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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED :11.04.2019

CORAM :

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN
WP (MD) No.7725 of 2019

and

WMP (MD) Nos.6136 & 6137 of 2019

M.Devi

... Petitioner

Vs.

1.The National Council for Teachers

Education,

rep.by the Member Secretary,

Wing II, Hans Bhawan,

1, Bahadur Shah Zafar,

New Delhi - 110002.

2.The State of Tamil Nadu,

Rep.by the Principal Secretary to

Government,

School Education Department,

State of Tamil Nadu, Fort St.George,

Chennai.

3.The Teachers Recruitment Board

Rep.by The Chairman,

Teachers Recruitment Board,

College Road, Chennai - 600 006.

... Respondents

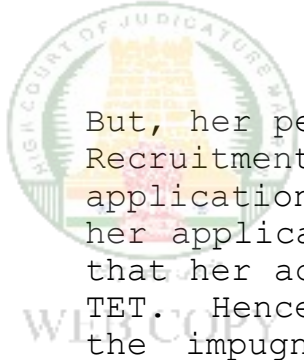
Prayer : This Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the records connected with the Notification No.8/2019 issued by the third respondent Teachers Recruitment Board dated 28.02.2019 for teachers eligibility test TET relating to the minimum required eligibility marks of 45% in 2019 Tamil Nadu Teachers Eligibility Test - 2019 (TNTET) and quash the same as illegal and consequently direct the respondents to consider the petitioner's application and allow her to participate in the TNTET examination, 2019 in accordance with law.

For Petitioner : Mr.G.Prabhu Rajadurai
for Mr.R.Alagumani

For Respondents : Mr.Su.Srinivasan for R1
Mrs.S.Srimathy,
Special Government Pleader for R2
Mr.V.R.Shanmuganathan for R3

ORDER

The writ petitioner belongs to Scheduled Caste. The petitioner is having a degree in B.A., (English). She had also passed B.Ed. The petitioner appeared for Teacher Eligibility Test in the year 2017.



But, her performance was below the cut-off mark. When the Teachers Recruitment Board issued notification No.8/2019 calling for applications from eligible candidates, the petitioner also submitted her application through online. But, it was rejected on the ground that her academic qualification rendered her ineligible to apply for TET. Hence, the petitioner has filed this writ petition challenging the impugned notification dated 28.02.2019 insofar as it has stipulated that the candidate should have a degree with atleast 45% of marks.

2.The learned counsel appearing for the writ petitioner contended that Teachers Recruitment Board is only a nodal agency for conducting Teacher Eligibility Test. The Government of Tamilnadu has issued G.O (Ms) No.70, School Education (MS) Department, dated 12.04.2018 laying down the eligibility norms to write TNTET. The said G.O has directed that the NCTE guidelines issued in NCTE Notifications dated 23.08.2010 and 29.07.2011 fixing the minimum qualification for teachers should be adopted. According to the learned counsel for the petitioner, in the NCTE notification dated 29.07.2011, it has been clearly mentioned that relaxation upto 5% in the qualifying marks shall be allowed to the teachers belonging to reserved categories such as SC/ST/OBC/PH.

3.The learned counsel appearing for the petitioner also drew my attention to the decision of the Hon'ble Supreme Court reported in (2017) 1 SCC 350 (Vikas Sankhala vs. Vikas Kumar Agarwal and others) in which it was authoritatively held that this relaxation of 5% does not relate to Teachers Eligibility Test at all. The learned counsel further pointed out that in the neighbouring State of Kerala, a candidate who has secured below 45% marks in degree is allowed to write TET provided he or she belongs to reserved category. Even the Central Teachers Eligibility Test - 2019 contains a note that relaxation upto 5% in the qualifying marks in the minimum educational qualification for eligibility shall be allowed to the candidates belonging to reserved category such as SC/ST/OBC/PH. She was allowed to join B.Ed., course as she was found eligible. For all these years, the respondents did not insist that the candidate appearing for TET should possess minimum marks of 45%. All on a sudden, the respondents have changed their policy thereby shattering the legitimate expectations of the writ petitioner.

