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WA No. 2664 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.04.2023

CORAM :

THE HONOURABLE MR. JUSTICE R. MAHADEVAN
and
THE HONOURABLE MR. JUSTICE MOHAMMED SHAFFIQ

Writ Appeal No. 2664 of 2022
and
CMP.No.21441 of 2022

V. Jayanthi

.. Appellant

Versus

1. The Government of Tamil Nadu
rep. by its Principal Secretary
Department of School Education
Fort St. George, Chennai - 600 009
2. The Director of School Education
College Road, Chennai - 600 006
3. Teachers Recruitment Board
rep. by its Member Secretary
4th Floor, EVK Sampath Maaligai
DPI Compound, College Road
Chennai - 600 006
4. K. Muthukumaran
Regd.No.13PG23010612
C/o. Teachers Recruitment Board
rep. by its Chairman
4th Floor, EVK Sampath Maaligai
DPI Compound, College Road
Chennai - 600 006

.. Respondents



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Writ Appeal filed under Clause 15 of Letters Patent against the order dated 30.06.2022 passed in WP No. 12116 of 2015 on the file of this Court.

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For Appellant : Mr. S. Sathia Chandran

For Respondents : Mr. Stalin Abimanyu,
Additional Government Pleader for R1 & R2

Mr. R. Neelakandan
Additional Advocate General
assisted by K. Sathish Kumar for R3

JUDGMENT

(Judgment of the Court was delivered by R. MAHADEVAN, J)

The appellant, who is aggrieved by the order of dismissal dated 30.06.2022 passed by the learned Judge in Writ Petition No. 12116 of 2015, has come forward with this writ appeal.

2. The aforesaid writ petition No. 12116 of 2015 was filed by the appellant seeking to issue a Writ of Certiorarified Mandamus to quash the order dated 18.03.2015 passed by the third respondent and to issue a direction to appoint her to the post of Post Graduate Assistant (Tamil).

3.(i) According to the appellant, she obtained a Bachelor Degree in Tamil during the year 2006 and Post Graduate Degree in the same subject in the year 2008. It is stated that the appellant had registered her name in the



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Professional Employment Exchange, Chennai bearing Registration No.

2008F00023138 in anticipation of employment opportunity befitting her qualification. At this stage, the third respondent - Teachers Recruitment Board (in short, "the Board") issued a notification dated 09.05.2013 inviting applications for direct recruitment to the post of Post Graduate Assistant (Tamil). The appellant applied for the said post and she also participated in the written examination held on 21.07.2013.

(ii) It is stated that in the written examination conducted by the Board, the appellant was provided with "D" series question paper, while some other candidates, who had written the examination along with her, have been furnished with question papers with "A", "B" and "C" series. It is further stated that the questions contained in all the question papers remain the same, but the candidates were furnished different question papers with different serial number. It is also stated that all the questions are multiple choice questions for which there was only one correct answer. As per the pattern of examination, even if a candidate furnishes the wrong answer, there will not be any negative mark for the same. According to the appellant, she did the examination well and was anticipating to get selected.

(iii) On 23.12.2013, the Board published the key answers to the questions as well as the list of candidates eligible for certificate verification.



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As per the results published, the appellant secured 100 out of 150 marks but fell short of 1 mark to come within the zone of consideration viz., 101 marks.

When the appellant verified the questions and key answers, she noticed that the answers provided by her have not been properly evaluated by the Board and several questions set in the question papers were wrong and this had deprived her a mark for being selected. Therefore, on 26.12.2013, the appellant submitted a representation to the third respondent for correct valuation of the question Nos. 28, 35, 53, 88, 93, 100 and 115 along with the documentary evidence.

(iv) While so, by pointing out the errors in several questions in the question papers furnished to the candidates during the competitive examination, two writ petitions viz., WP (MD) Nos. 13267 and 14940 of 2013 have been filed and by order dated 01.10.2013, this Court directed the Board to conduct fresh examination. Aggrieved by the same, the Board filed Writ Appeal (MD) Nos. 1089 and 1090 of 2013. The Division Bench of this Court, while ordering notice, directed the Board to keep two posts of Post Graduate Assistant vacant for the respondents in the said writ appeals. Following the same, the appellant herein filed WP (MD) No. 421 of 2014 and on 07.01.2014, this Court granted an interim direction to keep one post of Graduate Assistant (Tamil) vacant for the appellant. Subsequently, on 04.12.2014, this Court



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disposed of the said writ petition, with a direction to the appellant to submit a representation to the third respondent-Board and with further direction to the third respondent -Board to consider the same on merits. Accordingly, the appellant submitted a representation on 22.01.2015, but it was rejected by the third respondent on 18.03.2015. In the order of rejection, the third respondent has stated that the comparison made by the appellant with the respondents in WA (MD) Nos. 1089 and 1090 of 2013 cannot be accepted inasmuch as they appeared in the examination and furnished with "B" series question booklet, but what was furnished to the appellant was "D" series and hence, she cannot claim that the benefit of the said judgment has to be extended to her. Aggrieved by the order of rejection dated 18.03.2015, the appellant filed the instant writ petition No. 12116 of 2015 before the learned Judge.

