



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 15.12.2020

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THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY

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W.P(MD) .Nos.17354 and 17392 of 2020

and

W.M.P. (MD) .Nos.14510, 14511,14531 and 14532 of 2020

S.Karunakaran

... Petitioner in W.P.(MD).No.17354 of 2020

A.Velmurugan

... Petitioner in W.P.(MD).No.17392 of 2020

Vs.

1.The Chairman,
Teachers Recruitment Board,
4th Floor, E.V.K.Sampath Maligai,
DPI Campus,
College Road,
Chennai 600 006.

2.The Director of School Education,
DPI Campus,
College Road,
Chennai 600 006.

3.The Joint Director,
Ex-Servicemen Welfare Association,
No.22, Raja Muthaiah Road,
Chennai 600 003. ... Respondents in both W.Ps.

PRAYER in both WPs: Writ Petitions filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus to call for the records relating to the impugned Revised Provisional Selection List for direct recruitment of Special Teachers for the year 2012-2016 in respect of Physical Education Teacher published by the first respondent dated 28.10.2020 and quash the same and direct the first respondent to select and appoint the petitioners to the post of Special Teacher (Physical Education Teacher) by calling the petitioners for counseling within the time stipulated by this Court.

(in both WPs)

For Petitioners : Mr.C.Vakeeswaran

For R1 : Mr.V.R.Shanmuganathan,
Special Government Pleader



For R2

: Mrs.S.Srimathy,
Special Government Pleader

For R3

: Mr.K.P.Narayanakumar,
Special Government Pleader

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C O M M O N O R D E R

These writ petitions have been filed challenging the impugned Revised Provisional Selection List published by the first respondent, dated 28.10.2020, for direct recruitment of Special Teachers (Physical Education Teachers) for the year 2012-2016 and quash the same and consequently direct the first respondent to select and appoint the petitioners to the post of Special Teacher (Physical Education Teacher) by calling the petitioners for counselling within the time stipulated by this Court.

2. The case of the petitioner in W.P.(MD).No.17354 of 2020 is that he joined in the Army on 29.08.1983 as Naik and he has completed the 10th Standard in the month of March 1983. He has rendered unblemished service for more than 15 years in the Indian Army and the Indian Army had given the Graduation Certificate to the petitioner on 31.07.2000. The said graduation certificate may be considered as educationally qualified for reserved Group "C" post.

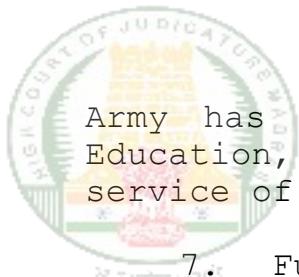
3. The case of the petitioner in W.P.(MD).No.17392 of 2020 is that he joined in the Army on 28.10.1991 as Havildhar and he has completed the 10th Standard on 20.06.1972. He has also completed the Physical Education Course which was conducted by the Army School of Physical Training on 06.07.1998 and the certificate of Command Preparatory Physical Training Course was issued by the Major Western Command. He has rendered unblemished service for more than 15 years in the Indian Army and the Indian Army has given the Graduation Certificate to the petitioner on 31.08.2011.

4. On 26.07.2017, the first respondent has called for applications for the post of Special Teachers (Physical Education, Drawing, Music and Sewing) in School Education and other Departments for the years 2012-2016. The qualifications prescribed in Clause No.ii is as follows:

- ii). a) Pass in Secondary School Leaving Certificate (SSLC)
and
- b) Government Teachers Certificate of Lower Grade in Physical Education.

5. By referring the said qualifications, the persons, who have completed the S.S.L.C., are eligible to do the Physical Education degree of five years course.

6. In the present cases, the petitioners have completed the S.S.L.C. and thereafter, they have joined in Indian Army and the

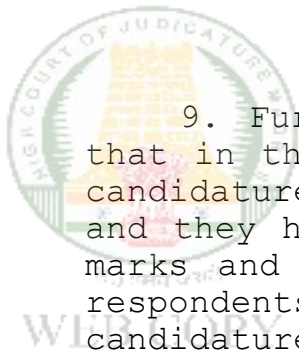


Army has also issued the Certificate of Graduation in Physical Education, since the petitioners herein have rendered unblemished service of 15 years.

