



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 22.07.2019

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P[MD]No.11731 of 2014

S.Latha

... Petitioner

Vs.

1.The State of Tamil Nadu,
Rep. by its Secretary to Government,
School Education Department,
Secretariat, Chennai - 9.

2.The Chairman,
Teachers Recruitment Board,
4th Floor, E.V.K. Sampath Maligai,
College Road, Chennai - 6.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, calling for the records relating to the impugned order passed by the second respondent in his proceedings Nil dated Nil and quash the same as illegal and consequentially to direct the respondents to declare that the petitioner is qualified with TET and issue certificate thereto within the period that may be stipulated by this Court.

For Petitioner : Mr.H.Mohammed Imran
for M/s.Ajmal Associates
For Respondent No.1 : Mrs.S.Srimathy
Special Government Pleader
For Respondent No.2 : Mr.VR.Shanmuganathan
Special Government Pleader

O R D E R

The order passed by the second respondent proceedings Nil dated Nil stating that the writ petitioner is ineligible for getting the Teachers Eligibility Test Certificate is under challenge in the present writ petition.

2.The writ petitioner is working as B.T.Assistant (English) in D.D. Vinayagar Higher Secondary School, Ramanathapuram District. The petitioner states that she has completed SSLC in March 1992 and Higher Secondary in March 1993.

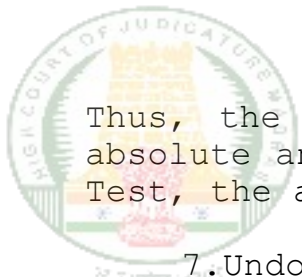


3.The writ petitioner states that she was not in a position to write the 10th examination on account of her illness. She recovered from her illness within a year and wrote the 10th examination in March 1992 through regular school and was successful in the examination. Thereafter, the petitioner studied the higher secondary privately and appeared in the higher secondary examination in March 1993 and came out successfully. She completed B.A.English in December 2008 and further completed B.Ed., in May 2010. The petitioner has completed M.A. English during 2012.

4.The writ petitioner was appointed as B.T.Assistant (English) on 04.02.2011 at D.D.Vinayagar Higher Secondary School, Ramanathapuram District. The appointment of the writ petitioner was approved by the District Educational Officer in proceedings dated 03.10.2012 with a condition that the writ petitioner should pass Teachers Eligibility Test within a period of five years from the date of her appointment. Learned Counsel for the writ petitioner states that the writ petitioner was working as such without giving any room for complaints. The writ petitioner appeared for TET conducted in the year 2013 and secured 93 marks. The petitioner was successful in the examination as she secured more than 90 marks. The petitioner was treated as qualified in the Teachers Eligibility Test and thereafter, called for certificate verification held on 23.01.2014. The candidates who passed TET were called for certificate verification and during the certificate verification, the respondents have rejected the candidature of the writ petitioner and issued the impugned order stating that the petitioner is ineligible for the Teachers Eligibility Test and accordingly, rejected her claim for issuance of the Teacher Eligibility Test Certificate.

5.The learned Counsel for the writ petitioner states that the Government issued G.O.Ms.No.1171, Education (VI) Department dated 27.11.1992, which is given effect to from March - April 1993. Subsequently, an amendment was issued by way of a Government Letter in proceedings dated 23.02.1992, wherein the Government Order was given effect from September to October 1993. Citing the said Government amendment, the learned Counsel for the writ petitioner states that the writ petitioner appeared in the Teachers Eligibility Test prior to the Government Order issued in G.O.Ms.No.1171. Therefore, the Government Order cannot be applied in the case of the writ petitioner and accordingly, for all purposes she must be declared as a candidate who passed Teachers Eligibility Test and her appointment should be validated.

6.Learned Counsel appearing on behalf of the Teachers Recruitment Board as well as the Special Teacher appearing on behalf of the education department seriously contested the issues by stating that the writ petitioner is not a qualified candidate. The approval of appointment itself was granted subject to the condition that the writ petitioner should pass Teachers Eligibility Test.

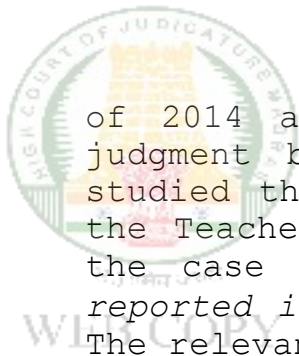


Thus, the approval of appointment of the writ petitioner was not absolute and only after the declaration of the Teachers Eligibility Test, the approval can be confirmed.