4. The writ petition was opposed by the third respondent by filing a detailed counter affidavit. According to the third respondent, the appellant appeared for the examination and she was issued with "D" series booklet in the written examination. She had secured 100 marks as against the required 101 marks to become eligible to progress to the further selection process. It is further stated that the appellant earlier filed WP (MD) No. 421 of 2014 and based on the directions issued by this Court, she sent a representation stating



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that question Nos. 28, 35, 88, 93, 100 and 115 of "D" series booklet were erroneous and claimed marks therefor. The said representation was considered and was ultimately, rejected by the Board especially when the entire selection process was completed except reserving two seats for the petitioners in W.P.(MD) Nos.13267 and 14940 of 2013, who were the respondents in WA (MD) Nos. 1089 and 1090 of 2013. Thereafter, the Board published the selection list on 03.01.2014 and forwarded it to the user department for issuing appointment orders. Further, the Board also conducted examination and published the provisional selection list on 22.01.2015, for the years 2013-14 and 2014-15. As the entire selection process was completed and appointment orders have also been issued to the notified vacancies, the claim of the appellant cannot be considered. Therefore, the third respondent prayed for dismissal of the writ petition.

5. The learned Judge, after having found that the entire selection was completed, refused to entertain the writ petition filed by the appellant herein. While so, it was observed by the learned Judge that the entire selection process was completed even in the year 2014 and after 8 years, the claim of the appellant to provide additional marks and to consider her candidature for appointment to the post of Post Graduate Assistant (Tamil) cannot be granted.



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Accordingly, the learned Judge dismissed the writ petition, by the order dated 30.06.2022, which is impugned in this writ appeal, at the instance of the appellant / writ petitioner.

6.(i) The learned counsel for the appellant submitted that the question Nos. 28, 35, 53, 88, 93, 100 and 115 set in the competitive examination by the Board are erroneous. In fact, the Board has admitted in W.A. (MD) Nos. 1089 and 1090 of 2013, that errors had crept-in in 21 questions set in the competitive examination due to printers' devil. Therefore, as per the direction of this Court, the Board awarded grace marks to the writ petitioners in W.P.(MD) Nos.13267 and 14940 of 2013, who were the respondents in WA (MD) Nos. 1089 and 1090 of 2013, but they failed to adopt the same yardstick to the case of the appellant herein. Adding further, the learned counsel submitted that in the earlier writ petition filed by the appellant viz., WP No. 421 of 2014, this court, by order dated 04.12.2014, permitted her to submit a representation to the Board by enclosing the copy of the Judgment passed in W.A. (MD) Nos. 1089 and 1090 of 2013 and on receipt of the same, the Board was directed to consider the claim of the appellant for award of grace marks by taking note of the errors crept-in, while preparing the question paper for the competitive examination. In spite of such direction, the Board



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rejected the claim of the appellant on the ground that provisional selection list was already published on 03.01.2014 and all the notified vacancies were filled up. According to the learned counsel, the appellant should not be made to suffer, for the failure on the part of the Board in not correctly printing the question paper. Even otherwise, the appellant required only one grace mark for being selected and appointed to the post called for. When grace marks were awarded to similarly placed persons like the appellant, the Board ought to have adopted the same yardstick to the case of the appellant as well. Therefore, it is submitted that the order, which was impugned in the writ petition, was discriminatory and arbitrary.

(ii) The learned counsel for the appellant further submitted that when WP No. 12116 of 2015 filed by the appellant was listed for hearing on 23.04.2015, this Court granted an order of interim direction to keep one post of Graduate Assistant (Tamil) vacant for the appellant herein, pending disposal of the writ petition. However, while disposing the said writ petition, on 30.06.2022, the learned Judge failed to take note of the interim direction passed at the earliest point of time and erroneously held that there is delay and laches on the part of the appellant in approaching this Court. Whereas, the fact remains that the order of rejection was passed by the Board on 18.03.2015 and immediately thereafter, the appellant has filed WP No. 12116 of 2015, in



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which, an order of interim direction was granted on 23.04.2015 and hence, there is no delay on the part of the appellant in approaching this Court.

(iii) The learned counsel for the appellant also submitted that at the time of filing of the first writ petition viz., WP.No.421 of 2014, the selection process was not completed and the same was stated to have been completed only on 03.01.2014. Thus, the appellant has approached this court well in advance and hence, the learned Judge was not right in holding that there is delay and laches attributable on the part of the appellant. The learned counsel for the appellant therefore prayed for setting aside the order passed by the learned Judge and allowing this writ appeal.

