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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.11.2021

CORAM :

THE HON'BLE MR.MUNISHWAR NATH BHANDARI,
ACTING CHIEF JUSTICE

AND

THE HON'BLE MR.JUSTICE P.D.AUDIKESAVALU

W.P.Nos.18794, 10618, 18810, 18814, 18815 and 18816 of 2021

V.Kalaiselvi ... Petitioner in WP No.18794/2021
M.Jeyabalan ... Petitioner in WP No.10618/2021
K.Ranjithkumar ... Petitioner in WP No.18810/2021
K.Sindhuja ... Petitioner in WP No.18814/2021
N.Mekala ... Petitioner in WP No.18815/2021
K.Selvi ... Petitioner in WP No.18816/2021

Vs

1.Government of Tamil Nadu,
rep. by Principal Secretary to Government,
School Education Department,
Secretariat, Chennai - 600 009.

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

3.The Joint Director (Higher Secondary),
Directorate of School Education,
Chennai - 600 006. ... Respondents 1 to 3 in all WPs

4.The Chief Educational Officer,
Erode. ... Respondent No.4 in WP 18794/2021

The Chief Educational Officer,
Tiruppur. ... Respondent No.4 in WP 10618/2021



The Chief Educational Officer,
Dindugal. ... Respondent No.4 in WP 18810/2021

The Chief Educational Officer,
Namakkal. ... Respondent No.4 in WP 18814/2021

The Chief Educational Officer,
Dindigul. ... Respondent No.4 in WP 18815/2021

The Chief Educational Officer,
Erode. ... Respondent No.4 in WP 18816/2021

Prayer: Petitions filed under Article 226 of the Constitution of India praying for a writ of certiorarified mandamus calling for the records of the first respondent relating to G.O.Ms.No.14, School Education (S.E.2(1) Dept. dated 30.01.2020, to quash the same to the limited extent of the stipulation in the Annexure under Rule 7(a) of Special Rules for Tamil Nadu Higher Secondary Educational Service relating to qualification in column (3) against II P.G. Assistant in Academic subjects "viz must have obtained Bachelor's Degree and Master's Degree on the same subject".

For the Petitioners : Mr.G.Amalraj
in all WPs

For the Respondents : Mrs.R.Anitha
in all WPs Spl. Government Pleader

COMMON ORDER

(Order of the Court was made by the Hon'ble Acting Chief Justice)

A challenge is made to Rule 7(a) of the Special Rules for the Tamil Nadu Higher Secondary Educational Service re-issued vide G.O.Ms.No.14, School Education [SE2(1)] Department, dated 30.1.2020, particularly, with regard to the educational qualifications prescribed in column (3) of the Annexure to the said Rule stipulating the qualification for the post of Post Graduate Assistant in Academic Subjects. By the Rule aforesaid, the qualification of Bachelor's Degree and Master's Degree in the same subject was prescribed. The petitioners would not be eligible for promotion to the post of Post Graduate Assistant in



Academic Subjects in the absence of the qualification of Bachelor's Degree and Master's Degree in the same subject.

2. For convenience, we have taken the facts from W.P.No.18794 of 2021.

3. Learned counsel submitted that petitioner in the said writ petition possesses the qualification of M.Sc. (Maths) and B.Ed. Degree and joined service as Secondary Grade Teacher on 14.10.2008. She completed the period of probation on 13.10.2010 and thereupon her services were regularised. The petitioner passed M.Com. Degree in December, 2017 and, thus, was eligible for appointment on the post in question by transfer from Tamil Nadu Elementary Educational Subordinate Service to Tamil Nadu Higher Secondary Educational Service as Post Graduate Assistant in Commerce. Her name was included in the panel prepared on 1.1.2018, placing her at S.No.274 in the list of Graduate Teachers fit for appointment as Post Graduate Assistant (Commerce). Before the promotion by way of transfer, the Government of Tamil Nadu by notification dated 30.1.2020 re-issued Special Rules for Tamil Nadu Higher Secondary Educational Service in supersession of the earlier Special Rules. It was published in the Government Gazette Extraordinary on 30.1.2020 itself. The qualification for the post of Post Graduate Assistant in Academic Subjects by way of direct recruitment and transfer was prescribed in Clause (c) of Column (3) and, as per the said Rules, a candidate was required (i) to be Post Graduate with at least 50% marks (or its equivalent) from recognised University and B.A.Ed./B.Sc.Ed. from any National Council for Teacher Education recognised institution; and (ii) must have obtained a Bachelor's Degree and Master's Degree in the same subjects or their equivalent in respect of which recruitment is made.

4. According to learned counsel for the petitioners, the qualification prescribed under Rule 7(a) was given retrospective effect and taken to be w.e.f. 12.6.2019, though the notification was issued on 30.1.2020. The grievance of the petitioners is limited to the extent of the stipulation "must have obtained a Bachelor's Degree and Master's Degree in the same subjects or their equivalent in respect of which recruitment is made." It is submitted that the amendment could not have been given retrospective effect when the panel of candidates fit for promotion as Post Graduate Assistant was issued on 1.1.2018 itself. It is submitted that the petitioners were earlier



qualified to get promotion on the post of Post Graduate Assistant in Academic Subjects and, accordingly, their names were shortlisted in the category of fit persons.

