

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on
13.02.2020

Delivered on
18.02.2020

CORAM:

THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

W.P.Nos.6220 & 7835 of 2019

and

WMP Nos.7070, 7071 & 8472 of 2019

1.K.Gunavathi
2.G.Muthuraman
3.R.Parthiban
4.S.Gnanaraja
5.R.Vinayagamoorthy
6.P.Saravanan
7.V.Lazar Ramesh
8.E.Natarajan
9.M.Annakamu
10.N.Amuthavalli
11.P.Srinivasan
12.M.Srikalpanadevi
13.I.Allaudeen Badhusa
14.S.Saravanan
15.A.Manjula
16.Mr.Sheela Thankam
17.K.Saravanan
18.V.Pugalenth
19.R.Sridhar
20.R.M.Manickavasagam
21.S.Bhuvaneswari

..Petitioners
in W.P.No.6220/2019

.vs.

The State of Tamil Nadu,
Rep.by Principal Secretary to Government,
School Education Department,
Fort St.George,
Chennai 600 009.

..Respondent
in W.P.No.6220/2019

1.E.Chandravadanam
2.S.Amsalakshmi
3.S.S.Asaithambi
4.N.Deepa
5.A.Regina Ponrani

6.M.Thilagavathi
7.V.Gnanachandran
8.C.Pravin
9.M.Anitha
10.N.Veeraraghavan
11.V.Kumaragurubaran

..Petitioners
in W.P.No.7835/2019

1. The State of Tamil Nadu,
Rep.by the Principal Secretary to Government,
School Education Department,
Fort St.George,
Chennai 600 009.
2. The Secretary to Government,
School Education Department,
Fort St.George,
Chennai 600 009.
- 3.The Director of School Education,
College Road, Nungambakkam,
Chennai.
- 4.The Joint Director (Vocational Education),
School Education Department,
Chennai-600 006.

..Respondents
in W.P.No.7835/2019

(R4 impleaded vide order dt.06.02.2020
made in WMP No.2730/2020 in WP.No.7835/2019
by NAVJ)

Prayer in W.P.No.6220 of 2019 : Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the records of the respondent relating to G.O.Ms.No.26, School Education (SE7-1) Department dated 12.02.2019 and quash the same insofar as Clause 2 (v) of the said GO which stipulates that the existing Computer Instructors shall be promoted as Computer Instructor Grade-I if they have 8 years of service in the present post is concerned and consequently issue a direction to the Respondent to treat all the 1880 candidates occupying posts of Computer Instructors sanctioned by G.O.Ms.No.187 (School Education Department) dated 04.10.2006 now re-designated as Computer Instructors Grade-II as equals while giving promotion as Computer Instructors Grade-I irrespective of the number of years of service put in by them in the present post.

Prayer in W.P.No.7835 of 2019 : Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the records of the first respondent relating to G.O.Ms.No.26, School Education (SE7-1) Department dated 12.02.2019 on his file, quash the same insofar as Clause 2 (v) of the said GO requiring 8 years of service for the petitioners to be promoted as Computer Instructors Grade-I is concerned and direct the respondents to promote the petitioners and designate them as Computer Instructors Grade-I irrespective of the number of years of their service.

For Petitioners
[In W.P.No.6220 of 2019] : Mrs.Nalini Chidambaram,
Senior Counsel
for Mrs.C.Uma

[In W.P.No.7835 of 2019] : Mrs.Hema Sampath,
Senior Counsel
for Mrs.R.Meenal

For Respondent : Mrs.V.Annalakshmi
[In both WPs] Government Advocate

COMMON ORDER

The present Writ Petitions have been filed challenging Clause 2(v) of the G.O. dated 12.02.2019, which prescribes 8 years of service in the post of Computer Instructor in order to be considered for promotion to the post of Computer Instructor Grade-I and for a consequential direction to consider the candidature of the petitioners for promotion to the post of Computer Instructors Grade-I.

2.This case has a chequered history. The same can be captured with the list of dates and events tabulated herein below:

S. No.	Date	Events
1	17/3/1999	Government of T. N. Announces in the assembly to introduce Computer Education for 11 th and 12 th standard students in Government schools. Government entered into an agreement with (Electronic Corporation of Tamil Nadu) to select and im part computer instructions

