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W.A.No.99 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.11.2023

CORAM

**THE HONOURABLE MR.JUSTICE R.SURESH KUMAR
and
THE HONOURABLE MR.JUSTICE G.ARUL MURUGAN**

**W.A.No.99 of 2020
and
C.M.P.No.1353 of 2020**

J.Gopikrishna

... Appellant

-Vs-

The Teachers Recruitment Board,
Represented by its Chairman,
4th Floor, EVK Sampath Maaligai,
DPI Campus, College Road,
Chennai - 600 006.

... Respondent

PRAYER : Writ Appeal filed under Clause 15 of the Letters Patent, to set aside the order dated 13.11.2019 made in W.P.No.31879 of 2019.

For Appellant

:

Mr.V.Raghavachari
Senior Counsel
for Mrs.V.Srimathi

For Respondent

:

Mr.R.Neelakandan,
Additional Advocate General
Assisted by Mr.K.Sathish Kumar
Standing Counsel for TRB



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J U D G M E N T

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(Judgment of the Court was delivered by **R.SURESH KUMAR, J.**)

This writ appeal has been directed against the order passed by the writ Court dated 13.11.2019 made in W.P.No.31879 of 2019.

2. The appellant was the writ petitioner. The Teachers Recruitment Board issued a Notification No.12 of 2019 dated 28.08.2019 and 04.10.2019 inviting application for direct recruitment, from eligible candidates, for the post of Assistant Professors in Tamil Nadu Collegiate Educational Service for Government Arts and Science Colleges and Colleges of Education for the year 2018-19.

3. The appellant / writ petitioner also made an application which was rejected at the threshold by the respondent / Teachers Recruitment Board, therefore, he had approached this Court by filing a writ of mandamus seeking a direction to the Teachers Recruitment Board to accept the application of the appellant / petitioner for the post of Assistant Professor.



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4. The said writ petition having been considered was dismissed by the learned Judge through the impugned order.

5. The reason for rejection of the application, according to the respondent / Teachers Recruitment Board is that, the appellant / writ petitioner completed SSLC in 1996, thereafter without taking +2 examination, he directly taken UG degree in the year 2002, thereafter PG degree, i.e., M.A in the year 2007 and M.Phil degree in the year 2008 and he also cleared the National Eligibility Test examination in the year 2009, thereafter, he has completed +2 examination only in the year 2019 through private studies.

6. With these qualifications, since he approached the Teachers Recruitment Board by making his application to be considered for the said post of Assistant Professor and the same since has been rejected for the reason that, as per Clause-6(v) of the Notification, candidates who have obtained a Bachelor Degree from a recognized University, under 10+2+3 pattern alone shall be considered for selection, since the appellant / petitioner secured UG degree without having +2 examination passed and after several years in the year 2019 only by private studies he passed +2 examination, therefore it is a reverse pattern not in the pattern of 10+2+3 but in the pattern of 10+3+2 which is



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against G.O.(Ms)No.107, Personnel and Administrative Reforms Department, dated 18.08.2009, G.O.(Ms)No.116, Personnel and Administrative Reforms (M) Department, dated 18.08.2010 and G.O.(Ms)No.242, Higher Education (B1) Department, dated 18.12.2012.

7. In this context, it is to be noted that in Clause-6(v) of the notification, the following effect has been made clear, which reads thus:

“6(v). It is informed that candidate who have obtained a Bachelor's degree from a recognised University, under 10+2+3 pattern alone shall be considered for selection as per G.O.Ms.No.107, P&AR Department, dated 18.08.2009, G.O.Ms.No.116, P&AR (M) Dept., dated 18.08.2010 and as prescribed in G.O.(Ms)No.242, Higher Education (B1) Department, dated 18.12.2012. No other order / pattern will be accepted.”

8. However, Mr.V.Raghavachari, learned Senior counsel appearing for the appellant has argued that, the qualification prescribed by the respondent / Teachers Recruitment Board has been fulfilled by the appellant. In fact he is having the over-qualification and a person who has secured UG degree, PG degree, M.Phil degree, passed in National Eligibility Test and also subsequently



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was awarded Ph.d degree, that is the maximum eligible qualification, can be acquired for the purpose of being a teaching faculty in the collegiate educational system.

9. When that being so, all these qualifications acquired by the appellant cannot be nullified by a prescription that has been made either by the State Government or by the Recruiting Agency stating that the qualification should have been acquired one by one as per the pattern they fixed not otherwise, it does not have a reasonable nexus between the classification and the object sought to be achieved.

