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W.P.No.7413 of 2012

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.02.2024

CORAM:

THE HONOURABLE MR. JUSTICE J.SATHYA NARAYANA PRASAD

W.P.No.7413 of 2012

and

M.P.No.1 of 2012

P.R.L.Rajavenkatesan

...Petitioner

-Vs-

1.The Teachers Recruitment Board,
Represented by its Chairman,
E.V.K.Sampath Maligai,
DPI Compound, First Floor,
College Road, Chennai – 600 006.

2.The Secretary to Government,
Government of Tamil Nadu,
Department of Law,
Fort St. George, Chennai – 600 009.

...Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying for the issuance of a direction in the nature of Writ of Certiorarified Mandamus calling for the records of the 1st respondent comprised in letter dated 15.03.2012 in R.C.No.494/B3/2008, quash the same as arbitrary, illegal and consequently direct the respondents to consider the petitioner for appointment as Lecturer (Senior Scale) in accordance with law.



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For Petitioner : Mr.S.Ramesh

For R1 : Mr.R.Neelakandan
Additional Advocate General
Assisted by Mr.R.Siddharth
Senior Counsel

For R2 : Mr.M.Rajendiran
Additional Government Pleader

ORDER

This writ petition is filed for issuance of a Writ of Certiorarified Mandamus to quash the order of the 1st respondent's letter R.C.No.494/B3/2008 dated 15.03.2012 and consequently direct the respondents to consider the petitioner for appointment as Lecturer (Senior Scale).

2. The case of the petitioner is that he completed his Law degree from Trichy Law College in the academic year 2003-06 and thereafter completed his Post Graduate in Law with First Class from Cochin Institute of Science and Technology in 2008. Thereafter, the petitioner has enrolled in the Bar Council of Tamil Nadu and was assigned Enrollment No.2313/2006. The petitioner has also submitted thesis in Ph.D. on the topic 'Study of Public Use



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of Private Rights with Special Reference to Intellectual Property Rights in

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India' in the departmental of legal studies at the University of Madras and he was awaiting viva for formal completion of his Doctoral Degree. The doctoral research was done in the school of Legal studies at Cochin University of Science of Technology and the research was on the topic 'Data Publication and Online Privacy'. Thereafter, the petitioner herein was a Guest Faculty for Post Graduate students in intellectual property at Dr.Ambedkar Law University, Tamil Nadu and also Teaching-cum-Research Fellow in the Department of Legal Studies at the University of Madras and a Senior Research Fellow in the Department of Legal Studies at the University of Madras. Further, the petitioner has also delivered several guest lectures on intellectual property rights before National and International Forums and several research papers of the petitioner have also been published in National as well as Intellectual Law Journals.

3. Learned counsel for the petitioner would submit that the petitioner came across a Notification dated 31.03.2010 issued by the 1st respondent calling for direct recruitment of Lecturers (senior scale) in Government Law Colleges, Tamil Nadu, and the petitioner applied for the said vacancy on 24.04.2010 by paying the requisite fee. The first Notification



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for recruitment of Lecturers (senior scale) was challenged by one Mr.Gowtham in W.P.No.10930 of 2010 and the ground on which the said Notification was challenged was on account of the fact that there was no subject-wise indication of the vacancies and the entire vacancies were clubbed together, thereby vitiating the entire Notification issued by the 1st respondent herein. The said writ petition was allowed by this Court by order dated 23.12.2010 directing the respondents to issue suitable Notifications by incorporating the subject-wise vacancies for the Lecturers (senior scale) and thereafter to proceed with the recruitment process. The respondent subsequently issued a corrigendum on 22.06.2011 in Advertisement No.5/2010 complying with the direction of this Court passed in W.P.No.10930 of 2010 dated 23.12.2010.

4. Learned counsel would further submit that in the interregnum, since the petitioner had completed the National Eligibility Test and was fully qualified to be appointed as a Lecturer made a representation to the respondent on 23.06.2011, for being included in the list of suitable candidates to appear in the written examination. As the respondent was not permitting the petitioner to appear for examination, the petitioner was constrained to file a writ petition in W.P.No.26321 of 2011 and the said writ



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petition was admitted. An interim order was passed on 17.11.2011 in which the petitioner was allowed to appear in the written examination and the results shall not be published until further orders. Subsequently, the second part of the order has been modified and the 1st respondent has been permitted to publish the results.

