



WEB COPY



W.P.No.8333 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.06.2023

CORAM :

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

and

THE HONOURABLE MR.JUSTICE P. DHANABAL

W.P.No.8333 of 2019 and

WMP No.8877 of 2019

Divya Kondaveeti

.. Petitioner

Vs.

1. The Registrar,
Central Administrative Tribunal,
Chennai Bench, High Court,
Chennai 600 104.
2. Union of India, rep. by the Chairman,
Railway Recruitment Board,
No.5, Dr.P.V.Churian Crescent Road,
Egmore, Chennai 600 008.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari, calling for the records of the first respondent in O.A.No.1049 of 2015 dated 06.02.2019 and quash the same.



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For Petitioner : Mr.T.S.Rajamohan

WEB COPY For Respondents : Mr.P.T.Ramkumar for R2

ORDER

(Order of the Court was delivered by P. DHANABAL, J.)

This writ petition has been filed to quash the order passed by the Central Administrative Tribunal, Chennai Bench, High Court, Chennai 600 104 in O.A.No.1049 of 2015 dated 06.02.2019.

2. The Petitioner had appeared for the written examination, conducted on 11.01.2014, for the post of Teacher Group-IV Economic, as per the notification No.3 of 2014 dated 11.10.2014 issued by the second respondent. Subsequently, the date of interview and document verification was fixed on 22.07.2015, however, the petitioner was not called for document verification. As per notification, the candidates shall have passed either Senior Secondary with atleast 50% marks and 2 years Diploma in Elementary Education or in case of Graduation and 2 years Diploma in elementary education and the same shall be coupled with pass in TET to be conducted by the appropriate government. According to the petitioner, she



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is a graduate in Science and also obtained diploma in Education. Further, she has passed Teacher Eligibility Test conducted by the Andhra Pradesh and also having working experience as teacher. However, she was not called for certificate verification and interview. Hence, she had given representation dated 23.06.2015 to the second respondent to provide the names of the candidates and their TET marks. But there was no response from them. Subsequently, the petitioner has filed O.A.No.1049 of 2015 before the first respondent, to quash the notification No.3 of 2014 and to direct the second respondent to conduct selection process, based on the guidelines of National Council for Teacher Education dated 11.02.2011. The above O.A. was dismissed on 06.02.2019. Aggrieved by the same, the present writ petition has been filed.

3. The second respondent filed a counter affidavit stating that as per notification No.3/2014 dated 11.10.2014, applications were called for two posts of Teacher Grade-IV Economics (English Medium), vide category No.36, in respect of one vacancy in Un-reserved and other in O.B.C. The minimum qualifying marks to be obtained in the written examination in



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respect of unreserved is 40% ; in respect of SC and OBC is 30% ; and in respect of ST is 25%. For the above examination, 100 applications were received, out of which 9 applicants were admitted, in which, 4 candidates absent and 5 candidates attended the examination. Since the applicant scored only 14.67% in the written examination, she was not called for interview.

3.1. Out of 5 candidates, 4 candidates belonged to OBC category and the petitioner belonged to U.R. category and they have appeared for the written examination. As per policy 2 1/2 times of vacancy has to be called for interview. However, only 4 candidates, comprising 1 unreserved and 3 OBC have secured the minimum qualifying marks eligible for interview and the petitioner did not secure the minimum qualifying marks. Therefore, one OBC candidate was called for interview against the vacancy in Unreserved post and three OBC candidates were called for interview against vacancy in O.B.C. and interview was conducted 23.07.2015.



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3.2. On interview and document verification, it was found that 3 candidates including the OBC candidates called against Un-reserved vacancy, did not possess qualification of 2 years Diploma in Elementary Education or 4 years bachelor of elementary education or 2 years Diploma in Education (Special Education). Therefore, considering the qualifying marks obtained in the written examination and also in the interview and required educational qualification, the candidate namely K.S.Syamkumar belonging to OBC was selected for the post of Teacher Grade-IV Economics and the same was communicated to Southern Railway on 10.08.2015. Further he joined as Teacher Grade-IV Economics in Palghat Division of Southern Railway on 19.10.2015. Since the petitioner did not secure minimum qualifying marks in the written examination, she was not selected for interview. The petitioner was furnished marks secured by all the candidates, who took part in the written examination. Hence the writ petition is liable to be dismissed.

4. The learned counsel for the petitioner submitted that, the petitioner is a Graduate in Science and Diploma holder in Education and has also



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passed the TET examination. Further, she scored 60% in the TET examination conducted by Andhra Pradesh and hence, she should be given weightage in recruitment process. The petitioner was not called for document verification and interview, however, the same was conducted, without publishing the marks obtained by the candidates in the written examination. Therefore, the second respondent was not transparent in the recruitment process. But, without considering the above aspects, the Tribunal has dismissed the O.A.1049/2015 filed by the petitioner, which is erroneous and hence the same is liable to be quashed.

5. The learned counsel for the second respondent submitted that, the petitioner belonged to Un-reserved category and as per the recruitment rules, she has to secure 40% marks in the written examination, however she secured only 14.67% and hence she was not called for interview. He further submitted that the selected candidate namely Mr.Syamkumar, K.S. belonged to OBC category has scored 37.67% and hence he was selected and appointed on 10.08.2015 for the post of Teacher Grade-IV Economics in Palghat Division of Souther Railway. He further submitted that marks



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obtained in the TET is not an essential criteria to be verified and as per employment notice, the candidates should have passed the TET conducted by appropriate government and no weightage of TET marks was envisaged for recruitment. The recruitment process had been conducted in accordance with the notification rules, without causing any prejudice to equality in public appointment. Therefore, the petitioner, having become unsuccessful in the selection process, has filed the O.A. challenging the notification itself and also the selection made in pursuance of the notification to be set aside. and the Tribunal has rightly dismissed the petition and it does not warrant any interference by this Court.

