



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON:	07.01.2021
DELIVERED ON:	20.01.2021

CORAM:

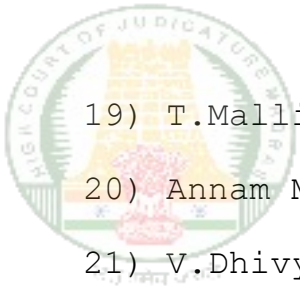
THE HONOURABLE MR.JUSTICE M.S.RAMESH

W.P. (MD)No.13270 of 2020

and W.M.P. (MD) Nos.11094, 11095 & 12405 of 2020

(Through Video Conference)

- 1) A.Mercy Vasan
- 2) D.Thileepavathi
- 3) D.Vanaja
- 4) G.Gayathri
- 5) P.Navammal
- 6) R.C.Hemesh
- 7) S.Suganya
- 8) Regu Gurusundar
- 9) G.Samuel Muthuraj
- 10) M.Priya
- 11) C.R.Kavitha Rani
- 12) M.Vanniyaraj
- 13) Ananthi
- 14) A.Ruth Jency
- 15) Ram Prabha
- 16) Jeyashree
- 17) K.Mariappan
- 18) P.Ishwarya Lakshmi



- 19) T.Malliga
- 20) Annam Muthupandian
- 21) V.Dhivya
- 22) M.Vijayakumar
- 23) D.Madhumitha
- 24) C.Karthikha
- 25) Jeya Girubha
- 26) S.Packiyaraj
- 27) K.S.Saravanakumar
- 28) G.Sangeetha
- 29) Mystica

... Petitioners

Vs

- 1) The State of Tamil Nadu,
Rep. By its Secretary to Government,
Higher Education Department,
Fort St.George, Chennai
- 2) Teachers Recruitment Board,
Rep. By its Member Secretary,
4th Floor, E.V.K.Sampath Maaligai,
DPI Campus, College Road,
Chennai
- 3) Teachers Recruitment Board,
Rep. By its Chairman,
4th Floor, E.V.K.Sampath Maaligai,
DPI Campus, College Road, Chennai
- 4) Tamil Nadu Public Service Commission,
Rep by its Secretary,
Road Park Town, V.O.C.Nagar,
Chennai, Tamil Nadu 600 003
- 5) Tamil Nadu Public Service Commission,
Rep. By its Chairman,
Road Park Town, V.O.C. Nagar,
Chennai, Tamil Nadu 600 003

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India seeking a Writ of Mandamus, to direct the respondent no.3 to



cancel the withdrawal notification dated 09.02.2018 and prepare a revised merit list and conduct certificate verification after segregation of banned tainted from non-tainted candidates and conduct reexamination in view of the notification No.14/2019 after revising new vacancy positions and incorporation of necessary changes and pass such other orders.

* Prayer amended vide Court order dated 23.09.2020 in W.M.P. (MD) No.10555 of 2020 in W.P. (MD) SR.29855/2020

For Petitioner : Mr.Abishek Yadav
for M/s.AY Associates
For R-1 : Mr.A.Muthukaruppan,
Additional Government Pleader

For RR 2 & 3 : Mr.VR.Shanmuganathan,
Standing counsel

For RR 4 & 5 : Mr.D.Sivaraman,
Standing counsel

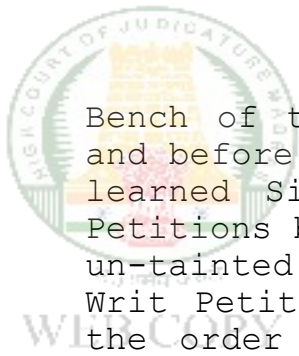
O R D E R

1.The brief facts of the case are as follows:

1.1 On 28.07.2017, the Teachers Recruitment Board (hereinafter referred to as the 'Board') had released a notification, calling for direct recruitment of Lecturers (Engineering/Non-Engineering) in Government Polytechnic Colleges for the year 2017-2018, pursuant to which, written examinations were conducted on 16.09.2017 and 1,33,568 candidates had appeared therein. While the Optical Mark Recognition (OMR) answer sheets were retained by the Board, the scanned images of the OMR sheets were outsourced to a private agency, namely, M/s. Datatech Methodex Private Limited, for evaluation and preparation of final list of the candidates qualified for certificate verification. Consequently, the results were published on 07.11.2017.

1.2 After a sequence of events, certain fraud, malpractices and irregularities were revealed in the evaluation process, through comparison of the original OMR sheets with the outsourced scanned copies and 196 candidates were found to be beneficiaries of the fraud. Apart from a criminal case being registered in this regard, an enquiry was also conducted by the Board. In view of the malpractices by 196 candidates and in suspicion of fraud in furthermore cases, the Board cancelled the written examination conducted on 16.09.2017 and withdrew the results, through a press report dated 09.02.2018.

