

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Order reserved on 10.12.2020

Order delivered on 05.02.2021

CORAM

THE HONOURABLE MR.JUSTICE V.PARTHIBAN

W.P.Nos.266, 271, 272, 276, 453 & 1059 of 2020
and

W.M.P.Nos.316, 317, 321, 323, 510, 14273, 14275,
14270, 14271, 14272, 311, 314, 315, 1266 of 2020

W.P.No.266 of 2020

S.Sindhu

..Petitioner

Vs

1. Government of Tamil Nadu,
rep. By its Secretary to Government,
School Education Department,
Fort St.George,
Chennai – 600 009.

2. Teachers Recruitment Board,
rep. By its Chairman,
4th Floor, EVK Sampath Maaligai,
DPI Compound, College Road,
Chennai – 600 006.

... Respondents

Prayer in W.P.No.266 of 2020:

Writ Petition filed under Article 226 of the Constitution of India praying Writ of Certiorarified Mandamus to call for the concerned records from the 1st respondent, quash the order of the 2nd respondent dated 03.01.2020 rejecting her candidature for appointment to the post of Computer instructor Grade I (Post Graduate Cadre) in the 1st respondent Department for the year 2018-19 as illegal, arbitrary, contrary to law and consequently direct the 2nd respondent to allow her to participate in the certificate verification and consider her for appointment to the post of Computer Instructor Grade I.

For Petitioners in all the WPs :Mr.Balan Haridas

For Respondents in all the W.Ps:Mr.P.Raja,Govt.Advocate for R1
Mr.Vijay Narayan
Advocate General
assisted by Mr.C.Munusamy
Special Govt.Pleader for R2

COMMON ORDER

सत्यमेव जयते

The matter is taken up through web hearing.

All these writ petitions are in relation to the selection to the post of Computer Instructor Grade-I (Post Graduate Cadre) in the 1st respondent department pursuant to the notification dated 01.03.2019 issued by the 2nd

respondent Recruitment Board. These writ petitions have a common grievance, namely that the cut off date prescribed for acquiring the qualification for consideration in the subject appointment. These writ petitioners though have acquired the prescribed qualifications before declaration of the result, however, their candidatures were rejected on the ground that the qualifications were not acquired before the cut off date fixed on 10.04.2019. Therefore, all the writ petitions are dealt with commonly and disposed of by common order hereunder.

2. The writ petitioners have applied for consideration of their candidature for appointment to the post of Computer Instruction Grade-I (Post Graduate Cadre) in the Tamil Nadu Higher Secondary Educational Service. According to these writ petitioners, all of them were fully qualified in terms of the prescription in the notification in respect of educational qualification. The applications were to be submitted online and all these petitioners have uploaded the required certificates along with the application and participated in the written examination. The results of the

written examination were declared in September, 2019.

3. The 2nd respondent contemporaneously issued another notification on 12.06.2019 calling for application for recruitment to the post of Post Graduate Assistant/Physical Educational Instructor Grade I. The last date for submission of the online application as per the notification was on 15.07.2019, whereas the last date for submission of the application for the petitioners' selection was on 10.04.2019. According to these petitioners, one of the qualifications prescribed was B.Ed. for National Council for Teacher Education and these petitioners had appeared for the examination during the month of May & June, 2019.

4. These petitioners who had qualified in the written examination were to be called to the final list of selection, namely Certificate Verification. However, they were not called for the Certificate Verification which was conducted between 08.01.2020 and 10.01.2020. These petitioners were informed that since they had not qualified fully before the

last date of submission of the online application on 10.04.2019, they were not eligible to be considered for appointment and therefore, not called for the certificate verification. According to these petitioners that the rejection by the 2nd respondent Board is *per se* arbitrary, discriminatory and liable to be interfered with for the simple reason that in respect of other notification calling recruitment to the post of Post Graduate Assistant/ Physical Education Directors Grade-I dated 12.06.219, a few candidates who had appeared in the B.Ed. Examination during the month of May & June, 2019 were considered for final selection and also been issued appointment letters. Those candidates have also not having full qualification on the last date of submission of the application form on 12.06.2019 insofar as that selection is concerned.

5. In the above circumstances, being aggrieved by the rejection of their candidatures on untenable grounds, the petitioners are before this Court.

6. There were several other writ petitions filed relating to the same recruitment with multiple challenges in relation to several other discrepancies and infirmities in the conduct of the selection. This Court, on consideration of the allegations of discrepancies and malpractise had passed an interim order on 08.01.2020 to the effect that no appointment orders shall be issued pending orders from this Court. Thereafter, the matters were listed from time to time and when the same was listed on 26.08.2020, it was brought to the knowledge of this Court that in view of the interim order, grave prejudice has been caused to the Department and also to the selected candidates who could not be given appointment. Therefore, a request was made by the learned Additional Advocate General on behalf of the respondents to modify the interim order, suitably.

