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**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
HEMANT GUPTA; J., SUDHANSHU DHULIA; J.**

AUGUST 30, 2022

**CIVIL APPEAL NO. 6991 OF 2015 WITH CIVIL APPEAL NO. 6992 OF 2015
THE DIRECTOR OF TEACHER'S TRAINING RESEARCH EDUCATION & ANR. *versus* O.M. JESSYMOL**

Tamil Nadu Recognised Private Schools (Regulations) Act, 1973 - Government Order fixing 50% marks for eligibility to undergo Teachers' Training Certificate Course for appointment in the State of Tamil Nadu - Upheld.

Administrative Law - The decision of the State in its executive power cannot be contradictory to the express provision of the statutory Rules, but where the statute and Rules are silent, the State Government, in exercise of its executive power, is competent to supplement the rules. The executive power of the State is to supplement and not supplant.

For Appellant(s) Mr. K. Radha Krishnan, Sr. Adv. Mr. D. Kumanan, AOR Mr. Kailash Vasudev, Sr. Adv. Mr. V. Balaji, Adv. Mr. Asaithambi MSM, Adv. Mr. C. Kannan, Adv. Mr. Nizamuddin, Adv. Mr. K. Rajan, Adv. Ms. Apsana, Adv. Mr. Umrao Singh Rawat, Adv. Mr. Rakesh K. Sharma, AOR

For Respondent(s) Mr. S. Nandakumar, Adv. Ms. Deepika Nandakumar, Adv. Mr. Anand Murthi Rao, Adv. Mr. V. N. Raghupathy, AOR

ORDER

Civil Appeal No. 6991 of 2015

Civil Appeal No. 6991 of 2015 is directed against the Judgment dated 25.04.2007 passed by the High Court of Judicature at Madras. The High Court vide such judgment allowed an intra-court appeal of the candidate, directing the appellants to evaluate the Teachers' Training Certificate obtained by the candidate from the Teachers' Training College at Nagaland for appointment in the State of Tamil Nadu.

The Tamil Nadu Recognised Private Schools (Regulations) Act, 1973 *inter alia* deals with the terms and conditions of services of the teachers and other persons employed in private schools. Section 19 of the said Act permits the State Government to make rules regulating the number, qualifications and conditions of service, including promotion, pay, allowance, leave, pension, provident fund, insurance and age of retirement, rights with respect to disciplinary matters. In terms of the powers conferred under Section 19 of the Act, the Tamil Nadu Recognised Private Schools (Regulation) Rules, 1974 have been framed. Rule 15(6) provides that teachers and other persons employed in a private school shall possess the qualification specified in Annexure V.

Annexure V prescribes the qualifications for appointment as Senior Secondary School Leaving Certificate (equivalent to +2) and Technical School Leaving Certification (TSLC). The relevant rules read as under:

“15(6) The teacher and other persons employed in a private school shall possess the qualifications specified in Annexure V.

Annexure V (3) : -

Secondary Grade Teacher –

Qualification :

- 1) S.S.L.C.
- 2) T.S.L.C. of Secondary Grade or its equivalent.”

The State Government issued a Government Order No. 1236 dated 17.09.1984 prescribing norms in respect of evaluation of Secondary Grade Teachers Training Certificates of other States. The relevant clause from the said Government Order is reproduced hereunder:

“2. In view of the above developments, the Director of School Education, sought certain modifications to the G.O. first read above. The Government have examined the matter carefully and have decided to approve the modifications suggested by the Director of School Education, Madras.

Accordingly, the Government now permit the Director of School Education to evaluate the Karnataka State Teachers Training Certificates subject to the following conditions :-

- i) Teachers training Certificate holders of Karnataka State should have passed their S.S.L.C. in Tamil medium with Tamil as I language or should have taken Tamil as I language in S.S.L.C. if they have studied in English medium.
- ii) They should have obtained 50% of marks in aggregate in their S.S.L.C. as in the case of Teachers Training Certificates holders of Tamil Nadu.
- iii) They should have obtained 50% of marks in each subject in their Teacher Training Certificate as in the case of Teacher Training Certificate holders of Tamil Nadu.
- (iv) If they studied other than Tamil Medium in their SSLC, as well as Teacher Training Certificate and satisfy the conditions 2 & 3 their certificates may be evaluated with a condition that they are eligible for appointment as Secondary Grade Teachers in Tamil Nadu only in schools where medium of instructions is other than Tamil.”

