

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.12.2019

CORAM

THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

W.P No.30838 of 2019
and W.M.P.No.30920 of 2019

V.Saravanan

Petitioner

vs.

1. The State of Tamil Nadu,
Rep by its Secretary to Government,
School Education Department,
Secreatariat, Fort St. George,
Chennai - 600 009.
2. The Director of School Education,
DPI Campus,
College Road,
Chennai - 600 006.
3. The Member Secretary,
Teacher 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 for issuance of a Writ of Certiorarified Mandamus, to call for the records relating to the impugned proceedings by the 3rd respondent in RC.No.8963/R5/2017 dated 17.10.2019 and to quash the same and consequently directing the respondents to award marks for Question No.27 'C' Series and Question No.82 'C' Series paper in Physics subject, based on the proof produced and consequently consider the petitioner for selection and appointment to the post of P.G.Assistant (Physics) as per Advertisement/Notification No.03/2017 dated 03.05.2017 within a time frame to be fixed by this Court.

For Petitioner : Mr.S.Nedunchezhiyan

For Respondents: Mrs.V.Annalakshmi

Government Advocate for R1 & R2

Mr.C.Munusamy

Special Government Pleader for R3

ORDER

This writ petition has been filed challenging the proceedings of the Member Secretary of Teacher Recruitment Board dated 17.10.2019 and for a consequential direction to the respondents to award marks for Question No.27 and Question No.82 in favour of the petitioner and consider the petitioner for selection for appointment to the post of P.G. Assistant (Physics).

2.The petitioner belongs to Most Backward Class community and he possessed a Post Graduation Degree (Msc., Physics and B.Ed.,). The 3rd respondent issued a notification dated 03.05.2017 for direct recruitment to the post of P.G. Assistant for the year 2016-17 in which 387 posts of P.G. Assistant(Physics) have been notified. The petitioner applied for the selection and the written examination was also conducted on 02.07.2017.

3.The petitioner earlier approached this Court and filed W.P.No.22951 of 2017 and sought for a direction to the respondents to award two marks for the petitioner with regard to Question Nos.27 and 82. This Court passed the following order in the said writ petition:

3. Pursuant to the filing of the present writ petition, the respondents have appointed an Expert Committee and the Expert Committee has submitted a report in respect of the questions and answers with reference to the original text books. The Expert Committee had consisted of Dr.V.Sivamadhavi, Associate Professor, Bharathi Women's College, Chennai, Dr.P.S.Vasuhi, Associate Professor, Bharathi Women's College, Chennai, Dr.P.Seenuvasakumaran, Associate Professor, Muthurangam Government Arts and Science College, Vellore and Dr.M.Balakrishnan, Associate Professor, Government Arts and Science College, Thiruvannamalai.

4. The Expert Committee, consisting of four professors, examined the entire question paper and answers, including the issues raised by the writ petitioner in this writ petition and submitted their report.

5. The learned Government Advocate, appearing on behalf of the respondents relying on the counter statement, made a submission that all such discrepancies were identified and the papers in respect of the candidates were rechecked by the competent authorities and wherever necessary,

additional marks were granted and accordingly, final merit list was prepared and published. In this regard, Paragraph Nos. 7 and 8 of the counter filed by the third respondent is extracted hereunder:

'7. It is submitted that the petitioner avers that Final key answers published by the Teachers Recruitment Board is not correct, in respect of Question Nos., Book-let Series as detailed below :-

Question No. of 'A' Series	Question No. of 'C' Series	Key answer of the petitioner	Tentative Key	Final key
37	27	None	A	A
102	82	B/C	B	B

There is no change in the tentative keys as well as in the final key and for the Questions 27 and 82 in series 'C' the subject experts have furnished their opinion as follows :-
(*Refer Annexure)

Question No.27
Petitioner Claim Option 'None'

Subject Expert Committee's views for accepting/rejecting of candidate's representation	Though the given constant value of Bohr magneton is not correct, the candidates are expected to substitute the given value and choose any one of the options. So, the correct option is 'A' and candidate claim is rejected.
Evidence	Page No.362, Solid State Physics by Reeta John.

Question No.82
Petitioner Claim Option 'B/C'

Subject Expert Committee's views for accepting/rejecting of candidate's representation	The correct key is B. The other given options are not correct.
Evidence	Mathematical Physics with classical Mechanics by Satya Prakash Page No.1054.

8. It is submitted that it is clearly stated in the notification that objections if any has to be submitted within the stipulated time with authenticated text books. Guides, notes, printout of unauthenticated material are not accepted.'

6. The learned counsel appearing for the petitioner states that even after the report submitted by the Expert Committee, the discrepancies were not sorted out. The questions raised in this regard by the petitioner has not been resolved at all.

