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W.P.No.6856 of 20--

IN THE HIGH COURT OF JUDICATURE AT MADRAS

ORDERS RESERVED ON : 29.10.2024

ORDERS PRONOUNCED ON : 07.11.2024

CORAM

THE HON'BLE MR. JUSTICE **BATTU DEVANAND**

W.P.No.6856 of 2018
and WMP.No.8498 of 2018

P.Vasantha Kumar

... Petitioner

Vs.

1. Government of Tamil Nadu,
Rep. the Secretary to Government,
Law Department, Secretariat,
Chennai 600009.
2. The Chairman,
Teachers Recruitment Board,
Chennai.
3. The Director of Legal Studies,
Purasawalkam High Road, Chennai 10.
4. The University Grants Commission,
Rep. by its Secretary,
Bahadur Shah Zafar Marg, New Delhi 110002.

5. N.Gowtham

... Respondents

[R5 impleaded as per the order of this Court,
dated 24.04.2019 made in WMP.No.28267 of 2018
in WP.No.6856 of 2018]

1/26



PRAYER: Writ Petitions filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus calling for the records relating to the proceedings of the first respondent made in Letter No.16717/SA KA/2017-3, dated 16.10.2017 quash the same and consequently direct the first respondent to initiate the process for direct recruitment to the post of Associate Professor in the Government Law Colleges.

For Petitioner : Mr.M.Devaraj

For Respondents

for RR1 and 3 : Mr.P.S.Raman, learned Advocate General
assisted by Mr.D.Ravichander, SGP

for R2 : Mr.K.Sathishkumar

for R5 : Mr.N.S.Sivakumar

Amicus Curiae : Mr.R.Singaravelan, Senior Counsel

ORDER

This Writ Petition has been filed seeking to issue a writ of certiorarified mandamus against the proceedings of the first respondent made in Letter No.16717/SA KA/2017-3, dated 16.10.2017 to quash the same and for a consequential direction to the first respondent to initiate process for direct recruitment to the post of Associate Professor in the Government Law Colleges and render justice.



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2. The petitioner has been working as Assistant Professor in the Tamil Nadu Dr. Ambedkar Law University. As per the information provided to the petitioner under the Right to Information Act, 17 posts of Associate Professor, 197 posts of Assistant Professor and 47 posts of Assistant Professor (pre-law) have been sanctioned to the Government Law Colleges. 17 posts of the Associate Professor are still vacant in the Government Law Colleges. The petitioner made a representation dated 03.08.2017 to the first respondent and other authorities requesting to take appropriate action and issue direction to the second respondent for taking steps to recruit Associate Professors in the Government Law Colleges in Tamil Nadu when eligible persons like the petitioners are available.

3. In reply to the said representation, the first respondent has sent a communication to the petitioner vide letter No.16717/SA KA/2017-3, dated 16.10.2017, wherein it is informed that the vacant posts of Assistant Professors in Government Law Colleges will be appointed by direct recruitment by the Teachers Recruitment Board and in respect of the vacant Associate Professor posts, under Career Advancement Scheme, qualified



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Assistant Professors will be upgraded. For the present vacancy of 17 posts of Associate Professor in the Government Law Colleges, steps are being taken to upgrade 15 Assistant Professors, who have been appointed through G.O.Ms.No.170 LAW (LE) Department, dated 22.07.2007 and working in the Government Law Colleges, the Government orders to be issued shortly. It is also informed in the letter that filling up of the vacancy by direct recruitment does not arise presently. Aggrieved by the said proceedings, wherein it is informed that the Associate Professor vacancies could not be filled up by direct recruitment, the petitioner is constrained to file this Writ Petition against the proceedings dated 16.10.2017 of the first respondent.

4. Though, the learned counsel for the petitioner has raised several grounds and made several contentions during the course of hearing of this case, the sum and substance of the case of the petitioner is that the sanctioned vacancies of Associate Professor posts under direct recruitment are not being filled periodically by following applicable Rules and Regulations and thereby the qualified persons like the petitioner are suffering.



