

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :24.01.2020

CORAM

THE HON'BLE MR.JUSTICE N.ANAND VENKATESH

W.P. No.33189 of 2019 and
W.M.P. Nos. 33638, 33640 & 33642 of 2019

1.M.Sankar
2.G.Gnanavel
3.G.Sathyamoorthy
4.C.Rajagiri
5.S.Priyadhrshini

...Petitioners

Vs.

1. The State of Tamil Nadu,
Rep. By its Secretary to Government,
Education Department,
Fort St.George,
Chennai 600 009.
2. The Director of School Education,
DPI Campus,
College Road,
Chennai 600 006.
3. Teachers Recruitment Board,
Rep. by its Chairman,
4th Floor, E.V.K.Sampath Maligai,
DPI Compound, College Road,
Chennai 600 006.

..Respondents

Prayer:- Writ petitions filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus calling for the records pertaining to the ineligible list dated 20.11.2019 published by the third respondent in its official website and quash the same as illegal, incompetent and ultravires in so far as the petitioners are concerned and consequently direct the respondents to appoint the petitioners in the post of PG Assistant - Mathematics as per the Notification No.10/2019 dated 12.06.2019.

For Petitioners	: Mr.R.Jayaprakash
For Respondents 1&2	: Mrs.V.Annalakshmi Government Advocate
For Respondent 3	: Mr.C.Munusamy Special Government Pleader

O R D E R

This writ petition has been filed challenging the rejection of the candidature of the petitioners, who participated in the selection to the post of PG Assistant (Mathematics).

2. The case of the petitioners is that they have completed M.Sc. Mathematics from the Tamil Nadu University, Thanjavur. They completed the Course on 14.07.2019, when the results were published. The 3rd respondent vide notification dated 12.06.2019 had invited applications from eligible candidates for appointment to the post of PG Assistant in various disciplines in Tamil Nadu Higher Secondary Educational Service for the year 2018-2019. The petitioners who had all the eligibility, applied for the post and also participated in the on-line examination that was held on 29.09.2019.

3. The name of the petitioners found a place in the provisional list and they were called for certificate verification and the petitioners were directed to upload all the original documents for verification. The petitioners were waiting for the call from the respondents and to the shock of the petitioners, the petitioners were informed that the candidature of the petitioners have been rejected and the name of the petitioners were shown in the ineligibility list that was published by the Teachers Recruitment Board in the Official website on 20.11.2019. The reason that was assigned was that the petitioners have passed the PG after the cut off date. Aggrieved by the same, the present writ petition has been filed before this Court.

4. The learned counsel appearing for the petitioner submitted that the basis on which the respondents have rejected the candidature of the petitioner is factually erroneous. The learned counsel submitted that even as per the certificate that was issued by the Tamil Nadu University, Thanjavur, the petitioners have completed the PG Course, when the results were declared on 14.07.2019. The learned counsel submitted that as per the notification, the last date for submission of application through on-line mode was fixed as 15.07.2019. Therefore, according to the petitioners, the petitioners have already completed the course as on the date when the application was submitted. The learned counsel therefore concluded his argument by submitting that the proceedings of the 3rd

respondent requires interference and the respondents must be directed to consider the candidature of the petitioners.

5. The learned counsel appearing for the petitioner in order to substantiate his submissions relied upon the judgement of the Hon'ble Supreme Court in [Food Corporation of India Vs. Rimjhim] in 2019 5 SCC 793. The relevant portions of the Judgment is extracted hereunder :-

"...11. Now so far as the submission on behalf of the FCI that a candidate must and/or ought to have produced the experience certificate along with the application is concerned, at this stage, a decision of this Court in the case of Charles K. Skaria v. Dr. C. Mathew (1980) 2 SCC 752 and the subsequent decision of this Court in the case of Dolly Chhanda v. Chairman, Jee and others (2005) 9 SCC 779 are required to be referred to. In the case of Charles K. Skaria (supra), this Court had an occasion to consider the distinction between the essential requirements and the proof/mode of proof. In the aforesaid case, this Court had an occasion to consider the distinction between a fact and its proof. In the aforesaid case before this Court, a candidate/student was entitled to extra 10% marks for holders of a diploma and the diploma must be obtained on or before the last date of the application, not later. In the aforesaid case, a candidate secured diploma before the final date of application, but did not produce the evidence of diploma along with the application. Therefore, he was not allowed extra 10% marks and therefore denied the admission. Dealing with such a situation, this Court observed and held that what was essential requirement was that a candidate must have obtained the diploma on or before the last date of application but not later, and that is the primary requirement and to submit the proof that the diploma is obtained on or before a particular date as per the essential requirement is secondary. This Court specifically observed and held that what is essential is the possession of a diploma before the given date; what is ancillary is the safe mode of proof of the qualification. This Court specifically observed and held that to confuse between a fact and its proof is blurred perspicacity. This Court further observed and held that to make mandatory the date of acquiring the additional qualification before the last date for application makes sense. But if it is unshakeably shown that the qualification has been acquired before the relevant date, to invalidate the merit factor because proof, though indubitable, was adduced a few days later but before the selection

or in a manner not mentioned in the prospectus, but still above board, is to make procedure not the handmaid but the mistress and form not as subservient to substance but as superior to the essence. While observing and holding so, in paragraphs 20 & 24, this Court observed and held as under:

20. There is nothing unreasonable or arbitrary in adding 10 marks for holders of a diploma. But to earn these extra 10 marks, the diploma must be obtained at least on or before the last date for application, not later. Proof of having obtained a diploma is different from the factum of having got it. Has the candidate, in fact, secured a diploma before the final date of application for admission to the degree course? That is the primary question. It is prudent to produce evidence of the diploma along with the application, but that is secondary. Relaxation of the date on the first is illegal, not so on the second. Academic excellence, through a diploma for which extra mark is granted, cannot be denuded because proof is produced only later, yet before the date of actual selection. The emphasis is on the diploma; the proof thereof subserves the factum of possession of the diploma and is not an independent factor..... Mode of proof is geared to the goal of the qualification in question. It is subversive of sound interpretation and realistic decoding of the prescription to telescope the two and make both mandatory in point of time. What is essential is the possession of a diploma before the given date; what is ancillary is the safe mode of proof of the qualification. To confuse between a fact and its proof is blurred perspicacity. To make mandatory the date of acquiring the additional qualification before the last date for application makes sense. But if it is unshakably shown that the qualification has been acquired before the relevant date, as is the case here, to invalidate this merit factor because proof, though indubitable, was adduced a few days later but before the selection or in a manner not mentioned in the prospectus, but still above board, is to make procedure not the handmaid but the mistress and form not as subservient to substance but as superior to the essence.

24. It is notorious that this formalistic, ritualistic, approach is unrealistic and is unwittingly traumatic, unjust and subversive of the purpose of the exercise. This way of viewing problems dehumanises the administrative, judicial and even legislative processes in the wider perspective of law

for man and not man for law. Much of hardship and harassment in administration flows from over-emphasis on the external rather than the essential. We think the government and the selection committee rightly treated as directory (not mandatory) the mode of proving the holding of diplomas and as mandatory the actual possession of the diploma. In actual life, we know how exasperatingly dilatory it is to get copies of degrees, decrees and deeds, not to speak of other authenticated documents like mark-sheets from universities, why, even bail orders from courts and Government Orders from public offices. This frustrating delay was by-passed by the State Government in the present case by two steps. Government informed the selection committee that even if they got proof of marks only after the last date for applications but before the date for selections they could be taken note of and secondly the Registrars of the Universities informed officially which of the candidates had passed in the diploma course. The selection committee did not violate any mandatory rule nor act arbitrarily by accepting and acting upon these steps. Had there been anything dubious, shady or unfair about the procedure or any mala fide move in the official exercises we would never have tolerated deviations. But a prospectus is not scripture and common sense is not inimical to interpreting and applying the guidelines therein. Once this position is plain the addition of special marks was basic justice to proficiency measured by marks."

6. The learned counsel further relied upon the judgment of the Hon'ble Supreme Court in [Dolly Chhanda Vs. Chairamn, Jee and others] in 2005 9 SCC 779. The relevant portions of the Judgment is extracted hereunder :-

"... 7. The general rule is that while applying for any course of study or a post, a person must possess the eligibility qualification on the last date fixed for such purpose either in the admission brochure or in application form, as the case may be, unless there is an express provision to the contrary. There can be no relaxation in this regard i.e. in the matter of holding the requisite eligibility qualification by the date fixed. This has to be established by producing the necessary certificates, degrees or mark sheets. Similarly, in order to avail of the benefit of reservation or weight age etc. necessary certificates have to be produced. These are documents in the nature of proof of holding of particular qualification or percentage of marks

secured or entitlement for benefit of reservation. Depending upon the facts of a case, there can be some relaxation in the matter of submission of proof and it will not be proper to apply any rigid principle as it pertains in the domain of procedure. Every infraction of the rule relating to submission of proof need not necessarily result in rejection of candidature.

9. The appellant undoubtedly belonged to reserved MI category. She comes from a very humble background, her father was only a Naik in the armed forces. He may not have noticed the mistake which had been committed by the Zilla Sainik Board while issuing the first certificate dated 29.6.2003. But it does not mean that the appellant should be denied her due when she produced a correct certificate at the stage of second counseling. Those who secured rank lower than the appellant have already been admitted. The view taken by the authorities in denying admission to the appellant is wholly unjust and illegal.

10. The appellant had qualified in the JEE-2003 but the said academic year is already over. But for this situation the fault lies with the respondents, who adopted a highly technical and rigid attitude and not with the appellant. We are, therefore, of the opinion that the appellant should be given admission in MBBS course in any of the State medical colleges in the current academic year."

7. Per contra, learned counsel appearing for the respondents submitted that even though the results were declared by the Tamil Nadu University, Thanjavur, on 14.07.2019, the certificate for the completion of the PG Course was given much later and therefore, on the date on which the application was submitted by the petitioners, the petitioners were not in possession of the completion certificate given by the University and therefore, the petitioners were not eligible to be considered for selection.