5. Learned counsel further submitted that the petitioner appeared in the written examination held on 20.11.2011 and the total cut-off marks for the selection process is 200, out of which 175 marks are awarded for the written examination and 25 marks for the interview. Out of 175 marks in the written examination, the petitioner herein secured 90 marks and the highest mark scored by a candidate is 126 marks. Thereafter, the respondent published a merit list on the website giving a list of 26 candidates who would be called for to attend the interview. The petitioner herein also received a call letter dated 09.03.2012 calling upon him to attend the interview on 21.03.2012. While the petitioner was preparing strenuously for the interview, he received the impugned letter dated 15.03.2012, in which the call letter for attending the interview was withdrawn citing no reasons. Aggrieved by the above impugned letter dated 15.03.2012, the petitioner has come forward with the present writ petition.



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6. A counter affidavit was filed by the 1st respondent on 03.01.2024. The learned Standing Counsel appearing for the 1st respondent Board submitted that a total of 6 posts have been allocated for the post of Assistant Professor in property law and one candidate has been provisionally selected for the aforesaid post. Due to non-availability of eligible candidates, the remaining 5 posts were not filled up and the educational qualification for the post of Lecturer (senior scale) (law) as per Notification No.05/2010 dated 30.03.2010 is tabulated hereunder:

“Qualifications (A) Lecturer (Senior Scale)

(i) Master's degree in Law of any recognised University with not less than 55% of marks and a good academic record:

Provided that candidates belonging to Scheduled Caste and Scheduled Tribe shall possess not less than 50% marks:

Provided further that holders of Ph.D in Law, who have passed their Master's degree in Law prior to 19th September 1991, shall possess not less than 50% marks in the Master's degree in Law.

Must have qualified in the National Eligibility Test (NET) or State Level Eligibility Test (SLET) and

(iii) Must have enrolled as an Advocate in the Bar:

Provided that other things are being equal, preference shall be given to persons who have actual experience at the Bar or Teaching experience.”

6.1 In the prospectus published by the Board, it has been clearly

stated that all the certificates relating to the qualification should be submitted



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before the last date to submit the application and the relevant portion is

extracted hereunder:

“14. Interview All certificates (except Teaching Experience) should have been issued prior to the last date for submission of filled-in Applications.”

6.2 As per para 17 clause (f) of the prospectus, it has been clearly stated that the Board cannot take any responsibility for the non-selection and ineligibility if any error detected at any stage during or after recruitment. The relevant portion is extracted hereunder:

*“17. Special Instructions:
f) Candidates are informed to ascertain their full eligibility for the post to which they have applied. The onus proof of providing equivalence vested with the candidates only. TRB cannot take any responsibility for the non selection and ineligibility if any mistake detected at any stage during or after the recruitment and declaration of results and their candidature will be liable for cancellation.”*

7. Learned Standing Counsel appearing for the 1st respondent Board submitted that it is pertinent to observe the fact that the candidates with similar issue namely, **J.Starmi, S.Manjula** filed Writ Petitions in **W.P.Nos.26489 and 26490 of 2011**, praying to consider the application of the petitioners on par with the applicants who had completed NET prior to 30.04.2010 and the said writ petition was dismissed by the Hon'ble Court on



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29.03.2012. The relevant portion is extracted hereunder:

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“....28. For the reasons stated herein above and keeping in view of the admitted position that the petitioners did not possess the requisite qualification as on the last date of submission of application i.e.30.04.2010, therefore, the petitioners do not have any right of consideration for appointment.

29. Furthermore, as observed above, even in case the relaxation is granted by the U.G.C., then also it shall be obligatory on the part of the respondent to re-advertise the post, by giving opportunity to all eligible persons, as per the constitutional mandate to compete for the post.

No merit, dismissed.”

8. Learned Standing Counsel further submitted that the petitioner had not completed either NET or PHD at the time of application. While publishing the result and sending call letters for the interview to all candidates who cleared the written examination, the Board inadvertently sent the call letter to the aforementioned 9 petitioners (including the instant writ petitioner) along with other candidates. Since the aforementioned 9 petitioners were ineligible to attend the interview, Board withdrew the call letters which had been sent to those 9 candidates/petitioners requiring them to attend the interview on 21.03.2012 vide in R.C.No.494/B3/2008 dated 15.03.2012. He further submitted that as on the date of Notification i.e., 30.03.2010 the petitioner was not qualified and did not pass in SLET/NET or PHD. Thus, the petitioner did not obtain the necessary qualifications for the



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post of Lecturer (senior scale) (law) in the year 2009-2010.

