

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT****Dated : 22.02.2018****CORAM :****WEB COPY****THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN****W.P(MD)Nos.2942, 3457, 3580, 3862 to 3865 of 2018
and****WMP(MD)Nos.3108, 3109, 3605, 3606, 3717, 3718,
and 4024 to 4031 of 2018**

M.ILLAMATHI ... PETITIONER in WP(MD) No.2942 of 2018

S.SABARIMALAI MADHA ... PETITIONER in WP(MD) No.3457 of 2018

- 1 A.CHRIS ROY
- 2 A.SHAMIM BANU
- 3 A.MERCY VASAN
- 4 R.C.HEMESH
- 5 M.KARMUHILAN
- 6 C.SIVARAJAN
- 7 M.BUVANESHWARAN
- 8 C.DHIVYA
- 9 S.SREETHAR
- 10 S.SANTHAKUMAR
- 11 T.SENTHIL MURUGAN
- 12 M.AMUTHAPRABAKAR
- 13 M.VIJAYAKUMAR
- 14 D.RAJBABU
- 15 C.PARTHIBAN
- 16 P.PRABHU
- 17 B.PREETHA
- 18 J.GULZAR BEGAM
- 19 K.MAHESWARI
- 20 A.VASANTHAKUMAR
- 21 S.MANOCHARAN
- 22 P.PRABAHARAN
- 23 V.PRAKASH
- 24 A.DURASAMY
- 25 B.NARMADA
- 26 C.AJITHAKALAIVANI
- 27 I.CATHERINE
- 28 M.P.PRASHANTH
- 29 C.PRIYA
- 30 P.GOPI
- 31 R.HARISH
- 32 S.VENKATAKRISHNAN
- 33 M.SANTHAPRIYA



34 P.BALAKUMAR
35 N.REVATHI
36 K.MOSES
37 A.DAISON RAJ
38 P.KRISHNAVENI
39 C.R.KAVITHARANI
40 D.MAYAKANNAN
41 P.GANDHI
42 S.PACKIYARAJ
43 N.VIJAYA
44 M.ANNAM
45 K.MARIAPPAN
46 K.UDAYAKUMAR
47 S.V.ANANDHI
48 P.JEYALAKSHMI
49 C.PANDIYARAJAN
50 L.EMMANUVEL
51 S.ANANTHA KRISHNAN
52 M.SOMU
53 V.SHARMILA
54 T.POONGOTHAI
55 G.S.RIZWANA BANU
56 L.MALATHI
57 J.JEYABHARATHI
58 V.RAM PRABHA
59 S.GAYATHRI
60 A.SRIDEVI
61 K.TAMILARASAN
62 P.KISHOREJEE
63 P.DEEPA
64 C.KARTHIKA
65 T.KARTHIKEYAN
66 D.SANKAR
67 P.NIROSHA
68 M.MUTHUKANNAN
69 R.SATHIYA PRIYA
70 P.LAKSHMI PRIYA ... PETITIONERS in WP(MD) No.3580 of 2018

P.NISHA ... PETITIONER in WP(MD) No.3862 of 2018

R.SARANYA ... PETITIONER in WP(MD) No.3863 of 2018

M.TAMIL THENDRAL ... PETITIONER in WP(MD) No.3864 of 2018

J.BALAKRISHNAN ... PETITIONER in WP(MD) No.3865 of 2018



1. The State of Tamil Nadu,
Rep.by its Secretary,
Higher Education Department,
Secretariat, Chennai.
2. The Chairman,
Teachers Recruitment Board,
4th Floor, E.V.K.Sampath Maligai,
College Road, Chennai - 6.
3. The Member Secretary,
Teachers Recruitment Board,
4th Floor, E.V.K.Sampath Maligai,
College Road, Chennai. ... Respondents in all WPs.