7. If that is the case, this Court is of an opinion that the examination papers of the writ petitioner can be once again rechecked by the competent authorities, in order to find out if there is any discrepancies or not, and thereafter take a decision and accordingly, inform the same to the writ petitioner. Thus, the respondents are directed to once again recheck the answer papers of the writ petitioner in order to find out any discrepancies arising, even after the submission of the report by the Expert Committee and if there is any such discrepancy, the same can be rectified. In the event of no discrepancy being found, then the file shall be closed. However, such a decision taken shall be communicated to the writ petitioner also.

4. After the above orders were passed, the Teacher Recruitment Board constituted a Committee comprising of two members viz., 1) Dr. V. Sivamadhavi and 2) Dr. K. Kalaimagal. The Expert Committee gave their opinion on the disputed questions to the effect that Option "A" is the correct answer for Question No. 27 and Option "B" is the correct answer for Question No. 82. Based on the opinion given by the Expert Committee, the impugned proceedings were passed by the Member Secretary of Teacher Recruitment Board and the petitioner was informed that he could not be considered for selection. The

same has now become a subject matter of challenge in the present writ petition.

5.Mr.S.Nedunchezhiyan, the learned counsel appearing on behalf of the petitioner submitted that insofar as Question No.27 is concerned, the question itself was not correct. In order to substantiate his submission, the learned counsel pointed out the opinion of the Expert Committee who have specifically stated that the constant value of Bohr magneton is not correct. After having said so, the Committee has expected a candidate to substitute the given value and choose the Option as "A". The learned counsel submitted that candidate cannot rewrite a question and a candidate is only expected to find out the answer based on the question prepared by the Teacher Recruitment Board. Therefore, the learned counsel submitted that the petitioner will have to be awarded marks for Question No.27.

6.The learned counsel brought to the notice of this Court, Question No.82. Insofar as this Question is concerned, the learned counsel submitted that earlier there were four Experts forming part of the Committee and out of the same two Experts viz., Dr.P.Seenuvasakumaran and Dr.M.Balakrishnan had signed and they have stated that the answer for Question No.82 is Option "B" or Option "C". Out of the four Experts, one Expert has now been made as a part of two member Committee by Teacher Recruitment Board and they have stated that the correct answer is Option "B". The learned counsel submitted that the Committee is now equally split and two Members said it is "B" or "C" and two other Members of the same Committee are now saying that the correct answer is "B". Since, this confusion prevails and the petitioner has answered this question by choosing option "C", the petitioner has to be given marks for this question also. The learned counsel therefore submitted that the petitioner has to be awarded marks for both these questions.

7.Per contra, the learned counsel appearing on behalf of the respondents submitted that this Court cannot sit on a judgment over the decision taken by an Expert Committee. It was submitted that the Expert Committee which was constituted pursuant to the orders passed by this Court, has come to a conclusion that the correct option for Question No.27 is "A" and the correct option for Question No.82 is "B". Once such a decision has been taken, this Court should not interfere with the same and if the petitioner has not chosen the correct option, he cannot be awarded marks for these two questions. A detailed counter affidavit has also been filed by the 3rd respondent in this regard.

8.This Court has carefully considered the submissions made on either side and also the materials available on record.

9. Before this Court ventures to decide the issue, it must remind itself that the opinion given by an Expert cannot normally be interfered and this Court cannot sit on judgment over the opinion given by an Expert. The law on this issue is well settled.

10. The petitioner had approached this Court earlier and this Court had noticed that an Expert Committee was appointed and it has submitted a report and the Expert Committee consisted of four Members. The Court after going through the opinion given by the Experts and the stand taken by the respondent in the counter, came to a conclusion that the discrepancies pointed out by the petitioner has not been sorted out. Therefore, this Court directed the respondent, once again, to recheck the answer papers of the petitioner and see if there is any discrepancy and if there is any discrepancy, the same was directed to be rectified.

11. There are two questions namely Question No.27 and Question No.82 that have been put to challenge with regard to the options given for those questions. Insofar as Question No.27 is concerned, the Expert Committee itself has stated that the constant value of Bohr magneton is not correct, which would mean that the question itself is not correct. The Expert Committee has opined that the candidates are expected to substitute the given value "which was found not to be correct" and choose Option "A". This would mean that the candidate has to rewrite the question and thereafter, choose Option "A". Such an exercise can never be done by a candidate and candidate can only choose the option for a given question and he cannot re-frame a question. Therefore, the opinion given by the Expert is not acceptable and mark has to be necessarily given to the petitioner for Question No.27.

