



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.02.2022

CORAM

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN
AND
THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.A.No.2 of 2015

1. The Chairman
Teachers Recruitment Board,
D.P.I. Complex,
College Road,
Chennai - 600 006.

2. The Member Secretary
Teachers Recruitment Board,
College Road,
Chennai - 600 006.

...Appellants

Vs

1. A. Selvam

2. The Principal Secretary to the Government
School Education Department,
Chennai.

3. Kabil Dev.K

...Respondents

Second respondent is suo motu impleaded as party respondent vide order of this Court dated 25.04.2018 made in W.A.No.2 of 2015 by KKSJ & RSMJ

Third respondent impleaded as a party respondent vide order of this Court dated 26.08.2019 made in CMP.No.17965 of 2019 in W.A.No.2 of 2015.

Prayer:Writ Appeal is filed under clause 15 of the Letter Patent praying to set aside the order made in WP No.29747 of 2013 by the order dated in 16.12.2013.

Prayer in W.P.No.29747 of 2013: This Writ Petition is filed under Article 226 of the constitution of India, Praying for the "issuance of writ of Declaration, to declare the cut of marks fixed by the respondent based on the Written Test alone and also the ratio fixed as 1:1 for Certificate Verification in the Direct Recruitment for Post Graduate Assistants in Government



Higher Secondary Schools for the year 2012-2013 in English Literature for Scheduled Caste Category (SC-General) candidates as illegal consequently direct the respondents to call the petitioner for Certificate Verification for the above recruitment.

For Appellants : Mr.Neelakandan
AAG (VIII)
Asst.by Mr.K.V.Sajeev Kumar
Special Govt.Pleader

For Respondents: Mr.K.Thilageswaran for R1
Mrs.Mythreyee Chandru
Spl. Govt. Pleader (Education)
for R2
Mr.M.Ramdass for R3

JUDGMENT

S.VAIDYANATHAN, J.
&
MOHAMMED SHAFFIQ, J.

The present appeal has been preferred against the order of the learned Single Judge made in WP No.29747 of 2013 dated 16.12.2013 in and by which the writ petition filed by the writ petitioner/1st respondent herein was allowed, with a direction to the respondents to call the writ petitioner for certificate verification. Aggrieved by the same, Teachers Recruitment Board (TRB) is before this Court by way of filing an appeal.

2.The learned counsel appearing for the Writ Petitioner submitted that the writ petitioner has completed his Post Graduation in English Literature and B.Ed., course and has registered his name in the employment exchange. The writ petitioner has secured marks required for the purpose of certificate verification and in the written examination, conducted by the TRB based on the prospectus dated 20.12.2013. He has secured 81 marks and pursuant to the interim order dated 16.12.2013 in W.P.No.29747 of 2013 of this Court he participated in the certificate verification wherein he has secured 2 more additional marks totalling 83.

3.A reading of the prospectus would make it very clear that the marks secured in the written test and certificate verification will have to be taken into account for the purpose of selecting the candidate for appointment. The writ petitioner contended that the ratio that has been adopted by the appellant herein the respondent in the writ petition namely the ratio as 1:1 for certificate verification is bad. The First Bench of this Court by following the decision of the Hon'ble Supreme Court



reported in 1992 (2) LLJ 18 in the case of [Shankarasan Dash V Union of India] held that 1:1 ratio was bad which has been incorporated by the learned Single Judge in paragraph No.4 and the same is extracted hereunder:-

"4. The issue involved in this writ petition, i.e., adopting the ratio of 1:1 in the matter of selecting the candidates for the posts has already been covered by the judgment of the First Bench of this Court in W.A.Nos.370 & 371 of 2008, etc., dated 19.08.2008, wherein, after following the decision of the Hon'ble Supreme Court reported in 1991 (2) LLJ 18 (Shankarasan Dash Vs. Union of India), the First Bench of this Court has held as under in para 11:

"11. As held earlier, we are not in a position to accept such a contention made on behalf of the second respondent. Even going by the dictum of the Division Bench, as consideration of one name against one vacancy will amount to 'no selection' in the eye of law since the very G.O.Ms.No.65, dated 30.03.2007, violates articles 14 and 16 of the Constitution of India, it will have to be held that any selection made based on the said G.O. should automatically fall to the ground. In other words when the Division Bench has declared in no uncertain terms that the prescription of 1:1 ratio was constitutionally invalid, there is no question of validating any appointment made applying the said ratio after its withdrawal even if the selection came to be made prior to its withdrawal. To put it differently when a provision has been held to be constitutionally invalid, it will be travesty of justice to approve of any action based on such invalid provision. We therefore reject the said contention made on behalf of the second respondent".

