

W.P.No. 28598 of 2014 and
M.P. No. 1 of 2014

M.Muthulakshmi

...Petitioner

Vs

- 1.The State of TamilNadu,
Rep.by its Principal Secretary to Government,
School Education Department,
Fort St.George,
Chennai - 600 009.
- 2.The Chairman,
Teachers Recruitment Board,
4th Floor, E.V.K.Sampath Maaligai,
DPI Compound, College Road,
Chennai - 600 006.
- 3.The Director of School Education,
College Road,
Nungambakkam,
Chennai - 600 006.
- 4.The Director of Elementary Education,
College Road,
Nungambakkam,
Chennai - 600 006.

...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, directing the Respondents to issue appointment order to the petitioner for the post of secondary grade teacher on the basis of certificate verification done on 30.05.2010 and 03.12.2011 based on the state Seniority without insisting for the Teacher Eligibility Test by following the order of the

Division Bench of this Hon'ble Court in review Application No.139 of 2012 in W.A.No.1201 of 2012 and W.A.No.2121 of 2012 dated 09.07.2013.

For Petitioner: Mr.N.Pappiah

For Respondents :Mr.K.Karthikeyan
Government Advocate

O R D E R

The relief sought for in the present writ petition is for a direction to direct the respondents to issue appointment order to the petitioner for the post of Secondary grade teacher on the basis of the certificate verification done on 30.05.2010 and 03.12.2011 based on the State seniority without insisting for the Teacher Eligibility Test by following order of the Hon'ble Division Bench of this Court in Review Application No. 139 of 2012 in Writ Appeal Nos.1201 of 2012 and 2121 of 2012, dated 09.07.2013.

2. The writ petitioner states that she has completed the course of Diploma in Teacher Education in the first class in the year 2002 and registered her name in the employment exchange on 14.11.2012. The petitioner was called for certificate verification on 02.12.2006 and she participated. However, the respondents had not issued the order of appointment.

3. The learned Government Advocate appearing on behalf of the respondent brought to the notice of this Court that the issues raised in the present writ petition were decided by the Hon'ble Division Bench of this Court in W.P.No.4827 of 2012 on 03.11.2015, wherein the issues raised are answered in paragraphs 17 and 18, which are extracted hereunder :

"17. We have elaborately heard the learned counsel appearing for the parties and carefully given our consideration of the material placed before this Court.

Question No.1:-

Whether the advertisement mentioned specific number of posts.?

(i) As noticed above the counsels on either side contend that there was no advertisement issued, but the number of posts to be filled up were notified by the Government under various Government Orders.

(ii) The Government by G.O.Ms.Nos.145 & 146, dated 29.06.2009, considered the letters of the Director of Elementary Education and Director of School Education, dated 04.04.2009 and 26.03.2009, respectively requesting permission to fill up the vacant post of Secondary Grade Teachers and Physical Education Teachers and Post Graduate Assistants, B.T. Assistants, Physical Education Teachers and Special Teachers for the year 2009-10, as per Government procedure and to fill up vacant post of B.T.Assistant from the eligible Secondary Grade Teachers through promotion as per seniority list and fill up the remaining posts through direct recruitment through the TRB. The proposals submitted by the Director were considered by the Government and by G.O.Ms.No.145, permission was accorded to fill up 6665 of Graduate Assistants for the year 2009-10. Subsequently, the Government by G.O.Ms.No.64, 152 & 153 sanctioned 1200, 2852 and 1766 posts of Graduate Assistants (B.T. Assistants). Thus, the respondents have filled up the posts which have been sanctioned by the Government through the Government Orders referred above except for 133 posts, which are stated to be backlog vacancies. The above facts have been admitted by the petitioners and are not in dispute. Accordingly, question No.1 is answered.

Question No.2:-

whether the posts mentioned have already been filled up?

It is not in dispute that the post of B.T. Assistant for the year 2009-10 and 2010-11 have been filled up and the stand taken by the respondents is that except 158 posts due to non availability of suitable candidates in respect of other minority subjects and special category, all posts have been filled up. This answers question No.2

Question No.3:-

whether the procedure of merit has been appositely followed?

It is admitted that the selection process was done based on the State wide seniority in the employment exchange and the candidates were sponsored by the employment exchange in the ratio of 1:5. This is not disputed by the petitioners. Therefore, the question of inter se merit did not have any role in the selection process, as admitted by the petitioners and the selection was solely based on the State wide employment exchange and Question No.3, is accordingly answered.

