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W.P.Nos.6867 of 2024 etc., batch

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.03.2024

CORAM :

**THE HONOURABLE MR. JUSTICE R.SURESH KUMAR
and
THE HONOURABLE MR.JUSTICE K.KUMARESH BABU**

**W.P.Nos.6867, 6923, 6945, 6973, 7431, 6457, 6908 and 6556 of 2024
and W.M.P.Nos.7284, 7746, 7775, 8319, 7743, 7779, 8320, 7201, 7665,
7663, 7664, 7703, 7701, 7702, 7777, 7719, 7720 and 7721, 7742, 7285,
7283, 7176, 7178 and 7179 of 2024**

W.P.No.6867 of 2024

P.V.Sumina

... Petitioner

-Vs-

1.Union of India, Rep.by
Secretary to Government (Education)
Government of Puducherry
Puducherry - 605 001.

2.The Director
Directorate of School Education
Government of Puducherry.

... Respondents

Prayer : Writ Petition under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorari calling for the records relating to the order dated 01.03.2024 in O.A.Nos.310/01027/2023 etc., passed by the Hon'ble Central Administrative Tribunal at Chennai Bench and quash the same and allow the Original Application as prayed for.



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In W.P.Nos.6867, 6923, 6945 and 6973 of 2024

For Petitioners : Mr.M.Gnanasekar
For Respondents : Mr.A.L.Somayaji, Senior Counsel
1 and 2 assisted by Mr.R.Syed Mustafa
Special Government Pleader (Puducherry)

In W.P.Nos.6556 and 6908 of 2024

For Petitioners : Mr.Prakash Adiapadam
For Respondents : Mr.A.L.Somayaji, Senior Counsel
1 and 2 assisted by Mr.R.Syed Mustafa
Special Government Pleader (Puducherry)

In W.P.No.6547 of 2024

For Petitioner : Ms.S.Meenakshi
For Respondents : Mr.A.L.Somayaji, Senior Counsel
1 to 3 assisted by Mr.R.Syed Mustafa
Special Government Pleader (Puducherry)

In W.P.No.7431 of 2024

For Petitioners : Mr.A.L.Somayaji, Senior Counsel
assisted by Mr.R.Syed Mustafa
Special Government Pleader (Puducherry)
For Respondents : Mr.Prakash Adiapadam - for R2

COMMON ORDER

(Order of the Court was made by **R.SURESH KUMAR, J.**)

All these writ petitions have been filed challenging the common order passed by the Central Administrative Tribunal (CAT), Chennai Bench dated 01.03.2024 made in O.A.Nos.310/01031/2023 etc., batch of Original Applications.



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2. The Administration of Union Territory of Puducherry had issued a notification inviting applications from eligible candidates for selection and appointment to the post of Primary School Teachers by a notification dated 21.10.2023. According to the said notification, the educational and professional qualification prescribed was a pass in Higher Secondary School Certificate or equivalent with 50% marks in aggregate and, Diploma in Teacher Education (In short 'DTE') in Basic Teacher's Training and should have studied Tamil / Malayalam as one of the subjects upto the secondary level and should have obtained minimum qualifying marks in Paper-I of the Teacher Eligibility Test (In short 'TET') examination.

3. Apart from these educational qualifications, the age limit that has been fixed is that the applicant shall be aged between 18 and 32 years as on 20.11.2023, which is the last date for submitting the applications. It has further been provided that age limit is relaxable for categories such as MBC, OBC, EBC, BCM, BT, SC and ST communities as well as persons with Bench Mark disability, Ex-servicemen etc.,

4. The mode of recruitment is that there shall be 100 marks for selection by giving weightage to the educational qualification and employment exchange seniority which is stated as follows:



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WEB COPY **"VIII. Mode of Recruitment :**

There shall be 100 marks for selection by giving weightage to the marks secured in the Academic qualification and to the Employment Exchange Registration Seniority as detailed below:

- *70% weightage for HSC and Diploma in Teacher Education.*
- *20% weightage for marks secured in Teacher Eligibility Test Paper-I (CTET/TNTET/KTET/APTET) and*
- *10% weightage for Employment Exchange Seniority of Teacher Eligibility Test (TET Paper-I)."*

5. Therefore 70% of the marks out of 100 would be given for the marks secured in HSE and Diploma in Teacher Education course certificate, 20% of the marks would be given for the marks secured in TET ie., Teacher Eligibility Test and 10% of the marks would be given for the Employment Exchange seniority of TET. That is how the 100 marks would be calculated and based on which, selection would be made. It is made clear that no competitive examination or viva-voce is prescribed.