4. According to the writ petitioner, he is not aware about the G.O.MS.No.100 School Education (Q2) Department (Eng.Ve.) dated 10.08.2004, which has been referred to by the appellant herein wherein ratio has been fixed as 1:1. However, he would submit that the ratio is held to be bad by this Court in the decision mentioned supra. It is submitted that the learned single Judge has rightly held that the ratio adopted in the matter of selection was bad, invalid and allowed the writ petition as prayed for and directed the case of the petitioner to be considered for recruitment to the post of Post Graduate Assistant in English, which needs no interference by this Court.

5.The learned Additional Advocate General (VIII), Assisted by Mr.K.V.Sajeev Kumar, learned Special Govt.Pleader appearing for the appellant who is the respondent in the writ petition contended that till 2017, 1:1 ratio was followed and thereafter it was withdrawn and now the ratio that has been followed is



1:2. G.O.MS.No.100 dated 10.08.2004 specifically mentioned that the candidates will be called for verification at the ratio of 1:1 as was done in the year 2003 - 2004 and the relevant clause of the said G.O. is extracted below.

"xii) candidates are called for certificate verification at the ratio 1:1 as was done in 2003-2004. However if more candidates secured the same cut off marks they should also called for certificate verification.

xiii) The weightage marks as detailed below were awarded at the time of certificate verification.

I.Employment Registration Seniority	Mark	Total marks
Below one year	0	4
1 to 3 years	1	
3 to 5 years	2	
5 to 10 years	3	
10 years and above	4	

II.Teaching experience is approved schools 6 - 10 class for BT Assistants and 11-12 classes Teaching experience for PG Teachers	Mark	Total marks
1 to 2 years	1	3
2 to 5 years	2	
5 years and above	3	
Total		7

xiv)The weightage marks after the certificate verification will be added to the provisionally selected candidates and final selection list will be released on the basis of merits - cum - communal roster.

xv) To publish the advertisements through leading daily newspapers for the written examination calling of applications and publish the examination results with marks through internet. The procedure already followed in the previous year recruitment will be adopted for this recruitment".



6. According to the appellant, the writ petitioner has not questioned G.O.MS.No.100, apart from the fact that he has not secured required marks and therefore he cannot contend that he is eligible to be appointed in the quota reserved for SC category (SC General), as the petitioner has secured only 81 marks in the written test. Having accepted the conditions stipulated in the prospectus and that knowing very well that there is a Government order in G.O.MS.No.100, starring at him and also having failed to succeed in the written test and the certificate verification, he cannot seek any relief much less the one sought for in the writ petition.

7. It is further stated that no candidate, who has secured less than 83 marks has been appointed. Hence, the order of the learned single Judge needs to be interfered with. It is stated that the writ petitioner has made only the TRB as a party and Government has not been made as a party. Therefore, for want of necessary and proper party, the learned single Judge ought to have dismissed the writ petition and prayed that the learned single Judge order may be interfered with. It is further stated that the certificate verification was conducted on 07.01.2014 for those candidates who have got interim order from this Court and the petitioner was also the one among them who participated. It is also stated that 41 candidates similarly placed like that of the writ petitioner have not been considered and out of the said 41, 13 candidates who have secured 83 and 82 marks respectively have been rejected. The Board has not called for any candidate who have scored 81 marks in the written examination under SC General category and hence there is no arbitrariness in the selection process. It is further stated that the age limit, which was originally 40 years for OC and 45 years for other categories have been increased vide G.O.MS.No.144 SE Department dated 18.10.2021 as 45 years for OC and 50 years for other categories up to 31.12.2022. As the petitioner has got further chances to compete and get selected, no relief in the present writ petition ought to have been granted and the writ appeal may be allowed.

8. In reply, the learned counsel appearing for the writ petitioner brought to the attention of this Court that the prospectus, more so, Page.No.1 which is extracted as follows:-

1. Government of Tamil Nadu has proposed to recruit Post Graduate Assistants/Physical Education Directors - Grade I for appointment in Government Higher Secondary Schools. The posts will be filled on the basis of marks secured in the written competitive examination and weightage marks awarded after Certificate Verification following communal reservation as per existing rules of the Government of Tamil Nadu.



