

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.02.2019

CORAM

THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.5077 of 2019
and W.M.P.Nos.5789 & 5791 of 2019

- 1.R.Suresh
- 2.V.Elavarasan
- 3.T.Ilayaraja
- 4.K.Sarathamani
- 5.M.Kandhappan
- 6.J.Jayakanth
- 7.D.Sundaramurthi
- 8.K.S.Karthikeyan
- 9.G.Premnath
- 10.P.Bharathi
- 11.J.Papathi
- 12.B.Jeyakannan
- 13.E.Sivakumar
- 14.A.Kasimani
- 15.J.Sivakumar
- 16.K.Anbu
- 17.I.Arockiam
- 18.K.Maharajan
- 19.B.Natarajan
- 20.G.Senthil Kumar
- 21.T.Dineshkumar

... Petitioners

-Vs-

सत्यमेव जयते

- 1.The State of Tamil Nadu
rep.by its Principal Secretary to Government
School Education Department, Secretariat
Fort St.George, Chennai 600 009.

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

- 3.The Chairman, Teachers Recruitment Board
4th Floor, EVK Sampath Maligai, DPI Campus
College Road, Chennai 600 006.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus to consider the petitioners for selection and appointment to the post of Physical education teacher based on the Notification No.05/2017 dated 26-7-2017 issued by 3rd respondent as per the marks secured by the petitioners in the selection in the respective reserved category by taking into consideration of certificate of Physical education (CPED) and Diploma of Physical education(DPED) as eligible qualification with all consequential and other attendant benefits within a time frame to be fixed by this Honble court.

For Petitioners : Mr.G.Sankaran
For Respondents : Mr.A.RajaPerumal,
Addl.Govt.Pleader - for R1&R2
Mr.C.Munusamy, Special Govt.Pleader - for R3

ORDER

The legal principles governed in respect of the issues raised in the present writ petition are that the terms and conditions, educational qualifications, age limit and other criteria fixed in the recruitment notification, pursuant to the rules, are binding on the candidates, who are all participating in the process of selection and also the unselected candidates cannot challenge the very process of selection in view of the fact that they are not qualified and possessing the requisite qualifications as per the recruitment notification.

2. The facts in nut shell to be considered in the present writ petition are that the writ petitioners are unsuccessful candidates for recruitment to the post of Physical Education Teachers in the School Education Department. Admittedly, all the petitioners had participated in the process of selection. As per the learned counsel for the writ petitioners, some of the writ petitioners are possessing Certificate course in Physical Education (C.P.Ed) and others are possessing Diploma in Physical Education (D.P.Ed). Learned counsel for the writ petitioner states that both Certificate course in Physical Education (C.P.Ed) and Diploma in Physical Education (D.P.Ed) are equivalent to that of the qualifications prescribed in the recruitment notification for appointment to the post of Physical Education Teachers, and therefore, the Government Orders in this regard are to be considered. Learned counsel for the petitioners states that the qualification of Certificate and Diploma in Physical Education are valid qualification for appointment to the post of Physical Education Teachers and therefore, the

same are also to be considered by the competent authorities for providing appointment to all these writ petitioners.

3. It is further contended that during earlier occasions, the competent authorities appointed candidates possessing Certificate of Physical Education as well as Diploma in Physical Education. This being the factum, the earlier procedure must be continued in respect of the present selection also. The grievance of the writ petitioners is that though the practice of appointing the candidates possessing Certificate of Physical Education as well as Diploma in Physical Education, earlier adopted, if continued in respect of the present recruitment, then they are entitled to be considered along with all other candidates for selection to the post of Physical Education Teachers. Learned counsel for the writ petitioners referred to G.O.Ms.No.126, School Education Department dated 13.11.2003. On a perusal of the above said Government Order, it is seen that the said order relates to the norms and procedures for admission to the Certificate Course in Physical Education (C.P.Ed). The Government Order, however, does not speak about any equivalence of any other course or regarding the eligibility to the post of Physical Education Teachers in the School Education Department. The very content of the Government Order is in relation to the norms and procedures for admission to the Certificate Course for Physical Education (C.P.Ed). Thus, the said Government Order is of no avail, as far as the case of the writ petitioners are concerned.

