

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30-11-2022

CORAM

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

WP No.26889 of 2016

And

WMP Nos.23103 and 23104 of 2016

J.Nithya

..

Petitioner

vs.

- 1.The Director of Elementary Education,
D.P.I. Campus,
College Road,
Chennai-600 006.
- 2.The District Elementary Educational Officer,
Thiruvarur District,
Thiruvarur.
- 3.The Additional Assistant Elementary Educational Officer,
Nannilam Panchayat Union,
Nannilam,
Thiruvarur District.
- 4.The Principal Secretary to Government,
School Education Department,
Fort St. George,
Secretariat,
Chennai-600 009.

5.The Principal Secretary to Government,
Higher Education Department,
Fort St. George,
Secretariat,
Chennai-600 009.

(R-4 and R-5 suo motu impleaded vide
order of Court dated 30.11.2022)

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Respondents

Writ Petition is filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorarified Mandamus, calling for the entire records relating to the order passed in Na.Ka.No.751/Aa2/2016 dated 26.07.2016 on the file of the second respondent and quash the same and consequently direct the respondents to promote the petitioner as B.T. Assistant (English) in Nannilam Panchayat Union, Thiruvarur District as per the approved panel dated 01.01.2016 with all consequential monetary benefits.

For Petitioner : Mr.C.Munusamy

For Respondents-1 to 4 : Ms.S.Mythreye Chandru,
Special Government Pleader.

For Respondent- 5 : Mr.C.Jaya Prakash,
Government Advocate.

ORDER

The order of rejection issued by the second respondent rejecting the claim of the writ petitioner for appointment to the post of B.T. Assistant (English) in proceedings dated 26.07.2016, is under challenge in the present writ petition.

2. The petitioner states that she was appointed as Secondary Grade Teacher at Panchayat Union Middle School on 26.10.2007. The petitioner studied B.Lit., Degree Course through Distance Education Programme at Annamalai University during the academic year 2005-2008 and further completed M.A. (Tamil) at Annamalai University in the year 2010. Thereafter the petitioner completed B.Ed., Degree Course in Tamil during the academic year 2010-2011. After completing the B.Ed., Degree Course in Tamil, the petitioner passed B.A., Degree in English in between the years 2012 and 2015.

3. The learned counsel for the petitioner made a submission that B.Ed., Degree is a common qualification for promotion to the post of B.T.

Assistant and the petitioner had already completed B.Ed., Degree Course and therefore, she is eligible for promotion to the post of B.T. Assistant (English). The case of the writ petitioner was erroneously rejected on the ground that the petitioner studied simultaneous degree.

4. The learned Special Government Pleader, appearing on behalf of the respondents 1 to 4, objected the contentions raised on behalf of the petitioner by stating that the petitioner is not eligible for promotion to the post of B.T. Assistant (English). The petitioner studied B.Ed., (Tamil) and after completing the B.Ed., Degree Course, she acquired the qualification of B.A. (English) in the year 2015.

5. As per the Regular Pattern of Education, a candidate, who studied B.A. (English) and thereafter acquiring B.Ed., (English) alone is eligible for promotion to the post of B.T. Assistant (English). Since the petitioner undergone the Course of B.Ed. (Tamil) and B.A. (English) in a reverse manner, she became ineligible for promotion to the post of B.T. Assistant (English).

6. The petitioner had not acquired the B.A. and B.Ed. in the same discipline. She studied B.A. (English) and before completion of degree, she had completed B.Ed (Tamil). Thus, the petitioner is not qualified for promotion to the post of B.T. Assistant (English).

7. The petitioner after completing M.A. (Tamil), acquired B.Ed. (Tamil) in December 2011. Subsequently, she acquired B.A. (English) in May 2015. Thus, she may be eligible for promotion to the post of B.T. Assistant (Tamil).

8. Importantly, the petitioner acquired M.A. (Tamil), B.Ed., (Tamil) through Distance Mode of Education / Correspondence Course. This Court has emphasised on many occasions that imparting teaching being a skill, candidates, who acquired Educational Qualifications through regular pattern in campus education alone must be appointed mainly for teaching posts. Persons studied through Distance Education Mode / Correspondence Education / Open streams may not be suitable and eligible for imparting

education to the children, more specifically, in class rooms.

9. Suitability and eligibility for appointment to public posts are of paramount importance. Assessment of suitability and eligibility is the main criteria in the process of selection. Imparting education / teaching is a skill and a noble profession. Women and men, who acquired educational qualifications through campus education may be more suitable than that of the candidates acquired educational qualifications through Correspondence Course / Distance mode of Education / Open University schemes.

10. This Court is of an opinion that there is no proper assessment of suitability and eligibility for teaching posts as of now and the educational qualifications possessed by the candidates alone is taken into consideration. Such an approach of the Government would affect the quality education to be provided by the State in consonance with the Statutes and the Constitution.