Prayer : Writ Petition is filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, to call for the records relating to the impugned order passed by the second respondent vide his proceedings nil dated 09.02.2018 and quash the same as illegal and consequently to make selection on the basis of the marks secured by the petitioner in the written examination pursuant to the notification issued by the second respondent in his proceedings notification No.06/2017 dated 28.07.2017 for appointment to the post of Lecturers in various disciplines in Government Polytechnic Colleges for the year 2017-18 in all WPs.

For Petitioner : Mr.Ajmalkhan
Senior Counsel
for Ms.Ajmal Associates.
in WPs 2942 & 3580 of 2018

: Mr.Ajmalkhan
Senior Counsel
for Mr.E.Marees Kumar
in WP(MD) 3457 of 2018

: S.Vanchinathan,
Counsel for Petitioner in WP(MD)No.
3862 to 3865 of 2018

For Respondents : Mr.V.R.Shanmuganathan,
Special Government Pleader in all WPs

COMMON ORDER

Heard the learned Senior Counsel appearing for the petitioners and the learned Standing Counsel/Special Government Pleader appearing for the respondents.

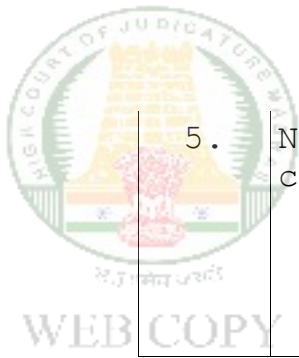
2. In all these writ petitions, the challenge is to the cancellation of the recruitment examination conducted by the Teachers Recruitment Board on 16.09.2017 for the direct recruitment of Lecturers in various disciplines in Government Polytechnic Colleges for the year 2017-18 as per Advertisement No.06/2017 dated 28.07.2017. This decision of the Teachers Recruitment Board was published by way of press release on 09.02.2018. It has been stated further that notification for a fresh examination will be issued during the 1st week of May 2018 and that the examination will be conducted during the 1st week of August 2018. By way of concession, it has been clarified that the candidates who already applied for the examination as per Advertisement No.6/2017 dated 28.07.2017 have to apply again but that they need not pay the examination fees. However, new candidates can also apply for the examination.

3. The petitioners in these writ petitions are spread all over Tamil Nadu. They belong to various categories. When the Teachers Recruitment Board issued Notification No.6/2017 dated 28.07.2017 inviting applications from eligible candidates for appointment to the post of Lecturer in various disciplines in Government Polytechnic Colleges for the year 2017-18, the petitioners applied in response thereto. They were all issued with hall tickets and they wrote the written examination that was held on 16.09.2017. The petitioners were provisionally selected for the purpose of certificate verification in the ratio of 1:2. The certificate verification process for the engineering subject was to be held on 23.11.2017, 24.11.2017 and 25.11.2017 and in respect of non engineering subject, it was held on 24.11.2017 and 25.11.2017.

4. It is now submitted that the certificate verification for non engineering subject is over. However, certificate verification for engineering subject was postponed. At that stage, the impugned announcement was made. Aggrieved by the decision of the Teachers Recruitment Board to cancel the entire examination, these writ petitions have been filed.

5. The respondent Board has filed its counter affidavit. The details pertaining to the aforesaid recruitment process has been set out in a Tabular format. It reads as under :

1.	Vacancy Notified	1058
2.	Candidates applied	1,70,365
3.	Candidates appeared for examination	1,33,568
4.	Date of Examination	16.09.2017



5.	No.of candidates called for certificate verification	Total - 2110
		Engineering - 1391
		Non-Engineering - 719

		2110

6.The stand of the Board is that when the recruitment process was at a midway stage complaints were received from certain candidates alleging that certain discrepancies were noticed in the certificate verification list. Thereupon, the Board conducted a detailed enquiry and based on the enquiry, it decided to withdraw the certificate verification process. The Board also uploaded the images of OMR answer sheets of all candidates in the Website on 11.11.2017 and called upon the candidates to submit their representations up to 18.12.2017. The Board also lodged a complaint against the agency which was entrusted with the task of evaluation of OMR sheets with the Commissioner of Police, Chennai City. In this regard, Crime No.468 of 2017 was registered on 21.12.2017. The police investigation is in progress.