6. The said notification has been put under challenge by a number of prospective applicants, who had challenged the same before the CAT Chennai in their respective Original Applications. The grounds of attack according to them is that, these applicants had already crossed the upper age limit of 32 years. Therefore, if age relaxation is not given to them, these applicants would be out of



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the purview of the selection process, as they became ineligible even to submit the application.

7. In this context, their contention was that, the TET examination was first introduced in the year 2011. Thereafter, in 2013 and 2015, there were notifications issued by the Government of Puducherry for the selection and appointment to the post of Primary School Teachers. Therefore, in those two selection processes, many of the candidates, even though secured the Diploma in Teacher Education Certificate, which is the basic and essential qualification to hold the post, could not participate because they did not either qualify with TET or for other reasons.

8. However, insofar as these applicants are concerned, since they have become qualified with Diploma in Teacher Education as well as TET qualification, these applicants have participated in the selection process in the year 2015, however unsuccessfully.

9. Some of the applicants, based on the ranking they secured and based on the merit, had been put in waiting list. However, subsequently for want of vacancy, the waiting list could not be moved further. Therefore, they could not get any appointment.



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10. After the year 2015, for about nine years, there had been no notification issued for selection and appointment of Primary School Teachers in the Union Territory of Puducherry. After 8+ years, or at the 9th year, now the present notification had been issued on 21.10.2023 to fill up 145 posts of Primary School Teachers. However, if this notification carries the instructions prescribing the age limit of 32 years and all those who crossed the upper age limit would become ineligible to make the application and participate in the selection process, several number of eligible candidates like the applicants would get affected.

11. Their contention was that in between 2015 and 2023-24, if any selection had taken place, they would have been in a position to participate in the selection and most of them would have cleared on merits because, they already secured marks in the Diploma in Teacher Education as well as TET and also if at all the employment exchange seniority is taken into account, even in that seniority also, they would have been in a better position by securing more marks. Such a chance has not been given to them, which means, since there has been no notification from 2015 to 2023, all these applicants became over aged ie., crossed the maximum age. Therefore, if they are not permitted to participate in the present selection process, for the whole life they would not see the light of getting any employment as a teacher.



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12. It is their further contention that, since they have qualified themselves to become a teacher as they have completed the Diploma course and successfully completed the TET examination, and the chance of getting employed as teacher is denied to them as stated supra, in the rest of their career they would not be considered for the appointment of teacher, thereby their very future itself would be in doldrum.

13. Therefore, the learned counsels appearing for the applicants before the Tribunal had projected their respective cases and ultimately the Tribunal by the impugned order dated 01.03.2024, having considered all these aspects, passed a detailed common order disposing of those original applications.

14. In the said order, at Para 9 under the heading 'Conclusion', the Tribunal has passed the following order, which reads thus:

*"9. **CONCLUSION** : To put a quietus to the issue(s), we deem it fit and proper, under the existing facts and circumstances, to dispose of the present OA(s) with the following directions:-*

9.1. Two issues have been addressed, accordingly.

9.2. The candidates who stand qualified as per merit now and who had not participated in the recruitment process in the year 2015 (the closing date of said Selection process) and had become overage between the intervening period till the closing date for the



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respective post(s) in the present impugned notification, their applications should be assessed as per the over-all merit list for their respective post(s) and under the relevant category. Such applicant(s) as above, shall give an undertaking within 10 days from today to the competent authority that they had not participated in the recruitment process, for the said post, in the year 2015.

9.3. In the event, the said applicants / candidates who give such undertaking qualify on merit and fall within the zone of consideration ie., cut-off marks in the respective category, cases of such candidates be forwarded to the Hon'ble LG/Administrator for his consideration and appropriate decision purely as a **"one time measure for age relaxation" to the extent of further period of 2 years only**, on a case-to-case basis, in exercise of his powers under Rule 6 of the RR's to his own wisdom, taking a holistic view and also taking into account similar benefits extended in the course of other recruitment exercise in the CAPF, Haryana Staff Selection Commission, Delhi Government and Orissa Government, either by virtue of Notification and/or pursuant to the decision rendered by various Courts. The appropriate orders(s) ie., offer of appointment to persons, if otherwise found eligible, be issued within a period of three months from the date of notification of the final result of the selection process.