Question No.4:-

Whether petitioners despite being more meritorious have been left out and less meritorious candidates have been appointed ?

(i) The learned counsels appearing for the petitioners fairly concede that the basis of selection was the seniority of the candidates in the Employment Exchange and there was no assessment of inter se merit. The candidates who were eligible and registered with the Employment Exchange based on their seniority were considered subject to communal rotation. The procedure adopted was to call for a list of eligible candidates from the Employment Exchange in the ratio of 1:5 and all those candidates who were sponsored were called for certificate verification and after certificate verification, one among the five candidates is selected following the communal rotation and the cut off date.

(ii) The respondents in their counter affidavit dated 29.5.2015, have explained by way of illustration how the cut off date is reckoned. We may note that if a candidate in a particular subject such as Zoology under B.C.(General) category had been selected in the last recruitment, the date of his/her registration with the Employment Exchange is reckoned as the cut off date for the subsequent recruitment in respect of the candidate in the same subject and the same communal rotation viz. B.C.(General) and if the date of registration of the candidate waiting in the Employment Exchange is after the cut off date in the last recruitment, he or she will not be considered for selection.

(iii) The respondents in their counter affidavit have furnished the details pertaining to the petitioners in a tabulated form and also furnished the copy of the communication sent by the Director, Directorate of Employment & Training to the Principal Secretary, Teacher Recruitment Board, dated 31.07.2015, which also contains the details in a tabular format. These formats contain the names of the candidates and the position of the candidate in the Employment Register. Further, the tabulated statement in the counter affidavit dated 29.05.2015, furnishes the name of the candidate, subject, community, date of registration in the Employment Exchange and the cut off date fixed by TRB for selection. In another tabulated format which finds place in page Nos. 331 to 336 of the typed set of papers filed by the respondents, apart from the above details,

a separate column 'Remarks', which sets out the reason as to why the candidate was not selected.

(iv) Thus, the reason assigned by the respondents for non-selection of the petitioners is on the ground that they have not reached the cut off date, as the date of registration in the Employment Exchange by all the petitioners was after the cut off date arrived at based on the last recruitment in respect of each subject and communal rotation. The petitioners have not questioned the fixation of the cut off date nor their appears to be a contest as regards the details of the candidates furnished in the tabulated formats, referred to above.

(v) Thus, Question No.4, is answered by stating that the candidates were called for selection based on the seniority in the Employment Exchange and TRB directed the employment exchange to sponsor the names of five candidates as against each vacancy viz.in the ratio of 1:5 and the selection was based on the employment seniority and communal rotation and not based on the assessment of inter se merit.

Question No.5:-

Whether assuming the advertisement did not mention the number of posts, the petitioners herein still could claim a right in perpetuity to have the appointment ?

(i) While answering Question No.1, this Court took note of the stand taken by the learned counsels appearing for the parties, whereby they conceded that there was no advertisement issued specifying the number of posts, but it was only by way of notifications issued by the Government from time to time. Therefore, the issue to be answered could be modulated to read as to whether the petitioners would have a right of perpetuity to be appointed to the post. This issue would largely dwell on the claim of the petitioners that the recruitment process commenced well before the NCTE notification making TET compulsory and that their certificate verification was completed.

(ii) It is not in dispute that the TRB requested the Employment Exchange to sponsor candidates in the ratio of 1:5. The TRB in order to afford a fair opportunity, verified the certificates of all the candidates whose names were sponsored by the Employment Exchange in the ratio of 1:5, regardless of the fact as to whether they would be eventually selected, which was

solely based on the cut off date and communal rotation. In such circumstances, we have no hesitation to hold that merely because the certificates of all candidates sponsored by the Employment Exchange in the ratio of 1:5 were verified, would not confer upon them any right much less a vested right or a perpetual right for appointment.

(iii) The specific stand of the respondents is that one among the five candidates sponsored by the Employment Exchange for a particular post will be selected based on the cut off date and communal rotation and the names of the four candidates were sent back to the Employment Exchange to be included in the live Register. The petitioners contented that this was not done and there was uncertainty in so far as the petitioners are concerned. However, this controversy was put to rest by producing the copy of the communication dated 31.07.2015, from the Director of Employment & Training addressed to the Principal Secretary, TRB, which shows the status of the candidates in the Live Register of the Employment Exchange. Out of the total 94 candidates, except for a few whose names are not found in the data on account of the fact that it had lapsed, the names of other candidates are maintained in the Live Register. This leave us with the issue as to whether the petitioners who attended the certificate verification have secured a perpetual right to seek for appointment without passing the TET.

