



W.P.No.1577 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.10.2023

CORAM :

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

and

THE HONOURABLE MR.JUSTICE P. DHANABAL

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Nisha K.

... Petitioner

Vs.

1. Union of India,
Rep. by the Principal Secretary,
Education Department,
Government of Puducherry,
Puducherry.
2. The Director of School Education,
Directorate of School Education,
Perunthalaivar Kamarajar Centenary,
Educational Complex, Anna Nagar,
Puducherry 605 005.
3. The Registrar,
Central Administrative Tribunal,
Chennai 600 104.

... Respondents

Prayer: Writ petition filed under Article 226 of the Constitution of India seeking to issue a Writ of Certiorarified Mandamus calling for the records



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relating to common order dated 16.03.2015 in O.A.No.983/2015 and M.A.No.983/2015 and order dated 28.08.2018 in R.A.No.9/2018 and quash the same and allow the original application, as prayed for.

For petitioner : Ms.Y.Kavitha

For Respondents : Mr.R.Syed Mustafa, Special Govt.Pleader
for first and second respondents

ORDER

(Order of the Court was delivered by D.KRISHNAKUMAR, J.)

Challenging the order dated 16.03.2015 passed in O.A.No.983/2015 and the order dated 28.8.2018 passed in R.A.No.9/2018, by the Central Administrative Tribunal, Chennai Bench, this Writ Petition has been filed to quash the same and to appoint the petitioner herein to the post of Trained Graduate Teacher in Malayalam on regular basis, by granting age relaxation.

2. The brief facts leading to the filing of the present writ petition is as follows.

The petitioner is fully eligible for appointment to the post of Language Teacher (Malayalam) in Higher Secondary/High School in Mahe



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Region at Puducherry District, as she is possessing i) Bachelor Degree in Malayalam, ii) Bachelor of Teachers Education and iii) Master degree in Malayalam and she had passed Kerala Teachers Eligibility Test (KTET) also. The petitioner was born on 01.05.1976. The maximum age limit for backward community, as per the present service Rules is 35 years. Further, as per Rule 6 of the Recruitment Rules, dated 06.01.2011, the Lieutenant Governor is empowered to relax the upper age limit prescribed under the recruitment rules. Therefore, she made a representation dated 28.07.2011 to the Government of Puducherry seeking 5 years age relaxation and the same was rejected, vide order dated 08.03.2013.

2.1. A notification dated 23.01.2014 was issued by the Government of Puducherry to fill up the post of Trained Graduate Teachers (herein after referred to as TGT) in various subjects, including four posts of TGT (Malayalam). The petitioner had applied to the said post on 14.02.2014. Subsequently, vacancies had not been filled up due to non availability of eligible candidates, whereas, the petitioner is fully qualified for the above said post, except age limit. Therefore, she filed O.A.No.628/2015 before the



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Tribunal seeking appointment to the post of TGT (Malayalam), by giving age relaxation. Pending application before Tribunal, again the second respondent had issued a notification dated 28.10.2015 calling upon the applications to fill up seven post of TGT (Malayalam) in the Government Schools at Mahe Region and she had also applied for the said post.

2.2. According to the petitioner, the vacancies for the post of TGT (Malayalam) were not filled up since 1990 and if the vacancies were filled up as and when that arose, the petitioner would have been well within the age limit. For the failure of the respondents in filling up the vacancies on time, the petitioner cannot be deprived of her right of opportunity for appointment. The application filed by the petitioner was dismissed by the Tribunal, vide order dated 16.03.2017. Therefore, she filed RA No.9/2018 before the Tribunal to review the order passed in O.A.No.628/2015 and the same was also dismissed on 28.08.2018. Therefore, challenging the above said orders, the present writ petition has been filed.