10. However, Mr.R.Neelakandan, learned Additional Advocate General appearing for the respondent / Teachers Recruitment Board has submitted that, the issue raised in this appeal is no more *res-integra* as the issue has been considered many times by various Division Benches of this Court, where a consistent view has been taken by which the pattern prescribed as 10+2+3 alone is the pattern to be adopted or followed by any candidate who seeks for a job in Government Organizations and that was the prescription which was made under the relevant Government Order, namely, G.O.(Ms)No.107, Personnel and Administrative Reforms Department, dated 18.08.2009.



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11. The learned Additional Advocate General would also submit that insofar as the validity of G.O.(Ms)No.107, fixing the pattern of 10+2+3 is concerned, it has already been testified before this Court in the matter of ***T.L.Muthukumar and others Vs. The Registrar General, High Court of Madras and another*** in ***W.P.No.18729 of 2010***, where, a Division Bench of this Court had upheld the validity of G.O.(Ms).No.107 and had rejected the plea made therein by a job seeker or the employee who sought for promotion.

12. The learned Additional Advocate General has also relied upon few more Division Bench judgments on the similar line (i) ***2014-2-L.W.1005*** in the matter of ***J.Joseph Irudayaraj Vs. Joint Director of School Education and others*** (ii) ***W.A.No.805 of 2014 dated 06.08.2014*** in the matter of ***The Chairman, Teachers Recruitment Board and another Vs. V.Kanimozhi*** and (iii) ***W.A.No.40 of 2021 dated 28.04.2022*** in the matter of ***M.Pushpa Vs. The Director of School Education and others***. By relying upon these judgments, the learned Additional Advocate General would contend that, the issue raised in this writ appeal, as has been stated earlier, is no more *res-integra* as it has been



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concluded by more than four or five judgments and the issue cannot be canvassed once again before this Court as if a new issue and nothing can be deviated from the consistent view already been taken by this Court in those judgments, he contended.

13. We have considered the said rival submissions made by the learned counsel appearing for the parties and have perused the materials placed before this Court.

14. Insofar as the qualification that has been acquired by the appellant is concerned, absolutely there has been no quarrel that he has acquired these qualifications, i.e., 10th Standard, 12th Standard, UG degree, PG degree, M.phil degree and Ph.d degree as well as National Eligibility Test. However, while acquiring these qualifications whether the appellant has proceeded in the path or pattern that has been envisaged in the relevant Government Orders which have been issued by the State Government under the executive power under Article 162 of the Constitution of India is the question.

15. G.O.(Ms)No.107, Personnel and Administrative Reforms Department, dated 18.08.2009 had made it clear that, the UG degree if it is a



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qualification to hold any post or to get an appointment or to get a promotion in any of the State service, such a qualification must be on the basis of 10+2+3 pattern, that means after passing 10th Standard, he must take +2 examination to be passed, thereafter only UG degree he can secure.

16. The validity of the said G.O.(Ms)No.107 has been upheld in the said judgment of *T.L.Muthukumar's* case, which we have quoted herein above.

17. Insofar as the appellant is concerned, after completing 10th Standard, for whatever reason he did not pursue his +2, however, after few years, he directly pursued the UG degree and was able to secure the UG degree in the year 2002, thereafter secured M.A degree in the year 2007 and acquired the qualification of M.Phil in the year 2008 and passed the National Eligibility Test in the year 2009 and thereafter Ph.d degree. After acquiring all these qualifications, for long years, the appellant has thought of getting +2 examination passed, therefore by way of private studies, he had written +2 examination successfully in the year 2019 only.

18. Therefore, according to the respondent / Teachers Recruitment Board, the pattern adopted by the appellant is 10th Standard, UG degree, PG degree,



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M.Phil degree, Ph.d degree and thereafter, +2.

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19. If at all the importance of the +2 or the pattern of 10+2+3 is not required or not to be recognized, the very appellant himself would not have pursued +2 examination and got through the same after several years in the year 2019. In fact, the legal position pursuant to G.O.(Ms)No.107 having been taken note of and it might have triggered the mind of the appellant to make him to qualify with +2 examination also even though well before that he acquired all other qualifications including Ph.d degree.

20. Therefore, acquiring the qualification of +2 is a must, however that qualification of +2 must be secured prior to the joining of UG degree, i.e., the pattern called 10th Standard, 12th Standard and UG, otherwise called as 10+2+3.

21. Therefore, even though the appellant has acquired the qualification of +2 after several years, i.e., after acquiring all other qualifications including UG degree, ie., UG, PG and M.Phil, which are the essential qualifications to hold the post of Assistant Professors, such acquiring of the qualification of +2 is nothing but a reverse pattern. That kind of reverse pattern has never been recognized by the Court of law by virtue of series of judgments which we have



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quoted herein above.