7.Undoubtedly, the writ petitioner participated in the Teachers Eligibility Test examination. Teachers Eligibility Test is conducted pursuant to the notional educational policy which was adopted by the State Government and accordingly, terms and conditions were published even at the time of submission of application by the candidates. The brochure contains the terms and conditions and the terms and conditions clearly stipulates that the candidates who studied in the regular course alone is eligible to participate in the Teachers Eligibility Test. The candidates must have studied the courses in the regular educational pattern prescribed by the University Grants Commission ie., 10+2+3. During the certificate verification, the educational qualifications possessed by the candidates will be verified by the competent authorities. Thus, the process of selection and grant of certificate will be done strictly with reference to the terms and conditions issued. The writ petitioner also agreed for the said condition and participated in the Teachers Eligibility Test examination.

8.No doubt, the writ petitioner secured 93 marks and was successful in the examination. However, during the certificate verification, it was found that after passing the 10th standard in April 1992, the writ petitioner secured higher secondary in March within a period of one year. Thus, the writ petitioner has violated the regular pattern of 10+2+3 and secured the qualification of +2 from the date of passing of the S.S.L.C. Such a course is impermissible as per the Government regulation and as per the instructions and orders of the Government. Even as per the Government of Tamil Nadu guidelines, the person who studied 10+2+3 alone is to be declared as qualified person for further appointment to the higher integrated courses like M.B.B.S., Law Degree, Agriculture courses etc. Even as per the Government of Tamil Nadu orders, students who studied 10th standard and thereafter two years +2 course alone are eligible for all such provisional integrated courses. The petitioner has not undergone the regular pattern of education and secured the qualification of +2 within a period of one year from the date of passing of the S.S.L.C. and therefore, she is not eligible to get the Teachers eligibility certificate with reference to the terms and conditions of the examinations itself.

9.Relying on the above said ground, learned Special Government Pleader appearing on behalf of the Teachers Recruitment Board, cited the judgment of the Hon'ble Single Judge dated 11.03.2014, which is in favour of the writ petitioner, wherein the learned Single Judge quashed the impugned order passed by the Teachers Recruitment Board and directed to consider the petitioner for appointment to the post of Post Graduate Assistant Teacher in Tamil. In respect of the said



of 2014 and the Division Bench of this Court has reversed the judgment by setting aside the principles that the students who studied the regular pattern of education alone is eligible to get the Teachers Eligibility Test Certificate and the said judgment in the case of **Chairman Teachers Recruitment Board Vs. V.Kanimozhi** reported in **(2014) 8 MLJ 344**, is also submitted before this Court. The relevant portion of the judgment are extracted hereunder:

"4.Discussion:

4.1.The respondent obtained her degree in B.A. Under Open University System. Thereafter, she joined B.Ed., degree as a regular course and obtained B.Ed. Then, she obtained her M.A. Degree. Thereafter she realised that unless and until she passes the plus 2 examination she will not be eligible for appointment to the post of Post Graduate Assistant Teacher. Accordingly,. With that new wisdom dawned on her, she completed her plus 2 course after securing B.Ed., degree, B.A. Degree and M.A. Degree. Now, the question for consideration is the completion of plus 2 course after obtaining the three degrees can be termed as in consonance with the G.O. passed in G.O. (Ms)No.107 Personnel & Administrative Reforms (M) Department dated 18.08.2009. The second question, though not considered by the learned Single Judge, is that inasmuch as the respondent did undertake entrance test before joining the first degree course, the said degree be considered as a valid one in terms of regulation 2(1) of the U.G.C. Regulations 1985 dated 25.11.1985.

4.2.Coming to the first issue, we would like to extract the relevant passage of the Government Order passed in G.O.(Ms)No.107 Personnel & Administrative Reforms (M) Department, dated 18.08.2009, which reads as under:

"The above recommendations were carefully examined by the Government and accordingly Government accepted the recommendations of Equivalence Committee and issue orders, that the Diplomas / Degrees / Post Graduation after possession of Xth Std., Higher Secondary (+2) obtained through Open Universities alone considered for appointment / promotion in Public Services."