7. Upon hearing the counsels in these batch of writ petitions and also the learned Additional Advocate General appearing on behalf of the respondents, the interim order dated 08.01.2020 stood modified as under.

“(a) The respondents are liberty to go ahead with the

appointment process pursuant to the Notification dated 01.03.2019 issued by the TRB and the selection thereto and the respondents shall ensure that no one, who is not eligible or qualified as on 10.04.2019, shall be given appointment orders, in the process.

(b) Since, serious doubts have been raised as to the manner in which the cut-off date being not observed in some cases, the respondents are directed to file additional affidavit as to the details of the appointments made pursuant to this direction. Action Taken Report in this regard shall also be submitted to this Court on the next date of hearing. Any appointments in furtherance of this direction shall be subject to result of final orders to be passed by this Court. The respondents are also directed to intimate the candidates to be appointed in the present process of the pendency of the present litigation before this Court.”

8. However, subsequently various counsels representing other batch of writ petitions, wherein challenges relating to various other allegations in the conduct of the subject recruitment and selection, the above order was further clarified stating that the interim order passed above is to be confined

only in regard to the issue of cut off date and not in relation to the other allegations raised in the other writ petitions.

8. Subsequently, the other batch of writ petitions were taken up for hearing and this Court by order dated 17.12.2020 has appointed a One Man Committee headed by a retired High Court Judge to look into the grievance of the affected candidates in respect of three centres where the selection took place which centres gave rise to several complaints of irregularities in the selection.

9. As far as these writ petitions are concerned, the only issue to be adjudicated is whether there was any sanctity attached to the cut off date fixed by the 2nd respondent Recruitment Board or not. According to the petitioners herein some candidates were allowed to participate and were ultimately, selected and appointed and have been working as Post Graduate Assistant, despite the fact that the candidates attained their qualification after the cut off date.

10. Mr.Balan Haridas, learned counsel for the petitioners would vehemently submit that the very fact, the name of two candidates mentioned in the affidavit, one A.Kanimozhi and other S.Akalya, who had appeared in the B.Ed. Examination only in May, 2019 and the results were declared only subsequent to the cut off date on 12.06.2019 and they allowed to participate and were also selected and appointed and were working as on date. According to the learned counsel, despite this Court, modifying the interim order as above and directing the respondent to file Action Taken Report, so far no report has been filed as yet.

11. Mr.Balan Haridas, learned counsel would vehemently contend that these writ petitioners have secured very high marks in the written examination and their performance individually was outstanding and therefore, they cannot be denied appointment only on the ground that have acquired the qualification subsequent to the so called cut off date i.e., 10.04.2019. According to the learned counsel, these petitioners have indeed

obtained the qualification before the results were declared. Therefore, these petitioners were deemed to have qualified in all respects. Moreover, the 2nd respondent recruitment board which issued both the notifications cannot discriminate between one selection with the other in the matter of strictly conforming to the cut off date. This was more so, when the qualification for both the recruitment was B.Ed. and the Board cannot apply a different yardstick in sticking to the cut off date in one selection and going easy on the other selection. Therefore, the rejection of the petitioners' candidatures is patently arbitrary, discriminatory and unreasonable and liable to be interfered with.

12. On the other hand, the learned Advocate General who appeared in all the batches of Writ Petitions would submit that as far as the present batch is concerned, the two candidates named in the affidavit filed by these petitioners were not part of the selection at all. They were part of a different selection in relation to the recruitment to the post of Post Graduate Assistant/Physical Education Directors Grade-I. Therefore, it is not open to

the petitioners herein to draw parallel to those candidates.

13. Learned Advocate General would further submit that even otherwise as submitted by the earlier learned Additional Advocate General in the hearing which took place before this Court on 26.08.2020, steps had been taken to identify the candidates who had been mistakenly selected, appointed and have been working, their continuance would be reviewed and correctional action would be taken for cancellation. In any case, such appointments which were not in terms of the notification cannot be allowed to sustain and these petitioners cannot draw strength from such irregular appointments of another selection. Therefore, the learned Advocate General would submit that the entire writ petition is misconceived and lack in merits and substance. In the counter affidavit, a decision was also extracted rendered by the Division Bench of this Court on the aspect of cut off date and the observation of the Division Bench would squarely applicable to this case as well.

14. This Court, considered the submission of Mr.Balan Haridas, learned counsel for the petitioner and also the learned Advocate General for the respondents.