5. Learned counsel for the petitioners has given a reference to Rule 10 of the Special Rules also. The saving clause under Rule 10 provides that the Rules shall not adversely affect any person holding any of the posts on the date of publication of the Rules. The alternative argument of the learned counsel for the petitioners is that if Rule 7(a) of the Special Rules is not found to be invalid or unconstitutional, the petitioners holding the post on the date of publication of the Rules should be treated to be eligible for promotion by transfer on the post of Post Graduate Assistant in Academic Subjects and, accordingly, appropriate direction be given to the respondents to consider the case of the petitioners for promotion.

6. Learned counsel for the respondents justified the prescription of educational qualification as made by the Special Rules. It is submitted that the posts in question need to be filled with candidates having qualification of the subject. If a candidate not having the Bachelor's Degree and the Master's Degree in the same subject is recruited on the post earmarked for a particular subject, he would not be in a position to satisfy the requirement of the post to teach the subject. It has been illustrated that if a candidate is to be recruited to the post of Post Graduate Assistant (Commerce) and if he is in possession of Bachelor's Degree and Master's Degree in Science, he would not be in a position to teach the subject on his posting on the post of Post Graduate Assistant (Commerce). There may be a case where a candidate is having the qualification of Bachelor's Degree in Science and Master's Degree in Commerce, but in the absence of Bachelor's Degree in Commerce, the Government found it to be inappropriate to allow the candidate to work on the post meant for the specialised subject. The justification in bringing the Rule has been given.

7. We have considered the submission made by learned counsel on either side and perused the record.

8. It is for the reason that this court would be addressing the legal issue raised by the petitioners challenging the constitutional validity of Rule 7(a) of the Special Rules in question, for ready reference, Rule 7(a) for the post of Post Graduate Assistant in Academic Subjects is quoted hereunder:

II (1). Post	(i) Director	1 (a) Post Graduate with at
	Graduate Recruitment;	least 50% marks (or its



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Assistant
t in
Academic
Subjects (ii) Recruitment by
Transfer

and

equivalent) from recognized
University and Bachelor of
Education (B.Ed.) from
National Council for
Teacher Education
recognized institution
or

(b) Post Graduate with at
least 45% marks (or its
equivalent) from recognized
University and Bachelor of
Education (B.Ed.) from
National Council for
Teacher Education
recognized institution in
accordance with the
National Council for
Teacher Education (Form of
application for
recognition, the time limit
of submission of
application, determination
of norms and standards for
recognition of teacher
education programmes and
permission to start new
course or training)
Regulations, 2002 notified
on 13.11.2002 and National
Council for Teacher
Education (Recognition
Norms and Procedure)
Regulations, 2007 notified
on 10.12.2007.

or

(c) Post Graduate with at
least 50% marks (or its
equivalent) from recognized
University and
B.A.Ed./B.Sc.Ed., from any
National Council for
Teacher Education
recognized institution.



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and
2. Must have obtained a Bachelor's degree and Master's degree in the same subjects or their equivalent in respect of which recruitment is made.

9. The amendment to the Rules brought by way of the Government Order was notified in the Gazette. It shows that apart from the qualification given under column (3), the candidate must possess the Bachelor's Degree and Master's Degree in the same subject or their equivalent in respect of which recruitment is made.

10. In the facts of the case of which reference has been given, the petitioner is not in possession of the required qualification as has been provided under Rule 7(a) of the Special Rules. The said petitioner does not possess B.Com. Degree, i.e., the Bachelor's Degree in Commerce, and, accordingly, she would not be eligible for recruitment by way of transfer to the post of Post Graduate Assistant (Commerce).

11. The challenge to Rule 7(a) is made mainly on the ground that despite being a subordinate legislation, it has been given retrospective effect. It is primarily in reference to the fact that prior to the issuance of the Government Order of 2020, the respondents had prepared a panel of fit persons for appointment on the post of Post Graduate Assistant in Academic Subjects and in view of the same, the petitioners' candidatures should have been considered for recruitment by transfer based on the qualification then existing in the year 2018 and if the prayer aforesaid is not accepted for the reason of retrospective effect of the Rules, the same may be struck down.

12. The alternative prayer of the petitioners is to cover the case of the petitioners by Rule 10 of the Special Rules which is the saving clause and, for ready reference, Rule 10 is also quoted hereunder:

"10.Savings: Nothing contained in these rules shall adversely affect any person holding any of the posts on the date of publication of these rules."



13. It is a fact that by virtue of the Rules brought in by way of the Government Order of 2020, the petitioners would not be eligible for recruitment by transfer on the post in question though prior to the amendment of the Special Rules, the petitioners were eligible and for which a panel of eligible candidates was prepared in the year 2018.

14. The question for our consideration would be as to whether based on the panel prepared by the respondents in the year 2018 for recruitment by transfer, the petitioners acquired a vested right despite Rules already repealed or superseded.

