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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.2.2022

CORAM :

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

THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

W.P.No.1900 of 2022
& WMP.No.2052 of 2022

1.G.Manigandan
2.SP.Chitra
3.V.Arul Selvi
4.S.Parimala
5.M.Umaselvi
6.K.Pandiselvi
7.D.Vimala
8.K.Vanitha
9.S.Mynoortheen
10.N.Kamarnabisha

.. Petitioners

vs

The Teachers Recruitment Board
Rep. by its Chairman, 4th Floor,
EVK Sampath Maaligai,
DPI Campus, College Road, Chennai-6

.. Respondent

Prayer: Petition filed under Article 226 of The Constitution of India praying for the issuance of a Writ of Declaration declaring that the 6th Proviso to Section 27(f) of the Tamil Nadu Government Servants (Conditions of Service) Act 2016 is violative of Article 14 of the Constitution in so far as the said Proviso allows the backlog vacancies of Backward Class and Backward Class Muslims to lapse instead of being carried forward as in the case of backlog vacancies of Scheduled Casts, Scheduled Tribes and Most Backward Classes contrary to the recommendation of the two High Committees referred to in G.O.Ms.No. 33 Backward Classes Most Backward Classes and Minorities Welfare Department dated 02.5.2000 and G.O.Ms.No.34 Backward Classes Most Backward Classes and Minorities Welfare Department dated 02.5.2000 and issue a consequential direction directing the respondents to issue an addendum to the advertisement No.01/2021 dated 11.2.2021 and add the 411 backlog vacancies in BC and BCM categories also to the 2098 vacancies notified in the advertisement No.01/2021 dated 11.2.2021 which backlog vacancies arose in the course of election of 1663 post



of Post Graduate Assistants by direct recruitment under advertisement No.03/2017 dated 09.5.2017.

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For Petitioners : Mrs.Nalinichidambaram,
Senior Counsel for
Mrs.C.Uma
For Respondent : Mr.C.Kathiravan, Standing
Counsel

ORDER

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

The writ petition has been filed challenging the provisions of Section 27(f) of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016 (for brevity, the Act of 2016).

2. The learned Senior Counsel appearing on behalf of the petitioner submits that while providing reservation to other backward classes, the provision for carrying forward the unfilled vacancies was not made. It is despite the recommendations of the High Level Committee.

3. It is submitted that contrary to the recommendations of the High Level Committee, Section 27(f) of the Act of 2016 was brought denying the carry forward of unfilled vacancies to other backward classes. Due to that, a discrimination has been made between the other backward classes and the scheduled caste and scheduled tribes. While there is a provision for carrying forward of the unfilled vacancies in the posts reserved for scheduled caste and schedule tribe, it was not provided for the other backward classes. The Legislation has been brought in ignorance of the recommendations of the High Level Committee and thus, it has to be struck down.

4. We have carefully considered the said submissions made by the learned Senior Counsel and perused the records.

5. The recommendations of the High Level Committees make a reference to the carry forward of the unfilled vacancies, while the Act of 2016 does not provide for carry forward of the unfilled vacancies for other backward classes.

6. Section 27(f) of the Act of 2016 reads thus :

"27. Reservation of Appointment : Where the special rules lay down that the principle of reservation of appointments shall apply to any service, class or category, selection for appointment thereto



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shall be made on the following basis:-

.....
(f) If qualified and suitable candidates belonging to any of the Backward Classes, Backward Class Muslims including the Most Backward Classes and Denotified Communities are not available for selection for appointment by recruitment by transfer or by promotion in the turns allotted to them, the turns so allotted shall lapse and the selection for appointment for the vacancies shall be made by the next turn in the order of rotation:

Provided that if qualified and suitable candidates belonging to any of the Scheduled Castes and Scheduled Tribes are not available for selection for appointment by recruitment by transfer or by promotion in the turns allotted to them in the cycle, the turns so allotted to them shall not lapse and the number of candidates to be selected in that recruitment shall be reduced by the number of candidates belonging to Scheduled Castes and Scheduled Tribes not available for selection against the turn allotted to them. The unfilled vacancies reserved for the Scheduled Castes and Scheduled Tribes to be filled by recruitment by transfer or by promotion shall be carried over to four consecutive recruitment years, namely, year of recruitment plus three subsequent recruitment years. The selection for appointment to the vacancies in the next recruitment shall be made first for the carried over turns and then the normal rotation shall be followed. If qualified and suitable candidates belonging to any of the Scheduled Castes and Scheduled Tribes are not available for selection for appointment by recruitment by transfer or by promotion even thereafter, the vacancies reserved for those categories shall first be dereserved by obtaining the orders of the Government before filling them by candidates in the next turn in the order of rotation:

Provided further that the normal number of vacancies reserved for the candidates belonging to the Scheduled Castes and Scheduled Tribes and the carried forward vacancies as specified in the first proviso