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5. On behalf of the first and third respondents, a counter affidavit has been filed on 04th June 2018. It is averred in the said counter that as per the sub-rule (b) of Rule 2 of the Special Rules for the Tamil Nadu Legal Educational Service, all substantive vacancies arising in the post of Associate Professor shall be filled or reserved as follows:

- i) 60% (Sixty percent) by promotion.
- ii) 40% (Forty percent) by direct recruitment.

6. In the said counter, it is further averred that at present there are 17 sanctioned regular posts of Associate Professor in the Government Law Colleges and all the posts are lying vacant at present. 40% meant for direct recruitment of the total 17 posts works to be 6.8. Therefore, 7 posts of Associate Professor will be kept vacant in view of the direction issued by this Court on 27.03.2018 in this Writ Petition. It is further averred in the counter that 40% earmarked for direct recruitment of the total 17 sanctioned posts of Associate Professor would be adhered to while making direct recruitment to the post of Associate Professor in Government Law Colleges. It is also submitted that prompt action is being taken by the respondents to fill up the teaching vacancies in the Government Law Colleges.



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7. On 19th September 2024, the third respondent has filed an additional affidavit, wherein it is stated that at present 15 Government Law Colleges are functioning in the State of Tamil Nadu. The sanctioned posts and vacant posts for Associate Professor in the Government Law Colleges as on date are furnished hereunder:

Sl.No.	Name of the post	Total sanctioned posts	No. of persons working	Vacant posts
1.	Associate Professor	20	1	19
2.	Associate Professor (upgraded)	9	9	--

8. On enquiry by the Court, learned Special Government Pleader appearing for the first and third respondent, on instructions, submitted that out of 206 sanctioned posts of Assistant Professor in the Government Law Colleges, at present 136 Assistant Professors are working and 70 posts of Assistant Professor are vacant.

9. On consideration of this factual position, it is clear that the respondents 1 and 3 are not taking steps to fill the sanctioned posts of Assistant Professors and Associate Professors on permanent basis with



qualified candidates. It is also came to the notice of the court that after 2018, no notification was issued to fill the vacant posts of Assistant Professor and Associate Professor under direct recruitment.

10. This issue has drawn serious attention of this Court. This Court is of the considered opinion that it is impossible to impart qualitative legal education to the students without filling the sanctioned posts of teaching faculties, in the Government Law Colleges and if, the sanctioned teaching faculty posts are not filled, ultimate sufferers would be the students. It will destroy the future generation, who are interested to enter into the noble legal profession. Accordingly, this Court by order dated 30th September 2024, directed the first respondent to appear before this Court on 15.10.2024 to submit the course of action to be undertaken in a time frame to fill the vacancy of Associate Professors and Assistant Professors in Government Law Colleges.

11. On 15.10.20204, the first respondent appeared before this Court. Thiru. P.S.Raman, learned Advocate General appearing for the State representing the first respondent submitted that the first respondent addressed the third respondent to take up the selection process to fill up the



vacancies in the Government Law Colleges and the Second respondent sought certain clarifications with regard to the syllabus and accordingly, 2 member Committee was constituted to finalise the same and it will be send to the second respondent immediately.

12. The first respondent also filed an affidavit wherein it is stated that the first respondent has received a proposal from the third respondent vide letters dated 29.05.2024, 05.06.2024 and 12.06.2024 to fill up 64 vacant posts of Assistant Professor and 60 vacant posts of Assistant Professor (pre-law) in total 124 posts in the Government Law Colleges. Based on the proposal from the third respondent, concurrence of the Human Resources Management and Finance Departments have been obtained to fill up 124 posts. The approval of Staff Committee to fill up the posts also have been obtained. Accordingly, the second respondent has been addressed vide 3 letters viz., i) Government Letter No.7653871/LS/2024-1, Law (LS) Department, dated 07.10.2024, ii) Government Letter No.7653871/LS/2024-2, Law (LS) Department, dated 07.10.2024 and iii) Government Letter No.7653871/LS/2024-3, Law (LS) Department, dated 07.10.2024 to fill up the said vacancies as early as possible.