11. In this context, it is relevant to rely on the judgment of the Division Bench of this Court in WP No.19534 of 2018 etc., batch of cases, dated 19.05.2021, wherein in paragraphs 95, 97 and 101, it has been observed as under:-

“95. Any recruitment to a post of teaching faculty in higher education or any other education for that matter is not intended to provide job opportunities to the potential candidates who apply for consideration. The purpose of appointments of teaching faculty is towards fulfillment of achieving higher academic standards in any field of education. In this case, the focus is on the quality of the legal education. The quality of education could only be measured through the type of teachers who are appointed to handle the academics. If persons with no experience in campus life having not studied and earned their degrees in the regular institutions/ Colleges, may not said to have experienced the institutional academic culture and the expectation of the present generation of student community. Further, if such candidates are appointed as regular faculty in a College campus, he/she

would, in all probability, unable to come to terms with the expectations of the student community.

97. It is needless to mention that the regular campus education shapes the students-character and intellectuality towards acquiring better cognitive skills. The campus life provides a plenty of opportunities of interaction with the fellow students, lecturers and may at times provide life changing opportunities of shaping the academic orientation of many students. However, the degree holders from Distance Education mode would certainly but unfortunately suffer disadvantage on this account. There may be exceptions to these rules but the fixation of eligibility criteria are not to be influenced by the exception to the rule.

101. It is needless to mention that a person with a two year postgraduate degree alone in the relevant subject, cannot claim to have the depth of knowledge as in the case of person studied both undergraduate and postgraduate degrees in the same subject. The candidates with two degrees in different subjects at undergraduate and postgraduate levels, could

only said to be having fragmented knowledge in two different subjects with no profound development of their cognitive function in any particular subject. By all means, such candidates with cross degrees ought to have been not included as eligible persons in the Notification. It is unfortunate that such an important issue has not been clarified in the Notifications. Whether the omission is deliberate or inadvertent is again not clarified on behalf of the State Government. But, in any event, the cross degrees obtained by the candidates, in the considered view of this Court, cannot said to be a valid qualification and hence, such of those candidates who have such cross major viz., undergraduate degree in different subject than the subject of study at the postgraduate level are not to be considered as eligible for the subject appointments. In order to save the existing standards and also to ensure improvement in the standards of legal education in future, it must be ensured that persons with degrees obtained through distance education mode and with cross major degrees are to be declared as not qualified, particularly in the total

absence of any clarification or justification emanating from the Government.”

12. Under Section 8 of the Right of Children to Free and Compulsory Education Act, 2009, the duties of the appropriate Government are enumerated as under:

“(a) provide free and compulsory elementary education to every child: Provided that where a child is admitted by his or her parents or guardian, as the case may be, in a school other than a school established, owned, controlled or substantially financed by funds provided directly or indirectly by the appropriate Government or a local authority, such child or his or her parents or guardian, as the case may be, shall not be entitled to make a claim for reimbursement of expenditure incurred on elementary education of the child in such other school. Explanation – The term “compulsory education” means obligation of the appropriate Government to-

(i) provide free elementary education to every child of the age of six to fourteen years;

and (ii) ensure compulsory admission, attendance and completion of elementary education by every child of the age of six to fourteen years;

(b) ensure availability of a neighbourhood school as specified in section 6;

(c) ensure that the child belonging to weaker section and the child belonging to disadvantaged group are not discriminated against and prevented from pursuing and completing elementary education on any grounds;

(d) provide infrastructure including school building, teaching staff and learning equipment;

(e) provide special training facility specified in section 4;

(h) ensure and monitor admission, attendance and completion of elementary education by every child;

(g) ensure good quality elementary education conforming to the standards and norms specified in the Schedule;

(h) ensure timely prescribing of curriculum and courses of study for elementary education; and

(i) provide training facility for teachers.”

13. Section 9 of the Act contemplates duties of local authorities
as under:

(a) provide free and compulsory elementary education to every child: Provided that where a child is admitted by his or her parents or guardian, as the case may be, in a school other than a school established, owned, controlled or substantially financed by funds provided 7 directly or indirectly by the appropriate Government or a local authority, such child or his or her parents or guardian, as the case may be, shall not be entitled to make a claim for reimbursement of expenditure incurred on elementary education of the child in such other school;

(b) ensure availability of a neighbourhood school as specified in section 6;

(c) ensure that the child belonging to weaker section and the child belonging to disadvantaged group are not discriminated against and prevented from pursuing and

completing elementary education on any grounds;

(d) maintain records of children up to the age of fourteen years residing within its jurisdiction, in such manner as may be prescribed;

(e) ensure and monitor admission, attendance and completion of elementary education by every child residing within its jurisdiction;

(f) provide infrastructure including school building, teaching staff and learning material;

(g) provide special training facility specified in section 4;

(h) ensure good quality elementary education conforming to the standards and norms specified in the Schedule;

(i) ensure timely prescribing of curriculum and courses of study for elementary education;

(j) provide training facility for teachers;

(k) ensure admission of children of migrant families;

(l) monitor functioning of schools within its jurisdiction;and

(m) decide the academic calendar.”

