



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 29.07.2019

CORAM:

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P. (MD) Nos.2700, 3808 and 7998 of 2014

and

M.P. (MD)Nos.1, 2, 1, 2 and 1 of 2014

WEB COPY

A.Surya ... Petitioner in W.P.(MD)No.2700 of 2014
J.Emmanuel ... Petitioner in W.P.(MD)No.3808 of 2014
R.Esther Rani ... Petitioner in W.P.(MD)No.7998 of 2014
-Vs-

1.The State of Tamil Nadu,
Represented by its Principal Secretary to Government,
School Education (TRB) Department,
Secretariat, Chennai-600 009.

2.The Chairman,
Teachers Recruitment Board,
Chennai-600 006.

3.The Director of School Education,
Chennai-600 006.

4.The Director of Elementary Education,
Chennai-600 006.

... Respondents

in W.P.(MD)Nos.2700 and 3808 of 2014

1.The State of Tamil Nadu,
Represented by its Secretary to Government,
School Education Department,
St. George Fort, Chennai-9.

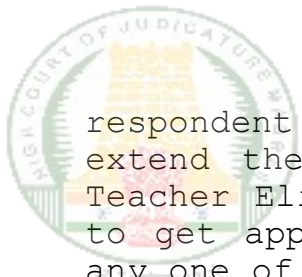
2.The Secretary,
Tamil Nadu Teachers Recruitment Board,
E.V.K.Sampath Maligai, DPI Compound,
Chennai.

3.National Council for Teacher Education,
Represented by its Chairman,
Hans Bhawan, Wing II,
1, Bahadur Shah Zafar Marg,
New Delhi-110002.

... Respondents

in W.P.(MD)No.7998 of 2014

PRAYER in W.P. (MD)Nos.2700 and 3808 of 2014: Writ Petitions filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, calling for the records pertaining to the order passed by the first respondent in G.O.Ms.No.25, School Education (TRB) Department, dated 06.02.2014 and quash the same, insofar as it denies the relaxation of 5% to the candidates who appeared in the Teacher Eligibility conducted by the second



respondent in 2012 is concerned, and directing the respondents to extend the benefit of 5% relaxation to the petitioner and issue Teacher Eligibility Test Certificate so as to enable the petitioner to get appointment to the post of B.T. Assistant (Maths), Tamil in any one of the Government Schools.

PRAYER in W.P. (MD) No. 7998 of 2014: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Mandamus, directing the respondents 1 and 2 to issue a certificate of pass in Tamil Nadu Teacher Eligibility Test, 2012-Paper 2 by providing relaxation upto 5% in the qualifying marks to the petitioner Roll No.12TE20804344 belonging to OBC category / Backward Class Category as per the Notification dated 29.07.2011 issued by the third respondent and accordingly, to appoint the petitioner in the post of Graduate Assistant in History within the time period stipulated by this Court.

For Petitioner : Mr.V.Panneer Selvam,
For M/s.C.S. Associates
(in W.P. (MD) Nos.2700 and 3808 of 2014)
For R1, R3 & R4 : Mrs.S.Srimathy,
Special Government Pleader.
(in W.P. (MD) Nos.2700 and 3808 of 2014)
For R2 : Mr.V.R.Shanmuganathan,
Special Government Pleader.
(in W.P. (MD) Nos.2700 and 3808 of 2014)
For Petitioner : Mr.T.Lajapathi Roy
(in W.P. (MD) No.7998 of 2014)
For R1 : Mrs.S.Srimathy,
Special Government Pleader.
(in W.P. (MD) No.7998 of 2014)
For R2 : Mr.V.R.Shanmuganathan,
Special Government Pleader.
(in W.P. (MD) No.7998 of 2014)
For R3 : No Appearance

COMMON ORDER

The Government Order dated 06.02.2014 in G.O.Ms.No.25, School Education (TRB) Department is sought to be quashed in W.P.(MD)Nos.2700 and 3808 of 2014 and consequential direction is sought for to direct the respondents to extend the benefit of 5% relaxation to the writ petitioners and issue Teacher Eligibility Test Certificate, so as to enable the writ petitioners to get appointment to the post of B.T. Assistant (Maths) in any one of the Government Schools.

2.The relief as such sought for in W.P. (MD) No.7998 of 2014 is for a direction to direct the respondents 1 and 2 to issue certificate of pass in Tamil Nadu Teacher Eligibility Test, 2012-Paper 2 by providing relaxation upto 5% in the qualifying marks to the writ petitioner Roll No.12TE20804344 belonging to OBC category / Backward Class Category as per the Notification dated 29.07.2011



issued by the third respondent and accordingly, to appoint the petitioner in the post of Graduate Assistant in History.

3.The question of issuing a direction to appoint the writ petitioners does not arise at all. Acquiring qualification of Teachers Eligibility Test is mandatory qualification for appointment. Thus, mere passing in the test would not confer any right on the candidate to seek for a direction to issue appointment order.

4.However, in the present case, the claim of the writ petitioners, is that 5% of relaxation in acquiring mark was granted by the Government with reference to the Teachers Eligibility Test conducted during the year 2013. However, the said benefit was not extended in respect of the candidates, who appeared in the year 2012. Claiming actions of the respondents as discriminating, the Writ Petition are filed.

