



W.A.Nos.598, 600, 602 to 609 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment Reserved on : 26.09.2022

Judgment Pronounced on : **30.09.2022**

CORAM :

**THE HON'BLE MR. JUSTICE PARESH UPADHYAY
AND
THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY**

W.A.No.598 of 2022 and CMP.Nos.4290 & 4291 of 2022,
W.A.No.600 of 2022 and CMP.Nos.4298 & 4299 of 2022,
W.A.Nos.602 to 609 of 2022

and

CMP.Nos.4312 & 4307, 4310 & 4314, 4308 & 4311, 4313, 4316 & 4317, 4319
& 4321, 4320 & 4322, 4329 & 4330 of 2022

In W.A. No.598 of 2022:

1.The Director of School Education,
College Road, Chennai – 6.

2.The Chairman,
Teachers Recruitment Board,
4th floor, EVK Sampath Maligai,
College Road, Chennai – 6.

... Appellants

Versus

N.Mercy Vennila

... Respondent

Prayer in W.A.No.598 of 2022: Writ Appeals have been filed under Section 15 of Letter of Patent, to allow the above Writ Appeal by setting aside the order passed by this Court in W.P.No.27694 of 2017, dated 26.06.2018.



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For Appellants : Mr.R.Neelakandan, AAG,
Assisted by
Mrs. S.Mythreye Chandru, Spl.,Govt.Pleader and
Mr. K. Sathish Kumar, Standing Counsel for TRB.

For Respondents : Mrs. Nalini Chidamabaram, Senior Counsel,
for Mrs. C. Uma.

COMMON JUDGMENT

(The Judgment was made by Mr.Justice.D.Bharatha Chakravarthy)

These Writ Appeals are filed against the order of the learned Single Judge, dated 26.06.2018, in and by which, the Writ Petitions filed by the respective respondents were allowed by the learned Judge by directing the respondents to award two marks for question Nos.34 and 93 to the Writ Petitioners and since after awarding the said two marks, the Writ Petitioners fall within the cut off marks in respect of their communal categories, directing the appellants to call them for certificate verification.

2.As a matter of fact, the order of the learned Judge is dated 26.06.2018 and these appeals were filed along with the delay of 278 days which was dismissed by this Court, against which, the appellants herein approached the Hon'ble Supreme Court of India by way of S.L.P (C)



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Nos.25262 to 25271 of 2019 and by an order, dated 03.02.2022, the Hon'ble Supreme Court of India set aside Order, condoned the delay and directed these appeals to be disposed off as expeditiously as possible after the parties record their presence, in any case, within three months from the date of the order of the Hon'ble Supreme Court of India. However, thereafter, the matters came up for admission before this Court on 26.09.2022 and even on the date of admission, the learned Senior Counsel, appearing for the respondents, was ready to get along with the matter. But, however, this Court recorded the fact that the learned Counsel accepted notice and posted the matter for filing Vakalath and for hearing the appeals on 29.09.2022. Thereafter, on 29.09.2022, this Court heard *Mr.R.Neelakandan*, the learned Additional Advocate General for the appellants and *Mrs.Nalini Chidambaram*, the learned Senior Counsel for the respondents/writ petitioners.

3.The brief facts, leading to filing of the present Writ Appeals are as follows:-

The appellants, through the second appellant, Teachers Recruitment Board, issued an advertisement in Advertisement No.3 of 2017, dated 09.05.2017 for filling up of Post-Graduate Assistants/Physical Education Directors Grade-I in the scale of pay of Rs.9,900/- - 34,800/- + G.P. Rs.4,800/-