15. The issue aforesaid was answered by the Apex Court in the case of Dr.K.Ramulu and another v. Dr.S.Suryaprakash Rao and others, (1997) 3 SCC 59. In the said case, the Government had taken a decision in the year 1988 to amend the Andhra Pradesh Animal Husbandry Service Special Rules, 1977. A cautious decision was also taken to not fill up the vacancies till amendment is made. After the recommendation of a One-man Commission, the Rules of 1977 were repealed with effect from 12.6.1996. The Government did not prepare a panel for the post of Assistant Director for the year 1995-96 in accordance with the 1977 Rules then applicable. The candidates approached the Administrative Tribunal to seek a direction on the Government to prepare and operate a panel based on the qualification existing for the vacancy of the year 1995-96. The Apex Court held that the government is entitled to take a decision not to fill up the existing vacancies as on the relevant date even if a rule exists for that. The candidates had not acquired vested right for being considered for promotion in accordance with the repealed rules and, therefore, the Apex Court refused to issue direction on the State Government to prepare the panel and make promotion based on the repealed rules. The issue was considered in reference to the "vested right" and it was held that in case of amendment in the rules, a candidate not actually promoted prior to amendment would have no right to seek promotion based on the repealed rule. The vested right would remain in favour of those actually promoted prior to the amendment. It is apposite to quote the following paragraphs of the said judgment:

"12. ... Thus, it could be seen that for reasons germane to the decision, the Government is entitled to take a decision not to fill up the existing vacancies as on the relevant date.

...



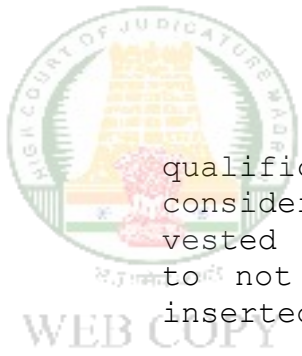
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15. Thus, we hold that the first respondent has not acquired any vested right for being considered for promotion in accordance with the repealed Rules in view of the policy decision taken by the Government which we find is justifiable on the material available from the record placed before us. We hold that the Tribunal was not right and correct in directing the Government to prepare and operate the panel for promotion to the post of Assistant Directors of Animal Husbandry Department in accordance with the repealed Rules and to operate the same."

16. The judgment of the Apex Court in the case of Dr.K.Ramulu (supra) gives a complete answer to the issue raised by the petitioners. It is not only in reference to the amendment in the Rules to prescribe higher qualification than possessed by the petitioners, but the retrospectivity of the Rules, inasmuch as no vested right is accrued to the posts.

17. In the instant case, even if the Rules are deemed to operate prospectively, then also the petitioners would not be entitled to get appointed by way of transfer for the reason that the consideration of the candidature would be made based on the existing rules and not the rules already repealed. That apart, as already held above, we find justification in bringing in the amendment to Rule 7(a) of the Special Rules to provide a qualification of Bachelor's Degree as well as Master's Degree in the same subject for which appointment is to be made. On this aspect, we are in complete agreement with the argument advanced by the learned Special Government Pleader. Accordingly, we do not find any good ground to hold Rule 7(a) of the Special Rules to be ultra vires the Constitution.

18. The question that now remains is as to the application of Rule 10 of the Special Rules. According to the petitioners, the saving clause should be applied to make them eligible for recruitment by way of transfer. A perusal of Rule 10 shows its applicability only to those candidates holding the post, i.e. the higher post, on which recruitment is to be made. "Holding of the post" means the post on which one is working would not be affected by the Rules brought by the respondents, which are under challenge. It is to save those candidates who have already been recruited on the higher post based on the



qualification then operating when their candidature was considered. With the promotion or recruitment they acquired vested right which could not have been nullified otherwise and to not take away such vested right, the saving clause was inserted in the Rules.

19. In view of the above, we are unable to accept even the alternative argument raised by learned counsel for the petitioners and, accordingly, we do not find any merit in the writ petitions on any of the grounds urged before us and, therefore, the batch of writ petitions is dismissed.

There will be no order as to costs. W.M.P.Nos.20107, 11231, 11238, 20082, 20085, 20100, 20101, 20103, 20104, 20105, 20106 and 20108 of 2021 are closed.

SD/-
SSISTANT REGISTRAR

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SUB ASSISTANT REGISTRAR

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To:

- 1.The Principal Secretary to Government,
Government of Tamil Nadu,
School Education Department,
Secretariat, Chennai - 600 009.
- 2.The Director of School Education,
Chennai - 600 006.
- 3.The Joint Director (Higher Secondary),
Directorate of School Education,
Chennai - 600 006.
- 4.The Chief Educational Officer,
Erode. .
- 5.The Chief Educational Officer,
Tiruppur.



6.The Chief Educational Officer,
Dindugal.

7.The Chief Educational Officer,
Namakkal.

+1cc to Mr.G.Punniakoti, Advocate Sr.61319
+1cc to the Government Pleader Sr.61072

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srg 01/12/2021