(iv) The learned counsels appearing for the petitioners after elaborately referring to the various Government Orders in and by which 9176 vacancies were notified by the Government vide G.O.Ms.Nos.193, 46, 169 and 170 and those Government Orders having been issued prior to 15.11.2011, the date on which the State Government issued orders for conducting TET, all vacancies prior to 15.11.2011 viz. 22198 have to be treated on par and fill up based on Employment Exchange seniority. Thus, it is the contention of the petitioners that the TRB cannot create a classification within the vacancies sanctioned by Government Orders issued upto 11.7.2011, and those vacancies sanctioned after the said date. It is the further submission that all the candidates who have completed the certificate verification prior to 23.10.2010, the date of notification of NCTE would fall under the category and form a homogeneous group to be eligible to be appointed without TET, since the appointment process of such candidates were initiated prior to NCTE notification

dated 23.08.2010, which was subsequently substituted by notification dated 29.07.2011. The first notification dated 23.08.2010 in clause 5 contains only one paragraph which deal with the Teachers appointed after the date of the notification in certain case. The notification states that where appropriate or local authority or a school has issued an advertisement to initiate the process of appointment of teachers prior to the date of the notification, such appointments may be made in accordance with the NCTE Regulations, 2001, as amended from time to time.

(v) In the notification dated 29.07.2011, paragraph No.5 of the notification dated 23.08.201, was substituted by a new paragraph No.5 consisting of two sub-paragraphs viz. 5(a) and 5(b). Paragraph 5(a) of the new notification dated 29.7.2011, is in para materia with paragraph 5 of the original notification dated 23.08.2010.

(vi) The sheet anchor of the petitioners contention is that in their cases, the Government has notified the number of vacancies under various Government Orders and the process of recruitment has commenced prior to 23.08.2010 and therefore, they are not required to pass TET.

(vii) We are unable to accept the contentions raised by the learned counsels for the petitioners as it would amount to misreading of the notifications dated 23.08.2010/27.09.2011. Paragraph 5 / 5(a) of the notification makes it abundantly clear that the exemption carved out is in respect of such appointments made, pursuant to recruitment process initiated prior to the date of the notification. Therefore, the emphasis is on the expression "such appointment" as contained in paragraph 5/5(a) of the notification. Therefore, the benefit of the notification would enure in favour of those candidates who participated in the recruitment process initiated prior to 23.08.2010 and appointed against the posts advertised or as notified in the instant case. Therefore, it is only those appointments which would fall within the expression "such appointment" as contained in the notification issued by the NCTE.

(viii) In the light of the above conclusion that the benefit of the exemption in terms of the notification, dated 23.08.2010/27.09.2011, would not enure to the benefit of the candidates such as the petitioners. In the light of such conclusion, there

would not be a necessity to examine the other aspects as regards the number of vacancies, which were notified by the Government, those which have been filled up and those which remain unfilled. One more reason to arrive at such a conclusion is that unless and until the petitioners had been appointed as against the notified vacancies then alone the benefit of the exemption under the notification issued by the NCTE would apply.

(ix) It is not in dispute that the petitioners were never appointed and they do not dispute this fact. However, their contention is that the recruitment process was initiated prior to 15.11.2011 and the petitioners' names were sponsored by the employment exchange and the petitioners were called for certificate verification and their certificates were verified and therefore, they are entitled to be treated on par with all those candidates, who were appointed pursuant to the call letters sent by TRB, since the vacancies were notified well before the notification issued by NCTE.

(x) We are unable to accept such a contention for more than one reason. Firstly TRB requested the employment exchange to sponsor candidates in the ratio of 1:5. It is a settled legal position that merely because a candidate name is sponsored or considered for selection does not confer any right on such candidates and even a candidate in the select list does not have a vested right to secure employment. Secondly merely because the certificates of the petitioners were verified, it could neither create a vested right much less a perpetual right in favour of the petitioners, as they have failed to fall within the cut off requirement. In the preceding paragraphs, we have noticed the manner in which the cut off date has been reckoned. There has been no challenge by the petitioners to the fixing of the cut off date nor it is the case of any one of the petitioners that despite falling within the cut off date, they were not selected.