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9. Heard both sides and perused the materials available on record.

10. In the instant case, the petitioner did not have the required qualifications on the date of notification, dated 30.03.2010. The petitioner had not completed either NET or PHD at the time of application and did not pass SLET/NET/PHD. Thus, the petitioner did not obtain the necessary qualifications for the post of Lecturer (senior scale) (law) in the year 2009-2010.

11. The petitioner had completed NET and was fully qualified to be appointed as a Lecturer (senior scale) (law) as on 22.06.2011. The respondents subsequently issued a corrigendum on 22.06.2011 in Advertisement No.5/2010 notifying subject-wise vacancies for the post of Lecturer (senior scale). The representation of the petitioner 23.06.2011 was not considered and the petitioner filed W.P.No.2632 of 2011 and this Court by interim order dated 17.09.2011, allowed the petitioner to appear in the written examination. By virtue of this order, the petitioner appeared in the written examination and the respondents have been permitted to publish the results.



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12. The main contention of the 1st respondent Board is that the Board sent the call letters to 9 persons including the writ petitioner along with the other candidates and subsequently, the Board withdrew the call letters which had been sent to those 9 candidates/petitioners, requiring them to attend the interview on 21.03.2012 vide in R.C.No.494/B3/2008 dated 15.03.2012.

13. Learned Standing Counsel appearing for the 1st respondent relied on the order passed by this Court in similar ***W.P.Nos.26489 and 26490 of 2011, J.Starmi Vs. State of Tamil Nadu, Rep. by the Secretary to the Government, Law Department, Fort St. George, Chennai-9***, which was dismissed by this Court on 29.03.2012 and the relevant portion of the order is extracted hereunder:

“50. In the absence of an enabling provision for grant of relaxation, no relaxation can be made. Even if such a power is provided under the statute, it cannot be exercised arbitrarily. (See [Union of India v. Dharam Pal](#)31.) Such a power cannot be exercised treating it to be an implied, incidental or necessary power for execution of the statutory provisions. Even an implied power is to be exercised with care and caution with reasonable means to remove the obstructions or overcome the resistance in enforcing the statutory provisions or executing its command. Incidental and ancillary powers cannot be used in utter disregard of the object of the



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statute. Such power can be exercised only to make such legislation effective so that the ultimate power will not become illusory, which otherwise would be contrary to the intent of the legislature. (Vide Matajog Dobey v. H.S. Bhari³² and State of Karnataka v. Vishwabharathi House Building Coop. Society.).

51. More so, relaxation in this manner is tantamount to changing the selection criteria after initiation of selection process, which is not permissible at all. Rules of the game cannot be changed after the game is over. (Vide K. Manjusree v. State of A.P. and Ramesh Kumar v. High Court of Delhi.)"

28 For the reasons stated hereinabove and keeping in view of the admitted position that the petitioners did not possess the requisite qualification as on the last date of submission of application i.e. 30.04.2010, therefore, the petitioners do not have any right of consideration for appointment.

29 Furthermore, as observed above, even in case the relaxation is granted by the U.G.C., then also it shall be obligatory on the part of the respondent to re-advertise the post, by giving opportunity to all eligible persons, as per the constitutional mandate to compete for the post."

14. In view of the above submission and the ratio laid down by the Hon'ble Division Bench of this Court, this Court is not inclined to interfere with the order passed by the 1st respondent in R.C.No.494/B3/2008 dated 15.03.2012 and the same is hereby confirmed.

J.SATHYA NARAYANA PRASAD, J.

In the result, the writ petition stands dismissed with the above



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observations. No costs. Consequently, connected miscellaneous petition is closed.

23.02.2024

cda

Index : Yes/No

Speaking / Non Speaking Order

To

1.The Chairman,
Teachers Recruitment Board,
E.V.K.Sampath Maligai,
DPI Compound, First Floor,
College Road, Chennai – 600 006.

2.The Secretary to Government,
Government of Tamil Nadu,
Department of Law,
Fort St. George, Chennai – 600 009.

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