9.4. All OA(s) are disposed of in the aforesaid terms. No order as to costs."



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15. Even though the Tribunal has considered the plea raised by these applicants for giving such age relaxation and to that extent, a direction has also been given in Para 9.3 of the order as extracted herein above, such a concession was directed to be given only to those who did not participate in the earlier selection process ie., in the year 2015, which means, those who participated in the selection process, would not be entitled to seek any such concession or relief of getting the age relaxation. Therefore, all the applicants before the Tribunal, some of whom are the writ petitioners herein, being the candidates who have already participated in the 2015 recruitment process would be out of the purview of getting any such concession as directed by the Tribunal through the impugned order. Therefore, aggrieved over the same those applicants have preferred the respective writ petitions in this batch.

16. Insofar as such a direction given by the Tribunal is concerned to the Puducherry Administration especially the Administrator of Puducherry Government to take such recourse by exercising power under Rule 6 of the Recruitment Rules (In short 'RR') the Puducherry Administration also, having aggrieved over the said direction, has come up with W.P.No.7431 of 2024. That is how all these writ petitions came to be filed.

17. Since the issue raised in these writ petitions are one and the same and arises out of the common order, with the consent of the learned counsel for both



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sides, all these writ petitions were heard together and are disposed of by this common order.

18. Though extensive arguments have been made by the learned counsel for both sides and voluminous documents have been filed in support of the writ petitions by the individual writ petitioners as well as Puducherry Government who filed the said writ petition (W.P.No.7431 of 2024), the issue to be decided in all these writ petitions is in a very narrow compass.

19. Insofar as the age relaxation which is the main issue is concerned, the Recruitment Rules has prescribed the maximum age which is 32 years and it is relaxable for reserved communities.

20. Even if such a relaxation is given beyond 32 years, ie., for OBC/MBC/EBC/BCM/BT candidates - 3 years, SC & ST candidates - 5 years, for Physically Challenged persons - 10 years for General Category - 13 years for OBC MBC/EBC/BCM/BT, 15 years for SC/ST and for Ex-servicemen - period of military service plus 3 years, insofar as Open Competition (OC) candidates as well as some of the candidates of OBC and SC/ST also such relaxation given by the Puducherry Government as stated supra still is not sufficient, as they have already crossed that age.



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21. In that circumstances, whether any further relaxation can be given as special concession or one time measure is a question.

22. In this context, it is to be noted that, there are Recruitment Rules (RR) for the Union Territory of Puducherry Government in respect of this kind of appointments.

23. The RR has been issued by the Government of Puducherry ie., the Department of Education in G.O.Ms.No.136 dated 11.11.2003 under which there is a Rule which speaks about the power of the Administrator to relax the Rules in respect of persons or class of persons. Rule 6 of the RR is extracted hereunder:

" 6. Power to relax : Where the Administrator, Puducherry is of opinion that it is necessary or expedient so to do, he may, by order and for reasons to be recorded in writing, relax any of the provisions of these rules with respect to any class or category of persons."

24. Only in that context, a direction had been given by the Tribunal through the impugned order in Para 9.3 as stated supra, where the Tribunal in fact had stated that, those who participated in the 2015 recruitment process would not be eligible to seek for any such age relaxation and therefore they must give an undertaking or affidavit before the Government that they did not participate in the



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2015 selection process and those candidates if they not participated in the earlier selection process, and wants to participate in the present recruitment where age relaxation is required for the selected candidates, those candidates' list can be placed before the Administrator of the Puducherry Government for consideration to take appropriate decision purely as an one-time measure for age relaxation to the extent of further two years only on a case-to-case basis, in exercise of his powers under Rule 6 of the Recruitment Rules to his wisdom taking a holistic view.

25. If this direction is implemented, first of all those candidates who participated in the selection process of 2015 would get ousted completely. Consequently, only on case-to-case basis such a relaxation to be given, was the direction given by the Tribunal.

26. Even though such a power of relaxation vests only with the Administrator of the Union Territory of Puducherry under Rule 6, whether this kind of classification can be made by the Tribunal, based on which whether such a direction can be given to the Administrator to exercise the power selectively for some of the candidates on case-to-case basis is another question.

27. In this context, it is to be noted that the law is well settled that, if particular thing has to be done in a particular manner as stated by the Statue, it shall be done only in that manner.



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28. Here in the case in hand, the Statute ie., the Recruitment Rules (RR) has prescribed that the Administrator and Administrator alone is empowered to give relaxation of any provisions of the RR in respect of a 'class or category of persons'. Whether persons like the applicants are 'class of persons' and whether they are entitled to get any such benevolence at the hands of the Administrator by exercising his power and wisdom under Rule 6 of the RR is another question to be considered.

29. In this context, the factual matrix as projected has to be taken note of. Though these applicants have become eligible to participate in the selection process as they successfully completed Diploma in Teacher Education as well as TET and they participated in 2015 selection process they became unsuccessful and some of them were kept in waiting list also.