(xi) It was argued by the learned Senior counsel for the petitioner that the respondents appear to have been confused after the enactment of the RTE Act and the issuance of the notification by the NCTE introducing an exemption clause.

(xii) In our view there appears to be no confusion in the matter, as the recruitment process followed by the respondents is simple. The TRB, which is the recruiting agency called for names from the employment

exchange in the ratio of 1:5. The names sponsored by the employment exchange in the said ratio was considered and all candidates were called for certificate verification. At no point of time, there was any assurance in favour of any candidate that on completion of certificate verification, there is an assurance that they will be appointed. The selection has been made based on seniority in the employment exchange, which is based on the cut off date applying communal rotation. Thus such of those candidates, who had fallen within the cut off date and satisfied the other parameters, namely subject/communal status have been appointed. These appointments having been made pursuant to a recruitment process initiated prior to the NCTE notification dated 23.08.2010, were entitled for the benefit of the exemption as mentioned in clause 5/5a of the notifications. The necessary corollary being remaining candidates, who failed to fulfil the cut off date/communal rotation had to go back to the employment exchange and this has been demonstrated to have been done by the respondents and the names of the candidates are in the live register. Therefore, the interpretation given by the petitioner that none of the candidates, whose names were sponsored by the employment exchange are required to have TET on the sole ground that the recruitment process had commenced prior to the NCTE notification, dated 23.08.2010 is an argument stated to be rejected.

(xiii) It was argued by the learned Senior counsel for the petitioners that the Hon'ble Supreme Court in the case of Society of Unaided Private Schools of Rajasthan (supra), upheld the validity of the RTE Act and held it to be applicable from the academic year 2012-13, and the Constitution Bench in the case of Pramati Educational and Cultural Trust and others (supra), while affirming the judgment did not interfere with the applicability of the RTE Act from the academic year 2012-13 and these cases ought to be appreciated in the light of the date of applicability of the RTE Act.

(xiv) The contention raised is not tenable for the simple reason that there is no challenge to the notification issued by the NCTE nor the Government Order issued by the respondent making TET compulsory. The date of coming into force of the RTE Act is largely vis-a-vis the educational institutions and hence its applicability was fixed w.e.f., the academic session 2012-13. This could hardly have any impact on the recruitment process initiated by the Government by duly complying with the

NCTE notification. Hence, the notification of NCTE nor the Government Order making TET compulsory having not been put to challenge by the petitioners, the decision of the Hon'ble Supreme Court fixing the implementation of RTE Act to the Educational Institution from the academic session 2012-13 would not lend any support to the petitioners' case. Further more, there is nothing on record to show that there was any prohibitory order against the State Governments to implement the requirement of TET. The State Government followed the directive of NCTE issue during February 2011 to insist upon TET. This notification also was not challenged.

(xv) A contention was raised by the learned Senior counsel that the respondents are not justified in taking umbrage that actual appointments were made only in 2012 though notification was issued in 2010. The petitioners' case is founded on the exemption granted by NCTE in respect of certain cases. The exemption would benefit only those appointees, appointed before the date of the notification, thus it is immaterial as to when the actual appointments were made. The relevant date would be the date of the notification issued by NCTE. These issues cannot be canvassed by the petitioners in the absence of any challenge to the notification or the Government Orders. We agree with the submission of the learned Advocate General that the petitioners have no right to challenge the subsequent requirement made by TRB under the new recruitment policy and the petitioners will not acquire any indefeasible right to be appointed though there is unfilled vacancy.

(xvi) The decisions relied on by the learned counsel for the proposition that the vacancies, which occurred prior to the amended rule shall be governed by the old rule would have no applications to the facts and circumstances of the cases on hand. The petitioners do not dispute the settled legal principle that selected candidates have no vested right to secure an appointment and their case is that appointment shall not be denied arbitrarily. Further, the petitioners would state that they are not aggrieved by G.O.Ms.No.181, dated 15.11.2011, which made it mandatory to possess TET and therefore, they would state that they need not be challenged G.O.Ms.No.181. The contention put forth by the petitioners is self destructive. Once it is admitted that even a selected candidate has no vested right for appointment, that being the settled legal position, petitioners who were never selected would have no semblance of right to insist that the respondents should