15. The only issue that requires to be adjudicated in this batch of writ petitions is whether the cut off date prescribed by the 2nd respondent Board in the notification dated 01.03.2019 has any legal sanctity or not. In the notification under paragraph No.4(b) in Sub para (viii), the following is stipulated:

4. Qualifications:

...

(b) Educational Qualifications:

.....

(viii) The candidates not having prescribed qualifications, as on the last date of submission of filled-in-online application, shall not be eligible to apply. The candidates should satisfy themselves about their eligibility before applying. It is to be noted that if a candidate is allowed to appear for the examination it

does not imply that the eligibility of the candidate is verified. The eligibility shall be verified by the Board only at the time of Certificate Verification.

16. The candidates were very well informed that those who were not having prescribed qualification as on the last date of submission of filled in online application was not eligible to apply. The last date for submission of online application was admittedly on 10.04.2019. Having accepted the conditions and having participated in the selection, this Court does not think that it is legitimately open to these petitioners to challenge the stipulation in the notification. In fact, as per the above stipulation, the petitioners were not even eligible to apply but they had chosen to apply and they were also allowed to participate provisionally in the written examination.

17. Moreover, the selection of two candidates, despite their not being eligible on the cut off date was admittedly, in relation to a different recruitment and to different posts. No doubt, the Recruitment Agency is the same viz., the 2nd respondent Board. But the fact that one or two or few

candidates who had been selected, despite their not being eligible on the cut off date by itself cannot establish the fact that the sanctity of the cut off date prescribed in the present selection is invalid. Even otherwise, it has been categorically submitted and in fact on behalf of the respondents, they have gone on record by way of an affidavit that steps would be taken to cancel those appointment of candidates who had been selected and appointed after the cut off date. In the face of such undertaking given, it is no more open to these petitioners to draw a parallel to those appointments and seek to justify waiver of the cut off date for them also. In any case, when the illegal appointment has taken place in another selection that does not give any right to these candidates to seek parity in illegality. Therefore, these petitioners have no *locus standi* to question whether the some candidates have been improperly or irregularly selected in the other selection. Further in the counter, a Writ Appeal order made in W.A.No.1483 & 1484 of 2015 (N.Sankar vs. Teachers Recruitment Board) has been extracted. It is useful to refer the extract of the same, hereunder.

...7. It is relevant to refer to clause-11 of the

Notification No.02/2013 issued by the Teachers Recruitment Board, dated 09.05.2013, which relates to Certificate Verification. In that clause, it is specifically stated that all Educational Certificates should be issued prior to the last date for submission of filled in applications and that the certificates issued after the cut off date will not be considered. It cannot be simply read as persons who have appeared for the examination shall be considered for the post. As on the date of submission of application, the candidate should have acquired the qualifications prescribed. The qualification prescribed for the post of P.G. Assistant in M.A./M.Sc./M.Com. in the relevant subject with B.Ed. Degree. The respondent herein did not qualify in B.Ed. before the cut-off date. He only appeared for the examination and was not holding the degree certificates at the relevant point of time. Without there being any certificate in hand, it cannot be stated that the candidate has acquired the qualification.

Apart from as already held the notification has been issued only in compliance with the rules and without challenging the validity of the rules, this writ petition is not maintainable either on merits or in accordance with law.”

18. In the above matter, the learned Division Bench has held that questioning the validity of the cut off date is not to be entertained, unless the notification itself is under challenge. In this case, these writ petitioners have not chosen to challenge the stipulation in the notification and therefore, on this ground alone, these writ petitions are liable to be dismissed.

19. Even otherwise, this Court is of the firm view that once the candidates have consciously accepted the instructions/conditions and have been allowed provisionally to participate in the selection, they cannot turn around and question the very prescription in the notification. It is trite in law to hold that when the candidates participate in the selection without any demur or protest, such candidates are estopped from questioning the instructions in the notification, after the selection is over. Therefore, look at it from any point of view, this Court is of the considered view that these petitioners have no case at all calling for intervention of this Court.

20. Therefore, all these Writ Petitions stand dismissed. No costs.

Consequently, connected miscellaneous petitions are closed.

05.02.2021

Speaking/Non-speaking
Index : Yes/No
vsi

To

1. The Secretary to Government,
School Education Department,
Fort St.George, Chennai – 600 009.
2. Te Chairman,
Teachers Recruitment Board,
4th Floor, EVK Sampath Maaligai,
DPI Compound, College Road,
Chennai – 600 006.

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W.P.Nos.266 of 2020 etc.

V.PARTHIBAN.J.

vsi



Pre-delivery order in

**W.P.Nos.266, 271, 272, 276, 453
& 1059 of 2020**

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