2	1999 -2000	2394 Computer Instructors without B.Ed. degree (which is a minimum qualification required for a teacher) were appointed on contract basis at the instance of in Government schools without going through Employment Exchange and without following the Rule of Reservation or recruitment rules on the recommendation of the Government
3	23/4/1999	When the appointment of Computer Instructors by the private agency was questioned by Chandravadanam in W. P. 6564 of 99 in the High Court, Madras, the High Court held that on the expiry of the term of 5 years proper procedure (Employment Exchange And Rule of Reservation and recruitment rules) should be followed for future appointment
4	February 2005	The term of 5 years expired - Government created 1880 permanent posts of Computer Instructors. Notwithstanding the High Court judgement the Government after creating 1880 posts of Computer Instructors , passed G. O. Ms. No. 187 dated 4/10/2006 to conduct special test for Computer Instructors appointed by on contract basis to fill up the 1880 posts without calling for applications from open market
5	22/10/2006	Single judge quashed G.O.Ms. No. 187 dated 4/10/2006 in W. P. No. 43897 of 2006 filed by Chandravadanam.
6	22/8/2008	The Division Bench allowed W. A. No. 1152 of 2007 filed by the Government on the undertaking of the Government stating that the special test is a onetime measure. The court held that in the special test there will be some failures. Hence the balance seats should be filled up by regular recruitment process.

7	12/10/2008	TR B conducted special test prescribing 50% as minimum pass mark. On the night of 12/10/2008 after the exam, the Teachers Recruitment Board reduced the minimum pass mark from 50% to 35%. Even then only 894 of the 1686 candidates passed. 792 failed unable to get even 35%.
8	9/7/2009	C. A. 4187 of 2009 was filed by Chandravadanam before the Supreme Court of India. The Supreme Court ruled that the reduction of marks from 50% to 35% was unjustified. In the exam only 894 candidates passed. 792 failed. Supreme Court directed the State Government to issue a notification inviting applications through advertisements and allow candidates sponsored by the Employment Exchange to take the test. All rules of appointment and rules of reservation would also apply. The court gave permission to the 792 failed the candidates who had taken more than 35% but less than 50% to take part in recruitment process even if they did not have B.Ed. as a one-time exception.
9	19/11/2009	i. In the classification petitions I. A. 2 to 6 and 7 of 2009, the Supreme Court directed conduct of exams for candidates who had secured 35% to 49% and appoint those who secured more than 50% in the second test. ii. For the existing 175 vacancies and future vacancies recruitment should be through the Employment Exchange based on seniority with the Employment Exchange as per the policy decision of the Government as well as Government orders applicable.
10	24/1/2010	TRB conducted the second exam. Out of 792 candidates only 125 secured 50% marks. 667 candidates failed. Hence 175+ 667, i.e. 842 posts were vacant.

11	12/4/2010	W. P. No. 756 7 of 2010 was filed by the Association of Higher Secondary School Computer Teacher Association questioning the defects in the question paper and seeking re - exam
12	13/4/2010	W. P. No. 7567 of 2010 was dismissed holding that the failed computer instructors cannot have the luxury of a 3 rd exam.
13	3/1/2011	Orders were passed in W. A. No. 837 of 2010 and W. P. No. 178 to 2 of 2010 directing reference of 45 questions, key answers and objections to the Computer Science Department of IIT, Madras.
14	February 2011	As per the direction of the Supreme Court in its order dated 19/11/2009, certificate verification was conducted for 845 candidates. 175 posts of Vocational Computer Instructors were filled up following Employment Exchange seniority and the rule of reservation.
15	13/9/2012	M. P. No. 1 of 2012 was filed in W. P. No. 1 7822 of 2010 seeking verification of 5 more questions.

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16	20/12/2012	W. A. No. 837 of 2010 et cetera filed against the order in W. P. No. 7567 of 2010 were disposed of. The contract Computer Instructors dragged on the matter for several months and years by filing frivolous applications. Finally the High Court Division Bench was able to dispose of the writ appeal by accepting the report of the committee and directed re- evaluation of the answers after deleting 20 questions for which he answers were wrong. Those who obtained 6 remarks out of the total 130 marks were to be considered qualified. The remaining candidates would be treated as failed. Results were to be published on or before 31/1/2013. The remaining vacancies should be filled from open market through Employment Exchange seniority by following the rules of reservation on or before 15/5/2013.
17	28/1/2013	SLP (Civil) No. 1408 of 2013 filed against the order in W. A. No. 837 of 2010 was dismissed as withdrawn. The petitioners therein sought liberty to approach the Government for appropriate relief. Permission was granted on making clear that the Hon'ble Supreme Court had not expressed a new opinion on the merits of their proposed claim.
18	30/1/2013	Clarification by the Bench that Teachers Recruitment Board could proceed with the process already commenced.
19	31/1/2013	The Teachers Recruitment Board published the result of the second test after re-evaluation. Out of the 667 failed the candidates, only 15 candidates secured 50% and above