4. Learned counsel for the writ petitioners further referred to G.O.Ms.No.241, School Education Department dated 27.11.2006. In the said Government Order also, the proposal submitted by the Director of School Education was considered by the Government and the name of the course was re-designated as Diploma in Physical Education. The name change of Diploma in Physical Education will not provide any support to the case of the writ petitioners, as even after the name change, the recruitment notification did not prescribe the said qualification as an eligible qualification for selection to the post of Physical Education Teachers.

5. Learned Special Government Pleader appearing on behalf of the respondents, disputed the contentions stating that in W.A.No.65 to 70 of 2019 etc., the Honourable Division Bench of the Madurai Bench of this Court passed a judgment on 12.02.2019. However, those writ appeals are filed by the selected candidates. Even in that case, while disposing of the writ appeals, the Division Bench has issued the following directions in paragraph 5 of the judgment.

"Hence, these Writ Appeals are allowed and disposed of with the following directions.

i. The appellants in these appeals ie., the selected candidates are entitled to get appointment as per recruitment notification.

ii. The official respondents shall proceed further with the process of appointment in the manner known to law as their appointments will not be subject to the outcome of connected writ appeals pending before this Court.

iii. This exercise shall be completed within a period of four weeks from the date of receipt of a copy of this order.

iv. The writ appeals filed by the writ petitioners (who have not been selected) and the State will be dealt with separately."

6. Learned Special Government Pleader further contended that the present writ petitioners are unqualified persons as well as they are not selected in the selection process. Thus, they have no locus standi to file the writ petitions in respect of the procedures followed by the competent authorities in accordance with the recruitment notification.

7. Let us now look into the recruitment notification, which is enclosed in Page 6 of the typed set of papers filed in support of the writ petition. The notification states that the applications are invited only through on line mode from eligible candidates upto 11.59 PM on 18.09.2017 for direct recruitment to the post of Special Teachers (Physical Education, Drawing, Music, Sewing) in School Education Department for the years 2012-2016. The prescribed qualification as per the notification are extracted hereunder.

POST	PRESCRIBED QUALIFICATIONS
PHYSICAL EDUCATION TEACHER	1. General Educational Qualification : SSLC / Higher Secondary 2. Technical qualifications i. a) Pass in Pre University or Higher Secondary or Teachers School Leaving Certificate (Secondary Grade or Senior Basic) and b) Government Teachers Certificate of Higher Grade in Physical Education or ii. a) Pass in Secondary School Leaving Certificate (SSLC) and b) Government Teachers Certificate of Lower Grade in Physical Education or iii. A Bachelor degree in Physical Education (B.P.Ed) or iv. A Bachelor degree in Physical Education and Sports (B.P.E.S) offered by the YMCA College of Physical Education, Chennai or a qualification equivalent thereto. v. A Master Degree in Physical Education and Sports offered by Annamalai University (directly acquired M.P.E.S without the degree of B.P.E.S.) or vi. A Bachelor degree in Mobility Science for the Disabled (B.M.S.) offered by the YMCA College of Physical Education, Chennai and other similar colleges teaching Physical Education. Or vii. A Master Degree in Physical Education (M.P.Ed) whether acquired through regular course or directly acquired without acquiring a Bachelore degree in Physical Education (B.P.Ed).

8. Nowhere in the above notification, the qualification of Certificate in Physical Education (C.P.Ed) or the changed nomenclature of Diploma in Physical Education (D.P.Ed) is prescribed for appointment to the post of Physical Education Teachers. The learned counsel for the petitioner, though referred to Clause 2 viz., the Government Teachers Certificate of Lower Grade in Physical Education, the learned Special Government Pleader submits that it is unconnected with the course undergone by the writ petitioners viz., Diploma in Physical Education.