5.The power of relaxation was exercised by the Government in an arbitrary manner is the contention of the writ petitioners. It is stated that the Government has taken a decision to grant 5% relaxation in acquiring marks in respect of the candidates, who appeared in the Teachers Eligibility Test of the year 2013 and the same benefit is to be extended to the candidates, who appeared in the year 2012 also. All these writ petitioners had appeared in the Teachers Eligibility Test of the year 2012. However, the issues in this regard, are already settled by the Hon'ble Supreme Court of India in the case of **V.Lavanya and others Vs. State of Tamil Nadu and others** reported in **2017 (1) SCC 322**. The relevant paragraphs of the judgment are extracted hereunder:-

"27. Granting relaxation to SC/ST, OBC, physically handicapped and de-notified communities is in furtherance of the constitutional obligation of the State to the under-privileged and create an equal level-playing field. After referring to clause 9 of the NCTE Guidelines, the Madras High Court rightly held that the Government of Tamil Nadu has acted in exercise of the powers conferred under clause 9 of the Guidelines issued by the NCTE. Madurai Bench was not right in quashing G.O. (Ms.) No.25 dated 06.02.2014 on the ground that such relaxation based upon the theory of social justice is actually destructive of the very fabric of the social justice. In our considered view, the judgment of the Madurai Bench has not kept in view the constitutional obligation of the State to provide equal level-playing field to the under privileged. In consonance with the M. Nagaraj case, an affirmative action taken by State Government granting relaxation for TET would not amount to dilution of standards and hence the view taken by the Madurai Bench is not sustainable and is liable to be set



aside.

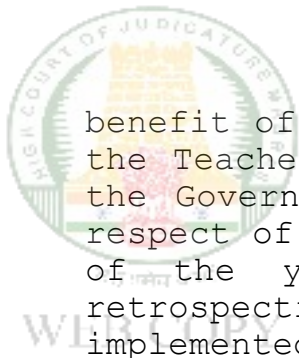
29. We are unable to persuade ourselves to accept the view of Madurai Bench quashing the impugned G.O. on the ground of alleged change in the stand of the Government. Considering the representation from various quarters, it was a policy decision taken by the Government to relax marks for TET pass for specified and under-privileged communities. It is a matter of State policy to frame and prescribe selection norms with regard to services and posts connected with the affairs of the State. It is well-settled that courts cannot interfere with the policy decisions of the State especially when the policy decision is taken in public interest to further the advancement of reserved categories. A policy decision taken by the State in exercise of its jurisdiction under Article 162 of the Constitution of India is subservient only to the mandate of the constitutional provisions and the recruitment rules framed by the State itself, either in terms of a legislative act or an executive order. The relaxation provided by the State Government and criteria of selection laid down vide impugned government orders are in exercise of the powers provided under the proviso to Article 309 of the Constitution of India and being a policy decision in terms of its extant reservation policy cannot be impeached on the ground that the relaxation has been given to suit some specific class of individuals.

30. It is now well settled by a catena of decisions that there can be no question of estoppels against the Government in the exercise of its legislative, sovereign or executive powers (vide *Excise Commissioner U.P., Allahabad v. Ram Kumar* (1976) 3 SCC 540 and *M. Ramanatha Pillai v. State of Kerala and Anr.* (1973) 2 SCC 650). The view taken by Madurai Bench as regards the stand of the Government to relax the norms allegedly in contradiction to its earlier stand is not sustainable in law.

43. The Madras High Court rightly rejected the challenge to G.O.(Ms.) No.25 dated 06.02.2014 and G.O.(Ms.) No. 71 dated 30.05.2014, holding that as per the NCTE Guidelines, the State Government has the power to grant relaxation on the marks obtained in the TET for the candidates belonging to reserved category and the same is affirmed. The Madurai Bench did not keep in view the NCTE Guidelines and the power of the State Government to grant relaxation in terms of their extant reservation policy and erred in quashing G.O.(Ms.) No.25 dated 06.02.2014 and hence the same is liable to be set aside."

6. In view of the judgment of the Hon'ble Supreme Court of India, no further consideration is required as far as granting

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benefit of relaxation in respect of the candidates, who appeared in the Teachers Eligibility Test of the year 2012 is concerned. When the Government has taken a policy decision to grant relaxation in respect of the candidates, who appeared in Teachers Eligibility Test of the year 2013 alone, now, this Court cannot grant any retrospective relaxation by extending Government policy already implemented during the year 2013.

7. When the Hon'ble Supreme Court of India also categorically discussed the issues in relation to G.O.Ms.No.25, School Education (TRB) Department, dated 06.02.2014 as well as G.O.Ms.No.71, School Education (TRB) Department, dated 30.05.2014, no further adjudication is required in respect of the relief sought for in the present Writ Petitions, as admittedly, the present writ petitioners are claiming benefit of 5% relaxation in respect of the Teachers Eligibility Test of the year 2012. Thus, the Writ Petitions stand disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (AD I)

// True Copy //

Sub Assistant Registrar (CS)

To

1. The Principal Secretary to Government,
The State of Tamil Nadu,
School Education (TRB) Department,
Secretariat, Chennai-600 009.
2. The Chairman,
Teachers Recruitment Board,
Chennai-600 006.
3. The Director of School Education,
Chennai-600 006.
4. The Director of Elementary Education,
Chennai-600 006.
5. The Secretary,
Tamil Nadu Teachers Recruitment Board,
E.V.K. Sampath Maligai, DPI Compound,
Chennai.



6.The Chairman,
National Council for Teacher Education,
Represented by its Chairman,
Hans Bhawan, Wing II,
1, Bahadur Shah Zafar Marg,
New Delhi-110002.

+2 CC to M/s.V.PANNEER SELVAM, Advocate (SR-78637[F],78636 dated
30/07/2019)

+1 cc Mr.T.LAJAPATHI ROY ,Advocate, SR.No. 78394

W.P. (MD) Nos.2700, 3808 and 7998 of 2014
29.07.2019

_KK/SAR/16.08.2019/6P-10C/