7. Further, the petitioners have referred the G.O.(Ms.)No.77, dated 23.01.2018 and in Paragraph No.3 of the said G.O., it is stated as follows:

"3. After careful examination, the Government have decided to accept the proposal of the Director of Ex-Servicemen's Welfare, Chennai and accordingly, direct that for appointment to any reserved vacancy in "Group-C" posts, a Matriculate Ex-servicemen, (which term includes an Ex-servicemen, who has obtained the Indian Army Special Certificate of Education or the corresponding certificate in the Navy or the Air Force), who has put in not less than 15 years of service in the Armed Forces of the Union shall be considered eligible for appointment to the posts for which the essential qualification prescribed is Graduation. They are eligible for promotion to all Group 'A' and 'B' Posts in routine course excepting for those posts for which graduation is prescribed as a prescribed qualification for promotion."

8. By referring the above said Paragraph No.3 of the said G.O., the learned counsel appearing for the petitioners submitted that it prescribed only *Matriculate Ex-servicemen*. Therefore, the Certificate of Graduation in Physical Education obtained by the petitioners in the Indian Army will be considered as equivalent to the qualifications prescribed for the Physical Education Teacher and hence, the petitioners need not undergo H.S.C. He further submitted that the said G.O., was passed in the year 2018, whereas the Notification No.5 of 2017 was published by the Teachers Recruitment Board only on 26.07.2017. Since the process has not been completed, the same Notification will apply retrospectively. The Ex-servicemen made representations to the third respondent to consider the Graduation Certificate obtained in the Indian Army as equivalent to the graduation in Physical Education for the purpose of selection of the Physical Education Teachers in Tamil Nadu. Their grievances also addressed by way of several representations. Even in the said G.O., the Letter Rc.No.5076/2008/C1, dated 18.04.2012 and 21.05.2012 of the Ex-servicemen have been mentioned. After considering the said representations only, the present G.O. has been issued. The Ex-servicemen made their grievances in the year 2012. Hence, the retrospective effect will apply and the said G.O., takes effect from 21.05.2012. Further, he submitted that now the Government has taken a policy decision and *this Court passed orders suitably to permit the petitioners to participate in the certificate verification.*



9. Further, the learned counsel for the petitioners submitted that in the present cases, the respondents have not rejected their candidature and they were allowed to participate in the examination and they have also participated in the examinations and secured 46 marks and during the course of certificate verification only, the respondents said that H.S.C. were not produced and hence, their candidature cannot be considered. He further submitted that at the time of submitting the applications, the petitioners have attached all the documents and after perusal of the documents only, they were allowed to participate in the examination and in the certificate verification, the petitioners have submitted the documents what they have submitted along with the applications. If at all if there is any error on the part of the petitioners, they should have initially rejected and after allowing them in the written examination and at the time of certificate verification, they are invited this new point and says that the petitioners not completed the HSC.

10. In the prescribed qualifications, it has been stated that the person can complete the graduation in Physical Education, even after completing the 10th Standard. In the present cases, after completing the 10th Standard, the petitioners have joined in the Army and obtained the Certificate of Graduation in Physical Education. Hence, this would be considered as a permissible qualification. Therefore, he prayed for allowing these writ petitions.

11. Mr.V.R.Shanmuganathan, learned Special Government Pleader appearing for the respondents strongly opposed the petitions stating that the petitioners supposed to have completed 10th, +2, +3. Since they have not produced the H.S.C., their candidature can be rejected by the respondents. With regard to the points raised by the petitioners in Clause No.ii of the prescribed qualifications ie., 10th standard, SSLC + 5 years Physical Education, the point to be decided is as to whether they have produced the HSC certificate or not. According to the counsel, it is mandatory to produce the HSC Certificate. Apart from that, the learned Special Government Pleader submitted that the said G.O.(Ms.)No.77 dated 23.01.2018 will not be applicable retrospectively in the present cases, which was passed only after the issuance of the Notification No.5 of 2017 published by the Teachers Recruitment Board, dated 26.07.2017. Hence, he prayed for the dismissal of these writ petitions.

12. Heard the learned counsel appearing for the petitioners, learned Special Government Pleader appearing for the respondents and perused the materials available on record.

