

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 23.11.2017

Pronounced on: 03.01.2018

CORAM

THE HON'BLE MR.JUSTICE HULUVADI G.RAMESH
AND
THE HON'BLE MR.JUSTICE RMT.TEEKAA RAMAN

W.A.No.1406 of 2016

C.Senthil ... Appellant

-vs-

1.The Secretary,
Tamil Nadu Public Service Commission,
Chennai-600 006.

2.The Director of Collegiate Education,
College Road, Chennai-600 006.

- 3.C.Uma Devi
- 4.P.Prasanna Kumar
- 5.S.Arokiya Antonyraj
- 6.V.Sujitha
- 7.A.Thajunnishabi
- 8.S.Mahendran
- 9.J.Manohar Chendur Pandi
- 10.Jasinth Gracelin
- 11.K.Muthukumarasamy
- 12.C.Murugadhasan
- 13.K.Vasudevan
- 14.V.Veeran
- 15.Giridharan K
- 16.K.Mahalakshmi
- 17.D.Lizza Rajakumari
- 18.D.Anuradha
- 19.P.Ramesh
- 20.T.Narandran
- 21.S.Ananthaselvam
- 22.M.Srinivasan
- 23.M.Santhi
- 24.M.Kumaresan
- 25.Surulu Muruganandan
- 26.N.Vijayakumar
- 27.P.Sivakumar

28.M.Inbaraj
29.I.Selvarani
30.M.Ravi
31.Kumanan
32.Aruna K
33.N.Gowri
34.R.Gopika
35.M.Krishnamurthy
36.S.Senthil Kumar
37.S.Prasath
38.A.Riaz Khan
39.N.Vijayakumar
40.V.Lakshmi Praba
41.R.Prabakaran
42.T.Kumanan
43.Dr.I.John Parthiban
44.Vennial
45.P.Ramesh
46.D.Anuradha
47.N.Jawahar Benjamin
48.T.Rajaram
49.M.S.Moosa Mubarak Ali

50.J.Muthukumar
51.S.Murugan
52.P.Jothipriya

(R-50 to R-52 impleaded as party respondents vide order of this Court dated 27.06.2017 made in C.M.P.No.2726/2017 in W.A.No.1406/2016). Respondents

Appeal filed under Clause 15 of the Letters Patent, against the order passed by this Court in W.P.No.12157 of 2010 dated 18.04.2016.

W.P.12157 of 2010 : Petition under Article 226 of the Constitution of India Praying to issue a writ of Certiorarified Mandamus calling for the records After calling for the records relating to the impugned select list published by the 1st Respondent which contains the Register Number of 90 candidates by which those 90 candidates were admitted and allowed to attend the Oral Test / Interview which is scheduled to be held on 14.06.2010 quash the same and consequently direct the Respondents to include the Register Number of all the candidates including the Petitioner who were qualified in the Written Test and Physical Fitness Test for Oral Test and make the final selection and appointment to the post of Physical Director in the existing 43 notified vacancies both based on the total marks obtained by the candidates in the Written Test and Oral

Test / Interview together and award costs

For Appellant :: Mr.L.Chandrakumar for
Mr.K.K.Ramakrishnan

For Respondents :: Ms.C.N.G.Niraimathi for R1

Ms.N.R.Jasmine Padma for
R4 and R8

Mr.C.Selvaraju, Sr.Counsel for
M/s.C.S.Associates for R6, R19
and R31

Mrs.Nalini Chidambaram,
Sr.Counsel for Ms.C.Uma for R4, R8
R10, R11, R14, R17, R20, R21,
R24 & R27

Mr.Naveenkumar Murthy for
Mr.K.Ramasamy for R2, R30 and
R50 to R52

Mr.S.Gunaseelan for R47

JUDGMENT

RMT.TEEKAA RAMAN, J.

By an advertisement bearing No.210 issued on 29.07.2009, the Tamil Nadu Public Service Commission invited applications for appointment to 43 posts of Director of Physical Education in the Tamil Nadu Collegiate Education Services. The last date for receipt of applications was indicated as 31.08.2009. Paragraph 4 (B) of the advertisement indicated the educational qualifications prescribed for appointment to the said post and the same reads as follows:-

"(B) EDUCATIONAL QUALIFICATION: Candidates should possess the following or its equivalent qualification on the date of this Notification viz. 29.7.2009.