30. Thereafter, admittedly for 8 to 9 years there has been no recruitment by issuance of notification by the Puducherry Government.

31. When that being so, in between 8 or 9 years naturally majority of those who already became eligible, would have become over-aged. Therefore, if at all any upper age limit is prescribed under the RR and based on the RR and policy of the



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Government if any age relaxation is given for reserved communities ie., BC, MBC, OBC, SC and ST and also special categories like Physically Challenged, Ex-servicemen etc., those candidates may get the benefit to that extent, where age relaxation is given.

32. However in respect of some of the candidates, who belong to different reserved communities, but are over-aged because of the long years there has been no recruitment and some of these candidates who does not belong to any of those reserved communities ie., OC category candidates also would have been over-aged.

33. In that case, as we stated supra, the chance of getting the post of Teacher for which they have acquired the qualification of Diploma in Teacher Education and TET would get defeated because, if they miss this recruitment process, for their entire life time or career, they would not get the job of Teacher in the Union Territory of Puducherry.

34. When that being the position, these people *en masse* can be put in a 'class or category of persons' within the meaning of Rule 6 of the Recruitment Rules. Therefore, it is for the Administrator of the Puducherry Government to give such a further age relaxation apart from the age relaxation already been given to the reserved communities and special categories as stated supra.



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35. Therefore, to that extent the Tribunal has come forward to give such a direction to the Administrator to give such a relaxation exercising his power under Rule 6 of the Recruitment Rules, may be accepted. But, at the same time while giving such a direction, the Tribunal ought not to have made a further classification in its own wisdom for which we feel that there has been no *intelligible differentia*.

36. Merely because such applicants have already participated in the 2015 recruitment process, where, for want of vacancy they could not reach the zone of consideration and some of them have reached the zone of consideration and placed in the waiting list, for want of vacancy they could not get posted as the waiting list was not moved further, their right cannot be defeated. However, from the purview of getting age relaxation which is going to be given by the Administrator of the Puducherry Government by invoking Rule 6 of the Recruitment Rules for a 'class or category of persons', the words 'class or category of persons' would include the present applicants who were also qualified and participated in the 2015 selection, but failed. Therefore, in our considered view, such a classification made by the Tribunal which is reflected in Para 9 of the order impugned may not be justifiable.

37. The second issue that has also been raised before this Court for consideration is that, in the notification dated 23.10.2023, the Puducherry Government under Clause VIII under the heading 'Mode of Recruitment' has stated that, out of the total 100 marks, 70 marks will be given for HSC and Diploma and 20



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marks for TET and 10 marks purely for Employment Exchange seniority for the TET qualification alone. In this context, we would like to point out that this notification was issued in fact in consonance with G.O.Ms.No.28 issued by the Government of Puducherry, Director of School Education.

38. Annexure to G.O.Ms.No.28 consists of various prescriptions as to how the method of drawal of merit list has to be made, where under clause (C), common aspects for all categories of posts also has been given. For easy reference, we extract the relevant paragraph of Clause (C) of annexure to G.O.No.28.

(C) Common Aspects for All Categories of Posts

- *To arrive at % of aggregate marks of essential qualifications, for every additional attempt 5% will be deducted;*
- *Even if the candidate completed the required essential qualifications within the stipulated period of the course but made additional attempt(s) 5% will be deducted for every additional attempt(s)*
- *For all the categories of posts, Employment Exchange Registration, Seniority would be calculated uniformly at the rate of 1.00% per year subject to a maximum of 10 years from the date of registration of the essential qualification for the particular post including TET.*

39. It is to be noted that, for all the categories of posts, Employment Exchange seniority would be calculated uniformly at the rate of 1% per year subject to a maximum of 10 years from the date of registration of the essential qualification for the particular post including TET.



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40. The words 'including TET' seems to have been given a meaning by the Puducherry Government that 'including TET' is nothing but the weightage marks for employment exchange seniority would be given only based on the seniority earned by the candidate from the date of registration of TET qualification in the employment exchange. That is the reason why in the notification in Clause VIII it has been specifically stated that 10% weightage for employment exchange seniority of TET would be given.

41. However, they omitted to note the clarification given by the Government in Clause (C) of annexure to G.O.No.28, where it has been specifically stated that, employment exchange seniority would be calculated uniformly at the rate of 1% per year subject to a maximum of 10 years from the date of registration of the essential qualification.

42. The words **"from the date of registration of the essential qualification"** means, for the post of Primary School Teacher is concerned, it is Diploma in Teacher Education course.