1.3 Challenging the cancellation, two batches of writ petitions came to be filed by the aggrieved candidates before the Madurai



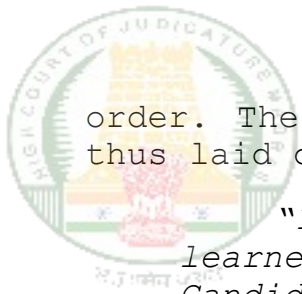
Bench of the Madras High Court in W.P.(MD)Nos.2942 of 2018, etc., and before the Principal Bench in W.P.Nos.3287 of 2018, etc. While a learned Single Judge of the Madurai Bench had allowed the Writ Petitions by finding that segregation of the tainted candidates from un-tainted ones was possible, the Principal Bench had dismissed the Writ Petitions. The order of the Principal Bench was subsequent to the order of the Madurai Bench. Both the orders were challenged before a Hon'ble Division Bench of the Principal Bench in a batch of Writ Appeal Nos.2002 of 2018... etc., which came to ordered with a finding that the candidatures of the 196 tainted candidates should be rejected and the selection process should continue for the other successful candidates.

1.4 Aggrieved against the decision of the Hon'ble Division Bench, the Board had filed appeals before the Hon'ble Supreme Court of India in Civil Appeal Nos.6190-6201 of 2019 and by its order dated 08.08.2019, it was held that the Board's decision to cancel the entire examination ought not to have been interfered by the High Court, in view of its doubt with regard to the possibility of further candidates being involved in the scam and thereby allowed the Board's appeal. For the same cause of action, a Public Interest Litigation (PIL) was filed before the Hon'ble Supreme Court in Writ Petition (Civil) No.365 of 2020, which was dismissed as withdrawn, with liberty to approach the High Court.

1.5 Invoking the aforesaid liberty, Writ Petition No.5687 of 2020 was filed as a PIL before the Madurai Bench of the Madras High Court, which was dismissed as '*not maintainable*', but with an observation that it was open to the litigant to file a writ petition before the Service Bench of this Court. It is in this background the present writ petition has been filed to have the withdrawal-notification cancelled and for preparation of a fresh merit list for the non-tainted candidates.

2. On being appraised of the aforesaid facts, this Court had raised a preliminary query to Mr. Abhishek Yadav, the learned counsel for the petitioners, with regard to its powers to overcome the order of the Hon'ble Supreme Court of India, which had earlier ratified the Board's decision to cancel the same notification and had allowed the Board's appeal in this regard. In reply, Mr. Abhishek submitted that, when the Hon'ble Supreme Court had earlier seized of the matter and passed its final order, the investigation into the fraud was in progress and now that the investigation/enquiry had been completed and the 196 fraudsters have been permanently debarred by the Board, the withdrawal of the entire selection process is not warranted.

3. The submission of the learned counsel for the petitioners is not based on ***intelligible differentia***. Effectively, the learned counsel seeks this Court to interpret the findings and the order of the Hon'ble Supreme Court, in a manner convenient to the petitioners to the ratio behind the Hon'ble Supreme Court's



order. The reasons for allowing the Appeals of the Board has been thus laid down by the Apex Court:

"11. Mr. M. Ajmal Khan and Ms. Nalini Chidambaram, learned Senior Counsel appearing for the Respondent-Candidates referred to the interim orders passed by the Division Bench by which the investigation authorities were summoned and records pertaining to the investigation were called for. They relied upon the interim orders to support the judgment of the Division Bench that there is no material to suggest the involvement of any other candidate apart from the 196 candidates who have been found indulging in malpractices. They justified the observations of the Division Bench in the impugned judgment by submitting that segregation of 196 candidates from the others is possible for which reason the cancellation of the entire selection process is contrary to the law laid down by this Court. Irreparable injury and untold misery will be caused to such meritorious candidates who were successful in the written examination if they are asked to take the written examination afresh.

12 . In *Inderpreet Singh Kahlon (supra)*, allegations were made against Mr. Ravinderpal Singh Sidhu, Chairman of the Public Service Commission for having accepted money and manipulating the results of some candidates in the selections to various posts by the Public Service Commission. Results were announced and the selected candidates were appointed. Pursuant to an inquiry conducted into the allegations against Mr. Ravinderpal Singh Sidhu, appointments of persons who were selected with his help were terminated. This Court on the facts of the said case held that merely because allegations are made against the Chairman of the Public Service Commission the decision to cancel the entire selection process without examining as to whether the entire selection process was vitiated is wrong. This Court further held that there is a vast difference in the cancellation of examination prior to the selection and the termination of services of appointed persons. We are of the considered opinion that the facts of this case are entirely different and the judgment in *Inderpreet Singh Kahlon (supra)* is not applicable. It is not necessary to refer to the other judgments which have followed *Inderpreet Singh Kahlon (supra)*. "

13. In the instant case, the Board initially conducted an inquiry on its own regarding the allegations pertaining to manipulation of the OMR answer sheets. The Board found that a few people benefited due to the tampering of the OMR answer sheets. On a deeper scrutiny sufficient material was



found against 196 persons who were beneficiaries of the fraud in the alteration of marks. The Board was convinced that there were chances of more people being involved in the manipulation of marks for which reason a decision was taken to cancel the entire examination. A bona fide decision taken by the Board to instill confidence in the public regarding the integrity of the selection process could not have been interfered with by the High Court. Sufficiency of the material on the basis of which a decision is taken by an authority is not within the purview of the High Court in exercising its power of judicial review. More material is being unearthed in the investigation and several people have been arrested. The investigation is in progress.