(i) Master's Degree in Physical Education (two years course) or Master's degree in sports or an equivalent degree with at least 55 percent of marks or its equivalent grade of B in the University Grants Commission 7 (Seven) points scale plus a consistently good academic records;

(ii) Record of having represented the University/College at the inter-University inter-Collegiate competitions or the State in National

championships;

(iii) Passed the Physical fitness test;

(iv) NET or SLET or an accredited Test shall remain the compulsory requirement for appointment as Director of Physical Education for those with Post Graduate Degree. However, the candidates having Ph.D Degree in the concerned subject are exempted from NET, SLET, or an accredited Test for PG level and UG level teaching. The candidates having M.Phil degree in the concerned subject are exempted from NET or SLET or an accredited Test for UG level teaching only."

2. But about 18 days before the issuance of the said advertisement, the University Grants Commission had notified a new set of Regulations. These Regulations were called the "UGC (Minimum Qualifications Required for the Appointment and Career Advancement of Teachers in Universities and Institutions affiliated to it) (Third Amendment) Regulations 2009". These Regulations came into force on 11.07.2009, when they were published in the Gazette of India. As per these Regulations, a pass in NET/SLET was stipulated as the minimum eligibility criteria for recruitment and appointment of Lecturers in Universities/Colleges/ Institutions. The proviso inserted by the amendment stipulated that candidates who are awarded Ph.D. Degree in compliance of the 2009 Regulations shall be exempt from the requirement of minimum eligibility of a pass in NET/SLET for recruitment and appointment as Assistant Professor or equivalent positions in Universities/ Colleges/ Institutions. This amendment which came into force on 11.07.2009 was omitted to be taken note of by the first respondent-TNPSC, when they issued the advertisement on 29.07.2009. The advertisement issued by TNPSC prescribed qualifications that were in existence before the amended Regulations came into force. Without any demur or protest, 2,443 candidates applied in response to the notification issued by the TNPSC. Out of them 1,299 candidates were admitted for the written examination held on 25.10.2009. But only 1,127 candidates appeared for the examination. Out of them 624 candidates were shortlisted for physical fitness test in the ratio of 1:15. The physical fitness test was conducted on 23.04.2010, 24.04.2010 and 05.05.2010. But only 587 candidates appeared for physical fitness test. Thereafter, a total of about 90 candidates in the ratio of 1:2, were invited for an oral test, in June 2010. Finding that their names did not find a place in the list of 90 candidates shortlisted for interview, a group of persons filed writ petitions, both on the file of the Principal Bench and on the file of the Madurai Bench of this Court. The writ petitions filed before the Madurai Bench were also taken up along with the writ petitions filed before the Principal Bench.

3.The case of all the petitioners in the writ petitions is that they are qualified even as per the amended UGC Regulations that came into force on 11.07.2009. Therefore, their simple contention is that candidates who do not fulfill the qualifications prescribed in the amended Regulations of UGC, ought not to have been called for interview and ought not to be selected. It remains to be stated that the writ petitioners are those who have applied in response to the advertisement issued by the TNPSC on 29.07.2009 and all of them appeared for the written test and have come up with the writ petitions only after finding themselves not included in the list of candidates shortlisted for interview. W.P.No.12157 of 2010 was filed with the following prayer:

"to issue a writ of Certiorarified Mandamus calling for the records relating to the select list published by the first respondent which contains the register number of 90 candidates by which those 90 candidates were admitted and allowed to attend the oral test / interview which is scheduled to be held on 14.06.2010, quash the same and consequently direct the respondents to include the register number of all the candidates, including the petitioner, who were qualified in the written test and physical fitness test for oral test and make the final selection and appointment to the post of Physical Director in the existing 43 notified vacancies, both based on the total marks obtained by the candidates in the written test and oral test / interview together and award costs;"

4.The learned single Judge gave a direction to the Tamil Nadu Public Service Commission to furnish a list giving a probable list of ultimate selectees along with their registration numbers and names together with an indication as to who among them were qualified as per UGC Regulations 2009. Accordingly, the Standing Counsel for the Public Service Commission produced in a sealed cover, the final tally of results. It was found from the final tally of results that out of 43 candidates who would have otherwise been selected, had there been no writ petitions, only 25 were qualified as per the amended Regulations of UGC even on the date of notification namely 29.07.2009.