On a reading of the above said paragraph, it is clear that a diploma / degree / post graduation can only be considered for appointment in public services after a candidate possesses Xth Standard as well as Higher Secondary (+2). This Government order passed has been upheld by the Division Bench of this Court in W.P.No.18729 of 2010 dated 10.02.2011.



4.3. Even otherwise, the binding nature of the said Government Order is not in dispute. The respondent has not challenged the said Government Order. As the appellants are the competent authorities to fix the qualification, that too, pertaining to the teachers of Higher Secondary Schools, there is no difficulty in coming to the conclusion that the conditions prescribed are mandatory. In other words, unless and until a candidate satisfy the requirements as envisaged in G.O.(Ms)No.107, Personnel & Administrative Reforms (M) Department, dated 18.08.2009, he or she cannot be considered for the post.

4.4. In the case on hand, admittedly, at the time of completing the degree, the respondent did not complete the plus 2 course. That is exactly the reason why she thereafter completed the plus 2 course. This fact has also been observed by the learned Single Judge. While it is absolutely open to the respondent to do the same, the question for consideration is, as to whether the said action would cure the defect. In our respectful submission, the said attempt cannot be substitute to the Government Order passed in G.O.(Ms)No.107 Personnel & Administrative Reforms (M) Department dated 18.08.2009. Any other interpretation would amount to re-writing the provisions of the said Government Order, which is impermissible in law, without there being a challenge.

4.5. Now, coming to the Regulations of the University Grants Commission with reference to admission of a student to a Degree, the said issue is irrelevant insofar as the insistence on the part of the appellants to comply with the Government Order passed in G.O.(Ms)No.107 Personnel & Administrative Reforms (M) Department, dated 18.08.2009. The appointment is to the post of Post Graduate Assistant Teacher in the Higher Secondary School. When the appellants thought it fit to make sure that only those who have completed plus 2 course and thereafter the degree course be eligible to be considered for a particular post of a teacher, then the wisdom and rationale behind the same cannot be questioned. As discussed above, the rationale has not been questioned before us and in any case, we do not find any arbitrariness in the Government Order, which has already been upheld.



4.6.The issue of recognition of a degree is different from a qualification fixed in service matters. An eligibility criteria fixed cannot be said to be an indirect way of derecognising a degree or diploma. To put it differently, such a degree cannot be termed as an eligible qualification for a particular post. Therefore, we are of the view that though scope and ambit of Regulation 2 of the University Grants Commission has not been considered by the learned Single Judge, the same is not required to be considered in favour of the respondent in view of the express terms as provided in the G.O. passed in G.O. (Ms)No.107 Personnel & Administrative Reforms (M) Department dated 18.08.2009. In this connection, a useful reference can be made to the Full Bench Judgment of the Rajasthan High Court in Shanker Lal Verma and 13 others v. Rajasthan State Electricity (supra) wherein the following passage is apposite:

"32.It is also to be noted that these are not the cases of derecognition of a degree, diploma or certificate issued by a particular institution because of some fault on the part of the institution awarding the same. The cases of derecognition of particular institutions and consequently derecognition of the degrees, diplomas and certificates issued by such institutions have to be distinguished from service matters in which certain qualifications are deleted from the rules. Removing or deleting a qualification from eligibility criteria cannot be said to be derecognition of that qualification or a degree, diploma or certificate. It only means that the degree, diploma or certificate has ceased to be the eligibility qualification for a particular post. It does not take away from the candidate, the degree, diploma or certificate conferred by the institutions. For example, if the eligibility qualification for a particular post was earlier 'Graduate' and by amendment, it is raised to 'Post Graduate', it does not mean that degree possessed by the candidates are derecognised. What it simply means is that the eligibility qualifications are enhanced and a higher qualification is now required. It is also to be taken into account that purpose behind amendment to the rule was not to derecognise any degree, diploma or certificate, it was only to delete certain qualifications from the eligibility criteria. This may be because of the changed situation in which the employer may find that



candidates who have passed the Secondary School Examination from the Statutory Boards and Universities are available in sufficient numbers and it was not necessary to consider the candidates having equivalent qualifications. The respondents cannot be forced to accept equivalence of certain qualifications and to accept such equivalence for all times to come."