7.In the meanwhile, this Court took up the matter and registered the same as a *suo motu* Public Interest Litigation in WP (MD)No.1798 of 2018. The Board took the view that only when the police investigation reaches finality, it would be possible to finalise/identify the persons who unlawfully benefited. In this view of the matter, the Teachers Recruitment Board thought it advisable to cancel the entire selection process. The object of the Board is to ensure that the entire recruitment is stain free. The Board took pains to impress upon this Court that its actions are bonafide. When allegations pertaining to evaluation were brought to the notice of the Board, it took immediate action by ordering for enquiry. It published the OMR sheets of all the candidates and called upon them to furnish their representations. As many as 119 representations were received from the candidates. The Board after due enquiry came to the conclusion that some candidates were awarded more marks than what they actually would have secured in the final result. However, the Board has made a strange claim in Paragraph No.12 of the Counter affidavit that since it is not conversant with the technicalities involved in the process of online applications and E-governance management system, it decided to cancel the recruitment process and issued fresh notification. The Board has called upon this Court to dismiss all these writ petitions as devoid of merits.

8.The Teachers Recruitment Board as the very name itself would indicate is only a recruitment agency. As and when the Government notifies the number of vacancies to be filled up, the function of the Board is to conduct the recruitment process and submit a list of selected candidates to the Government. In the present



case, the Government of Tamil Nadu notified the Teachers Recruitment Board that there are as many as 1058 vacancies in the post of Lecturers in various disciplines in Government Polytechnic Colleges to be filled up for the year 2017-18. Thereupon, the Board issued notification No.6/2017 on 28.07.2017 calling for applications only through online mode from eligible candidates. The last date of submission of applications through online mode was 11.08.2017 and the date of written examination was 16.09.2017. The Teachers Recruitment Board thereafter prepared the question papers and also the Key answers by availing services of the academic experts. The process of setting the question papers was carried out with utmost confidentiality.

9.It is nobody's case that there was any leakage of the question papers. The applications received from the candidates were scrutinised and hall tickets were issued. Individual Registration Numbers were assigned to the candidates. As many as 1,33,568 candidates wrote the examination on 16.09.2017. It is again nobody's case that there was mass copying or any commission of malpractice. In other words, even according to the Teachers Recruitment Board, the examination was properly conducted. After the examination was over, the OMR sheets written by the candidates were collected from the individual examination centres under seal and deposited in the office of the Teachers Recruitment Board. Again that there was no commission of any malpractice. The OMR sheets written by the candidates were thereafter scanned and stored in Hard Disk and the Hard Disk is retained by the chairman of the Teachers Recruitment Board. It is again not the case of the Teachers Recruitment Board that the said Hard Disk has been tampered with. Original OMR sheets are still available.

10.As already pointed out, the OMR sheets have also been duly uploaded in the official Website of Teachers Recruitment Board. Copies of the OMR sheets were taken from the Hard disk and given to an external agency for evaluation. In this case, one M/s.Datatec Methodex Pvt Ltd., a Noida based company was entrusted with the task of the preparing the final list for certificate verification. The said agency submitted the final list to Teachers Recruitment Board based on which call letters were sent to selected candidates for certificate verification in the ratio of 1:2.

11.It is at that stage one Vijay Anandh lodged a complaint with Prime Minister's Office that something fishy had taken place. Thereupon, the said complaint was forwarded by the Prime Minister's Office to the Principal Secretary to State of Tamil Nadu and then to the Teachers Recruitment Board. Thereupon, the Teachers Recruitment Board cross checked the evaluation results. It was ascertained that marks of 196 candidates were fraudulently altered. In this regard, enquiry was conducted and it was



ascertained that one Shaik Dawood Nazzar, who was deputed by the said agency evaluated the OMR sheets, prepared merit list, CV list and final list, had indulged in these fraudulent activities for illegal gratification. Thereafter, the Member Secretary of TRB lodged a complaint with the Commissioner of Police, Chennai City. Arrests have been made and the principal accused Shaik Dawood was also taken to police custody and interrogated. The information presently available with Teachers Recruitment Board indicates that there has been a conspiracy involving a large number of persons.