5.After examining the matter in detail, the learned single Judge was of the view that allowing at least those 25 candidates who have now become successful in the interview and who were qualified even at the time of Notification, should be appointed. Accordingly, the writ petitions were disposed of directing the respondents therein to declare only those 25 candidates (i) who were fully qualified as per the amended UGC

Regulations even on the date of Notification and (ii) who have qualified for selection after interview, as having been selected for appointment. Accordingly, 25 persons have been appointed for the 43 posts.

6.The appellant herein is the 13th respondent in W.P.No.12157 of 2010. He completed B.Sc.Botany in the year 1998 and also completed M.PEd., in the year 2001 and M.Phil in the year 2003. He challenged the selection process, but the same was rejected on the ground that the writ petition was filed by him only after he participated in the selection process and he is not the aggrieved person as he did not become eligible to appear in the oral interview.

7.The learned counsel for the appellant has submitted that the learned single Judge has erred in issuing a direction to give appointment for 25 candidates without drawing the selection list on the basis of the marks and communal reservation, even while holding that all the writ petitions filed are not legally maintainable on the ground that the writ petitioners have filed the writ petitions challenging the recruitment notification only after participating in the recruitment. He also submitted that the learned single Judge ought to have considered the clarification issued by the University Grants Commission in the year 2010, before conduct of the interview, that the UGC Regulation 2009 is not applicable to the persons like that of the appellant, who had completed the M.Phil, before the 2009 regulations. He further submitted that the appellant had participated in the written test, physical test and oral interview and he successfully came out of all the tests, but his legitimate right of appointment with necessary qualification as prescribed under the recruitment notice has been deprived of, in view of the order passed by the learned single Judge and hence the order passed by the learned single Judge in the writ petition has to be set aside.

8.The learned counsel for the Tamil Nadu Public Service Commission has submitted that as per the directions passed by this Court in the writ petitions to select and recommend only 25 candidates, the Tamil Nadu Public Service Commission has carried out the said exercise and accordingly 25 persons were selected. She further submitted that since the appellant herein is not qualified, he has no locus standi to be selected and recommended. It is also stated in the counter affidavit filed by the Tamil Nadu Public Service Commission that the appellant herein has acquired post graduate in Physical Education, but neither he possess the qualification of Ph.D nor passed the SLET or NET and hence he is an ineligible candidate for the recruitment in question.

9. Mrs. Nalini Chidambaram, learned senior counsel appearing on behalf of the respondents 10, 11, 14, 17, 20, 21, 24 and 27, has submitted that in exercise of the powers conferred by Section 26(1)(e) of the University Grants Commission Act, 1956, UGC framed the Regulations in 1982 prescribing the qualification of M.Phil degree or a recognised degree beyond Masters level for the teaching post of lecturer in colleges and thereafter, UGC framed regulations on 19.09.1991 superseding the 1982 Regulations and providing apart from other qualifications, clearing NET as a test for eligibility to become a lecturer. Vide an amendment dated 21.06.1995, a proviso was added to the 1991 Regulations by which candidates who have submitted their Ph.D. thesis or passed M.Phil examination on or before 31.12.1993 are exempted from the said eligibility test for appointment to the post of lecturer. This was continued till 2002, the only change made being that the exemption continued qua Ph.D thesis holders for dates that were extended 31.12.2002. Thereafter the said third amendment, i.e., 2009 Regulations was promulgated by the UGC on 11.07.2009, as stated supra. Thereafter, the advertisement dated 29.07.2009 was issued by the TNPSC without noticing the third amendment and pursuant to the order passed by this Court in the writ petitions, 25 candidates were declared as eligible for the post of Director of Physical Education, who were fully qualified as per the 2009 Regulations of the University Grants Commission, i.e., the third amendment issued on 11.07.2009. While so, the University Grants Commission has issued the 2016 Regulations dated 12.04.2016 gazetted on 04.05.2016 pursuant to the directions issued by the HRD Ministry to protect the interest of candidates who have Ph.D or M.Phil degree prior to July 11, 2009 by exempting such candidates from NET/SLET for appointment as Assistant Professors. Clause 3.3.1 of the amended UGC Regulations 2016 reads as follows:

"NET/SLET shall remain the minimum eligibility condition for recruitment and appointment of Assistant Professors in Universities / Colleges / Institutions, provided, however, that candidates who are or have been awarded Ph.D degree in compliance with the University Grants Commission (Minimum Standards and Procedure for Award of Ph.D Degree) Regulations, 2009 shall be exempted from the requirement of the minimum eligibility condition of NET/SLET for recruitment and appointment of Assistant Professor or equivalent positions in Universities / Colleges / Institutions."