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13. On 18th October 2024, the first respondent has filed an affidavit stating that those clarifications sought for by the second respondent have been furnished by the first respondent vide letter dated 18.10.2024. It is further stated in the said affidavit that the second respondent will take necessary further action to fill up the vacancies of Assistant Professors and Associate Professors in the Government Law Colleges and all earnest steps have been taken by the Government to fill up the said vacancies.

14. On 24th October 2024, the second respondent filed an affidavit stating that to fill up the vacancies of Assistant Professors and Assistant Professors (pre-law) in the Government Law Colleges, a tentative time frame is prepared and they will proceed accordingly after approval of the Board.

15. Considering the issue of non filling of sanctioned vacancies of Associate Professors and Assistant Professors in the Government Law Colleges regularly, and considering the difficulties of the students of



Government Law Colleges in getting quality education, this Court sought the assistance of Thiru.R.Singaravelan, learned Senior Counsel as “amicus curiae.”

16. The learned “amicus curiae” would submit that it is true the respondents 1 to 3 are not taking effective steps to fill the sanctioned posts of teaching faculty on permanent basis regularly, in the Government Law Colleges of Tamil Nadu. The learned amicus curiae further brought to the notice of this Court that for the last 75 years a single schedule tribe candidate was not appointed as teaching faculty in Government Law Colleges. Accordingly, he requested the Court to pass appropriate orders directing the respondents to take up the selection process of teaching faculties i.e., Associate Professors and Assistant Professors in a fixed time frame by strictly following the Rule of reservation.

17. Mr.P.S.Raman, learned Advocate General would submit that the first respondent is taking all earnest steps to fill up the vacant posts of Assistant Professor, Assistant Professor (pre-law) and Associate Professor in the Government Law Colleges by duly following applicable rules and regulations and Teachers Recruitment Board i.e. the second respondent has



to take up the recruitment process now.

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18. This Court gave anxious consideration to the submissions advanced by the respective counsels and carefully examined the entire materials available on record.

19. In the impugned proceedings Dt.16-10-2017, the first respondent has informed the petitioner that filling up of vacancies of Associate Professor by direct recruitment does not arise at present as they are going to upgrade the 15 Assistant Professors, who were appointed through G.O.Ms.No.170, Law (LE) Department, dated 22.07.2007 and working in the Government Law Colleges in the vacancies of 17 posts of Associate Professor.

20. But, in the affidavit filed by the respondents 1 and 3 it is stated that as per sub-rule (b) of Rule 2 of the Special Rules for the Tamil Nadu Legal Educational Service, all substantive vacancies arising in the post of Associate Professors shall be filled as follows:

i) 60% (Sixty percent) by promotion.



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ii) 40% (Forty percent) by direct recruitment.

21. In the affidavit filed by the first respondent on 14.10.2024 it is stated that out of 20 sanctioned posts of Associate Professor, 12 posts are earmarked for promotion and 8 posts are earmarked for direct recruitment. It is also stated that at present 20 posts of Associate Professors are vacant. As seen from the affidavit of the first respondent, it is clear that out of 20 posts of Associate Professors, which are vacant at present, 12 posts have to be filled by promotion from the cadre of Assistant Professor and 8 posts have to be filled by direct recruitment.

22. In view of the admission of the first respondent, it is to be held that the proceedings dated 16.10.2017 issued by the first respondent, which is impugned in the writ petition is contrary to sub-rule (b) of Rule 2 of the Special Rules for the Tamil Nadu Legal Educational Service. Accordingly, it is liable to be quashed with a direction to the respondents 1 and 3 to initiate the process for direct recruitment vacancies to the post of Associate Professor in the Government Law Colleges forthwith.