4.7.Coming to the other decisions relied on by the respondent as considered by the learned Single Judge, we are of the view that they do not have any application to the case on hand. In Writ Appeal No.1064 of 2012 dated 6.11.2013, the Division Bench of this Court merely directed the authorities to reconsider the matter. On a perusal of the order passed by the learned Single Judge, it is seen that the ratio laid down in Joseph v. Irudhayaraj v. Joint Director of School Education (supra) has been wrongly relied upon. The direction was specific to the effect that the entire issue will have to be considered in the light of paragraph No.4 of G.O.(Ms)No.107 Personnel & Administrative Reforms (M) Department, dated 18.08.2009. We have already discussed the scope and ambit of paragraph No.4 of the G.O. Therefore, we are of the view that the said decision does not throw any light on the issue raised before us, that too, in favour of the respondent. Similarly, we are of the view that the decision dated 21.04.2014 relied upon by the respondent as rendered by the Single Judge of this Court in W.P.No.13054 of 2010 etc., batch does not have any application to the case before us in view of the discussion made above, wherein, we have already held that fixing qualification is different from recognising a degree.

4.8.After the judgment was reserved, on mentioning, learned Counsel appearing for the respondent produced the following judgments:

1.Suresh Pal and Others Vs. State of Haryana and others;

2.Full Bench Judgment of the Punjab and Haryana High Court in Neelam Kumari Vs. State of Punjab and Others, and

3.Chandrakala Trivedi Vs. State of Rajasthan and Others,

4.9.In Suresh Pal and Others v. State of Haryana and Others (supra) the issue involves derecognition



of a degree course with retrospective effect. Merely because the respondent has obtained the degree earlier, the same cannot act as an estoppel on the appellants from exercising their power in fixing the qualification. Therefore, the said decision does not have any application to the present case. The other decisions relied upon by the learned Counsel for the respondent in Full Bench Judgment of the Punjab and Haryana High Court in *Neelam Kumari v. State of Punjab and others (supra)* and *Chandrakala Trivedi v. State of Rajasthan and others (supra)* would not help the case of the respondent. In *Chandrakala Trivedi v. State of Rajasthan and others (supra)*, the Supreme Court was dealing with the question of equivalence. We are afraid, the issue of equivalence is not before us. On the contrary, we are dealing with the issue of requisite qualification and the power of the appellants in fixing the same for the purpose of appointing teachers. Hence, the said judgment also is of no help to the respondent.

4.10. In the case on hand, the respondent has written the examination as a private candidate without undergoing Higher Secondary course of a duration of two years. It is the prime duty of the appellants to see to it that the quality of education is maintained for the purpose of imparting the same to the students. Certainly, there is a difference between a candidate, who had undergone a regular course as against the other who completes it by writing the examination privately. Therefore, even on that score, we do not find anything arbitrary in the decision of the appellants in rejecting the candidature of the respondent.

In the result, the writ appeal stands allowed and the order dated 11.03.2014 passed by the learned Single Judge in W.P.No.1068 of 2014 stands set aside. Consequently, the writ petition is dismissed. However, there is no order as to costs and the connected miscellaneous petition is also dismissed."

10. This Court is of the considered opinion that even considering the grounds raised by the writ petitioner independently, the Apex Court in the case of ***Annamalai University Vs. Secretary to Government***, reported in (2009) 4 SCC 590, held that the open university degrees are invalid. The Division Bench of our High Court in the year 2002 itself elaborately adjudicated the provisions of the University Grants Commission and the validity of the degrees granted through open university system and the importance of educational system and the appointment of Teachers etc.,



11.This Court also had an occasion to consider these aspects in many cases and a consistent view has been taken by this Court that the Teachers in Education Department as well as the teaching faculty in University and Colleges must be appointed if the candidates have undergone the regular course of graduation or post graduation in regular colleges. The candidates who studied correspondence courses as well as through open university system should not be appointed for teaching posts. Teaching is a profession. A professional approach is required for imparting better education to the students studying in the schools and colleges. A professional approach can be developed only if the candidate who secured appointment has studied the regular course in regular colleges.

12.This being the procedures to be adopted, the candidates who studied in correspondence course as well as in open university system should not be considered for appointment to the teaching posts as well as in teaching faculties in colleges and universities. The importance of taking classes in classrooms and the professionalism which is to be shown by these teachers are of paramount importance. In the absence of any such professional approach in teaching and imparting education to the children undoubtedly, the educational policies of the Government of India, howsoever effective cannot be implemented in its real letter and spirit.