10. It has also been further submitted that the award of degrees to candidates registered for M.Phil / Ph.D programme prior to July 11, 2009 shall be governed by the provisions of the ten existing ordinances / By Laws / Regulations of the Institution awarding the degrees and the Ph.D candidates shall be exempted from the requirement of the minimum eligibility

condition of NET / SLET / SET for recruitment and appointment of Assistant Professors or equivalent positions in Universities / Colleges / Institutions subject to conditions. Thus, it is submitted that as per the 2016 amendment of UGC Regulations, candidates registered for M.Phil and Ph.D prior to July 11, 2009 shall be exempted from the requirement of the minimum eligibility condition of NET/ SLET for recruitment and appointment of Assistant Professors. In the circumstances, as on date, even the candidates who do not have NET / SLET qualifications are qualified to be appointed as Director of Physical Education in the Tamil Nadu Collegiate Education Services, provided such candidates have registered for M.Phil and Ph.D prior to July 11, 2009.

11.A counter affidavit has also been filed on behalf of the respondents 10, 11, 14, 21, 24 and 27 in which it is stated that they have now come to understand from the TNPSC that the names of respondents 10, 11, 14, 21, 24 and 27 and 4 others, viz., J.Muthukumar, A.Sivagami, M.Santhi and M.Ponnarasi are not in the short list of 43 candidates in view of G.O.Ms.No.91 (Higher Education Department) dated 03.04.2009. By the said Government Order, the Government declared that the M.Phil and Ph.D degrees obtained through the Correspondence / Distant Education / Open University System are ineligible for Government appointments and appointment as lecturers in Colleges/ Universities including self financing colleges. The respondents 10, 11, 14, 21, 24 and 27 and the said 4 other persons have obtained their M.Phil degree through correspondence course and hence their names were not included in the short list of 43 candidates despite getting high marks in the written test and oral interview. It has also been stated that the Government of Tamil Nadu has issued a clarification by letter No.8609A/F2/2014-1 dated 13.06.2014 to the Chairman, Teachers Recruitment Board, clarifying that the orders issued in G.O.Ms.No.91 stating that the M.Phil and Ph.D degrees obtained through correspondence / Open University System are ineligible for Government Appointments and appointment of Lecturers in colleges/ Universities including self financing colleges, will have only prospective effect, ie., from the date of issue of the Government Order. Stating so, it has been prayed to direct the Tamil Nadu Public Service Commission to prepare a merit list of 68 candidates who have applied for the post of Director of Physical Education, pursuant to the advertisement dated 29.07.2009, based on the marks obtained in the written test held on 25.10.2009 and oral test held on 14.06.2010 by including the names of these respondents and 4 others, stated supra, who have obtained M.Phil through distance education much prior to G.O.Ms.No.91, in the merit list, in view of the clarification issued by the Government by letter dated 13.06.2014 and submit the merit list to this Court and appoint the candidates for the 21 posts of Director of Physical

Education now lying vacant for the past 9 years from the said merit list, based on the ranking and communal reservation.

12.Mr.Naveenkumar Murthy, learned counsel for the respondents 30, 50, 51 and 52 has submitted that the recruitment notification dated 29.07.2009 did not mandate NET/SLET and in such circumstance, merit shall supersede NET/SLET as the criteria for recruitment and accordingly, 18 vacancies have to be filled as per the recruitment notification dated 29.07.2009. He further submitted that since TNPSC has not filed any appeal before this Court, it is clear that the Service Commission sustains their recruitment Notification and hence the said Notification has to be scrupulously followed for selection to the remaining 18 vacant posts. He also submitted that even as per the Notification, NET/SLET is only mandatory for appointment and hence, pending appointment, once these respondents have acquired NET/SLET, they are fully eligible to be appointed based on their merit as per the recruitment Notification even after taking into account the UGC's third amendment.

13.Heard the respective learned counsel for the parties and perused the materials available on record.