4.In order to buttress the argument that a person who has undergone B.Ed., is entitled to appear for Tamil Nadu Teachers Eligibility Test, the learned counsel for the petitioner drew my attention to the eligibility norms laid down in the NCTE guidelines issued on 11.02.2011. The relevant portion of the guidelines reads as under :

"Eligibility :

5.The following persons shall be eligible for appearing in the TET:



i. A person who has acquired the academic and professional qualifications specified in the NCTE Notification dated 23rd August 2010.

ii. A person who is pursuing any of the teacher education courses (recognized by the NCTE or the RCI, as the case may be) specified in the NCTE Notification dated 23rd August 2010.

iii. The eligibility condition for appearing in TET may be relaxed in respect of a State/UT which has been granted relaxation under sub-section (2) of section 23 of the RTE Act. The relaxation will be specified in the Notification issued by the Central Government under that sub-section."

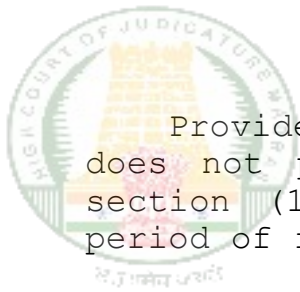
5. The learned counsel for the petitioner also pointed out that successfully clearing TET is no guarantee to get a job. It is only an eligibility requirement to take part in the recruitment process for being appointed as a teacher. The petitioner's counsel thus contended that the impugned notification is patently violative of Article 14 of the Constitution of India and ultra vires the NCTE notification dated 29.07.2011. He prayed for quashing the offending part of the impugned notification and wanted this Court to direct the respondents to accept the petitioner's application to appear for Tamilnadu Teacher's Eligibility Test - 2019.

6. I am unable to agree with the aforesaid submissions of the learned counsel appearing for the writ petitioner. As rightly pointed out by the learned Standing counsel/Special Government Pleader appearing for the respondents 2 and 3, the decision of the Hon'ble Supreme Court in (2017) 1 SCC 350 (Vikas Sankhala vs. Vikas Kumar Agarwal and others) will not come to the petitioner's rescue.

7. Parliament enacted the Right of Children to Free and Compulsory Education Act, 2009 in order to fulfil the constitutional requirement set out in Article 21-A which was added vide the Eighty Sixth Amendment. Section 23 of the said Act reads as under :

"23. Qualifications for appointment and terms and conditions of service of teachers: (1) Any person possessing such minimum qualifications, as laid down by an academic authority, authorised by the Central Government, by notification, shall be eligible for appointment as a teacher.

(2) Where a State does not have adequate institutions offering courses or training in teacher education, or teachers possessing minimum qualifications as laid down Under Sub-section (1) are not available in sufficient numbers, the Central Government may, if it deems necessary, by notification, relax the minimum qualifications required for appointment as a teacher, for such period, not exceeding five years, as may be specified in that notification:



Provided that a teacher who, at the commencement of this Act, does not possess minimum qualifications as laid down Under Sub-section (1), shall acquire such minimum qualifications within a period of five years.

(3) The salary and allowances payable to, and the terms and conditions of service of, teachers shall be such as may be prescribed."

8. The National Council for Teacher Education is the academic authority competent to lay down the minimum qualifications which a person needs to possess to make him eligible for appointment as a teacher. NCTE issued a notification dated 23.08.2010 laying down such minimum qualifications. It was mentioned that apart from the other educational qualifications prescribed in the said notification, the candidate should also secure qualifying marks in TET. The relevant portion in the notification reads as under :

"Pass in the Teacher Eligibility Test (TET), to be conducted by the appropriate Government in accordance with the Guidelines framed by the NCTE for the purpose."