12. The learned standing counsel/Special Government Pleader therefore emphasises the fact that the Teachers Recruitment Board is at present not in a position to say to what extent there was commission of illegalities. Therefore, it chose to be abundantly cautious and in order to ensure that the recruitment process was completely stain free, it cancelled the entire examination.

13. The learned counsel standing counsel/Special Government Pleader placed reliance on the decision of the Hon'ble Supreme Court of India reported in **(2002) 3 SCC 146 (Union of India vs. O. Chakradhar)**. Paragraph Nos.8 and 12 of the said decision were particularly relied upon. They read as under :

"8. In our view the nature and the extent of illegalities and irregularities committed in conducting a selection will have to be scrutinized in each case so as to come to a conclusion about future course of action to be adopted in the matter. If the mischief played is so widespread and all-pervasive, affecting the result, so as to make it difficult to pick out the persons who have been unlawfully benefited or wrongfully deprived of their selection, in such cases it will neither be possible nor necessary to issue individual show cause notices to each selectee. The only way out would be to cancel the whole selection. Motive behind the irregularities committed also has its relevance.

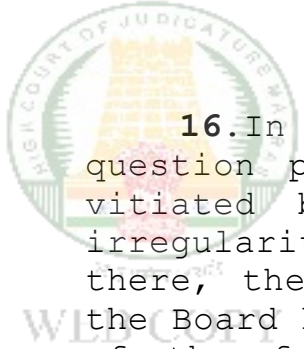
12. As per the report of the CBI whole selection smacks of mala fides and arbitrariness. All norms are said to have been violated with impunity at each stage viz. right from the stage of entertaining applications, with answer-sheets while in the custody of Chairman, in holding typing test, in interview and in the end while preparing final result. In such circumstances it may not be possible to pick out or choose a few persons in respect of whom alone the selection could be cancelled and their services in pursuance thereof could be terminated. The illegality and irregularity are so intermixed with the whole



process of the selection that it becomes impossible to sort out the right from the wrong or vice versa. The result of such a selection cannot be relied or acted upon. It is not a case where a question of misconduct on the part of a candidate is to be gone into but a case where those who conducted the selection have rendered it wholly unacceptable. Guilt of those who have been selected is not the question under consideration but the question is, could such selection be acted upon in the matter of public employment? We are therefore of the view that it is not one of those cases where it may have been possible to issue any individual notice of misconduct to each selectee and seek his explanation in regard to the large-scale widespread and all pervasive illegalities and irregularities committed by those who conducted the selection which may of course possibly be for the benefit of those who have been selected but there may be a few who may have deserved selection otherwise but it is difficult to separate the cases of some of the candidates from the rest even if there may be some. The decision in the case of Krishna Yadav (supra) applies to the facts of the present case. The Railway Board's decision to cancel the selection cannot be faulted with. The appeal therefore deserve to be allowed."

14. The learned standing counsel/Special Government Pleader also contended that there is no vested or accrued right in favour of the petitioners and that therefore he would contend that the writ petitions are liable to be dismissed as not maintainable. He would also point out that only a few individuals are before this Court and that therefore the decision taken in larger interest may not be interfered with.

15. The learned senior counsel appearing for the petitioners on the other hand pointed out that the settled principle of law in these matters is that the entire recruitment process can be quashed only if it is not possible to segregate the tainted candidates from non tainted candidates. He placed reliance on the decisions of the Hon'ble Supreme Court reported in **1990 (Supp) SCC 692 (Anamica Mishra v. U.P. P.S.C), (2003) 7 SCC 285 (Union of India and others v. Rajesh P.U., Puthuvalnikathu and another)** and **(2014) 6 SCC 644 (Joginder Pal v. State of Punjab)**. He would further contend that the recruitment process involved several stages. The recruiting agency would be justified in cancelling entire recruitment process only if all the stages are vitiated by illegality and irregularity. If certain stages are not tainted by any such illegality and irregularity, it would not be fair on the part of the Board to cancel the same also.