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22. In our latest judgment by our Bench in the matter of ***S.Rajkumar vs The State of Tamil Nadu, Represented by its Secretary to Government and another*** in ***W.A.No.2317 of 2012 dated 22.11.2023***, a similar issue when came up for consideration, we have held that, insofar as whatever the qualification acquired by anyone including UG or PG degree awarded by the University and recognized by the provisions of the University Grants Commission Act by the University Grants Commission, definitely such kind of degree must be a valid degree in the eye of law.

23. However insofar as the qualification that has been prescribed by the employer under the Service Rules or under the Notification, such kind of qualification prescribed by the employer must have been fulfilled, otherwise the job seeker is not entitled to seek for the job.

24. Therefore, there is a clear distinction between acquiring the qualification as well as fitting the qualification for the purpose of seeking a particular employment under the particular employer. This distinction has been considered by us in the said ***Rajkumar's case***, where we have held the



following:

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*"23. Here, no such exercise has been done and no such attempt has been made by the subsequent Division Bench in **M.Rathinavel's** case. More over, in the Division Bench judgment in **M.Rathinavel's** case, it has been held that the degree awarded by Madras University means any equivalent degree awarded by any other university can also be construed as an equivalent qualification, and held that the University from which the petitioner M.Rathinavel obtained the degree is also a recognized university and therefore the degree awarded by that University is also a recognized degree.*

*24. We have absolutely no quarrel on this proposition with regard to the recognized degree. Recognized degree means valid degree. However, the degree obtained from Open University without following 10+2+3 system, whether to be accepted as qualification for the purpose of appointment and promotion in the public employment insofar as the State of Tamil Nadu is concerned, was the question which arose in the wake of G.O.Ms.No.107 which has been upheld by the Division Bench in **T.L.Muthukumar's** case.*

25. No doubt, there was an U.G.degree obtained by the said M.Rathinavel (petitioner in W.P(MD) No.11111 of 2016) from Open University, without following the system of



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*10+2+3. That degree may be a valid degree, but that cannot be taken as qualification for the purpose of appointment and promotion in the public employment in Tamil Nadu including High Court Service. This has been already clarified and made clear by the earlier Division Bench judgment in **T.L.Muthukumar's** case on 10.02.2011 on the very same High Court Service Rules framed under Article 229 of the Constitution. When that being so, when a different view wanted to be taken by another Division Bench, they must have considered the earlier judgment and if at all the earlier judgment is not agreeable with the subsequent Division Bench, the subsequent Division Bench should have referred the matter to the Full Bench. Otherwise, the issue should have been declared as **per incuriam**."*

25. All other Division Bench judgments quoted herein above also have taken the similar view, in fact consistently, and therefore, there could be no deviation on the legal position.

26. Hence, the attempt made by Mr.V.Raghavachari, learned Senior counsel appearing for the appellant is only a vain attempt for succeeding this case.



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27. Though the learned Senior counsel appearing for the appellant has made a fervent plea before this Court that the very higher qualification including Ph.d degree acquired by the appellant shall be taken into account and mere deviation of pattern that has been prescribed under the Government Order cannot take away the qualification acquired by a person from recognized Universities of the State or Country is concerned, no doubt, those qualifications acquired by the appellant are the valid qualifications, may be for any other purpose, but, as far as the purpose of getting a job pursuant to the Notification issued by the respondent / Teachers Recruitment Board is concerned, it is not a valid qualification within the meaning of the prescription that has been made by the employer, here it is a State Government. Therefore, ultimately, we may have sympathy on the appellant, but the law does not permit to give any relief to the appellant.

28. Before parting with the case, we feel that it is a vexed issue, where Universities are established by the law made by the State Legislature as well as parliament and Exclusively Open Universities are established by legislation. Those open Universities are intended to impart education for those who did not have the regular pattern of 10+2+3 system. In those Universities also, degrees are offered to various eligible candidates and degrees are also awarded by such



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Universities.

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29. If these kind of qualifications are awarded by the State Universities created by the Act of Parliament or Act of State Legislature become a qualification which would not be accepted by the employer especially the State authorities for employment in their respective domain, then certainly it would be a pathetic situation insofar as those candidates are concerned. Therefore, the stake-holders of both Central and State authorities can have a re-look in this matter in the larger interest of the Society. Unless and until such an exercise is undertaken by the concerned authorities / stake-holders, what is the law that is prevailing alone shall be taken into account by this Court. Therefore, in view of the said legal position, we are not inclined to accept the plea raised by the appellant, therefore, it is liable to be rejected, accordingly, it is rejected. Hence, the writ appeal is dismissed. However, there shall be no order as to costs. Consequently, connected Miscellaneous Petition is closed.

(R.S.K., J.) (G.A.M., J.)
30.11.2023

NCC : Yes



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Speaking Order : Yes

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To

The Chairman,
The Teachers Recruitment Board,
4th Floor, EVK Sampath Maaligai,
DPI Campus, College Road,
Chennai - 600 006.



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