13.Thus, constitution of educational policies as well as appointment of qualified teachers should be simultaneously considered. Mere educational policy is insufficient. Appointment of qualified and efficient teachers are also very much important for the purposes of implementing such Government educational policy. Therefore, the candidates who had undergone the educational courses in the regular pattern in regular colleges alone should be considered for appointment to the teaching posts.

14.The degrees obtained through correspondence courses may be a valid degree. However, such degrees can be utilised for the purpose of securing public employment but not in teaching line. Therefore, the respondents must keep in mind that open university degrees are declared as invalid. Correspondence degree though valid cannot be declared as a valid degree for teaching in schools and colleges. This being the principles to be followed for the purpose of imparting quality education in schools and colleges, this Court is of the opinion that the appointments are to be made only through the candidates who have undergone the regular courses in colleges and not through correspondence courses or through open university system.

15.In the present case, learned Counsel for the writ petitioner <https://hcservicescourts.hcj.mil/hcservices/writ-petitioner> studied SSLC in the year 1992 and +2



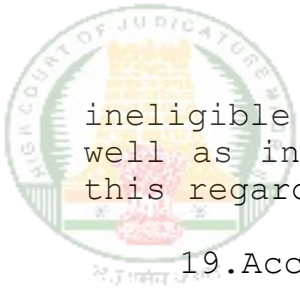
in the year 1993 and degree in 2008. The writ petitioner has studied B.A. in correspondence course. The learned Counsel for the writ petitioner further urged this Court by stating that the writ petitioner studied long back and therefore, her case is to be considered for the purpose of validating the appointment.

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16.This Court had repeatedly ruled that what is invalid under law cannot be validated by showing leniency or misplaced sympathy. In case of showing such misplaced sympathy, the same will result in wrong legal precedence and large number of such unqualified and ineligible persons will secure public appointments thereby making the public administration ineffective and inefficient.

17.Efficient public administration in educational system is also a constitutional mandate. The State has to thrive hard to secure efficient and effective educational system for the development of our great nation. Thus, appointment of teachers are of paramount importance for the purpose of implementing the new educational policy across the country and the Government should also concentrate in appointment of teachers and teaching faculties in schools and colleges. Therefore, the very contention of the learned Counsel for the writ petitioner that the principles of equity should be applied in this case cannot have no force in the eye of law. Principles of equity cannot be applied for the purpose of validating the invalid qualification obtained by the candidate. Such misplaced sympathy will result in miscarriage of justice. The misplaced sympathy cannot be a ground for validating such invalid qualifications. Therefore, this Court is not inclined to accept the contentions that the writ petitioner has studied SSLC in the year 1992 and +2 in the year 1993 and therefore, she must be allowed to get the TET based on the examination conducted by the recruitment Board.

18.The facts and circumstances reveals that the writ petitioner at the first instance was not qualified for securing appointment for degree course in the regular college. A candidate can get appointment to graduation course in any college only if he or she had undergone the SSLC course as well as the +2 course in the regular pattern. Therefore, the writ petitioner was not even qualified for appointment to the graduation course namely B.A. Degree. That is why she has chosen to study correspondence course. Thus, the very appointment for degree itself was obtained in violation of UGC regulations. This apart, the writ petitioner has not studied +2 course as per the scheme of education of Government of Tamil Nadu. As per the scheme of education in the State of Tamil Nadu, a candidate must pass 10th standard and thereafter 2 years +2 course. The writ petitioner admittedly had not studied two years +2 course and she studied +2 course within 1 year from the date of passing of the SSLC. This being the factum, the very relief as such sought for in this writ petition deserves no merit consideration.



ineligible for TET is in consonance with the legal principles and as well as in accordance with the Government Rules and regulations in this regard.

19. Accordingly, the writ petition stands dismissed. No costs.

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Sd/-
Assistant Registrar (Crl. Side)

/TRUE COPY/

Sub Assistant Registrar

MR

To

1. The Secretary to Government,
State of Tamil Nadu,
School Education Department,
Secretariat, Chennai - 9.

2. The Chairman,
Teachers Recruitment Board,
4th Floor, E.V.K. Sampath Maligai,
College Road, Chennai - 6.

+1 CC to M/s. AJMAL ASSOCIATES, Advocate (SR-76607[F] dated
22/07/2019)

W.P[MD]No.11731 of 2014
22.07.2019

JM/18.10.2019/11P/4C