43. Therefore, if for employment exchange seniority, weightage has to be given at 1% per year to the maximum of 10 years, that should be only from the date of registration of the Diploma qualification, which is the essential qualification to hold the post of Teacher ie., Primary School Teacher.



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44. Therefore, to that extent, the 10% weightage that has been provided under the 'qualification' in Clause VIII cannot be said to be in consonance with G.O.No.28 and any other Rules, as the notification has been issued based on G.O.No.28 especially in the context of the weightage marks on the basis of the employment exchange seniority.

45. Therefore, the 10% weightage for employment exchange seniority if at all to be given to the candidates, that should be given only on the basis of employment exchange seniority of the essential qualification viz., Diploma in Teacher Education. Therefore, from the date of registration of the Diploma in Teacher Education alone such a weightage should be calculated unmindful of the qualification of TET because, TET even though has become essential qualification, that cannot be a criteria to be adopted for the purpose of giving weightage of 1% or one mark per year as stated in Clause 'C' explanation of the annexure to G.O.No.28.

46. Therefore, the prescription of 10% weightage of employment exchange seniority should be only on the basis of registration of TET qualification is not in consonance with the policy decision already been taken by the Government as reflected in G.O.No.28. To that extent, the prescription made by the Government through the notification is bad in law. Hence, we are constrained to strike it down. In the alternative, the weightage of 10% marks for employment exchange seniority



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should be given only from the date of registration of the essential qualification viz., Diploma in Teacher Education. Therefore, insofar as the second issue raised before this Court is concerned, it has to be answered as has been discussed herein above.

47. If these two issues are answered which are mainly projected by the applicants, then the grievance of the Government who filed writ petition No.7431 of 2024 against the direction given by the Tribunal through the impugned order especially in Para 9 of the impugned order also would get automatically redressed.

48. In view of the aforesaid discussions, we are inclined to dispose of this batch of writ petitions with the following order :

- The impugned common order dated 01.03.2024 passed by the Central Administrative Tribunal, Chennai Bench insofar as the directions given in Paragraphs 9.2 and 9.3 is concerned, are hereby set aside to the extent it is being modified by the following directions.
- There shall be a direction to the Puducherry Government to immediately take steps for giving age relaxation for all such candidates or candidates of any category according to the wisdom and decision of the Puducherry Government ie., the Administrator



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of the Puducherry Government by exercising his power under Rule 6 of the Recruitment Rules.

- Such a decision shall be taken by the Administrator of Puducherry Government within a period of six weeks from the date of receipt of a copy of this order.
- Once such a relaxation is given for upper age limit for a 'class or category of persons' within the meaning of Rule 6 of the Recruitment Rules, based on which, a corrigendum shall be issued by the Puducherry Government to the notification dated 23.10.2023, enabling some more candidates, who may become eligible to make an application by virtue of such relaxation to be given by the Administrator, to make application.
- It is made clear that pursuant to issuance of such corrigendum, the applicants who have already made applications need not make a fresh application.
- In the corrigendum, in respect of of Clause VIII of the notification with regard to the 10% weightage for employment exchange seniority, it must be given only for the essential qualification viz.,



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Diploma in Teacher Education, that means, from the date of registration of Diploma in Teacher Education alone should be calculated to arrive at the 10% weightage of employment exchange seniority and such weightage shall be provided, and not on the basis of TET qualification registration.

- It is further made clear that, by virtue of this amended notification to be issued, it may not be understood that the TET is not an essential qualification. It is an essential qualification, without which no applicant would be eligible to make application to participate in the selection process.
- Correspondingly, the Directorate of Employment Exchange or as the case may be, the concerned officer who is looking after the employment exchange seniority registration issues in the Union Territory of Puducherry, shall re-draw the list of candidates based on the employment exchange seniority of essential qualification ie., Diploma in Teacher Education and accordingly re-drawn list to be forwarded by them to the Education Department, based on which the selection process shall go on.



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49. We expect that all the above directions would be complied with as early as possible, as large number of teachers ie., 145 Primary School Teacher posts are to be filled up in the Government schools, atleast before the commencement of the next academic year ie., 2024-25.

50. With all these directions, the order passed by the Tribunal dated 01.03.2024 since has been set aside to the extent of the directions given herein above, we dispose of these writ petitions accordingly. No costs. Consequently, connected miscellaneous petitions are closed.

(R.S.K.,J.) (K.B.,J.)
20.03.2024

KST

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To

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- 1.The Secretary to Government (Education)
Government of Puducherry
Puducherry - 605 001.
- 2.The Director
Directorate of School Education
Government of Puducherry.



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R.SURESH KUMAR, J.
and
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20.03.2024