In the guidelines dated 11.02.2011 issued by NCTE, it was specified that the minimum pass percentage of TET is 60%. However, the State Governments were permitted to give concessions to persons belonging to the reserved categories in accordance with their extant reservation policy.

9. After the issuance of the notification dated 11.02.2011 by NCTE, the State of Rajasthan issued a communication dated 23.03.2011 to the authorities concerned conveying its decision to grant relaxation in minimum pass marks in TET to reserved category candidates. The relaxation ranged from 10% to 20%. Thus, even if the reserved category candidates secured only 50% marks in TET, they were still treated as a qualified candidate and were allowed to appear in the recruitment process. This was challenged by many candidates belonging to the general category who contended that minimum percentage for passing TET was 60% and that therefore candidates belonging to the reserved categories who secured less than 60% in TET could not be declared as having passed TET and were therefore ineligible to participate in the selection process. The writ petitioners tasted success before the Single Judge as well as the Division Bench. Therefore, the State Government as well as the selected candidates belonging to the reserved categories filed appeals before the Hon'ble Supreme Court. In Paragraph No.19 and 38 of the Judgement, the Hon'ble Supreme Court held as under :

"19. We may point out at the outset that insofar as issue of concession/relaxation in TET is concerned, it has three facets, viz.:

(i) whether relaxation in passing marks for TET was validly given by the State Government in its letter dated March 23, 2011 and all such candidates belonging to the reserved categories can be



treated as having passed TET on obtaining marks as per relaxed standards?

(ii) whether no relaxation of any nature could be given by the State Government and, therefore, it was incumbent upon the persons belonging to reserved categories as well to secure 60% marks in TET to treat them as qualifying the said TET?

OR

(ii) relaxation to the extent of 5% was permissible, as provided by NCTE vide its amendment Notification dated July 29, 2011 and, therefore, those who secure 55% or above could be treated as successful in TET?"

38. The history of events, right upto the decision of the High Court, gives a clear glimpse of the questions of law that need to be determined by this Court. At this juncture, we would like to formulate these issues, as under:

i) Whether policy of the State as reflected in its letter dated March 23, 2011 deciding to give relaxation ranging from 10% to 20% in TET marks to different reserved categories as mentioned therein is valid in law?

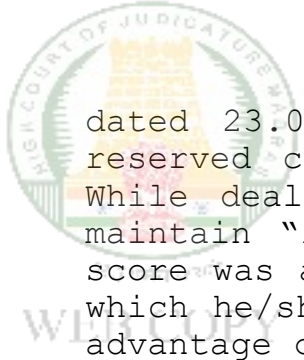
ii) Whether NCTE notification dated July 29, 2011, which amends paragraph 3 of its earlier guidelines/notification dated February 11, 2011, provides 5% relaxation to the reserved category for passing TET? If so, whether it would be applicable to the reserved categories in the State of Rajasthan as well?

iii) Whether reserved category candidates, who secured better than general category candidates in recruitment examination, can be denied migration to general seats on the basis that they had availed relaxation in TET?"

The Hon'ble Supreme Court chose to answer the question No.2 in the first instance in the following manner :

"47. Thus, our answer to Question No. 2 is that insofar as NCTE is concerned, it has not provided any provision for relaxation in TET examination for reserved category candidates but has left it to the State Governments to do the needful in this behalf, as per para 9 of guidelines dated February 11, 2011 which remains unaltered."

