



W.P.No.30863 of 2017
and WMP No.33793 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 09.12.2022

CORAM

THE HONOURABLE DR. JUSTICE ANITA SUMANTH

W.P.No.30863 of 2017
and WMP No.33793 of 2017

A.Raga Shiny Priya

... Petitioner

Vs

1.State of Tamil Nadu

rep. by its Secretary to Government,
Higher Education G1 Department,
Secretariat, Fort St. George, Chennai – 600 009.

2. The Registrar,

Tamil Nadu Teachers Education University,
Lady Willingdon College Campus,
Kamaraj Salai, Chennai – 600 005.

3. The Director of School Education,

Directorate of School Education,
DPI Compound, College Road,
Chennai – 600 006.

4. The Chairman,

Teachers Recruitment Board,
4th Floor, E.V.K.Sampath Maligai,
DPI Compound, College Road,
Chennai – 600 006.

.... Respondents



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PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus directing the respondents to consider the case of the petitioner for appointment to the post of Graduate Assistant in the Government Schools based on the marks obtained by her in the Tamil Nadu Teachers Eligibility Test which was held on 30.04.2017 conducted by the Teachers Recruitment Board and the certificate of verification that had taken place as per Memo.No.306/TET/2017 dated 11.07.2017 before the Teachers Recruitment Board, Chennai and also after taking into account the petitioner's B.Ed Provisional Certificate issued by the Tamil Nadu Teachers Education University.

For Petitioner : Mr.V.S.Jagadeesan

For Respondents : Mr.R.Neelakandan
Additional Advocate General
assisted by
Mr.V.Nanmaran
Additional Government Pleader
and Mr.Alagu Gowtham
Government Advocate – R1, R3 & R4
No appearance - R2

ORDER

The petitioner has completed her schooling, i.e., 10th and 12th standards in the year 2010 and thereafter, Bachelor of Engineering (computer science) from the National Engineering College, Kovilpatti, affiliated to Anna University, Chennai. She completed the course in April 2014 securing a first



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class. In 2015, she enrolled for the Bachelor of Education Course spurred on by the assurance contained in the guidelines issued by the National Council for Teachers Education (NCTE), that candidates who had completed B.E. degree would be considered for teaching technical subjects, such as Mathematics, Physics and Chemistry. She underwent the course in the Sri Ram Nallamani Yadhava College of Education, Tenkasi and completed B.Ed (Mathematics) during the academic year 2015-2017.

2. Her entitlement to have enrolled for, and completed her B.Ed, having completed her Bachelors degree in Engineering, is also settled, and in fact supported by G.O.(1D) No.257 Higher Education (G1) Department dated 19.07.2016, that lays down guidelines for admission of students to the B.Ed course in Government/Government Aided/Self-financing colleges of Education.

3. The Government Order (G.O.) states inter alia, that candidates who have done their Bachelors degree in Engineering or Technology with a speciliazation in Science and Mathematics or any other qualification equivalent thereof, are eligible for admission to B.Ed., degree programme in Physical Science, Biological Science, Maths and Computer Science.

4. There is a reservation for Engineering students, vis-a-vis UG/PG students in the rato 20% : 80%. All this would only go to support the position

that the State intended at all times to accord due weightage to candidates who



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have completed a technical/engineering degree, by reserving a portion of seats in B.Ed course.

5. Evidently, the State believes, and this, in the considered opinion of the court, is well-founded, those that have been through the rigour of professional degree would be more than adequately suited for a teaching position.

6. The petitioner thereafter, in pursuance of her desire for appointment as a teacher, undertook the Teachers Eligibility Test (TET) prescribed under the Right to Education Act, 2009. The Teachers Recruitment Board (TRB) has been designated the nodal agency for the State to conduct the TET and had issued Notification dated 24.02.2017 calling for applications for TET paper I and paper II.

7. The qualification as set out in Notification qua TET paper II is as follows:

'a. Candidates who have passed a Bachelor's Degree (B.A.B.Sc/B.Lit.) with Tamil, English, Mathematics, Physics, Chemistry, Botany, Zoology History and Geography as major subjects in their Degree course or a Degree with any one of the equivalent subjects (Regarding equivalent subjects, Government orders issued prior to the date of this notification alone will be considered) from a Recognized University under 10+2+3 Pattern and a Bachelor's Degree in Education (B.Ed.) from a Recognized University and seeking an appointment as Graduate Teacher can write Paper II. The candidates with B.Lit., (Tamil) degree should possess either B.Ed., or D.T.Ed., or TPT.'



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8. In the present case, no doubt the petitioner is over qualified having undergone her education in 10+2+5 pattern and B.Ed in Mathematics thereafter. However and this is critical, the official website of the State does not filter out a candidate who is over qualified and has, infact, permitted the petitioner to write the test. This, in my view, would be a reflection of the State's thinking in this regard.