13. Upon hearing the submissions made on either side, this Court came to know that both the petitioners as well as the respondents have admitted the fact that the petitioners have completed the Physical Education Course and obtained the Certificate of Graduation in Physical Education from the Army, since they have completed 5 years of service. Further, G.O.(Ms.).No.77, dated



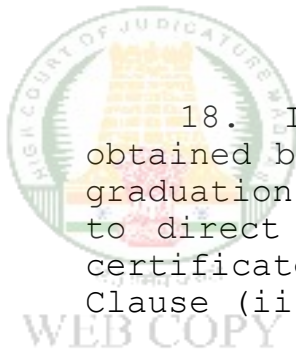
26.07.2017 was passed by the Government to recognise the Graduation Certificate issued by the Army as equivalent to the Graduation in Physical Education.

14. Further, in the said G.O., it has been clearly mentioned that graduation made after the Matriculation. In the present cases, the petitioners have completed the 10th Standard and obtained the Graduation Certificate. But the only issue is whether the G.O., can be applied in the present recruitment process, which was called in the year 2017. The said G.O. was issued on 23.01.2018 and the said Notification was issued on 26.07.2017, after several representations given by the Ex-Servicemen Welfare Association from the year 2012 onwards and some of the representations dated 18.04.2012 and 21.05.2012 have been referred in the said G.O. After considering the representations given by the Ex-Servicemen Welfare Association in the year 2012, the Government has belatedly taken a decision. Had the Government took the decision immediately, the issue as to whether the application for retrospective effect would not have arisen. Therefore, this Court is of the view that the said G.O. can be applied in the present recruitment retrospectively and if it is not applied retrospectively, the respondent has to recognise the Graduation Certificate issued by the Army as equivalent to the graduation in Physical Education as equivalent to the qualifications as prescribed in Clause (ii) of the Notification.

15. On perusal of the prescribed qualification for the post of Physical Education Teacher, it appears that the persons qualified in SSLC and thereafter, completed the physical education course for 5 years is eligible. In the same way, the petitioners qualification ought to have considered as Matriculation Graduation.

16. In the present cases, the petitioners seek to quash the impugned Revised Provisional Selection List published by the first respondent dated 28.10.2020, for direct recruitment of Special Teachers (Physical Education Teachers) for the year 2012-2016. The learned counsel for the petitioners submitted that four vacancies are there in the Ex-servicemen category, as this Court already held that the petitioner Matriculation Graduation obtained from the Army as equivalent qualification ie., S.S.L.C., + Physical Education Graduation, as prescribed in Clause (ii) of the Notification dated 26.07.2017, this Court does not see any impediment for the respondents to consider the petitioner's candidature.

17. As the petitioners have completed the SSLC and obtained the Matriculation graduation certificate from the Army, the certificate of graduation obtained from the Army shall be treated as equivalent to the graduation in physical education, as sufficient qualification in terms of Clause (ii) of the Notification in which case, question of insisting HSC does not arise.



18. In view of the above finding that the qualification obtained by the petitioners is equivalent to the physical education graduation, this Court is of the view that it would be appropriate to direct the respondents to consider the petitioners' graduation certificate as equivalent to the qualifications as prescribed in Clause (ii) of the Notification.

19. Accordingly, these Writ Petitions are disposed of and the respondents are directed to fix the date for verification of the certificate of the petitioners within a week from the date of receipt of a copy of this order and until the completion of the certificate verification of the petitioners, the respondents are directed not to fill up the four posts which are available for Ex-Servicemen Quota. No costs. Consequently, the connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (AE)

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Sub Assistant Registrar(CS)

akv

To

1.The Chairman,
Teachers Recruitment Board,
4th Floor, E.V.K.Sampath Maligai,
DPI Campus, College Road, Chennai 600 006.

2.The Director of School Education,
DPI Campus,
College Road,
Chennai 600 006.

3.The Joint Director,
Ex-Servicemen Welfare Association,
No.22, Raja Muthaiah Road,
Chennai 600 003.

+2 CC to M/s.C.VENKEESWARAN, Advocate (SR-25795 & 25794[F] dated 16/12/2020)

+1 CC to M/s.GP (SR-26042 & 26032[F] dated 17/12/2020)

W.P(MD).Nos.17354 and 17392 of 2020

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