10. As regards the Question No.1, the Hon'ble Supreme Court held that as far as relaxation in passing TET is concerned, it is governed Para No.9 of the Notification dated 11.02.2011. The expression "extant policy" set out in para 9 (a) of the guidelines dated 11.02.2011 was interpreted to mean the policy surviving at the time of TET examination or at the most at the time of recruitment. It was open to the State Government to give relaxation in favour of the reserved categories and to modify the same from time to time with changing socio economic conditions. Question No.1 was ultimately answered by holding that relaxation prescribed in Letter



dated 23.03.2011 in pass marks in TET examination for different reserved categories mentioned therein is legal and valid in law. While dealing with Question No.3, it was noted that in order to maintain "level playing field" the provision of giving 20% of TET score was applied to all candidates irrespective of the category to which he/she belongs and, therefore, no concession or relaxation or advantage or benefit was given in this behalf that would disturb the level-playing field and tilt the advantage in favour of reserved category candidate. The reserved category candidates who had secured less marks in TET examination were given lesser marks in the recruitment process on the application of the formula of allocating 20% marks of TET score. Question No.3 was answered accordingly.

11.This Court had referred to Vikas Sankhala decision in extenso because the sheet anchor of the writ petitioner's submission is founded on the observation set out in paragraph 45 of the judgment that relaxation upto 5% is relatable to marks in graduation and B.Ed., qualification and not to TET score at all. On this basis, the petitioner's counsel would contend that when NCTE has laid down minimum pass marks of 45% in graduation, by applying the aforesaid ratio, the State Government was obliged to give 5% relaxation. Thus, a candidate who has secured 40% percentage marks in graduation is entitled take part in TNTET.

12.As rightly pointed out by the learned Special Government Pleader/standing counsel for Teachers Recruitment Board, the petitioner has not correctly understood the ratio laid down in Vikas Sankhala decision.

13.Vide NCTE notification dated 29.07.2011, sub para (i) of paragraph No.1, sub para (ii) of para 1 and paragraph Nos.3 and 5 of the principal notification dated 23.08.2010 were substituted. Para 1 of the NCTE notification dated 23.08.2010 laid down the minimum qualifications for the teachers. The teachers were divided into two categories. Those who were to teach Classes I to V and those who were to teach Classes VI to VIII. In respect of both these categories, pass in the TET was made mandatory. As regards the teachers who are to teach Classes I to V, the basic qualification was pass with certain percentage in the Senior Secondary(or its equivalent) plus 2-year Diploma in Elementary Education/4 year Bachelor of Elementary Education. The teachers for Classes VI to VIII are to have Graduation plus Diploma/B.Ed/4 year B.El.Ed. However, as per paragraph No.3 of the NCTE notification dated 23.08.2010, a person with B.A./B.Sc., with at least 50% of marks and B.Ed., qualification was also held to be eligible for appointment for Classes I to V upto 01.01.2012 provided, he undergoes after appointment, an NCTE recognized six months special programme in Elementary Education. Likewise a candidate with D.Ed., (Special Education) or B.Ed., (Special Education) qualification shall undergo after appointment a similar training. While amending paragraph No.3, it was added that the relaxation up to 5% in the qualifying marks shall be allowed to the candidates belonging to the reserved



categories such as SC/ST/OBC/PH. Since paragraph No.III(ii) pertained only to paragraph No.3 of the principal notification dated 23.08.2010, it was held by the Hon'ble Supreme Court that this relaxation up to 5% in the qualifying marks referred only to the marks secured in the graduation and that it did not relate to TET at all. The reason is obvious. This is because paragraph No.3 of the principal notification dated 23.08.2010 does not concern with the TET at all. Up to 01.01.2012, a person possessing graduation with at least 50% marks and B.Ed., qualification was eligible for being appointed as teacher even if he or she had not passed TET. But the appointee must undergo an NCTE recognized six months Special Programme in Elementary Education. By the amending NCTE notification dated 29.07.2011, the academic authority/NCTE stated that 5% relaxation can be given. Thus, a person having 45% marks in B.A./B.Ed., was also eligible for appointment as teacher for Classes I to V up to 01.01.2012. Of course he has to undergo the training programme as laid down. Therefore, the interpretation given by the Hon'ble Supreme Court in Vikas Sankhala case is of no assistance to the Writ petitioner because it pertained only to paragraph No.3 and not paragraph No.1 of the NCTE notification dated 23.08.2010. The clause regarding relaxation relied on by the petitioner's counsel occurs in paragraph No.3 which does not concern TET at all.