20	15/5/2013	The last date for filling up of the remaining vacancies as per the orders dated 20/12/2012 in W. A. No. 837 of 2010.
21	17/4/2013	Show cause notice issued to all the 652 failed Computer Instructors to terminated services.
22	23/4/2013	W. P. 11995/2013 was filed by the failed Computer Instructors against the show cause notice.
23	30/4/2013	Interim direction petition for the failed candidates to continue till the regular recruitment took place was disposed of.
24	22/5/2013	The qualified B. Ed. holders filed W. A. 1307/2013 and the failed the candidates filed W. A. 1088 & 1089/2013.
25	4/6/2013	The B. Ed. Association filed Contempt Petition 1270/2013 for implementation of the order dated 20/12/2012 in W. A. 837/2012.
26	23/7/2013	The Division Bench passed orders in Contempt Petition 1270/2013 to terminate all the 652 failed Computer Instructors. The failed the candidates filed SLPs before the Supreme Court of India.
27	30/7/2013	SLP (C) 13775/2013 and 13 778/2013 filed by the failed candidates were dismissed by the Supreme Court.

28	12/8/2013	The Division Bench ordered in Contempt Petition 1270/2013 that the State Government should commence the selection process, comply with the orders of the Supreme Court and substantial recruitment should be completed to fill the 652 vacancies. Report shall be submitted on 22/10/2013.
29	18/9/2013	The Division Bench passed orders in W. A. 1307/2013 batch that the termination order was correct and that recruitment should be by open competition through TRB and not by Employment Exchange seniority, thus nullifying the orders in favour of the qualified B.Ed. candidates with Employment Exchange seniority.
30	7/3/2014	The Supreme Court allowed Civil Appeal 3342 of 2014 holding that the 652 vacant posts should be filled up on the basis of Employment Exchange seniority.
31	6/4/2015	The writ petitioners were appointed as Computer Instructors after a long struggle of 16 years.

3. Mrs. Nalini Chidambaram and Mrs. Hema Sampath, learned Senior Counsels appearing on behalf of the petitioners submitted that the respondents can fix the qualification only in line with the Notification issued by the National Council for Teacher Education [hereinafter referred to as "NCTE"] which prescribes the minimum qualification for teachers. The petitioners are teaching Senior Secondary Classes and the qualification prescribed by NCTE through the Notification dated 12.11.2014, is as follows:

v. The existing Computer Instructors shall be promoted as Computer Instructor Grade. If they have 8 years of service in the present post and possess the required minimum educational qualification based on NCTE norms as mentioned in para-1 above by upgrading the post as Computer Instructor Grade-I.

The learned Senior Counsels by pointing out to the above qualification prescribed by NCTE, submitted that the respondents have prescribed a qualification, which is beyond the requirements as stipulated by NCTE. It was further submitted that repeated attempts are being made to somehow accommodate the persons, who got in as Computer Instructors appointed as contract employees even without a qualification and deny the rights of the persons who got appointed based on their qualifications, and through a proper mode of appointment. The learned Senior Counsel submitted that the petitioners after a very long battle were appointed as Computer Instructors only in the year 2015 and the present qualification of 8 years experience has been prescribed only with a malafide intention to disqualify the petitioners from participating in the process of promotion. The learned Senior Counsel further submitted that if the petitioners are not promoted as Computer Instructor Grade-I in the present process of promotion, they will rank junior to the directly appointed Computer Instructors and contract employees and it will have a cascading effect whereby there will be very bleak chances for their further promotion to the post of Headmaster, Higher Secondary School. Therefore, it was submitted that the 8 years of service prescribed in the Notification is arbitrary and violative of Article 14 of the Constitution of India and the same requires to be quashed by this Court.

4. The respondents have filed a counter in both the writ petitions. The respondents have taken a plea that they are not responsible for the delay which happened while conducting recruitment to the 652 vacant posts and it happened only due to the litigation which was pending for a longtime. A further stand has been taken in the counter affidavit to the effect that the Notification does not in any way violate the NCTE Norms and what the Government has done is that, they have only added to the qualifications already prescribed by the NCTE. According to the respondents, service conditions including promotions are the prerogative of the State Government and unless it is fulfilled, no one has the right to claim for promotion. It is further stated that the 8 years period has been prescribed to ensure that sufficient experience is gained by the candidates in the post of Computer Instructor before the candidate is considered for promotion.

5. Mrs. V. Annalakshmi, learned Government Advocate appearing on behalf of the respondents submitted that the petitioners do not have any vested right to be considered for promotion to the post of Computer Instructor Grade-I unless they fulfill the qualifications prescribed under the Notification. The learned Government Advocate further submitted that prescribing 8 years experience as a condition is the prerogative of the respondents and the same cannot be interfered with by

this Court, if it is not in conflict with the NCTE Regulations. The learned Government Advocate therefore, sought for the dismissal of the writ petitions.