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by way of direct recruitment in the various subjects in all totaling to 1663 vacancies. The Writ Petitioners, being qualified in the subject of English, applied for the post and appeared for the written examination. The written examination was conducted on 02.07.2017 and the tentative key answers were published on 19.07.2017. The last date for submitting objections for the key answers expired on 25.07.2017. All the objections received from the candidates were duly considered by the expert committee constituted by the second appellant, Teachers Recruitment Board and accordingly, final key answers were published and the consequential results were also published on 11.08.2017. The provisional list of selected candidates was thereafter published on 12.09.2017. Since all the respondents/writ petitioners fell short of either one or two marks than the cut-off marks for their respective communal category, they were not called for certificate verification. Therefore, pointing out errors either in the questions/ key answers in respect of five questions i.e., question Nos.6, 23, 25, 34 and 93 in question set - A in the examination, Writ Petitions were filed for a Mandamus to award one mark each to the said five questions and consequently to direct the respondents/Writ Petitioners to be appointed in the post of Post Graduate Assistants.

4.The Writ Petitions were resisted by the respondents by filing a



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counter affidavit. It is the case of the respondents that the tentative key answers were published in the website on 19.07.2017 and the objections were called for to the tentative key answers with relevant proof of authority on or before 23.07.2017. Thereafter, the respondents, through a committee of subject experts of academic excellence examined representations received by the candidates and the objections were overruled and the final key answers were prepared and based on which, O.M.R sheets of all the candidates were valued and the final results were arrived at and accordingly, the cut-off marks were fixed and based on the cut-off marks, the provisional list was drawn and the successful candidates were called for certificate verification. It is the stand of the appellants/respondents that the questions and the key answers were correct as per the expert committee constituted by them.

5.In the teeth of the said stand, the learned Single Judge also constituted yet another expert committee by constituting two experts, namely one *Dr.C.K.Mallika*, Assistant Professor of *Quaid-E-Millath* Government College for Women and *Dr.Sugannya Ravichandran*, Associate Professor of English, *Quaid-E-Millath* Government College for Women to give their expert opinion in respect of the said five questions complained by the Writ Petitioners. The experts found that the challenge of the petitioners in respect



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of the five questions as untenable for the reasons mentioned in their report.

However, the learned Single Judge went into the contents of the five questions, the answers and the opinion of the expert committee and he agreed with the expert committee in respect of the three questions, but, however, differed with the expert committee in respect of the two questions i.e., question Nos.34 and 93 and on the strength of his findings held that two marks are to be granted to the respondents/writ petitioners for the said two questions. It was further found that if two marks are granted, eight out of the ten Writ Petitioners qualified as per the cut-off the marks applicable to their respective communal category and therefore, held that they are eligible to be called for certificate verification and directed the respondents to verify their certificates. Aggrieved by the same, the present Writ Appeals are filed.

6.*Mr.R.Neelakandan*, the learned Additional Advocate General appearing on behalf the appellants, would submit that the recruitment was conducted for 3375 vacancies, of which, 384 vacancies were for the English subject. The provisional list of selected candidates was published on 12.09.2017. After the publication of the provisional list, without challenging the select list or final key answers, the Writ Petitioners, totally ten in numbers, filed the Writ Petitions. The learned Additional Advocate General would



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submit that firstly, the Writ Petition for Mandamus is not maintainable in the absence of challenge to the Select List. If at all marks have to be given, it has to be given to all the candidates who appeared in the examination and therefore, the Writ Petitions as framed were not maintainable in law.

7.Secondly, the learned Additional Advocate General would submit that the second respondent, namely the Teachers Recruitment Board is the expert body. It has constituted the subject matter experts as a committee which has examined all the objections in respect of the key answers and published final keys. Therefore, when the exercise has been duly carried out by the expert body, there was no occasion for this Court to enter into the domain of experts and re-appreciate the correctness or otherwise and the questions and the key answers. In any event, it can be seen that even the expert committee, appointed by the Court also, agreed with the second respondent, Board. In that view of the matter, in exercise of its jurisdiction under Article 226 of the Constitution of India, the Learned Single Judge ought not to have interfered with the key answers as finalised by the experts and also the expert opinion rendered by the committee of two professors constituted by the Court itself. Therefore, he would submit that this is a case for interference by this Court.