9. The equivalence of the degrees, diplomas, certificate courses, are to be considered by the competent expert body and only on the basis of the recommendations of such expert body, the Government has to pass orders granting equivalence. The equivalence of the degrees cannot be granted by the Courts. The equivalence of the degrees, diplomas or any other course must be dealt with in accordance with the procedures contemplated under Section 25 of the Tamil Nadu Government Servants (Conditions of Service) Act 2016, which enumerates the special qualifications. Section 25 of the said Act reads as follows.

"No person shall be eligible for appointment to any service, class, category or grade or any post borne on the cadre thereof unless he,

(a) possesses such special qualifications and has passed such special tests as may be prescribed in that behalf in the special rules; or

(b) possesses such other qualifications as have been declared to be higher than or equivalent to the said special qualifications or special tests-

(i) by the Government in consultation with the Committee constituted under the Chairmanship of the Chairman, Tamil Nadu Public Service Commission for the purpose, in cases where the appointment has to be made in consultation with the Commission; and

(ii) by the Government or by the appointing authority with the approval of the Government in other cases."

10. Thus, it is made clear that the equivalence of the qualifications are to be done in the manner prescribed. The Government has to issue orders in this regard, granting equivalence in respect of various degrees and diplomas granted by various Universities across the country. By comparing the change of name of the course or by verification of the subjects and academic pattern, the High Court cannot grant equivalence by exercising the powers of judicial review. The scope of judicial review under Article 226 of the

Constitution of India does not permit the High Court to exercise the power of expertise in the field of education or as a matter of fact any other field. The High Court is not an expert in respect of the field of education or other technology. The opinion of the expert body in this regard is of paramount importance in respect of grant of equivalence. The pattern of academic studies, subjects prescribed, pattern of examination conducted, duration of the course etc., are to be considered by the authorities competent viz., the committee for the purpose of passing an order by the Government. Only in the event of passing such an order by the Government, degrees can be equated and not otherwise. By a plain reading of the course viz., Certificate course or Diploma course, the High Court cannot grant the relief stating that this particular course also can be considered as an eligible qualification for the purpose of selection for appointment to the post of Physical Education Teachers. Such an exercise, if done by the Courts, is undoubtedly beyond the jurisdictional purview of judicial review. Thus, this Court would not be in a position to hold that the qualification now possessed by the writ petitioners are equivalent to the qualifications prescribed in the notification.

11. This apart, there may be number of courses which are all equivalent and the degrees are also may be equivalent. In the absence of any such declaration by the competent authorities, the benefit of equivalence cannot be granted even if certain qualifications or degrees granted by various other Universities are akin to each other. The grant of equivalence must be specific and by way of a Government Order by the appropriate Government and only in such an event, the candidates, who are participating in the selection process is eligible to seek consideration based on all such equivalence.

12. As far as the present writ petition is concerned, admittedly, the writ petitioners are not possessing the requisite educational qualifications as prescribed in the recruitment notification. Admittedly, the writ petitioners are not selected in the process of selection. This apart, the non selection of these petitioners were indicated by the Teachers Recruitment Board by way of a communication. Those orders are also not under challenge. Contrarily, the present writ of mandamus is filed for a direction to direct the respondents to consider the petitioners for selection and appointment to the post of Physical Education Teachers based on the notification No.05/2017 dated 26.07.2017. Considering the case of the petitioners for selection and appointment would arise only if they are selected and as per the recruitment rules and conditions in force. Thus, the prayer for direction sought for in the present writ petition is certainly misconceived and not based on any selection or based on any equivalence order passed by the Government or based on the qualifications prescribed in the recruitment

notification. Contrarily, the writ petitions are filed based on certain Government Orders, which are irrelevant as far as the equivalence of degrees and diplomas are concerned.