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23. On comprehensive examination of the issue placed before this Court, it is an admitted fact that the respondents 1 to 3 have initiated the process to fill vacancies of 186 Assistant Professors / Assistant Professors (pre-law) by direct recruitment in the Government Law Colleges during the period 2017-18. Thereafter, no recruitment has taken place to fill vacancies of teaching faculty till now.

24. As per the affidavit filed by the first respondent, at present 20 posts of Associate Professor are vacant and 124 posts of Assistant Professor / Assistant Professor (pre-law) are vacant. At present, the respondents 1 to 3 are contending that they are taking all earnest steps to fill the vacancies as per the letter dated 18.10.2024 of the first respondent.

25. Considering the large number of vacancies of Associate Professor, Assistant Professor and Assistant Professor (pre-law) in the Government Law Colleges, this Court is of the considered opinion that the



action of the respondents 1 and 3 in keeping the posts vacant for years together and teaching students with adhoc faculty is nothing but exploiting the educated qualified persons and depriving the students in getting quality education due to lack of proper teaching faculty.

26. This Court is also of the opinion that by non-filling of the vacancies of sanctioned posts of Associate Professor and Assistant Professor by qualified persons on permanent basis in the Government Law Colleges, the ultimate sufferers would be the students studying in such Government Law Colleges. This ultimately hampers the future of the students studying in those Colleges. They cannot achieve more height in their life and face challenges in the society due to the low quality of education due to lack of proper teaching faculty. In fact, the State Government has started these Government Colleges to impart law education with low costs. Normally, the students hail from SC, ST, OBC, EWS and minorities and other financially weaker sections of the Society choose Government Law Colleges of the State Government due to their Socio-Economic conditions. After knowing the fact of lack of proper qualified



faculties in those law colleges, the students could not move to better institutions with good faculty by paying higher fees. Ultimately, they are forced to continue in the said law colleges and as there is no qualified faculty, they are not getting qualitative education.

27. At this juncture, it is very apt and relevant to extract the observation of this court with respect to the necessity of “Qualitative Education” in the case of ***S.Ramesh vs. The Bharathidasan University and others*** reported in MANU/TN/7099/2023 as follows:

27. Parents admit their children with great belief that they get quality education and their children will be settled in the society in a good position with a bright future. If qualified persons are not appointed as faculty in the educational institutions, students will not get qualitative education, which includes teaching-research-training. This gives ultimately results in low or average performances of the students in various employment opportunities. For example, if guest faculty is teaching law students in Law Universities/Law Colleges, without much commitments and frustrations about their career, then how one can expect that a law student of that institution will perform better as a Lawyer in the Court and to take judicial examinations. Definitely his/her performance



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will be low. Every student is entitled to get qualitative education as a Right.

28. In the year 1993, in a landmark judgment in “Unnikrishnan case”, the Supreme Court of India held that “the right to education flows directly from the right to life”. The Apex Court and various High Courts time and again declared that “right to education” includes quality education. Education is a fundamental human right plays a crucial role in the over all development of an individual and national as a whole.

29. This Court cannot ignore the fact that at present, most of the Universities/higher educational institutions are imparting higher education with adhoc and guest faculty. Timely recruitment of teaching faculty on permanent basis is the primary factor in imparting of qualitative education in Universities. The present situation is so miserable in connection with the students in imparting quality education with the adhoc teaching faculty. There are different categories in teaching posts such as Assistant Professors, Associate Professors and Professors on permanent basis. The Universities, instead of appointing teaching faculty on permanent basis, they are making temporary arrangements, such as guest faculty, teaching assistants, academic



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consultants, adhoc faculty and Assistant Professors on contract basis. Many Universities are following the method to make temporary teaching arrangements. Because of these situations, several issues are coming out from the system. Most of the Universities in the country are under such situation of not having full permanent faculty. The system results several severe issues, which are dangerous to the students, parents, faculty to the institutions and ultimately to the society.