9. This Court is conscious of a line of decisions that settle the position that where qualifications are stipulated, such qualifications must be adhered to strictly, and not just under-qualification, but over-qualification would also constitute a disqualification for selection. The Supreme Court in the case of *Jyoti K.K. vs. Kerala Public Service Commission* (2010 (15) SCC 596), has decided this issue. In that case, Rule 10(a)(ii) of the Kerala State and Subordinate Services Rules, 1958 came up for consideration.

10. The Rule approved the qualifications recognized by Executive or Standing Orders of the Government as equivalent to qualifications specified for a post in the Special Rules, and such of those higher qualifications which presuppose the acquisition of the lower qualification prescribed for that post were also stated to be sufficient.

11. In that case, there was no exclusion of candidates, who possessed a higher qualification. The decision in *Jyoti K.K.* came up for consideration in a



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subsequent decision in *State of Punjab vs. Anita* (2015 (2) SCC 170), which dealt with the eligibility of candidates for JBT/ETT qualified teachers.

12. The prescribed qualification for JBT/ETT included matric with a two year course in JBT Training and knowledge of Punjabi and Hindi at Matriculation Standard or equivalent. The candidature of that aspirant was rejected which came to be challenged by her on the ground that she possessed qualifications superior to what was prescribed.

13. Reliance upon the case of *Jyoti K.K.* was rejected, since the eligibility criteria in *Anita's case* were not equivalent and there was no inclusion of or reference to superior qualifications in that case. Thus, the Bench held that while the perusal of Rule 10(a)(ii) of the Kerala Rules presuppose the acquisition of lower qualification if the candidates possessed the higher qualification, a similar provision was unavailable in the relevant Rules as applicable in *Anita's case*.

14. In fine, the Bench in *Zahoor Ahmad Rather and others v. Sheikh Imtiyaz Ahmad and others* ((2019) 2 SCC 404), rejected the argument advanced on behalf of those candidates that the stipulation in Note-12 to the effect that ITI was 'a bare minimum requirement' cannot be extended to assume that it would include superior qualification as well.

15. At para 28 and 29, the Bench states as follows:



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“28. Ms Wadia sought to draw sustenance from the fact that the holder of an ITI certification can obtain lateral entry to the diploma course. The point of the matter, however, is that none of the appellants fit the description of candidates who had secured an ITI certification before seeking a lateral entry to a diploma course. Plainly, when an ITI with matric is required, a person who does not hold that qualification is not eligible.

29. The submission based on Note 12, urged by Ms Wadia, cannot be accepted. The stipulation that the qualification prescribed is the bare minimum requirement of the job emphasises that it is an essential requirement, a threshold which cannot be dispensed with. Under Note 12, the Board is entitled to assign additional weightage for a higher qualification. Whether such a weightage should be assigned is a matter for the Board to determine. The SSSB did not assign an additional weightage for a higher qualification. In not exercising an enabling power, no fault can be found with the SSSB. An enabling provision postulates a discretion which may or may not be exercised. A candidate has no vested right to assert that the Board must as a mandate assign an additional weightage to a higher qualification. Whether to do so or not is a matter for the Board to determine. All that Note 12 postulates is that the mere possession of the prescribed qualification will not entitle a candidate to be called for the written test or interview. The Board may shortlist among eligible candidates by granting a weightage to a higher qualification in the relevant line or discipline. But the words “as may be decided by the Board” in Note 12 indicate that the Board is vested with a discretion in pursuance of an enabling power which it may or may not exercise.”

16. The emphasis laid, is on the language in which the criteria is couched and the overarching right of the employer to determine the employment criteria.

In the case of *Chief Manager, Punjab National Bank and another v. Anit Kumar Das* ((2020) SCC Online SC 897) a Bench comprising three Judges of



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the Hon'ble Supreme Court considered the case of an applicant for the post of peon in the Punjab National Bank.

17. The eligibility criteria therein was that the candidate should hold a pass in the XII Standard or equivalent with basic reading/writing knowledge of English. A negative covenant was also placed, to the effect that the candidate should not be a graduate as on 01.01.2016. Anit Kumar Das was a graduate at the time of his application, citing which his candidature was cancelled.

18. This came to be challenged by him in a writ petition that was allowed on the ground that the appointment should not be cancelled simply because he possessed a higher qualification. The Bank appealed against this conclusion and the Division Bench dismissed the appeal against which the Bank filed an SLP.

19. However, the position in this case is distinguishable. The official website of the State permitted the petitioner to write the TET test in which she was successful. Thereafter, she was called for certificate verification. Though she was initially unable to produce the provisional certificate of B.Ed., as she was awaiting the results, she produced the provisional certificate once received, and this position is undisputed.

20. Thereafter and since she was not selected, she has approached this

Court by way of mandamus directing the respondents to consider her



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appointment to the post of Graduate Assistant in the Government Schools based on the marks obtained by her in the TET held on 30.04.2017 and subsequent verification by TRB.

21. The question that arises now is as to whether she is qualified for the post of Middle School Maths teacher (Associate Teacher). Pending Writ Petition, the State has also issued a Government Order in G.O.(Ms).No.270 dated 03.12.2019, wherein, the State has considered various educational qualifications possessed by candidates and the recommendations of the 2nd and 3rd Equivalence Committee meeting held on 06.11.2019 and 12.11.2019 respectively.

