



WEB COPY



W.A.No.2654 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.05.2024

CORAM :

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

Writ Appeal No.2654 of 2023
and
C.M.P.No.22292 of 2023

1. R.Mahalakshmi
2. C.Amirtham

.. Appellants

Versus

1. The State of Tamil Nadu,
Rep. by its Principal Secretary to Government,
Higher Education Department,
Fort St.George, Chennai - 600 009.
2. Teachers Recruitment Board,
Rep. by its Chairman,
4th Floor, Puratchi Talaivar,
Dr.M.G.R.Centenary Building,
DPI Campus, College Road,
Chennai - 600 006.
3. The Director of School Education,
(Higher Secondary School)
Chennai - 600 006.
(3rd Respondent was *suo motu* impleaded as
per the order of this Court dated 06.02.2023
made in W.P.No.1474 of 2023)

.. Respondents

Writ Appeal filed under Clause 15 of Letters Patent praying to set aside
the order dated 17.08.2023 made by the learned Judge in WP.No.1474 of 2023.



W.A.No.2654 of 2023

For Appellants : Mrs.Nalini Chidambaram, Senior Advocate
for Mrs.C.Uma

For R1 : Mr.D.Ravichander,
Special Government Pleader

For R2 : Mr.R.Neelakandan, Additional Advocate General
assisted by Mr.K.Sathish Kumar,
Standing Counsel

JUDGMENT

R. MAHADEVAN, J.

This writ appeal is directed against the order dated 17.08.2023 passed by the learned Judge in dismissing the writ petition bearing no. 1474 of 2023 filed by the appellants / writ petitioners.

2. The aforesaid writ petition has been filed by the appellants for issuance of a writ of mandamus directing the second respondent to issue appointment orders to the appellants herein who have secured 82.84 marks in the written examination held on 23.06.2019 conducted by the second respondent for the post of Computer Instructors Grade-I pursuant to Notification No.09/2019 dated 01.03.2019 under the Backward Class (BC) community category, on the premise that two of the candidates who were already selected were found to be not eligible to the post in question for want of equivalence certificate and



therefore, the appellants herein, who were next in the line of selection under the BC community category, should have been considered for appointment.

3. It was projected by the appellants before the learned Judge that the appellants very recently came to know about the fact that two of the selected candidates were found to be not eligible for want of equivalence certificate and hence, they cannot be found fault with in approaching the Court belatedly.

4. Denying the allegations made in the writ petition, a counter affidavit was filed by the second respondent, *viz.*, the Teachers Recruitment Board (in short, 'the TRB') before the writ Court, *inter alia*, stating that the appellants were found to be not eligible for appointment to the post inasmuch as the degrees obtained by them were found not equivalent. The entire selection process, pursuant to the Notification of the year 2019 had attained finality. The remaining unfilled vacancies and the withheld vacancies were carried forward to the subsequent recruitment and the subsequent recruitment process, which was commenced pursuant to Advertisement No.01/2021 dated 09.09.2021 for recruitment in the year 2020-21 had also attained finality. The candidates who were appointed pursuant to notification of the 2019 had, in fact, completed their probation period. In the circumstances, the writ petition filed after a lapse of two years is liable to be dismissed on the ground of delay and laches.



5. On hearing both sides, the learned Judge held that though two of the candidates who had secured marks higher than the appellants were originally selected for appointment, their results were withheld for want of equivalence certificate and subsequently, they were not given appointment for want of equivalence certificate and as such, those two vacancies were left unfilled; that the vacancies notified in a particular notification must have been filled before the subsequent notification is issued; and that if any vacancies were left out in the earlier notification for some reasons, such vacancies must be carried forward to the next recruitment process. It was further observed that the appellants having missed the bus, now, cannot come around and say that they came to know about the fact only recently and hence, it is too late on the part of the appellants to seek for a mandamus. Having observed so, the learned Judge dismissed the writ petition.