3. The learned counsel for the petitioner submitted that, earlier,



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notification dated 23.01.2014 was issued, calling upon the applications to fill up the post of TGT (Malayalam) and the application of the petitioner was not proceeded with, since she was over aged. The above notification was not acted upon, as there was no qualified persons to fill up the above post. Again, a notification was issued on 28.10.2015 to fill up seven post of TGT (Malayalam), out of which 3 posts were reserved for OBC. The petitioner being the OBC category, had applied to the said post. It is the contention of the counsel for the petitioner that, till now, vacancies are available to the posts of TGT Malayalam at Mahe region in the Government Schools of Puducherry Union. Even though the petitioner is fully qualified for the said post, due to her over age, her application itself was not proceeded with. Hence, she prays to appoint the petitioner to the said post at Mahe Region by granting age relaxation, which will not prejudice to the right of any other candidates.

4. The learned Special Government Pleader appearing for the respondents submitted that, as per the earlier notification dated 23.01.2014, the petitioner was aged 37 years 9 months and 13 days, as on 14.02.2014.



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He further submitted that the petitioner belongs to migrant OBC community and as such, she is not entitled to the benefit of reservation and attendant age concession available for OBC category. More over, she had not passed the Teachers Eligibility Test, as prescribed in the notification and hence her candidature was rejected on this ground also.

4.1. He also submitted that, the Government of Puducherry has taken a policy decision to fill up all the teaching posts coming under Direct Quota on contractual basis, vide G.O.Ms.No.46, dated 07.11.2017 of Directorate of School Education (Secretariat Wing), Puducherry. As such the notification dated 28.10.2015 was cancelled, vide notification No.61015/DSE/ Estt-II/D/2019, dated 19.12.2020. Therefore, the writ petition has no merits and hence, he seeks for dismissal of the writ petition.

5. Heard the learned counsel for the petitioner and the learned counsel for the respondents and we have perused the materials also.

6. Admittedly, the petitioner was born on 01.05.1976 and her



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candidature for the post of TGT (Malayalam) was not considered, due to her over age. As per the notification dated 23.01.2014, the upper age limit fixed by the Puducherry Government was 30 years as on 14.02.2014; and on that date, she crossed 37 years. Further, as per the notification dated 28.10.2015, the upper age limit fixed was 30 years, as on 30.11.2015; and on that date she crossed 39 years. It is to be noted that earlier, her representation dated 28.07.2011 before the Puducherry Government, seeking five years age relaxation was rejected, vide order dated 08.03.2013 itself. However, when the notifications were issued in the year 2014 and 2015, calling upon the applications to fill up the vacancies including TGT (Malayalam), the petitioner had applied to the said post.

7. The main contention of the petitioner is that, even now, vacancies are available for the post of TGT (Malayalam) at Mahe Region in the Government Schools of Puducherry Union and the petitioner is fully qualified to the above said post, except age limit. Her another contention is that, she comes under OBC category and hence, she is entitled for 3 years age relaxation; and on the date of notification in the year 2015, the



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petitioner had crossed 39 years, and hence by granting additional age relaxation for 6 years, she may be appointed to the said post. But, it is the contention of the respondents that, the petitioner belonged to Migrant OBC and hence, she is not entitled for age concession available for OBC category and further, she was not qualified in Teachers Eligibility Test, as prescribed in the notification of the year 2014 itself and hence, her candidature was rejected on that ground also. It is to be noted that the above contentions were not denied by the petitioner.

8. As on date, the petitioner has crossed the age of 47 years. Therefore, her request for appointment, granting relaxation of 17 years, cannot be considered. Further, the petitioner had not fulfilled the eligibility criteria also, because, she has not passed the Teachers Eligibility Test, as prescribed in the notifications. Apart from that, as stated by the learned Special Government Pleader, the notification dated 28.10.2015 itself was cancelled, vide notification No.61015, dated 19.12.2020, which is placed before this Court. Therefore, considering at any angle, the petitioner is not entitled for appointment to the post of TGT Malayalam, as prayed for by



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her. As such, we are of the view that the reasons stated in the order passed by the Tribunal in the original application as well as the review application are in order and the same do not warrant any interference by this Court.