22. One of the recommendations made per Resolution 2.30 of the Equivalence Committee, reads as follows:

<u><i>Resolution No.2.30</i></u> <i>Public Services – Educational Qualification – Consideration of B.E. (any discipline) with B.Ed. whether eligible to the post of B.T. Assistant (Mathematics) for the purpose of employment in Public Services</i>	<i>Eligible to teach from 6th Standard to 8th Standard.</i>
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23. At paragraph 2 of the Government Order, the Government, after careful consideration selectively accepted some of the recommendations of the Equivalence Committee and this includes Resultion No.2.30. Thus, any candidate who had completed B.E. in any discipline with a B.Ed., is eligible to the post of B.T.Assistant (Mathematics) for the purpose of employment in public services and specifically found eligible to teach middle school students between 6th and 8th standards.

24. Mr.Neelakandan, learend Additional Advocate General, who appears for the State would urge that the decision of the State on 03.12.2019 must be understood and applied only prospectively and in this regard he would draw my attention to Notification issued at the time when the candidate had applied.

25. In Notification issued on 24.02.2017, the TRB permitted only candidates of the 10 + 2 + 3 pattern to write the TET in the following terms:

'3. Eligibility to Write TET Paper II:

Candidates should possess the following prescribed qualifications to write the Teacher Eligibility Test Paper II:

a. Candidates who have passed a Bachelor's Degree (B.A.B/Sc./B.Litt) with Tamil, English, Mathematics, Physics, Chemistry, Botany, Zoology, History and Geography as major subjects in their Degree course or a Degree with any one of the equivalent subjects (Regarding equivalent subjects, Government orders issued prior to the date of this notification alone will be considered) from a Recognized University under 10+2+3 Pattern and a Bachelor's Degree in Education (B.Ed.) from a Recognized University and seeking an appointment as Graduate Teacher can



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write Paper II. The candidates with B.Lit., (Tamil) degree should possess either B.Ed. or D.T.Ed. or TPT.

b.....

(Emphasis supplied by me)

26. He thus urges that the equivalence be applied only in respect of selections made in future. This submission is liable to be rejected, since, had it been a pre-condition to be enforced strictly, and adverse to candidates possessing higher qualification of 1-+2+5, there ought to have been a filter even at that stage, to ensure that only those candidates who were compliant with the specified educational pattern, write the test. This petitioner, who has studied 10 + 2 + 5 pattern has not just been permitted to write the TET, but has been successful, called for certificate verification and admittedly produced all necessary certificates, though the provisional B.Ed. Certificate was made available later.

27. His second submission concerns Notification dated 27.04.2017 issued by TRB for direct recruitment of B.T. Assistants in response to which the petitioner has applied. He specifically draws attention to Clause 2(a) under Educational Qualification reading thus:

2(a) – B.T Assistant (For the vacancies in the Department of School Education, Department of Elementary Education and Department of Social Defence)



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S.No	Name of the post	Prescribed qualification
1.	..	..
2.	..	..
3.	<i>B.T.Assistant (Maths)</i>	<i>i) B.Sc degree in Mathematics or its equivalent from recognized university.</i> <i>ii) B.Ed degree or its equivalent from recognized university</i> <i>iii) Qualified in TNTET Paper II with optional subject as Mathematics and Science.</i>

28. Thus, according to him, the stipulated qualification at that time was only a B.Sc degree (Mathematics) or qualification along with B.Ed. and qualification in TET paper II. As on that date, the petitioner was over qualified and thus, according to him, should not have the benefit of appointment.

29. It is also relevant to note that the petitioner has chosen Mathematics Part I and II as pedagogic studies, as supported by the statement of marks as well as transfer certificate, which refer at point No.10 to *Pedagogy Subject Studied : Mathematics.*

30. At the time of admission of this matter on 30.11.2017, after hearing the petitioner and the counsel who had accepted notice on behalf of the respondents, learned Judge of this Court had, felt that the petitioner had made



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out a prima facie case, and had directed the respondents to keep one post vacant until further orders. Thus, as on date, there is a post reserved for this petitioner.

31. Thus while disposing this Writ Petition, this Court cannot blind itself to the progress that has been occasioned in such matters and as reflected by subsequent Notifications/orders issued by the State. Thus and bearing note of G.O.(Ms.)No.270 dated 03.12.2019, the conclusion that this Court arrives at, is that the B.E. Degree that the petitioner has completed entitles her and render her eligible to teach middle school between 6th and 8th standards.

33. To reiterate, the petitioner, as on date, having completed 10+2+5+B.Ed. and being successful in the TET, is entitled to the post reserved for her to teach middle school and the emabargo placed under the 2017 Notification would be of no consequence in the decision arrived at by this Court.

34. Mandamus as sought is issued and orders of appointment shall be issued within a period of four (4) weeks from today. This Writ Petition is allowed. No costs. Connected Miscellaneous Petition is closed.

09.12.2022

Index : Yes
Speaking Order
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Dr.ANITA SUMANTH,J.

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