14 . In **Gohil Vishvaraj Hanubhai and Ors. v. State of Gujarat and Ors.** MANU/SC/0532/2017 : (2017) 3 SCC 621, this Court held:

21. Purity of the examination process-whether such examination process pertains to assessment of the academic accomplishment or suitability of candidates for employment under the State-is an unquestionable requirement of the rationality of any examination process. Rationality is an indispensable aspect of public administration under our Constitution. The authority of the State to take appropriate measures to maintain the purity of any examination process is unquestionable. It is too well settled a principle of law in light of the various earlier decisions of this Court that where there are allegations of the occurrence of large-scale malpractices in the course of the conduct of any examination process, the State or its instrumentalities are entitled to cancel the examination. This Court has on numerous occasions approved the action of the State or its instrumentalities to cancel examinations whenever such action is believed to be necessary on the basis of some reasonable material to indicate that the examination process is vitiated. They are also not obliged to seek proof of each and every fact which vitiated the examination process.

It was further held in the said judgment as follows:

" 30. Identifying all the candidates who are guilty of malpractice either by criminal prosecution or even by an administrative enquiry is certainly a timeconsuming process. If it were to be the requirement of law that such identification of the wrongdoers is a must and



only the identified wrongdoers be eliminated from the selection process, and until such identification is completed the process cannot be carried on, it would not only result in a great inconvenience to the administration, but also result in a loss of time even to the innocent candidates. On the other hand, by virtue of the impugned action, the innocent candidates (for the matter all the candidates including the wrongdoers) still get an opportunity of participating in the fresh examination process to be conducted by the State."

15. May be, the candidates who had a chance of being selected and appointed as Lecturers in the Government Polytechnic Colleges on the basis of the results of the written examination would be inconvenienced due to another examination being conducted but a serious doubt entertained by the Board about the magnitude of the manipulation in the examination has to be given due weightage.

16. Having considered the merits of the case we do not approve the approach of the learned Single Judge of the Principal Bench of the Madras High Court in taking a different view with another Single Judge of the same Court. It is trite law that the matter has to be referred to a larger Bench in case of disagreement by a Coordinate Bench of equal strength.

17. In view of the aforementioned, we set aside the judgment of the Division Bench of the Madras High Court. The appeals are allowed."

4.The aforesaid extract is self-explanatory. The decision of the Board to withdraw the entire selection process was ratified by the Hon'ble Supreme Court on a thorough reasoning, in the aforesaid manner. Any attempt by this Court to consider the petitioner's plea in the present writ petition, would amount to ignoring or interpreting the ratio behind the decidendi of the Apex Court's order, which is impermissible. Thus, there are no merits in Mr. Abhishek's submission in this regard.

5. Apart from this, I am also sceptic on the maintainability of the present writ petition itself. After the Board's appeal before the Hon'ble Supreme Court was allowed, a PIL was filed before the same Hon'ble Bench of the Apex Court. It is neither clear nor has any records produced before me to substantiate the nature of the PIL, the cause of action or the prayer therein and the nature of the liberty granted, while the PIL was dismissed. I do not intend to probe any further into the maintainability of this Writ Petition, since and even otherwise, this Writ Petition deserves a dismissal for reasons stated supra.



6. Accordingly, this Writ Petition stands dismissed. No costs. Consequently, all miscellaneous petitions shall stand closed.

Sd/-

Assistant Registrar

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Sub Assistant Registrar(CS)

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Note : In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the Advocate / litigant concerned.

To:

- 1) The Secretary to Government,
Higher Education Department,
Fort St.George, Chennai
 - 2) The Member Secretary,
Teachers Recruitment Board,
4th Floor, E.V.K.Sampath Maaligai,
DPI Campus, College Road,
Chennai
 - 3) The Chairman,
Teachers Recruitment Board,
4th Floor, E.V.K.Sampath Maaligai,
DPI Campus, College Road, Chennai
 - 4) The Secretary,
Tamil Nadu Public Service Commission,
Road Park Town, V.O.C.Nagar,
Chennai, Tamil Nadu 600 003
 - 5) The Chairman,
Tamil Nadu Public Service Commission,
Road Park Town, V.O.C. Nagar,
Chennai, Tamil Nadu 600 003
- +1 CC to M/s.AY.ASSOCIATES, Advocate (SR-1719[F] dated 21/01/2021)
+1 CC to M/s.GP (SR-1666[F] dated 21/01/2021)
+1 CC to M/s.D.SIVARAMAN, Advocate (SR-1588[F] dated 21/01/2021)

W.P. (MD)No.13270 of 2020

Dated:

20.01.2021

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