9. It is brought to the notice of this court that the respondents have appointed the teachers in the Government Schools on contract basis, based on the notification issued by the Government of Puducherry, vide G.O.Ms.46, dated 07.11.2017. The learned Special Government Pleader has tried to convince this Court that due to financial constrain, teachers were appointed on contractual basis.

10. At this juncture, it is useful to rely upon the decision of the Division Bench of this Court, in ***M.Saravanakumar and others Vs. The Secretary to Govt. Education, dated 15.07.2005, reported in (2005) 3 MLJ 538***, wherein, it is held thus.

31. However, before parting with these cases we wish to observe that it was not proper for the State Government to keep making appointments of Guest Lecturers year after year since the year 2000. This is demeaning to the Lecturers who are treated almost like casual or daily wage employees, and are given remuneration on an hourly basis and



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that too without even giving them any formal appointment order. What interest in their work will such teachers take, and what commitment will they have? There is no security of tenure for such teachers. Also, they are paid a paltry sum upto a maximum of Rs.4,000/per month. Is this the way to treat the Gurus of our youth? Even a peon in government service often gets more than Rs.4,000/- per month. Should our teachers be treated worse than peons?

32. It is also not in the interest of the students or the public to appoint Guest Lecturers on a large scale, because teachers who are given such appointments are not likely to take much interest in their work. They will not be able to work with a free mind and will feel all the time that there is a Damocles Sword hanging over their heads. Surely the students in Tamil Nadu deserve good teachers. Good education is of paramount importance for the progress of society in the modern age.

33. We fail to understand why for the past 5 years no regular recruitment has been made through the Teachers Recruitment Board, and instead this policy of appointing Guest Lecturers has been continued year after year. The teachers are the Gurus of society, and they must be given proper respect, proper status, and a secure job, so that they can function with a free mind and take interest in their work. This policy of making appointments of Guest Lecturers is not conducive to this end, and must now be revoked.

34. In this connection we may refer to the decision of the Supreme Court in *Rattanlal v. State of Haryana*, AIR 1987 SC 478. It appears that in the State of Haryana, too, the State Government was making ad hoc appointments of teachers year after year. In this connection the Supreme Court observed:- "In all these petitions the common question which arises for decision is whether it is open to the State Government



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to appoint teachers on an ad hoc basis at the commencement of an academic year and terminate their services before the commencement of the next summer vacation, or earlier, to appoint them again on ad hoc basis at the commencement of next academic year and to terminate their services before the commencement of the succeeding summer vacation or earlier and to continue to do so year after year. A substantial number of such ad hoc appointments are made in the existing vacancies which have remained unfilled for three to four years. It is the duty of the State Government to take steps to appoint teachers in those vacancies in accordance with the rules as early as possible. The State Government of Haryana has failed to discharge that duty in these cases. It has been appointing teachers for quite some time on an ad hoc basis for short periods as stated above without any justifiable reason. In some cases the appointments are made for a period of six months only and they are renewed after a break of a few days. The number of teachers in the State of Haryana who are thus appointed on such ad hoc basis is very large indeed. If the teachers had been appointed regularly, they would have been entitled to the benefits of summer vacation along with the salary and allowances payable in respect of that period and to all other privileges such as casual leave, medical leave, maternity leave, etc., available to all the Government servants. These benefits are denied to these ad hoc teachers unreasonably on account of this pernicious system of appointment adopted by the State Government. These ad hoc teachers are unnecessarily subjected to an arbitrary 'hiring and firing' policy. These teachers who constitute the bulk of the educated unemployed are compelled to accept these jobs on an ad hoc basis with miserable conditions of service. The Government appears to be exploiting this situation. This is not a sound personnel policy. It is bound to have serious repercussions on the educational institutions and the children studying there. The policy of 'ad hocism' followed by the State Government for a long period has led to the breach of Article 14



