



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 23.11.2021

CORAM

THE HON'BLE DR.JUSTICE ANITA SUMANTH

W.P.(MD)No. 146 of 2018

and

W.M.P.(MD) Nos. 148, 149 and 150 of 2018

K. Chellamuthu

.. Petitioner

Vs.

1. The State of Tamil Nadu,
Represented by its Principal Secretary,
School Education Department,
Secretariat,
Fort St. George,
Chennai - 600 009.
2. The Teachers Recruitment Board,
Represented by its Chairman,
No. 4th Floor, E.V.K. Sampath Maligai,
College Road,
Chennai -6.
3. The Director,
Directorate of School Education,
DPI Complex,
College Road,
Chennai - 600 006.
4. The School Education Joint Director,
(Vocational Education),
DPI Complex,
College Road, Chennai - 600 006.
5. The Chief Educational Officers,
Office of the Chief Educational Officer's officer,
Madurai District,
Madurai.
6. The Head Master,
Government Higher Secondary School,
Palamedu,
Madurai.

.. Respondents



Prayer: Writ Petition filed under Article 226 of the Constitution of India, for the issuance of a writ of certiorarified mandamus, calling for the records connected with the order in Na.Ka.No. 1502/VI/E2/2010 dated 24.07.2013 passed by the fourth respondent and quash the same as illegal, consequently directing the second respondent to grant the 20 marks award for 20 defective questions and to reinstate the petitioner in service as computer instructor in the 6th respondent school by considering the petitioner's representation dated 10.10.2017 within the time stipulated by this court and pass orders.

For Petitioner : Mr. PR. Boomee Rajan

For Respondents : Mr. A.K. Manikkam, SGP
for R1

Mr. V. R. Shanmuganathan
Standing Counsel for R2

ORDER

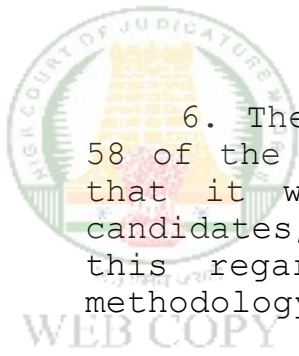
Heard Mr. Boomee Rajan, learned counsel for the petitioner, Mr. A.K. Manikkam, learned Special Government Pleader for R1, R3, R4, R5 and R6 and Mr. Kannan for Mr.V.R. Shanmuganathan, for Teachers Recruitment Board (TRB)/R2.

2. The relevant dates and events as are material to decide this writ petition are set out as follows. The writ petitioner was employed in a Government Boys Higher Secondary School. His services were absorbed in the year 2008 and he was appointed as a Computer Instructor on 09.11.2008 in R6 school.

3. While this is so, it appears that a writ petition had been filed by the Association of Computer Instructors claiming status as BT Assistant and equal benefits as accorded to teachers working in Government schools. The litigation instituted before the Principal Bench had travelled to the Hon'ble Supreme Court.

4. Taking note of the aforesaid writ petition as well as other writ petitions filed by the computer instructors to the effect that since they were already part of the education system, they should not be called upon to acquire a decree but rather could be tested on their technical qualification, a test was conducted on 24.01.2000 by R2.

5. The instructors were to be marked on 150 questions and the cut-off for eligibility was 50 %, that is, 75 marks, for continuing in service. Since some of the candidates who appear for the exam had alleged defects in the question papers, they approached this Court and a Division Bench, vide decision in W.A.No. 837 of 2010 went into the technology followed for the testing.



6. The conclusion of the Bench is set out in paragraphs 51 to 58 of the judgment of its decision dated 20.12.2012. While holding that it was unviable to hold a fresh examination for all the candidates, an alternative method was arrived at by the Bench and in this regard I extract paragraphs 52 to 58 that set out the methodology to be followed in resolving the issue in dispute :

"52. The controversy raised in this matter could be resolved easily by following a fair method of assessment. There are 20 disputed questions. There is no question of giving 20 marks to all the candidates for the simple reason that most of the candidates have not made attempt to answer the questions. In case full marks are given to all the candidates, it would be a bonus even to those who have not attempted to answer even some of the questions.

53. The court cannot ignore the aspirations of those who have passed the Computer Science Degree and undertaken B.Ed., course and waiting for years together seeking public employment. We should strike a balance in such cases, taking into account the interest of the in-service Computer Instructors and the other computer graduates waiting for a call from employment exchange.

54. We are in favour of the alternative suggested by the Division Bench of the Andhra Pradesh High Court in Chalamalasetty Satyendra Kumar and High Court of Kerala in Fathima Seethi.

55. Mr. Sempath Kumar, learned Special Government Pleader on instructions from Teachers Recruitment Board, submitted that the Board is in possession of the answer sheets and mark list showing the marks obtained by all the failed candidates and as such, there would not be any difficulty to prepare a fresh selection list in case this court is of the view that third test is not required.