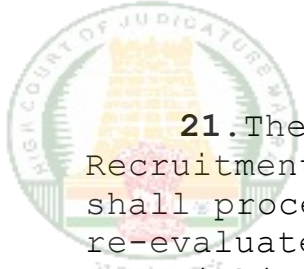
16. In this case, admittedly there was no leakage of the question papers. The conduct of the examination was also not vitiated by any illegality and irregularity. The fraud or irregularity had crept in only at the stage of evaluation. Even there, the entire evaluation process was not tainted. In fact, the Board had correctly located the persons who were beneficiaries of the fraudulent altering of the marks. The learned senior counsel would therefore contend that in this case, it is possible to segregate the tainted candidates.

17. However, the learned standing counsel/Special Government Pleader for the respondents would point out that the investigation is still pending at a very preliminary stage. Therefore, it is not possible to limit the number of tainted candidates. As already suspected, there appears to be a larger conspiracy. But, in any event, the fraud has crept only at the evaluation stage.

18. This Court is therefore of the view that it is possible to segregate the non-tainted stages of the selection process from the subsequent stage of evaluation. When admittedly the examination was conducted in a proper manner, it is not fair on the part of the Board to make the candidates to sit for examination once again. It is true that the petitioners have no indefeasible right to be selected. They have only been called for certificate verification. No substantive rights have accrued in their favour. But, in this case the issue is to be viewed from another perspective. The question is not whether the rights of the petitioners have been infringed or not. The question is whether the decision of the Teachers Recruitment Board to cancel the entire selection process is fair or not.

19. As already pointed out even according to the stand taken by the second respondent Board/T.R.B is that it was only the evaluation process which was vitiated by irregularity and fraud and not the stages prior to it. In this case, it is possible to segregate the two stages. Admittedly, the original answer sheets written by the candidates are very much available in an intact form with the Board.

20. The principle of severability has to be applied here. The entire selection process is to be quashed if it is vitiated totally. If a single drop of poison is put in a tumbler of milk, the entire milk will become unfit for consumption. There is no question of segregation thereafter. Even the celestial swan can separate only the water from milk. Such is not the position here. Segregation is definitely possible. The non-tainted stages remain independent and intact. This Court is of the view that Teachers Recruitment Board has needlessly pressed the panic button. This Court also expresses its disapproval of the reason set out in Para.12 of the counter.



21. Therefore, this Court quashes the decision of the Teachers Recruitment Board to cancel the entire examination. The Board shall proceed from the stage where the mistake crept in. It shall re-evaluate all the answer sheets afresh. This shall be carried out within twelve weeks from the date of receipt of a copy of this order. Of course, the certificate verification process shall have to be re-done. As a result, all these writ petitions are partly allowed. No costs. Consequently, all the connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(RTI)

/True Copy/

Sub Assistant Registrar

To

1. The Secretary, Higher Education Department,
Secretariat, Chennai.
2. The Chairman, Teachers Recruitment Board,
4th Floor, E.V.K.Sampath Maligai,
College Road, Chennai - 6.
3. The Member Secretary, Teachers Recruitment Board,
4th Floor, E.V.K.Sampath Maligai, College Road, Chennai.

+3cc to M/s. Ajmal Associates, Sr.No.50631,50632,50686
+4cc to Mr.S.Vanchinathan, Advocate Sr.No.51118 to 51121

SKM

VB/JC/SAR2/20.03.2018/10P/11C

**W.P(MD)No.2942, 3457,
3580, 3862 to 3865 of 2018
22.02.2018**