6. Aggrieved by the same, the appellants are before this court with the present appeal.

7. The learned senior counsel for the appellants submitted that in the revised Provisional List for direct recruitment for the post of Computer Instructors Grade-I (Post Graduate Cadre) pursuant to Notification No.09/2019



W.A.No.2654 of 2023

dated 01.03.2019, in Sl.No.382, the name of Shajina V.Vazhiyil and in Sl.No.394, the name of Roselin Mary Clare Kulandairaj, both belonging to BC community, were included against whose names the remark WH (withheld) was notified. But, they were not immediately declared as ineligible. The appointment orders were issued to eligible candidates in the list read with the addendum Notification and the results of 42 withheld candidates, including the said two candidates still remained under the withheld category and all 42 posts for whom results were withheld, continued to remain vacant till end 2022. Therefore, the statement in the counter affidavit in para 11 that appointment orders were issued for eligible candidates except withheld candidates and the remaining vacancies, including the withheld vacancies of candidates were not selected and those vacancies were carried forward to the subsequent recruitment, is a wrong statement. The above said two vacancies continued to remain vacant without being carried forward and only on 26.08.2022, by G.O.Ms.No.169, Higher Education Department, in Sl.No.25, the B.Sc. (Computer Science) and Computer Applications degree awarded by Avinashilingam Institute for Home Science and Higher Education for Women where the said two candidates had studied, was declared as not equivalent to B.Sc. (Computer Science) for the purpose of employment in public services. Even before issuance of G.O.Ms.No.169, *supra*, the appointment orders to eligible candidates under Notification No.09./2019



dated 01.03.2019 and Advertisement No.01/2021 dated 19.09.2021 for the post of Computer Instructor Grade-I for the year 2020-21 were issued and recruitment was finalized under the said Notifications. Thus, the two vacancies referred to above were available only on 26.08.2022 on account of G.O.Ms.No.169, *supra*. Hence, the statement that all vacancies were filled up and the recruitment under Notification No.09/2019 issued by the second respondent dated 01.03.2019 was completed and also the recruitment under Notification No.01/2021 dated 09.09.2021 has attained finality, is incorrect, since the said two vacancies became available only on passing G.O.Ms.No.169, *supra*, which was much later to the above said two notifications.

7.1. Adding further, the learned senior counsel for the appellants submitted that soon after G.O.Ms.No.169 dated 26.08.2022 was issued, the above said two candidates were declared ineligible for the post of Computer Instructor Grade-I. Hence, the appellants addressed a representation dated 28.08.2022 to the second respondent to issue appointment orders to them as those two candidates were disqualified, but, the same was not considered. In the circumstances, the appellants were not guilty of delay and laches in approaching this Court. It is also submitted that none of the vacancies on account of the remark “withheld” was carried forward and notified under Notification No.1/2021 dated 09.09.2021 and



they remained vacant almost till the end of 2022. The learned senior counsel particularly stated that in Notification No.1/2021, no backlog vacancies were notified for the post of Computer Instructor Grade-I and hence, the claim of the second respondent in their counter affidavit that vacancies of withheld candidates under Notification No.9/2019 dated 01.03.2019 were carried forward to the next notification is totally false.

7.2. It is further pointed out by the learned senior counsel for the appellants that the appellants were found to have the required qualification by virtue of G.O.Ms.No.84, Higher Education Department dated 03.06.2022 in Sl.No.45 and by virtue of G.O.Ms.No.65, Higher Education Department dated 24.04.2019 and the said two Government Orders were filed in the Court to disprove the allegation in paragraph 9 of the counter affidavit that the appellants were not eligible for the post of Computer Instructor Grade-I since they did not possess the eligible qualification as per G.O.Ms.No.361, School Education Department dated 31.12.1999. Without considering all these aspects, the learned Judge erred in dismissing the writ petition filed by the appellants. Stating so, the learned Judge sought to allow this appeal by setting aside the order impugned herein.



8. *Per contra*, the learned Additional Advocate General appearing for the second respondent submitted that the learned Judge has passed the order, after taking note of the submissions made on the side of the respondents, before the writ Court in a proper manner and hence, the same does not require any interference at the hands of this Court.

9. Heard the learned counsel on either side and perused the records carefully and meticulously.

10. The appellants have sought the relief before the writ court on the ground that when two of the candidates who were already selected for the post of Computer Instructors Grade-I pursuant to Notification No.09/2019 dated 01.03.2019 under the Backward Class (BC) community category, were found to be ineligible for want of equivalence certificate, the appellants who were in the next line of selection under the BC community category and possessing the necessary qualifications, ought to have been considered for appointment to the said post. However, the learned Judge dismissed the writ petition mainly on the ground of delay and laches on the part of the appellants.