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and Article 16 of the Constitution. Such a situation cannot be permitted to last any longer. It is needless to say that the State Government is expected to function as a model employer. We, therefore, direct the State Government to take immediate steps to fill up in accordance with the relevant rules the vacancies in which teachers appointed on an ad hoc basis are now working and to allow all those teachers who are now holding these posts on ad hoc basis to remain in those posts till the vacancies are duly filled up. The teachers who are not working on such ad hoc basis if they have the prescribed qualification may also apply for being appointed regularly in those posts. The State Government may also consider sympathetically the question of relaxing the qualification of maximum age prescribed for appointment to those posts in the case of those who have been victims of this system of 'ad hoc' appointments. If any of the petitioners in these petitions has under any existing rule acquired the right to be treated as a regularly appointed teacher, his case shall be considered by the State Government and an appropriate order may be passed in this case. We strongly deprecate the policy of the State Government under which 'ad hoc' teachers are denied the salary and allowances for the period of the summer vacation by resorting to the fictional breaks of the type referred to above. These 'ad hoc' teachers shall be paid salary and allowances for the period of summer vacation as long as they hold the office under this order. Those who are entitled to maternity or medical leave shall also be granted such leave in accordance with the rules".

35. The above decision of the Supreme Court was followed in *Sri Rabinarayan Mohapatra v. State of Orissa*, AIR 1991 SC 1286. It appears that in the State of Orissa teachers were given ad hoc appointment for 89 days, and thereafter given fresh appointment after one day break in service. This had been going on for 4 years. The Supreme Court held this to be arbitrary and illegal. The Supreme Court,



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37. We therefore direct that after 31.03.2006 all appointments of lecturers, and other teaching posts, including Principals, in Government Colleges in Tamil Nadu shall be made on a regular basis by selection through the Teachers Recruitment Board or any other legally constituted selection body and not by appointing Guest Lecturers. Such regularly selected teachers will be paid the U.G.C. grade salaries and guaranteed security of tenure. They shall also be given all benefits and perquisites allowable to regularly selected teachers. No Guest Lecturers or ad hoc Lecturers will be appointed or continued after 31.03.2006.

38. The process for making regular appointments on all such vacancies which have not been filled in by regular selection must immediately begin, and must be completed within a reasonable time, so that on and after 01.04.2006 all the incumbents in the State will be regularly selected Lecturers and not Guest Lecturers or ad hoc Lecturers. We are giving adequate time to the State Government to switch over from the system of appointing Guest Lecturers to the system of appointing regular Lecturers, etc. During this period of 8 or 9 months the Government must complete the exercise of making selections through the Teachers Recruitment Board or other legally constituted selection body. The selection body must ensure that the most meritorious persons are selected as teachers so that the youth of Tamil Nadu may be benefited.

11. In the light of the above decision, appointment of teachers in the schools, on contract basis, cannot be continued for months or for years and



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if such appointment on contract basis in the Educational Department is continued for months/years, it would affect the academic interest of the students in the Government Schools and hence, temporary appointment shall be deprecated. Therefore, we are of the considered view that the temporary appointment of teachers in Government schools made by the respondent/department might significantly impact the educational standards of students studying in the Government schools. In order to uphold the quality of education and ensure the proper functioning of these educational institutions, it is imperative to issue necessary directions to the respondent/Puducherry Government to ensure the best interest of the students studying in the Government Schools. As such, we direct the respondent/Puducherry Government to take necessary steps to fill up the vacancies for the post of teachers in Government schools through regular appointments by strictly adhering the relevant recruitment rules in force and such exercise shall be completed within a period of six months, from the date of receipt of a copy of this order.

12. With the above observations, this writ petition is dismissed. No costs.



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(D.K.K.J.) (P.D.B.J.)
18.10.2023

Internet: Yes/No
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To

1. The Principal Secretary, Union of India,
Education Department, Government of Puducherry,
Puducherry.
2. The Director of School Education,
Directorate of School Education,
Perunthalaivar Kamarajar Centenary,
Educational Complex, Anna Nagar, Puducherry 605 005.



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D.KRISHNAKUMAR, J.

and

P. DHANABAL, J.

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