14.The learned counsel appearing for the Writ petitioner further contended that when the petitioner was found eligible to pursue B.Ed., she cannot be held ineligible to appear for TET. I am not persuaded by the submission. The academic qualifications set out in paragraph No.2 cannot be relaxed at all. The Hon'ble Supreme Court in the decision reported in (2018) 13 SCC 560 (State of U.P. V. Anand Kumar Yadav) held as follows:-

"25.In the impugned judgment the Full Bench of the High Court highlighted the importance of the prescribed TET qualification as follows:

'112. The object and purpose of introducing the TET is to ensure that a teacher who embarks upon instructing students of primary and upper primary classes is duly equipped to fulfill the needs of the students, understands the relevance of education for a child at that stage and can contribute to the well rounded development of the child. Teaching a child is not merely a matter of providing information. Deeply embedded in the process of imparting education is sensitivity towards the psyche of the child, the ability to understand the concerns of a young student of that age, the motivations which encourage learning and the pitfalls which have to be avoided. The emphasis on clearing the TET is to ensure the maintenance of quality in imparting primary education. These requirements which have been laid down by NCTE fulfill an important public purpose by ensuring a complement of trained teachers who contribute to the learning process of children and enhance their growth and development. These requirements should not be viewed

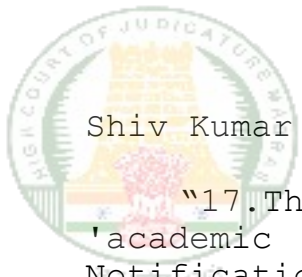


merely as norms governing the relationship of a teacher with the contract of employment. These norms are intended to fulfill and protect the needs of those who are taught, namely, young children. India can ignore the concerns of its children only at the cost of a grave peril to the future of our society. The effort of the State Government to by-pass well considered norms which are laid down by NCTE must be disapproved by the Court. We have done so on the ground that the State Government lacks the legislative power and competence to do so. Equally, fundamental is the concern that a relaxation of the norms prescribed by an expert body will result in grave detriment to the development and growth of our young children and the provision of quality education to them. Providing quality education is crucial for students belonging to every strata of society. Education which is provided in schools conducted by the Basic Education Board should not be allowed to degenerate into education of poor quality which it will, if the norms which are prescribed by an expert body under legislation enacted by Parliament in the national interest are allowed to be ignored by the State Government on the basis of parochial or populist perceptions. Such an attempt is ultra vires the statutory powers of the State and is arbitrary and violative of Article 14 of the Constitution.'

26. We are in agreement with the above observations. We are unable to agree that even unqualified teachers ought to be allowed to continue ignoring the legislative mandate or that we should exercise our jurisdiction Under Article 142 to undo the said mandate. Consideration for career of 1.78 lac Shiksha Mitras, over and above their legal right, cannot be at the cost of fundamental right of children to free quality education by duly qualified teachers in terms of legislative mandate."

It was further held that in view of the clear mandate of law statutorily requiring minimum qualification for appointment of teachers to be appointed after the date of notification dated 23.08.2010, there is no doubt that no appointment was permissible without such qualifications.

15. Therefore when the NCTE notification dated 29.07.2011 prescribes that graduation with at least 45% marks is one of the eligibility requirements, it cannot be bypassed on any ground. The NCTE guidelines for conducting TET issued on 11.02.2011 lay down that only a person who was acquired the academic and professional qualifications specified in the NCTE notification dated 23.08.2010 will be eligible for appearing in the TET. That being the position, considerations of equity or legitimate expectation cannot be pressed into service. It is true that the TET conducted in the year 2017 did not conform to the aforesaid standard. But that was a mistake. The State is always at liberty to undo its mistake and bring the procedure in line with the norms laid down by the NCTE. In fact the State Government had only discharged its statutory duty by revising its earlier stand. The Hon'ble Supreme Court in the decision reported in (2018) 12 SCC 595 (State of U.P. and Ors. vs.