12. The next issue is with regard to Question No.82. For this question, the earlier opinion was that both Option "B" and Option "C" are correct and this was also noted by this Court in the earlier order passed by this Court in W.P.No.22951 of 2017. While the said writ petition was disposed of, this Court only directed the Teacher Recruitment Board to see if there is any discrepancy between the answers given by the petitioner and the opinion given by the Expert Committee. However, Teacher Recruitment Board has proceeded to take the opinion of two Member Committee out of which one of the Member formed part of the earlier Committee. These two members have given the correct answer as Option "B". Under normal circumstances, this Court will not go into the correctness or otherwise of the opinion given by the Expert Committee. However out of the four Experts, two of the Experts have stated that the correct option is "B". This has actually confounded the existing controversy. This was not the type of exercise that was directed to be done by Teacher Recruitment Board. The Teacher Recruitment Board was not asked to get one more Expert opinion. It can be understood if the Teacher

Recruitment Board had proceeded to independently get an opinion from some other Expert Body. However, Teacher Recruitment Board has proceeded to take the services of one of the Associate Professor out of the original four and an independent opinion has been obtained to the effect that Option "B" is the correct answer.

13.The Experts are now equally divided with regard to the answer to be given for Question No.82. Two Experts say that Option "B" or "C" is correct and two other Experts says that Option "B" is correct.

14.This Court cannot continue with this exercise any longer and keep the petitioner anxiously waiting for ever. It looks like the dispute between the Experts will have to be resolved. This Court is not inclined to do the same at this length of time. In the considered view of this Court, the benefit of doubt will have to be given to the petitioner. Therefore, the petitioner who has given the answer for Question No.82 as Option "C" must be awarded a mark for this question also.

15.In view of the above findings, the impugned proceedings of the Member Secretary of the Teacher Recruitment Board dated 17.10.2019 is hereby quashed and there shall be a direction to the 3rd respondent to award marks to the petitioner for both Question No.27 and Question No.82 and proceed further with the selection and appointment of the petitioner to the post of P.G. Assistant (Physics), if the petitioner has satisfied all the other requirements. This exercise shall be completed within a period of four weeks from the date of receipt of copy of this order.

16.In the result, this writ petition stands allowed. Consequently, connected miscellaneous petition is closed. No Costs.

Sd/-

Assistant Registrar (CS-VIII)

//True copy//

Sub Assistant Registrar

ssr

To

1. The 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 Member Secretary,
Teacher Recruitment Board,
4th Floor, EVK Sampath Maligai,
DPI Campus, College Road,
Chennai - 600 006.

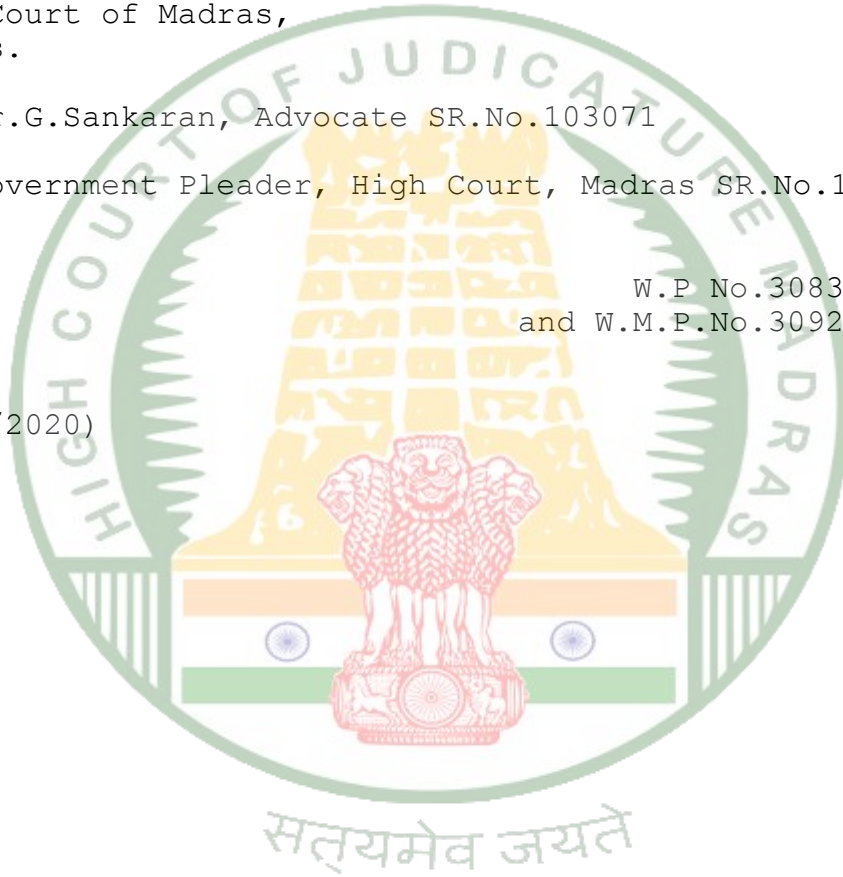
4. The Public Prosecutor,
High Court of Madras,
Madras.

+1cc to Mr.G.Sankaran, Advocate SR.No.103071

+2cc to Government Pleader, High Court, Madras SR.No.103131 &
104004

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and W.M.P.No.30920 of 2019

MR(CO)
GMY(27/01/2020)



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