13. The competent authorities, while undertaking the process of selection, must be vigilant and they should ensure that the rules and the conditions stipulated in the recruitment notification are scrupulously followed. The competent authorities cannot violate the terms and conditions as well as the educational qualification, age and other criteria fixed in the recruitment notification. Equal opportunity in public employment is a Constitutional mandate. All eligible candidates, who all are aspiring for public employment must be provided with an opportunity. The equality clause enshrined under Article 14 and 16 of the Constitution of India must be carefully adhered to by the competent authorities, while undertaking the process of selection. Lakhs and lakhs of youth of this great nation are burning their midnight lamp for securing public employment by participating in the open competition. If any back door procedures are adopted, then the young minds will get frustrated in respect of the system of appointment. Thus, the competent authorities as well as the State must be cautious and vigilant in respect of the implementation of the terms and conditions as well as the service rules in force with utmost care and without any violation or discrimination. This being the legal principles settled, this Court is of an opinion that the writ petitioners have not made out any acceptable ground or prima facie case for entertaining the writ petitions, as they are not selected in the process of selection and they are not qualified as per the recruitment notification and the qualifications prescribed. Thus, the writ petition is devoid of any merits and stands dismissed. No costs. Consequently, connected miscellaneous petitions are also dismissed. It is needless to mention that the qualified and eligible persons are considered strictly with reference to the recruitment notification published.

Sd/--

Assistant Registrar(CS iii)

//True Copy//

Sub Assistant Registrar

KST

- 1.The Principal Secretary to Government
School Education Department, Secretariat
Fort St.George, Chennai 600 009.
- 2.The Director of School Education, DPI Campus
College Road, Chennai 600 006.

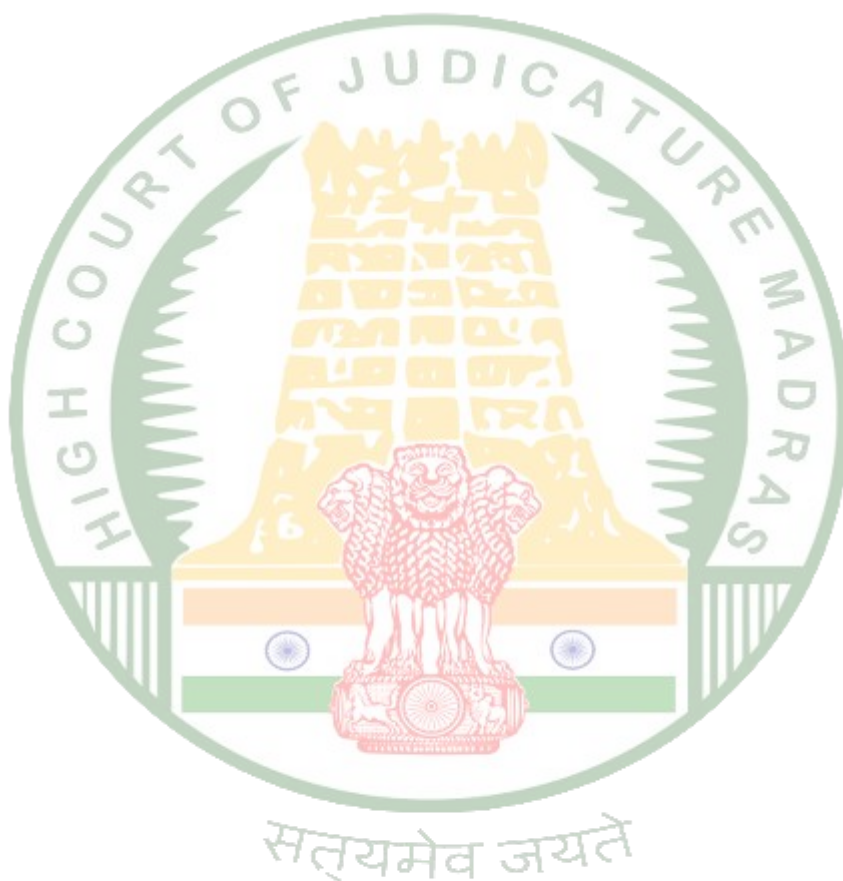
3.The Chairman, Teachers Recruitment Board
4th Floor, EVK Sampath Maligai, DPI Campus
College Road, Chennai 600 006.

+1cc to Mr. G.Sankaran, Advocate SR.No. 16893

+1 CC TO GOVERNMENT PLEADER SR.NO. 16960 and 16982

W.P.No.5077 of 2019

A.SK(20/03/2019)



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