11. The stand of the appellants herein is that the above said two vacancies continued to remain vacant without being carried forward and only on 26.08.2022, by G.O.Ms.No.169, Higher Education Department in Sl.No.25, the B.Sc. Computer Science and Computer Applications Degree awarded by Avinashilingam Institute for Home Science and Higher Education for Women where the said two candidates had studied, was declared as not equivalent to B.Sc. Computer Science for the purpose of employment in public services and hence, only from that point of time, the said two vacancies became vacant. It is also their stand that none of the vacancies on account of the remark “withheld” was carried forward and notified under Notification No.1/2021 dated 09.09.2021 and they remained vacant almost till the end of 2022. It is also specifically submitted that they were having the required qualification as per the relevant Government Orders and hence, it cannot be stated that they did not possess the eligible qualification.

12. On the other hand, it is the case of the respondent authorities that the entire selection process, pursuant to the Notification of the year 2019 had attained finality; the remaining unfilled vacancies and the withheld vacancies were carried forward to the subsequent recruitment; and the subsequent recruitment process had also attained finality.



13. It is seen that the learned Judge in the order impugned herein, pointed out that the vacancies notified in a particular notification must have been filled before the subsequent notification is issued; that if any vacancies were left out in the earlier notification for some reasons, such vacancies must be carried forward to the next recruitment process; and that merely because the appellants are next in the line with merits below the names of withheld candidates, it would not enure any right to them to be considered for appointment. Ultimately, the learned Judge dismissed the writ petition, observing that it is too late on the part of the appellants to seek for a mandamus.

14. The fact remains that the 2019 recruitment process has been completed long ago. Further, the subsequent recruitment process pursuant to Advertisement No.01/2021 dated 09.09.2021 had also attained finality. It is also an admitted fact that the candidates who were appointed pursuant to 2019 Notification had completed their probation period. Had the appellants been aggrieved by the selection process pertaining to the year 2019, they ought to have been more vigilant and should have approached the Court at the right time. When the 2019 recruitment process and the subsequent recruitment process have attained finality and the candidates who were appointed pursuant to 2019 Notification had also completed their probation period, the appellants, having not acted with alacrity,



but, slept over the matter for a very long period like Rip Van Winkle, cannot come around and now, make a prayer to consider them for appointment for 2019 Notification. At this length of time, if the prayer of the appellants is entertained, it is tantamount to derailing the entire recruitment process already made, which will greatly hamper the existing and future recruitment process. At this juncture, it will not be out of place to advert to the following sapient passage from the judgment of the Supreme Court in *State of Uttaranchal and another v Shiv*

***Charan Singh Bhandari and others*¹:**

“27. We are absolutely conscious that in the case at hand the seniority has not been disturbed in the promotional cadre and no promotions may be unsettled. There may not be unsettlement of the settled position but, a pregnant one, the respondents chose to sleep like Rip Van Winkle and got up from their slumber at their own leisure, for some reason, which is fathomable to them only. But such fathoming of reasons by oneself is not countenanced in law. Anyone who sleeps over his right is bound to suffer. As we perceive neither the Tribunal nor the High Court has appreciated these aspects in proper perspective and proceeded on the base that a junior was promoted and, therefore, the seniors cannot be denied the promotion.”

(emphasis supplied)

Hence, the contentions raised on the side of the appellants, cannot be countenanced by this court.

15. In view of the foregoing discussion, we are of the opinion that the learned Judge was justified in declining to grant the appellants / writ petitioners the relief sought in the writ petition.

¹ (2013) 12 SCC 179
<https://www.mhc.tn.gov.in/judis>



W.A.No.2654 of 2023

16. In fine, the writ appeal fails and is accordingly, dismissed. No costs.

Consequently, connected miscellaneous petition is closed.

[R.M.D., J.] [M.S.Q., J.]

10.05.2024

Index : Yes / No
Internet : Yes / No
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To

1. The Principal Secretary to Government,
The State of Tamil Nadu,
Higher Education Department,
Fort St.George, Chennai - 600 009.
2. The Chairman,
Teachers Recruitment Board,
4th Floor, Puratchi Talaivar,
Dr.M.G.R.Centenary Building,
DPI Campus, College Road,
Chennai - 600 006.
3. The Director of School Education,
(Higher Secondary School)
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