14.It is seen that the University Grants Commission has framed the Regulations in 1982 prescribing the qualification of M.Phil degree or a recognised degree beyond Masters level for the teaching post of lecturer in colleges and thereafter, UGC framed regulations on 19.09.1991 superseding the 1982 Regulations and providing apart from other qualifications, clearing NET as a test for eligibility to become a lecturer. Vide an amendment dated 21.06.1995, a proviso was added to the 1991 Regulations by which candidates who have submitted their Ph.D.thesis or passed M.Phil examination on or before 31.12.1993 are exempted from the said eligibility test for appointment to the post of lecturer. This was continued till 2002. Thereafter, the said third amendment, ie., 2009 Regulations was promulgated by the UGC on 11.07.2009, as stated supra. Thereafter, the advertisement dated 29.07.2009 was issued by the TNPSC without noticing the third amendment and pursuant to the order passed by this Court in the writ petitions, 25 candidates were declared as eligible for the post of Director of Physical Education, who were fully qualified as per the 2009 Regulations of the University Grants Commission, ie., the third amendment issued on 11.07.2009. Thereafter, it is seen that the University Grants Commission has issued the 2016 Regulations dated 12.04.2016 gazetted on 04.05.2016 pursuant to the directions issued by the HRD Ministry to protect the interest of candidates who have Ph.D or M.Phil degree prior to July 11, 2009 by exempting such candidates from NET/SLET for appointment as Assistant Professors. It is also seen that the award of degrees to

candidates registered for M.Phil / Ph.D programme prior to July 11, 2009 shall be governed by the provisions of the ten existing ordinances / By Laws / Regulations of the Institution awarding the degrees and the Ph.D candidates shall be exempted from the requirement of the minimum eligibility condition of NET/SLET/SET for recruitment and appointment of Assistant Professors or equivalent positions in Universities / Colleges / Institutions subject to conditions. Thus, as per the 2016 amendment of UGC Regulations, candidates registered for M.Phil and Ph.D prior to July 11, 2009 shall be exempted from the requirement of the minimum eligibility condition of NET/ SLET for recruitment and appointment of Assistant Professors.

15.Further it is seen that by issue of G.O.Ms.No.91 (Higher Education Department) dated 03.04.2009, the Government declared that the M.Phil. and Ph.D degrees obtained through the Correspondence / Distant Education / Open University System are ineligible for Government appointments and appointment as lecturers in Colleges/ Universities including self financing colleges. Further, the Government of Tamil Nadu has issued a clarification by letter No.8609A/F2/2014-1 dated 13.06.2014 to the Chairman, Teachers Recruitment Board, in which it is stated that the orders issued in G.O.Ms.No.91 stating that the M.Phil and Ph.D degrees obtained through correspondence / Open University System are ineligible for Government Appointments and appointment of Lecturers in colleges/ Universities including self financing colleges, will be only prospective effect, ie., from the date of issue of the Government Order.

16.In respect of considering the candidates as per the above said Government Order, the learned counsel for the Tamil Nadu Public Service Commission has submitted that the same has been taken note of and the same will not affect the selection of 25 candidates already made.

17.In view of the above stated circumstances, we are inclined to hold that the recruitment of 25 persons already made out of 43 candidates, is valid, as they were fully qualified as per the amended UGC Regulations even on the date of Notification and have qualified for selection after interview, as having been selected for appointment. In respect of the remaining 18 candidates, the first respondent - Tamil Nadu Public Service Commission is directed to prepare a merit list without insisting upon NET /SLET and to announce the results afresh in terms of the Notification issued by way of advertisement bearing No.210 dated 29.07.2009, without being influenced by the third amendment, and taking into account the 2016 Regulations dated 12.04.2016 gazetted on 04.05.2016 pursuant to the directions issued by the HRD Ministry to protect the interest of candidates who have Ph.D or M.Phil degree prior to July 11, 2009 by

exempting such candidates from NET/SLET for appointment as Assistant Professors, and also the clarification issued vide letter No.8609A/F2/2014-1 dated 13.06.2014 to the Chairman, Teachers Recruitment Board.

18.The writ appeal is disposed of accordingly. No costs.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

km
To

1.The Secretary,
Tamil Nadu Public Service Commission,
Chennai-600 006.

2.The Director of Collegiate Education,
College Road, Chennai-600 006.

+2cc to Mr.K.Ramasamy, Advocate, S.R.No.330

+1cc to Mr.N.R.Jasmine, Advocate, S.R.No.477

+1cc to M/s.C.S.Associates, Advocate, S.R.No.488

+1cc to Mr.C.Uma, Advocate, S.R.No.937

+1cc to Mr.S.Gunnaseelan, Advocate, S.R.No.301

+1cc to Mr.P.T.Ramadevi, Advocate, S.R.No.429

+1cc to the Government Pleader, S.R.No.1859

W.A.No.1406 of 2016

SAI (CO)
RRK(06/02/2018)

WEB COPY