9. By relying on the prospectus, he has contented that there is no mentioning about G.O. in the said prospectus and the marks in the written examination and weightage marks awarded in the certificate verification will have to be taken into account by following communal reservation as per the existing rules. If all put together, the petitioner who has secured only 81 marks will be eligible for appointment. He also drew the attention of this Court to the list showing that the candidate placed at Sl.No.327 has been selected and the petitioner has secured 83 marks including weightage based on clause No.15 of the prospectus, which reads as follows:-

S. no	Roll No	Candidate Name	Gender	Community	P H	DOB	written marks	Emp_Seniority	Teaching Exp	Total marks	Turn
327	13PG30020109	Naresh Kumar.K	M	SC		10.10.1988	82	1	1	84	SG
330	13PG02020522	Anantha Rajan.S	M	SC		0811.1982	82	1	0	83	SG
331	13PG09020004	Kabil Dev.K	M	SC		31.05.1983	83	0	0	83	SG

and that weightage marks have got to be given for the period of wait in the employment exchange and teaching experience for the short listed candidates. It is argued that as the petitioner is well within the zone of consideration, he is entitled to be considered for appointment and the contention that the candidate who has secured 81 marks has not been considered may not be correct. Hence prayed that the order of the learned single Judge need not be interfered with and the writ appeal may be dismissed.

10. In reply, the learned Additional Advocate General (VIII), Assisted by Mr.K.V.Sajeev Kumar, learned Special Govt.Pleader submitted that all the vacancies have been filled up and there are no vacancies as on date. He reiterated that it is open to the writ petitioner to compete again and in case he is successful and comes within the consideration zone, his case will be considered. Further he submitted that if the case of the writ petitioner is accepted, then it will amount to opening a Pandora Box and those candidates, who may be similarly placed may knock at the doors of the Court now.

11. It is seen that the Division Bench has already held that 1:1 ratio is bad and the Hon'ble Supreme Court in the decision reported in 1996 (6) SCC 216 has mandated that the recruitment through employment exchange alone cannot be a source for recruitment. Further it could be seen from the prospectus at clause No.15 extracted supra that the Government has made it



very clear that there will be an open advertisement and that weightage marks alone will be given for those candidates, who are waiting in the queue of employment exchange after registering their names in it. Even assuming that the G.O.MS.No.100 is incorporated in the said prospectus, to that extent the prospectus will be bad, as it is contrary to the order of the First Bench of this Court.

12.Hence, we are of the view that there is no need to interfere with the order of the learned single Judge and we issue the following directions.

i)The case of the writ petitioner shall be considered for appointment to the post of PG Assistant English in SC General category in the existing vacancies or the next vacancy, for which advertisement may be given;

ii)Age relaxation and other relaxation will have to be given

iii) There is no need for the writ petitioner to participate in any competitive examination and after filling up that vacancy, for the remaining vacancy, advertisement can be issued.

13.The argument of the learned Additional Advocate General that in case the writ petitioner is appointed, it may pave way to others to come with the similar plea, cannot be brushed aside. Therefore it is made clear that except the writ petitioner or any other person who has already approached this Court prior to the order of this Court dated 16.12.2013 and the matter is pending before this Court, no other candidates can knock at the doors of this Court contending that they are also similarly placed like that of the petitioner, as recruitment is of the year 2013 and almost a decade is over and on the ground of laches their cases need to be rejected. Those candidates will have to apply a-fresh candidate and no relaxation on any aspect is given and their candidature can be considered only based on the instructions contained in the notification or prospectus as the case may be.

14.With the above observations and directions the Writ Appeal is disposed of. No costs.

Sd/-

Assistant Registrar(CS-IV)

//True Copy//

Sub Assistant Registrar

dpq



To

1. The Principal Secretary to the Government,
School Education Department,
Chennai.

WEB COPY

2. The Chairman,
Teachers Recruitment Board,
College Road,
Chennai - 6.
3. The Member Secretary,
Teachers Recruitment Board,
College Road,
Chennai - 6.

+1cc to M/s.K.Thilageswaran, Advocate, S.R.No.10469

W.A.No.2 of 2015

PL(CO)
RGA(19/04/2022)