Subsequently, Govt. Order No. 906 was issued on 16.06.1987 prescribing minimum educational qualification for admission in Diploma in Teachers Education Course. On 17.03.1988, another Government Order was issued in respect of evaluation of Diplomas in Teachers education course/certificates from other States.

The candidate had obtained one year Teachers’ Training Certificate from the State of Nagaland and had obtained less than 50% marks. Therefore, she was treated ineligible for appointment as Secondary Grade Teacher.

Therefore, we are now required to examine whether the Govt Order fixing 50% marks for eligibility to undergo Teachers’ Training Certificate Course for appointment in the State of Tamil Nadu is legal and valid.

The High Court held that the Government Order runs contrary to the statutory rules, therefore, cannot be given effect to. We find that such a finding is not tenable in law. The Act and the Rules thereunder do not prescribe any minimum percentage of marks to be obtained in Secondary School Leaving Certificate for admission to undergo Teachers’ Training Certificate Course. The State Government, in exercise of its Executive Power, can determine the minimum eligibility conditions of the marks for appointment in the State. The decision of the State in its executive power cannot be contradictory to the express provision of the statutory Rules, but where the statute and Rules are silent, the State Government, in exercise of its executive power, is competent to supplement the

rules. The executive power of the State is to supplement and not supplant. This Court in a judgment reported as **Union of India & Anr. v. Ashok Kumar Aggarwal (2013) 16 SCC 147** held that an authority cannot issue orders/office memorandum/executive instructions in contravention of the statutory rules. The instructions can be issued only to supplement the statutory rules but not to supplant it. It was held as under:

“59. The law laid down above has consistently been followed and it is a settled proposition of law that an authority cannot issue orders/office memorandum/executive instructions in contravention of the statutory rules. However, instructions can be issued only to supplement the statutory rules but not to supplant it. Such instructions should be subservient to the statutory provisions. (Vide *Union of India v. Majji Jangamayya* [(1977) 1 SCC 606 : 1977 SCC (L&S) 191] , *P.D. Aggarwal v. State of U.P.* [(1987) 3 SCC 622 : 1987 SCC (L&S) 310 : (1987) 4 ATC 272] , *Paluru Ramkrishnaiah v. Union of India* [(1989) 2 SCC 541 : 1989 SCC (L&S) 375 : (1989) 10 ATC 378 : AIR 1990 SC 166] , *C. Rangaswamaiah v. Karnataka Lokayukta* [(1998) 6 SCC 66 : 1998 SCC (L&S) 1448] and *Joint Action Committee of Air Line Pilots' Assn. of India v. DG of Civil Aviation* [(2011) 5 SCC 435 : AIR 2011 SC 2220].)”

The finding of the High Court that the Government Order runs counter to the statutory rules is not tenable in law. Therefore, Civil Appeal No. 6991 of 2015 is allowed, setting aside the judgment and order of the High Court dated 25.04.2007.

Civil Appeal No. 6992 of 2015

Civil Appeal No. 6992 of 2015 is preferred by the candidate directed against an order passed by the High Court of Judicature at Madras dated 17.04.2008, whereby the appeal of the State was allowed, holding that the candidate is not eligible for appointment in the State of Tamil Nadu in view of G.O. No. 1236 dated 17.09.1984. The candidate had obtained Teachers' Training Certificate from the State of Karnataka and had not obtained 50% marks in the intermediate (+2) examination to be eligible for admission in the Teachers' Training Certificate course.

For the reasons recorded above in Civil Appeal No. 6991 of 2015, we do not find any merit in Civil Appeal No. 6992 of 2015 preferred by the candidate. The same is dismissed.

A perusal of the order dated 04.09.2015 passed by this Court shows that the statement was made by the respondent (State) that service of the appellant has been terminated. The appellant was ordered to be reinstated in service but without any back wages. Later on, on 27.02.2017, it was ordered that if the appellant is working in pursuance of the order dated 04.09.2015, the appellant would be entitled to salary.

In view of the interim order, the appellant might have continued to discharge his duties as a teacher. Therefore, it is directed that no recovery shall be affected from the appellant in view of the present order of this Court. However, he is given liberty to make representation to seek relaxation of the eligibility condition from the State Government. As and when such a request is made, the State shall consider the same in accordance with law.

Pending interlocutory application(s), if any, is/are disposed of.