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

7.The post that is involved in the present case seems to be destined to go through a process of litigation every time, when there is some development. It all started in the year 1999 and even after 20 years, it does not seem to have got out of the jinx.

8.It is really shocking that teachers were employed in schools as Computer Instructors even without a minimum qualification in the subject as contract employees. It is even more shocking that they taught Computer Science to students belonging to the Higher Secondary Level and that these students have managed to get through in the subject. The standard of persons, who were employed as Computer Instructors were abysmal and that can be seen from the fact that in the special test that was conducted by the Teacher Recruitment Board, 792 persons failed even when the minimum marks for passing was reduced to 35. Every time, the Government came up with a plea before the Court by saying that as a one time measure, the services of these Computer Instructors can be engaged. This case is a classical example which shows the cavalier manner in which education is being treated and students are being exposed in the hands of persons, who do not even have a minimum qualification to teach Computer Science. Unfortunately, the Government wanted to somehow save those Computer Instructors, who got in through ELCOT and all attempts were being made to accommodate them at every stage. It required a long legal battle which started in the year 1999, when ultimately the persons who possessed the appropriate qualifications came to be appointed as Computer Instructors in the year 2015. It was a struggle of nearly 16 years. All the petitioners lost precious time of their lives running from one Court to another just to get themselves recognized as Computer Instructors in spite of having the requisite qualification. It was unfortunate that the petitioners were fighting their case against the persons who were engaged on contract basis even without a minimum qualification. For reasons best known, the Government has continuously been siding with those persons who had come in through a very questionable process.

9.The petitioners after they were ultimately appointed as Computer Instructors in the year 2015, were hoping that it will be sailing smooth atleast for the rest of their career. However, the respondents thought it otherwise. The petitioners

are eligible to be considered for promotion under the NCTE Norms for the post of Computer Instructors Grade-I. However, a condition was added in the impugned Government Order which ensured that none of them who were directly appointed Computer Instructors will get their promotion to the next higher post.

10. Under normal circumstances, this Court will never interfere with the service conditions since it is the prerogative of the employer. This Court is also aware of the fact that no one has a

fundamental right for promotion and that there is only a fundamental right for being considered for promotion if the aspiring candidates fulfill the requirements. There is only one exception where this Court will question the condition imposed by the employer and that is where the condition is opposed to any Statute or Regulations or where it is added with a mala fide intention to ensure that only a certain category of persons will be fulfilling the eligibility and the others will be relegated from the process of selection.

11. In the present case, right from the beginning, the respondents have always supported only those persons, who came in through ELCOT on contract basis. The same has already been commented upon in the earlier paragraphs of this judgment. The requirement of 8 years experience was not prescribed under the NCTE Regulations. Going by the previous happenings in the present case and the attitude of the respondents against the regularly employed Computer Instructors, it is clear that this 8 years experience has been added in the Government Order only to ensure that the petitioners are not considered for promotion to the post of Computer Instructor Grade-I during the present selection. It was tailor-made to avoid the

petitioners from being promoted to the post of Computer Instructor Grade-I. If the petitioners are denied promotion during the present selection, most of them will have a very bleak chance of getting further promotion to the post of Headmaster, Higher Secondary School. Denial of promotion during the present selection will definitely have a cascading effect in the career of the petitioners.

12. In view of the above discussion, this Court has absolutely no hesitation to interfere with Clause 2(v) of the impugned Government Order dated 12.02.2019, which prescribes 8 years of service in the post of Computer Instructor and the same is hereby quashed. The State Government is directed to strictly comply with the other qualifications prescribed in the impugned Government Order and also the NCTE Regulations and

consider the promotion of all those eligible candidates to the post of Computer Instructor Grade-I. This process shall be completed within a period of three months from the date of receipt of copy of this order.

In the result, both the Writ Petitions are allowed with the above directions. No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar

// True Copy//

Sub Assistant Registrar

KP

To

1. The Principal Secretary to Government,
The State of Tamil Nadu,
School Education Department,
Fort St.George, Chennai 600 009.
2. The Secretary to Government,
School Education Department,
Fort St.George, Chennai 600 009.
3. The Director of School Education,
College Road, Nungambakkam,
Chennai.
4. The Joint Director (Vocational Education),
School Education Department,
Chennai-600 006.

+1cc to Ms.C.Uma, Advocate, SR.No.13501.

+1cc to Mr.R.Meenal, Advocate, SR.No.13900.

Common Order made in
W.P.Nos.6220 &7835 of 2019

PPA(CO)
CSR: 13.03.2020