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

9. The candidature of the petitioners have been rejected by the Teachers Recruitment Board only on the ground that the petitioners have passed the Post Graduation course after the cut off date. It is clear from the certificate issued by the Tamil Nadu University, Thanjavur that the results for the PG course was published on 14.07.2019. As per the results published, the petitioners have cleared the Post Graduation. The last date for

the submission of the application to participate in the selection was 15.07.2019. Therefore, on the date of submission of application, the petitioners have completed the course.

10. The judgments relied upon by the learned counsel appearing for the petitioner will squarely apply to the facts of the present case. As held by the Hon'ble Supreme Court, there is a distinction between fulfilling the initial requirements and proof / mode of proof. The candidate must possess the essential qualification as on the final date of the submission of the application. This essential qualification has been fulfilled by the petitioners in the present case. The production of the certificate at a later point of time will not take away the essential qualification that was possessed by the petitioners on the date of submission of application.

11. The respondents went wrong in rejecting the candidature of the petitioners on a wrong premise that the petitioners did not complete the post graduation before the due date. The respondents failed to note that the certificate which was given later to the petitioners is only the reiteration of the completion of the course by the petitioner on 14.07.2019. The certificate that was received at a later point of time cannot be put against the petitioners and in the considered view of this Court, the ground on which the candidature of the petitioners was rejected is totally erroneous and the same requires interference of this Court.

12. In the result, the impugned proceedings of the 3rd respondent dated 20.11.2019 is liable to be quashed in so far as the rejection of candidature of the petitioners is concerned. Consequently, the 3rd respondent is directed to take into consideration the petitioner's qualification and the marks obtained by them and proceed further with the process of selection by treating the petitioners as eligible candidates.

13. This writ petition is accordingly allowed. No costs. Consequently, connected miscellaneous petitions are closed.

s/d-

Assistant Registrar(CS-III)

True Copy

Sub-Assistant Registrar

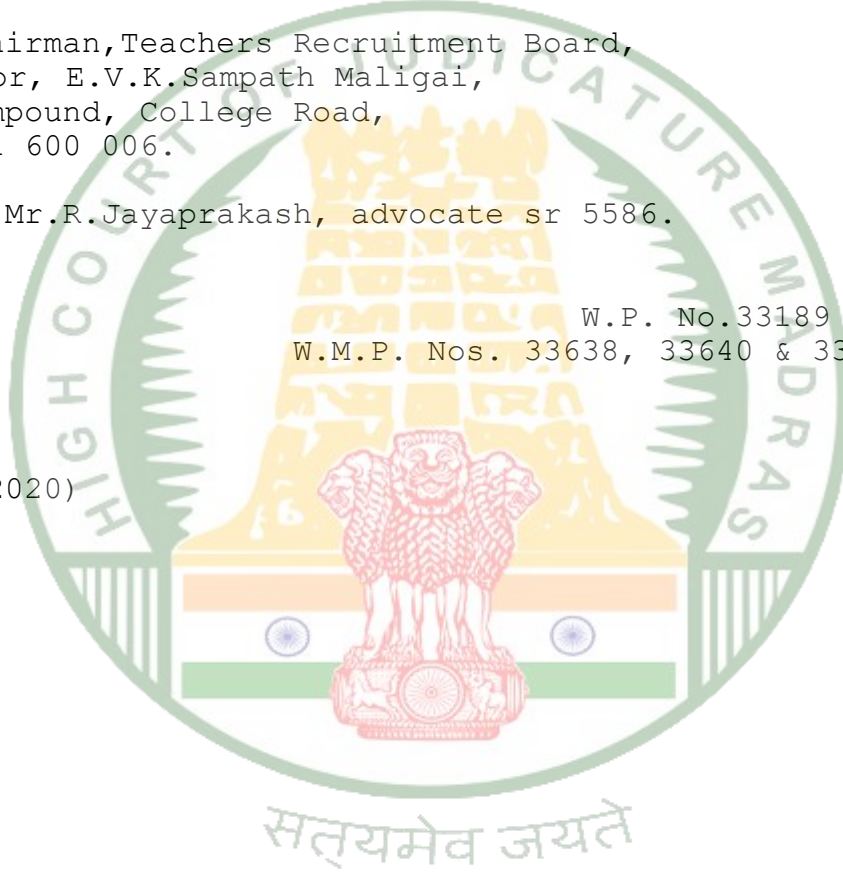
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To

1. The Secretary to Government,
Education Department,
Fort St.George,
Chennai 600 009.
 2. The Director of School Education,
DPI Campus,
College Road,
Chennai 600 006.
 3. The Chairman, Teachers Recruitment Board,
4th Floor, E.V.K.Sampath Maligai,
DPI Compound, College Road,
Chennai 600 006.
- +5 Ccs to Mr.R.Jayaprakash, advocate sr 5586.

W.P. No.33189 of 2019 and
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RJI (CO)
SP(03/02/2020)



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