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8. In support of his contentions, the learned Additional Advocate General relied upon the judgment of the Hon'ble Supreme Court in ***Uttarpradesh Public Service Commission Vs. Rahul Singh and Anr.***¹, more-fully relying upon the paragraph Nos.12 and 14, which read as follows"-

"12. The Constitutional Courts must exercise great restraint in such matters and should be reluctant to entertain a plea challenging the correctness of the key answers.

14. When there are conflicting views, then the courts must bow down to the opinion of the experts. Judges are not and cannot be experts in all fields and therefore, they must exercise great restraint and should not overstep their jurisdiction to upset the opinion of the experts."

9. The learned Additional Advocate General also relied upon the judgment of this Court in ***B. Florance Mary Vs. The Chairman, Teachers Recruitment Board***², more-fully on paragraph No.6 which reads as follows:-

"6. It is settled law that while exercising the discretionary and extraordinary power under

¹ (2018) 7 SCC 254

² W.A.No.1097 of 2014, dated 08.09.2014
<https://www.mhc.tn.gov.in/judis>



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Article 226 of the Constitution of India, this Court cannot act like an expert body, by replacing the assessment made by experts."

10.The learned Additional Advocate General relied upon the judgment of this Court in ***Jayalakshmi Vs. Teachers Recruitment Board***³, in more-fully relying upon paragraph Nos.27 and 28, which reads thus:-

" 27. "It is settled law that while exercising the discretionary and extraordinary power under Article 226 of the Constitution of India, this Court cannot act like an Expert Body by replacing the assessment made by Experts."

...if the claim of the petitioners are accepted, it will lead to alteration of selection list, thereby the selected candidates, who are not parties to the writ petitions, who are all working now, have to be sent out, which will cause grave prejudice to the selected candidates..."

" 28. The law is clear that if there is a discrepancy in framing the question or evaluation of the answer, it would be for all the candidates appearing for the examination and not for the petitioners only, thus, no interference is required. It is settled position that the Court should be extremely

³ W.A.No.382 of 2017 etc., dated 12.04.2018
<https://www.mhc.tn.gov.in/judis>



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reluctant to substitute its own views in preference to those formulated by professional persons possessing expertise and rich experience on the subject and the opinion of the expert ordinarily cannot be made the subject of judicial scrutiny simply because some authors expressed their views differently in their books or articles on the subject. This Court cannot sit as an Appellate Court on the recommendations made by the Expert Committee."

11. Further, the learned Additional Advocate General would rely upon the judgment of this Court, dated in W.A.No.505 of 2022 in ***Kalaimani Vs. State of Tamil Nadu***⁴, more-fully relying upon paragraph Nos.4.4 and 4.6 of the judgment which reads as hereunder:-

" 4.4.....We are of the view that, in the recruitment when thousands of candidates have participated, interference on this ground would lead to chaotic situation for the recruiting agency and the State on the whole. Powers under Article 226 of the Constitution of India can not be resorted to, like this."

.....

" 4.6. Coming to the merits of the matter,

⁴ W.A.No.505 of 2022, dated 06.09.2022
<https://www.mhc.tn.gov.in/judis>



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we find that, when the case of the writ petitioner is also to the effect that, for a particular question, the answer would not be 'X'; but 'Y' correction thereof at this stage would lead to absolute chaotic situation, since the candidates who have participated in the recruitment in question are thousands / lakhs since the vacancies notified were about 2000. On over all consideration, we find that, the writ petitioner is not entitled to any relief and exploring any possibility to grant any other relief to the writ petitioner at this stage would lead to an unreconcilable situation, which need not be done. When the same could not be done under Article 226 of the Constitution of India, it can not be done under Clause 15 of Letters Patent, since we do not find denial of relief by learned Single Judge to be an error apparent on the face of record."

12.For the ratio laid down in all the above judgments, the learned Additional Advocate General would submit that the exercise of jurisdiction under Article 226 of the Constitution of India, in the nature of the grievances expressed by the writ petitioners was uncalled for.