appoint them in respect of certain vacancies, which were notified under the Government Order, since recruitment process commenced prior to 23.08.2010. At this stage useful reference may be made to the decision of the Hon'ble Supreme Court in the case of State of M.P. vs., Sanjay Kumar Pathak reported in 2008 (1) SCC 456, and the decision in the case of East Coast Railway vs. Appa Rao reported in (2010) 7 SCC 678, wherein the Hon'ble Supreme Court pointed out that it is trite that though names of persons appears in the select list, the same by itself would not give rise to a legal right unless the action on the part of the State is found to be unfair, unreasonable or malafide. The State, thus, subject to acting bonafide as also complying with the principles laid down in Articles 14 and 16 of the Constitution of India is entitled to take a decision not to employ any selected (sic candidate) even from amongst the select list.

(xvii) Further, the Hon'ble Supreme Court in K.Jayamohan vs. State of Kerala, reported in (1997) 5 SCC 170, held that it is settled legal position that merely because a candidate is selected and kept in the waiting list, he does not acquire any absolute right to appointment and it is open to the Government to make the appointment or not. It was further held that even if there is any vacancy, it is not incumbent upon the Government to fill up the same, but the Appointing Authority must give reasonable explanation for non-appointment. Further, the Hon'ble Supreme Court in All India SC&ST Employees' Assn., vs. A.Arthur Jeen, reported in (2001) 6 SCC 380, held that merely because the names of the candidates were included in the panel indicating their provisional selection, they did not acquire any indefeasible right for appointment even against the existing vacancies and the State is under no legal duty to fill up all or any of the vacancies as laid down by the Constitution Bench of the Hon'ble Supreme Court after referring to earlier cases in Shankarsan Dash vs. Union of India, reported in (1991) 3 SCC 47. Thus, the rules of the selection have not been changed in the midst of the selection process nor there is any arbitrariness in denying employment to the petitioners. In the light of the above, it is held that the petitioners have no right to claim in perpetuity to secure an appointment and Question No.5 is answered against the petitioners/appellants.

(xviii) In a batch of Writ Petitions in W.P.Nos.19588/2013 etc., batch, the petitioners who are similarly placed to that of the petitioners/appellants

herein filed Writ Petitions claiming appointment to the post of Secondary Grade Teachers/Graduate Assistants [B.T. Teachers], based on the certificate verification done during 2010-2011 without insisting TET. Justice D.Hariparanthaman in an elaborate judgment, dated 23.09.2013, considered the matter at length and dismissed all the Writ Petitions by common order dated 23.09.2013 and among other things held that when the Association of Teachers filed a Writ Petition in W.P.No.2108 of 2012, for identical relief, the same was dismissed by order dated 10.02.2012 and the same attained finality as no appeal was preferred against the said order. After considering all the aspects of the matter, it was pointed out that if the plea of the petitioners' therein was accepted then more than twenty thousand candidates could enter without having a minimum qualification of TET and this Court cannot issue such a direction to appoint them contrary to the statutory provisions and the constitutional mandates as held by the Hon'ble Supreme Court in the case of C.Rekhi Ray vs. High Court of Delhi reported in (2010) 2 SCC 637.

18. In the result, the questions framed by the Hon'ble Supreme Court are answered as follows:-

(i) The petitioners/appellants concede that there was no advertisement and the posts were notified by various Government orders, and the question is answered accordingly;

(ii) The petitioners/appellants do not dispute that the posts have been filled up and there is no challenge to the select list;

(iii) The petitioners/appellants concede that the selection was based on State wide seniority in the employment exchange coupled with communal rotation and not based on inter se merit.

(iv) The selection being only based on employment seniority and communal rotation, inter se merit was not the criteria for selection.

(v) In the light of the discussion in the preceding paragraphs, it is held that the petitioners/appellants have no vested right much less a right in perpetuity to have the appointment."

4. In view of the judgment of the Hon'ble Division Bench of this Court, no further adjudication is required in

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

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

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To

- 1.The State of TamilNadu,
Rep.by its Principal Secretary to Government,
School Education Department,
Fort St.George,
Chennai - 600 009.
- 2.The Chairman,
Teachers Recruitment Board,
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+1cc to the Government Pleader, S.R.No.74310

RR(CO)
GSP(29/11/2018)

W.P.No.28598 of 2014

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