7. Per contra, the learned Additional Advocate General appearing for the third respondent submitted that at the instance of the appellant, the entire selection process cannot be resorted to afresh. The learned Judge has refused to grant the relief sought for by the appellant by taking note of the fact that the entire selection process, including issuance of appointment orders to the selected candidates, was over on 03.01.2014. Therefore, it was pointed out by the learned Judge that after eight years of the selection of candidates, the appellant cannot be awarded grace marks in the competitive examination conducted in the year 2014 to enable her to get selected to the post. By passage



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of time, much water had flown under the bridge and the attempt on the part of the appellant to set the clock back, is legally impermissible. The learned Additional Advocate General would further submit that if the relief sought for by the appellant is entertained, it would result in a logjam and much prejudice will be caused to the candidates who were already selected and working in the posts in which they were appointed. The learned Additional Advocate General, therefore, prayed for dismissal of the writ appeal.

8. We have heard the learned counsel for the appellant, the learned Additional Government Pleader appearing for the respondents 1 and 2 and the learned Additional Advocate General appearing for the third respondent and also perused the materials placed.

9. The facts remain undisputed are that in response to the notification issued by the Board, the appellant participated in the selection process for appointment to the post of Post Graduate Assistant (Tamil) and she had secured 100 marks as against the required 101 marks. She therefore sought to re-evaluate her mark sheet with reference to question Nos. 28, 35, 53, 88, 93, 100 and 115 along with the documentary evidence submitted by her. It is an admitted fact that in the competitive examination, several questions were erroneously printed and it led to series of writ petitions filed before this Court.

By order dated 01.10.2013 in WP (MD) Nos. 13267 and 14940 of 2013, this

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Court even directed the Board to conduct a fresh competitive examination.

However, appeals were filed thereagainst and the Division Bench of this Court directed to keep two posts vacant for the respondents therein. By placing reliance on the said interim order, the appellant also filed WP No. 421 of 2014, in which, an order of interim direction was granted on 07.01.2014 to keep one post of Graduate Assistant (Tamil) vacant for the appellant herein. But when the said writ petition was taken up for final hearing on 04.12.2014, this Court directed the respondents therein to consider the claim of the appellant, on merits. Pursuant to such direction, the third respondent rejected the claim of the appellant by order dated 18.03.2015, which was the subject matter of challenge in WP No. 12116 of 2015.

10. As stated earlier, it is the categorical stand of the third respondent in his counter affidavit filed in WP No.12116 of 2015, that the Board published the provisional selection list for the year 2012-2013 on 03.01.2014 and forwarded the same to user department for issuance of appointment orders. Further, the Board also conducted subsequent recruitment drive for the years 2013-2014 and 2014-2015 for the post of Post Graduate Assistant (Tamil) and also published the provisional selection list on 22.01.2015. While so, at this stage, if the prayer sought for by the appellant is granted, it would definitely reign in chaos in the administration and would cause immeasurable prejudice



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and hardship to the respondents.

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11. The learned Judge, on consideration of the entire facts and submissions made on both sides, dismissed the writ petition, placing reliance on the judgment dated 20.02.2022 passed in WA(MD)Nos.1089 and 1090 of 2013, mainly on the ground that the entire selection process resorted to by the Board, had been completed even in the year 2014 and hence, there is no scope for accommodating the appellant after eight years, i.e., in the year 2022, by the order impugned in this writ appeal.

12. It may be true that this Court passed an interim order on 23.04.2015 in WP No. 12116 of 2015 directing the Board to reserve one post vacant for the appellant. Such an order was passed as an interim measure, subject to the result of the writ petition. The said writ petition was dismissed on 30.06.2022 by the learned Judge and therefore, the interim order already granted on 23.04.2015 got merged with the final order passed in the writ petition. In such circumstances, the appellant cannot take advantage of the interim direction issued by this Court in the writ petition.

13. It is also worthwhile mentioning that WA (MD) Nos.1089 and 1090 of 2013 filed by the Board, against the order passed in WP(MD) Nos.13276 and 14940 of 2013 pertaining to the very same recruitment for the year 2012-13, were finally allowed, on 20.02.2022, by setting aside the order



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of the learned Judge, for the reason that the exercise of conducting the examination had been concluded in the year 2014 itself and thereafter also, two selection process had been completed and hence, it would not be proper and advisable to upset the apple cart by ordering the conduct of the fresh examination at this point of time as directed by the learned Judge. Following the said judgment passed by the Division Bench of this court, the learned Judge has concluded that the selection process which was completed in the year 2014, cannot be made the subject matter of the writ petition in the year 2022; and if any order is passed to accommodate the appellant, it would certainly unsettle the settled selection process. Accordingly, the learned Judge has rightly refused to entertain the writ petition filed by the appellant. This court finds no reason much less valid reason to interfere with the order so passed by the learned Judge.

14. In the result, the writ appeal fails and it is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

[R.M.D., J]

[M.S.Q., J]

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Index : Yes / No

Internet : Yes / No



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and
MOHAMMED SHAFFIQ, J

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To

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rep. by its Principal Secretary
Department of School Education
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