Shiv Kumar Pathak and Ors) held as follows:-

"17. There is no manner of doubt that the NCTE, acting as an 'academic authority' Under Section 23 of the RTE Act, under the Notification dated 31st March, 2010 issued by the Central Government as well as Under Sections 12 and 12A of the NCTE Act, was competent to issue Notifications dated 23rd August, 2010 and 11th February, 2011. The State Government was under obligation to act as per the said notifications and not to give effect to any contrary rule. we uphold the view that qualifications prescribed by the NCTE are binding..."

16. Even though in the guidelines dated 11.02.2011 issued by the NCTE, it was prescribed that 60% marks would be the minimum qualifying marks for the TET, it enabled the Government to grant relaxation to reserved category candidates in accordance with their extant reservation policy. The Government of Tamil Nadu exercising the aforesaid power of relaxation issued G.O.Ms.No.25 School Education (TRB) Department dated 06.02.2014 fixing the pass mark at 55% for the reserved categories. This relaxation given by the Government was upheld by the Hon'ble Supreme Court in the decision reported in (2017) 1 SCC 322 (V. Lavanya and others V. State of Tamil Nadu and others). In the said decision, it was held that the State Government was within its competence to give relaxation of 5% marks in TET. The Hon'ble Supreme Court followed the earlier decision rendered in Vikas Sankhala case. When it was contended that the Government of Tamil Nadu had gone back on its earlier stand, the Hon'ble Supreme Court held that there can be no question of estoppel against the Government in the exercise of its legislative, sovereign or executive powers. The same principle can be applied in the present case also. Merely because in the TET held in the year 2017, even those who secured below 45% marks in graduation were allowed to appear, it does not mean that they should be permitted to appear for ever. In the Constitution Bench decision reported in (2010) 1 SCC 477 (Gulshan Prakash and others V. State of Haryana and others) it was held that Article 15(4) is only an enabling provision and that the State Government is the best Judge to grant reservation for SC/ST/OBC categories at Post Graduate level in admission and the decision of the State of Haryana not to make any provision for reservation at the Post Graduate level suffers from no infirmity. The State Government can take its own decision with regard to the reservation depending on various factors. The Hon'ble Supreme Court held that it cannot issue a Mandamus against the decision of the State Government and cannot fault their prospectus for not providing reservation in Post Graduate courses.

17. Likewise, this Court cannot compel the State of Tamil Nadu to grant relaxation and permit those candidates who secured below 45% marks in Graduation to appear for TET. This is all the more so because the State was bound to adhere to the NCTE norms. Merely because the other States have not done so is not a ground to fault the impugned notification. It is to be noted that the impugned



notification is only in terms of G.O (Ms) No.70, School Education (MS) Department, dated 12.04.2018. As already pointed out, this Government Order is not under challenge. In any event this Court has already held that this Government Order is in conformity with the NCTE norms.

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18.I find no merit in this Writ petition. This Writ petition stands dismissed accordingly. No costs. Consequently, connected Miscellaneous petitions are closed.

Sd/-

Assistant Registrar()

/True Copy/

Sub Assistant Registrar(CS-)

To

- 1.The National Council for Teachers Education,
rep.by the Member Secretary,
Wing II, Hans Bhawan, 1, Bahadur Shah Zafar,
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- 2.The Principal Secretary to
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School Education Department,
State of Tamil Nadu, Fort St.George, Chennai.
- 3.The Teachers Recruitment Board
Rep.by The Chairman,
Teachers Recruitment Board,
College Road, Chennai - 600 006.

+1cc to Mr.R.Alagumani,Advocate, SR.No.60980
+1cc to Mr.Su.Srinivasan ,Advocate, SR.No.60850
+1cc to Special Government Pleader, SR.No.60739

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