30. In view of these aspects, it is necessary and desirable to the Universities and Colleges should fill all the vacancies of teaching posts available in the educational institutions on permanent basis as expeditiously as possible in the interest of the students.”

28. In view of the importance of the issues as discussed herein above, which are attracting larger interest of thousands of students of Government Law Colleges in Tamil Nadu and to safeguard and protect their interest and to redress the grievances of the qualified eligible persons like the petitioner, who are aggrieved by the inaction of the respondents 1 to 3, in not filling the vacancies of the sanctioned posts of Assistant Professor and Associate



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Professor under direct recruitment in the Government Law Colleges, this Court in exercise of the extraordinary jurisdiction conferred under Article 226 of the Constitution of India intends to issue certain directions to the respondents 1 to 3. In this context, it will be profitable to this Court to rely on the following decisions of the Apex court.

i) In a recent Judgment of the Apex Court in ***Central Council for Research in Ayurvedic Sciences and Others vs. Bikartan Das and Others*** reported in MANU/SC/0888/2023 has observed as extracted hereunder:

“51. ...Article 226 of the Constitution grants an extraordinary remedy, which is essentially discretionary, although founded on legal injury. It is perfectly open for the writ court, exercising this flexible power to pass such orders as public interest dictates & equity projects. The legal formulations cannot be enforced divorced from the realities of the fact situation of the case. While administering law, it is to be tempered with equity and if the equitable situation demands after setting right the legal formulations, not to take it to the logical end, the High Court would be failing in its duty if it does not notice equitable consideration and mould the final order in exercise of its extraordinary jurisdiction. Any other approach would render the High Court a normal court of appeal which it is not.”



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ii) In ***Bandhua Mukti Morcha vs. Union of India (UOI) and Others*** reported in MANU/SC/0051/1983, the Apex Court had observed as extracted hereunder:

“20. ... In fact, the jurisdiction of the High Courts under Article 226 is much wider, because the High Courts are required to exercise this jurisdiction not only for enforcement of a fundamental right but also for enforcement of any legal right and there are many rights conferred on the poor and the disadvantaged which are the creation of statute and they need to be enforced as urgently and vigorously as fundamental rights.”

iii) In ***Dwarka Nath vs. Income Tax Officer, Special Circle D-ward, Kanpur and Others*** reported in MANU/SC/0166/1965, the Apex Court had opined that the High Courts can also issue directions, orders or writs other than the prerogative writs. It enables the High Courts to mould the reliefs to meet the peculiar and complicated requirements of this Country.

29. In the light of the submissions of learned Amicus Curiae and considering the submissions of the counsels for the respondents 1 to 3 that



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they are taking steps to fill all the vacancies of teaching faculty in the Government Law Colleges, in my considered view it is desirable, appropriate and necessary to constitute an “Expert Committee” to monitor the recruitment process to be done fairly and in the transparent manner.

30. At this stage, the learned counsel appearing on either side has brought to the notice of this Court that in similar circumstances, to monitor the recruitment process of teaching faculty in the Government Law Colleges during the period 2017-2018, an Expert Committee was constituted. A copy of the order of a Division Bench of this Court dated 28.04.2018 in W.P.11806 of 2017 is placed before the court. On perusal of the same, it appears that an Expert Committee was constituted for the following purposes:

- “i) monitor the entire process of selection for 186 posts of Assistant Professor/Assistant Professor (pre-law) in Government Law Colleges in Tamil Nadu;*
- ii) issue necessary instructions and guidelines to the Teachers Recruitment Board to finalise and issue a notification for recruitment so as to enable that the notification is free from any litigation;*
- iii) decide the modalities of setting question papers, conducting written examination and interviews;*



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iv) issue instructions and guidelines to the Teachers' Recruitment Board to finalise question paper setters and examiners for valuation of the examination papers.

v) and constitute interview boards, as per UGC norms, for conducting interview.”