13.Per contra, *Mrs.Nalini Chidambaram*, the learned Senior Counsel appearing on behalf of the respondents/writ petitioners, would submit that in



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this case, the writ petitioners have clearly and pin-pointedly pointed out their grievances only in respect of the five questions. Even in respect of the said questions, the learned Single Judge did not go into the merits on his own. However, two professors, being experts, were constituted to go into the issue. Even in respect of the expert opinion, the learned Single Judge went by the expert opinion in respect of the other questions. She would submit that as far as the question No.34 is concerned, the learned Judge found that the question itself is wrong even as per the opinion of the expert. Therefore, the learned Judge has reasoned that once the experts themselves found that the question itself is wrong, their further opinion that the candidates should guess the correct question and answer to the same was unreasonable and therefore, interfered with in respect of that question. Secondly, as far as the question No.93 is concerned, even as per the expert, the question was out of syllabus and only on that ground, the learned Judge did not agree with the opinion of the experts that the candidates must answer the questions which are out of the syllabus also and therefore, interfered in respect of that question.

14. Therefore, the learned Senior Counsel would submit that Order of the learned Judge was not in the realm of the interference with the expert opinion and as a matter of fact, the learned Judge has followed dictum of all



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the judgments cited by the learned Additional Advocate General supra and therefore, would submit that this case does not call for any interference by this Court.

15.We have considered the rival submissions made on either side and perused the material records of the case. At the outset, even if the final key answers/the marks in respect of the said questions have to be interfered on any ground, the same cannot be done only with respect to the petitioners alone. The error if at all has to be corrected has to be done in respect of all the candidates. Therefore, the writ petitioners ought to have challenged the final key answers and the Select List. This Court, if at all could have interfered, can only order awarding of marks in respect of all the candidates and re-work the Select List. In the absence of such prayers and in the absence of such an exercise, allowing the Writ of Mandamus prayed for by the writ petitioners to grant marks for them alone is untenable as this exercise does not result in the meritorious candidates being selected. Therefore, the very writ petition, as filed for a Writ of Mandamus, is bound to fail.

16.Even otherwise, as rightly pointed out by the learned Additional Advocate General, the law on the subject has been categorically laid down by



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the Hon'ble Supreme Court of India in the ***Uttarpradesh Public Service Commission Vs. Rahul Singh and Anr.*** (cited supra) that the Constitutional Courts must exercise great restraint in such matters and should be reluctant to entertain a plea challenging the correctness of the key answers. Therefore, in the first place, when as per the notification draft key answers were published , the objections were invited and duly considered by an expert committee, appointing another expert committee itself is stretching the discretion, a little far. In any event, when the said experts, constituted by this Court, have opined that even in respect of the said questions, the questions are answerable and the key answers for the same are found to be correct and when the other candidates have answered the questions, the exercise undertaken by the learned Judge, to go into the merits of the said opinion and to form a contrary opinion certainly is not in order as per the dictum laid down by the Hon'ble Supreme Court of India and therefore, we have no other option than to interfere with the order of the learned Judge and thus, we find that the order of the learned Judge is unsustainable.

17.In the result, these Writ Appeals in W.A.Nos.598, 600, 602 to 609 of 2022 are all allowed and consequently the Writ Petitions filed by the respondents/writ petitioners in W.P.Nos.27694, 24189, 24191, 27693, 24190,



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27692, 24188, 24187, 27695, 24192 of 2017, stand dismissed. However, in the facts and circumstances of the case, there will be no order as to costs.

Consequently, the connected miscellaneous petitions are closed.

(P.U., J.) (D.B.C., J.)
30.09.2022
(1/2)

Index : Yes/No
Speaking/Non-Speaking order
grs/klt



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**PARESH UPADHYAY, J.,
and
D.BHARATHA CHAKRAVARTHY, J.,**

grs

Pre-Delivery Judgment in

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and
CMP.Nos.4290 & 4291 4298 & 4299, 4312 & 4307,4310 &
4314, 4308 & 4311, 4313, 4316 & 4317, 4319 & 4321, 4320
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