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shall not exceed fifty per cent of the total number of vacancies for a particular recruitment. If there be two vacancies only, one of them shall be treated as a reserved vacancy. If there be one vacancy only, it shall be treated as unreserved. The surplus of the fifty per cent shall be carried forward to the subsequent recruitment, subject, however, to the condition that the particular vacancies carried forward do not become time barred due to their continued existence for more than three years. Selection for appointment to the oldest carried forward vacancies shall be made first:

Provided also that in the case of selection for appointment by direct recruitment, with effect on and from the 1st April 1989, there shall be a ban on dereservation of vacancies reserved for the candidates belonging to any of the Scheduled Castes and Scheduled Tribes, Most Backward Classes and Denotified Communities to be appointed by direct recruitment. But, the above ban on dereservation of vacancies shall not be applicable to the vacancies reserved for the Backward Classes (other than Most Backward Classes and Denotified Communities), Backward Class Muslims and, therefore, if qualified and suitable candidates belonging to any of the Backward Classes (other than Most Backward Classes and Denotified Communities), Backward Class Muslims are not available for appointment, the turn so allotted to them shall lapse and the vacancy shall be filled by the next turn in the order of rotation. If sufficient number of qualified and suitable candidates belonging to any of the Scheduled Castes and Scheduled Tribes, Most Backward Classes and Denotified Communities are not available for selection for appointment for the vacancies reserved for them by direct recruitment in the first attempt of recruitment, then, a second attempt shall be made for selection of the candidates belonging to the respective communities by direct recruitment in the same recruitment year or as early as possible before the next direct recruitment for selection of candidates against such



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vacancies. If the required number of candidates belonging to such communities are not available even then, the vacancies for which selection could not be made shall remain unfilled until the next recruitment year treating them as "backlog" vacancies. In the subsequent year, when direct recruitment is made for the vacancies of that year (called the current vacancies), the "backlog" vacancies shall also be announced for direct recruitment, keeping the vacancies of the particular recruitment year, namely, the current year vacancies and the "backlog" vacancies as two distinct groups as illustrated in Schedule-IX. The selection for appointment for the next direct recruitment shall be made first for the "backlog" vacancies and then the normal rotation shall be followed:

Provided also that, in exceptional cases, for posts in Groups A and B for which suitable candidates belonging to the Scheduled Castes, Scheduled Tribes, Most Backward Classes or Denotified Communities are not available against the respective reserved vacancies and the non-filling up of posts causes hardship for running the administration, the Government may grant exemption from carrying forward of such vacancies and the procedure therefor shall be as specified in Schedule-IX:

Provided also that when a candidate selected for appointment against a vacancy for Scheduled Castes, Scheduled Tribes, Most Backward Classes/Denotified Communities, Backward Classes, Backward Class Muslims or General Turn, does not join duty in the post for which he is appointed or his provisional selection for that post is cancelled for any reason, a candidate in his place shall be appointed from the respective category and in accordance with the ranking from the reserve list:

Provided also that the candidates appointed from the reserve list shall be placed below all the candidates appointed from the regular list in the same order in which the vacancies have arisen:

Provided also that the reserve list shall be operated even against the vacancies



caused due to the fact that the candidates have joined duty, but left thereafter while the reserve list is in force."

7. We do not find any provision either under The Constitution of India or under the Act that whenever recommendations are made by the High Level Committee, the Legislature is bound to follow it. The Legislature, in its wisdom, can frame the provisions and bring them into statute book. It cannot be nullified only on the ground that it is against the recommendations of the High Level Committee. The provision for carry forward of the vacancies may be denied if it results in not filling of the posts till the subsequent years, affecting the administration in the absence of requisite number of hands to manage the affairs of the Government. Apart from the posts reserved for scheduled caste and scheduled tribe and other reserved categories, if other posts are also carried forward, it may have serious consequence and therefore, the Legislature, in its wisdom, may have not accepted the recommendations of the High Level Committee, which are, otherwise, not binding on them. A case of discrimination would not be made out between different classes having different status.

8. On the grounds raised aforesaid, we cannot accept the challenge to the provisions of Section 27(f) of the Act of 2016.

9. Accordingly, the above writ petition is dismissed. Consequently, the connected CMP is also dismissed.

Sd/-

Assistant Registrar(CS-IX)

//True Copy//

Sub Assistant Registrar

RS

To:

The Chairman,
Teachers Recruitment Board
4th Floor, EVK Sampath Maaligai,
DPI Campus, College Road, Chennai-6

+1cc to Mr.Kathiravan, Advocate, S.R.No.7997
+1cc to M/s.C.Uma, Advocate, S.R.No.8112
+1cc to the Government Pleader, S.R.No.8304

W.P.No.1900 of 2022 &
WMP.No.2052 of 2022

MG (CO)
SB(15/02/2022)