31. Taking the support of the order of a Division Bench of this Court dated 28.04.2018 in W.P.11806 of 2017 and with an intention to strengthen the Government Law Colleges and to safeguard and to protect the interest of the students studying in the Government Law Colleges, this court came to an opinion to constitute an “Expert committee” to monitor the recruitment process of the posts of Assistant Professor, Assistant Professor (pre-law) and Associate Professor of the Government Law Colleges to be undertaken by the Respondents No.1 to 3 at present.

32. Pursuant to the decision taken to constitute an Expert Committee, this court, got consent from the Hon'ble Justice V.Bharathidasan, Retired Judge of Madras High Court to be the Chairman of the Expert Committee, and Thiru.P.Wilson, Senior Advocate, Madras High Court., and Tmt. Mythili K Rajendran, IAS (Rtd) as members.



33. Accordingly, the expert committee is constituted as follows :

- 1) Hon'ble Justice Thiru. V.Bharathi Dasan,
Retired Judge, High Court of Madras Chairman.
- 2) Thiru.P.Wilson,
Senior Advocate, High Court of MadrasMember.
- 3) Tmt. Mythili K Rajendran, IAS (Rtd)
Former Secretary,
Personnel and Administration Department,
Government of Tamil NaduMember.

34. The aforesaid Expert Committee constituted shall :

- i) monitor the entire process of selection for vacant posts of Assistant Professor/Assistant Professor (pre-law) and Associate Professor in Government Law Colleges in Tamil Nadu including strict implementation of “Rule of reservation.”
- ii) issue necessary instructions and guidelines to the Teachers Recruitment Board to finalise and issue a notification for recruitment so as to enable that the notification is free from any litigation;



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iii) decide the modalities of setting question papers, conducting written examination and interviews;

iv) issue instructions and guidelines to the Teachers' Recruitment Board to finalise question paper setters and examiners for valuation of the examination papers.

v) and constitute interview boards, as per UGC norms, for conducting interview.”

35. The Director of Legal Studies/third respondent is directed to make necessary arrangement of the meetings of the Committee and also offer necessary assistance to the Expert Committee in discharging its functions.

36. The Chairman of the Committee shall decide the place and dates of the meeting. The decision of the Chairman of the Committee is final on any issue.

37. The Committee shall place before this Court appraising the stage



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of the recruitment process in the second week of December 2024, through the Director of Legal Studies/third respondent so as to enable this Court to issue any further directions if required.

38. For the aforesaid reasons and findings, this Writ Petition is allowed with the following directions:

i) The order impugned in this Writ Petition i.e, the proceedings of the first respondent made in Letter No.16717/SA KA/2017-3, dated 16.10.2017, is hereby quashed.

ii) The respondents 1 to 3 are directed to complete the recruitment process of Assistant Professor, Assistant Professor (pre-law) and Associate Professor in the Government Law Colleges of Tamil Nadu as early as possible by following the instructions of the Expert Committee.

No costs.

Consequently, connected miscellaneous petition is closed.

Post on 20.12.2024 for perusal of “Status Report”.

07.11.2024



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Speaking/Non-speaking order

Index : Yes/No

Internet : Yes/No

Note: Registry is directed to serve a copy of this order to the Expert Committee forthwith by a special messenger.

pvs

To

1. The Secretary to Government,
Government of Tamil Nadu,
Law Department, Secretariat,
Chennai 600009.
2. The Chairman,
Teachers Recruitment Board,
Chennai.
3. The Director of Legal Studies,
Purasawalkam High Road, Chennai 10.
4. The Secretary,
The University Grants Commission,
Bahadur Shah Zafar Marg, New Delhi 110002.



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BATTU DEVANAND.J.,
pvs

Pre-delivery order in

W.P.No.6856 of 2018

07.11.2024