56. We are therefore of the considered view that 20 questions should be deleted from the total number of 150 questions. Cancellation of 20 questions would not create any imbalance, for the simple reason that out of the disputed questions, one question was from General



Knowledge and others relate to computer science. Even though originally disputes were raised with respect to 45 questions, the same has narrowed down to 20 questions. Therefore, in the interest of both the parties, we are inclined to issue the following directions.

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57. Disposition:-

(i) The Teachers Recruitment Board is directed to delete the following 20 questions out of the total number of 150 questions

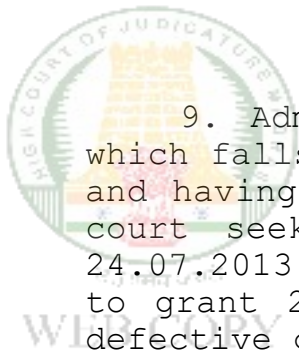
(ii) The Teachers Recruitment is further directed to judge the proficiency of 667 computer instructors on the basis of the answers given by them for the remaining 130 questions. Those who had secured 65 marks and above (50 % and above) out of 130 marks would be held to have qualified and the remaining candidates would be treated as failed. Such exercise shall be completed by 31 January 2013.

(iii) The State is directed to comply with the direction of Supreme Court in Civil Appeal No. 4187 of 2009 by filling up the remaining vacancies from open market and by following the rules of reservation and in accordance with the relevant rules, as expeditiously as possible and in any case on or before 14 May 2013.

58. The writ appeal and the writ petitions are disposed of with the above direction. No costs. Consequently, connected writ petitions are closed."

7. Thus and in substance R2 was directed to judge the proficiency of the 667 computer operators, who had been unsuccessful in the first attempt on the basis of the answers given by them for 130 questions, excluding the 20 questions wherein the candidates had alleged defects.

8. Sub paragraph 3 of paragraph 56 of the decision of the Division Bench is categorical to the effect that those who secure 65 marks and above, that is, 50 % or above of 130 marks, shall be held to have qualified and the remaining candidates would be treated to have been unsuccessful. A time frame was fixed for the aforesaid



9. Admittedly, the petitioner before me has secured 59 marks which falls six marks short of the 50 % to have been secured. Thus, and having failed to secure the requisite marks, he is before this court seeking a certiorarified mandamus challenging order dated 24.07.2013 terminating his service. He also seeks a direction to R2 to grant 20 marks as a positive awarding of marks towards the 20 defective questions in the paper and for reinstatement in service.

10. The direction sought by the petitioner for is liable to be rejected as the direction of the Division Bench is categoric that the benefit given to the candidates was after excluding the 20 defective questions. The question of awarding marks thus, does not arise. The candidates were directed to be marked on 130 questions and those that had secured 50%, that is, 65 marks or above would be successful. The challenge to the impugned order fails as the termination is based his failure in the qualifying test. The prayer of the petitioner is thus liable to be rejected and I do so.

11. Respondent raises an objection on maintainability of the writ petition citing laches as the petitioner has approached this court only in 2018 challenging an order passed in 2013. However, I find some merit in the explanation in paragraph 11 of his affidavit where the petitioner states that apart from difficult family circumstances, he was awaiting the result of the litigation initiated by other similarly placed candidates.

12. The decision of the Division Bench was rendered on 20.12.2012 and the judgment of the Supreme Court on 31.07.2017 in W.P.(Civil) No. 163 of 2015. The present writ petition has been instituted in January 2018. The Supreme Court, while dismissing that writ petition as withdrawn, has granted liberty to those petitioners to approach the High Court by way of filing fresh petitions seeking remedy and I do believe that that benefit should be extended to the present petitioner as well.

13. Thus while holding that the present writ petition is maintainable, I dismiss the same on merits. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

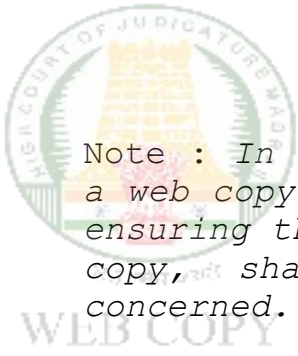
Assistant Registrar (AD-II)

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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 Principal Secretary,
State of Tamil Nadu,
School Education Department,
Secretariat, Fort St. George,
Chennai - 600 009.
2. The Teachers Recruitment Board,
Represented by its Chairman,
No. 4th Floor, E.V.K. Sampath Maligai,
College Road, Chennai -6.
3. The Director,
Directorate of School Education,
DPI Complex, College Road,
Chennai - 600 006.
4. The School Education Joint Director,
(Vocational Education),
DPI Complex,
College Road, Chennai - 600 006.
5. The Chief Educational Officers,
Office of the Chief Educational Officer's officer,
Madurai District,
Madurai.
6. The Head Master,
Government Higher Secondary School,
Palamedu, Madurai.

+1 CC to M/s.SPL GP (SR-35867[F] dated 25/11/2021)

W.P. (MD)No. 146 of 2018
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