6. Heard the learned counsel for the petitioner and the learned counsel appearing for the second respondent. Also we have perused the materials on record.

7. It is an admitted fact that the petitioner had applied for the post of Teacher Grade-IV Economics and had appeared for the written examination conducted on 11.01.2015 and she comes under Unreserved category. As per



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recruitment rules, the minimum qualifying marks to be obtained in the written examination in respect of Unreserved - 40% ; SC and OBC - 30% ; and ST - 25%. But, admittedly, the petitioner has scored only 14.67% in the written examination as against 40%, whereas, the selected candidate, who belonged to OBC category has scored 37.67% as against 30%. Further, as per notification No.3/2014 dated 11.10.2014, applications were called for two posts of Teacher Grade-IV Economics (English Medium), vide category No.36, in respect of one vacancy in Un-reserved and other in O.B.C. Since the selected candidate namely Shyam Kumar has scored 37.67% and he is eligible with all required educational qualifications, he was appointed, as stated supra. Though the petitioner contended that the candidates, who did not possess even basic qualification were selected for the post, she has not produced any documents to prove her contentions.

8. The main contention of the petitioner is that, she has secured 60% marks in the TET examination and hence, she should be given weightage marks in the recruitment process as per the guidelines framed by NCTE. However, it was strongly opposed by the learned counsel for the second



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respondent that no weightage marks was envisaged in the recruitment process, as per notification No.3/2014 and therefore, the contention of the petitioner cannot be accepted.

9. The petitioner having participated in the written examination, accepting all the terms and conditions of the notification No.3/2014 dated 11.10.2014, has challenged the above notification, after coming to know that she was not eligible to be called for to attend interview and for documents verification, stating that the entire selection process was not done in accordance with law.

10. At this juncture, it is relevant to rely upon the decision of the Hon'ble Supreme Court of India *in Civil Appeal Nos.2164 to 2172 of 2023 (@ SLP(C) Nos.20781 to 20789/2021 dated 28.03.2023 (Tajvir Singh Sodhi and others Vs. The State of Tammu and Kashmir and others)*, wherein, the Hon'ble Apex Court has observed thus.

13. The next aspect of the matter which requires consideration is the contention of the writ petitioners to the effect that the entire selection process was vitiated as the eligibility criteria enshrined in the



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Advertisement Notice dated 5th May, 2008 was recast vide a corrigendum dated 12th June, 2009, without any justifiable reason. In order to consider this contention, regard may be had to the following case law:

i) ...

ii)

iii)The Court was of the view that the appellants having participated in the selection process without objection and subsequently found to be not successful, a challenge to the process at their instance was precluded. The relevant observations are as under:

"13. The law on the subject has been crystalized in several decisions of this Court. In Chandra Prakash Tiwari v. Shakuntala Shukla, this Court laid down the principle that when a candidate appears at an examination without objection and is subsequently found to be not successful, a challenge to the process is precluded. The question of entertaining a petition challenging an examination would not arise where a candidate has appeared and participated. He or she cannot subsequently turn around and contend that the process was unfair or that there was a lacuna therein, merely because the result is not palatable. In Union of India v. S. Vinodh Kumar (2007) 8 SCC 100, this Court held that: ***"18. It is also well settled that those candidates who had taken part in the selection process knowing fully well the procedure laid down therein were not entitled to question the same (See also Munindra Kumar v. Rajiv Govil (1991) 3 SCC 368 and Rashmi Mishra v. M.P. Public Service Commission (2006) 12 SCC 724)".***

13.1. It is therefore trite that candidates, having taken part in the selection process without any demur or protest, cannot challenge the same after having been declared unsuccessful. The candidates cannot approbate and reprobate at the same time. In other words, simply because the result of the selection process is not palatable to a candidate,



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he cannot allege that the process of interview was unfair or that there was some lacuna in the process. Therefore, we find that the writ petitioners in these cases, could not have questioned before a Court of law, the rationale behind recasting the selection criteria, as they willingly took part in the selection process even after the criteria had been so recast. Their candidature was not withdrawn in light of the amended criteria. A challenge was thrown against the same only after they had been declared unsuccessful in the selection process, at which stage, the challenge ought not to have been entertained in light of the principle of waiver and acquiescence.

Therefore, as per the ratio laid down by the Hon'ble Supreme Court, the petitioner cannot challenge the notification, after she became unsuccessful. Further, it is also to be noted that, though the petitioner has challenged the notification and the entire selection process alleging that the candidates, who did not possess even basic qualification were selected, she did not implead the selected candidate as a party to the writ petition. On this ground also, this writ petition is liable to be dismissed. Therefore, we are of the view that without any material documents, the petitioner has challenged the above recruitment notification and also the selection process and hence the writ petition has no merits. As such, the order passed by the Tribunal does not warrant any interference by this Court and the writ petition is liable to be dismissed.



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11. Accordingly, this writ petition is dismissed, confirming the order passed by the Central Administrative Tribunal, Chennai Bench, High Court in O.A.No.1049 of 2015 dated 06.02.2019. No costs. Consequently, connected miscellaneous petition is closed.

(D.K.K.J.)

(P.D.B.J.)

22.06.2023

Internet: Yes/No

Index : Yes/No

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