14. The Hon'ble Supreme Court of India in the case of ***Vikas Sankhala and Others Vs. Vikas Kumar Agarwal and Others*** reported in ***[MANU/SC/1318/2016]***, held as follows:

“The exhortation of the High Court in the impugned judgment that the noble purpose contained in RTE Act can be achieved by providing free and compulsory education of satisfactory quality, cannot be doubted. Indeed it is a salubrious mission of the RTE Act which not only guarantees full time elementary education to every child upto 14 years of age, but also the quality of education which is satisfactory and equitable. The High Court is also right in remarking that in order to impart quality education, we need those teachers who are processed of essential aptitude and ability to meet the challenged of teaching at the primary and upper primary levels. We are of the opinion that in this manner the two constitutional goals, that of rendering quality education on the one hand and providing "equality of opportunity" to the unprivileged class on the other hand, are adequately met and rightly balanced.”

15. The Three Judges Bench of the Hon'ble Supreme Court of India in the case of ***Society For Un-Aided Private Schools of Rajasthan Vs. Union of India and Another in W.P.(C).No.95 of 2010 dated 12.04.2012***, where the Constitutional validities of Right to Education Act, 2009 was challenged and the same reads as under:

“The provisions of this Act are intended not only to guarantee right to free and compulsory education to children, but it also envisages imparting of quality education by providing required infrastructure and compliance of specified norms and standards in the schools.

The provisions of the Act are meant not only to strengthen the latter school by adequate number of students but to consolidate and to impart quality education due to the addition of teaching staff.

The object of the 2009 Act of not only providing free and compulsory education to the children in the neighbourhood school but also to provide quality education.

A paragraph extracted from the pai foundation case which was quoted in the Judgment:

“Affiliation or recognition by the State or the Board or the university competent to do so, cannot be denied solely on the ground that the institution is a minority educational institution. However, the urge or need for affiliation or recognition brings in the concept of regulation by way of laying down conditions consistent with the requirement of ensuring merit, excellence consistent with the requirement of ensuring merit, excellence of education and preventing maladministration. For example, provisions can be made indicating the quality of the teachers by prescribing the minimum qualifications that they must possess and the courses of studies and curricula. The existence of infrastructure sufficient for its growth can be stipulated as a prerequisite to the grant of recognition or affiliation. However, there cannot be interference in the day-to-day administration. The essential ingredients of the management, including admission of students, recruiting of staff

and the quantum of fee to be charged, cannot be regulated.(Para 55, Pai Foundation)”

16. In the context of the provisions of the Right of Children to Free and Compulsory Education Act, 2009 and as interpreted by the Constitutional Courts, quality education to be provided, is the right of the children. Quality education is not only prescribed under the provision of the Act, but it is a constitutional mandate. Providing of infrastructures alone would be insufficient, but quality education to the children would alone build our Great Nation. Thus, ensuring quality education across the State of Tamil Nadu is the bounden duty of the 'State'. Only if meritorious and dedicated Teachers are appointed, quality education shall be assured.

17. For instance, Article 335 of the Constitution of India stipulates Claims of Scheduled Castes and Scheduled Tribes to services and posts. Accordingly, “The claims of the members of the Scheduled Castes and the Scheduled Tribes shall be taken into consideration, consistently with the maintenance of efficiency of administration, in the making of

appointments to service and posts in connection with the affairs of the Union or of a State:”

18. Thus, even while providing reservation in public appointments, the “State” has to maintain efficiency in order to provide better services to the people at large, so as to achieve the Constitutional goals. Thus, the State, while implementing reservation cannot dilute the merits. Even amongst the Scheduled Castes and Scheduled Tribes candidates, meritorious candidates are to be appointed, so as to ensure quality education to the children and students studying in Schools and Colleges.

19. The criteria for eligibility and suitability must be fixed in such a manner in consultation with the experts to ensure that women and men of skills in teaching are appointed to impart education in Schools and Colleges across the State of Tamil Nadu. It is not only the relevant educational qualifications, which all are acquired by the candidates, but the assessment of suitability and eligibility with reference to the skill possessed

by them is also required to be verified. It is needless to state that persons, who have not even attended classes or no class room experience will be a better candidate to take classes for children in Schools and Colleges. Ironically large number of persons, who have not attended the classes either in Schools or in Colleges are now holding the teaching posts, which is an unfortunate situation in the State of Tamil Nadu. Those candidates may be suitable for other posts in the Ministerial Lines in the Department. However, they may not be better candidates than that of the candidates, who have acquired educational qualifications through campus education.

20. All India Based Statistics published shows that the State of Tamil Nadu is ranked as 27th State in providing quality Education. 26 States across the Country are ahead of the State of Tamil Nadu in providing quality education to the children. The Government of Tamil Nadu is allotting huge funds and current year allocation was about Rs.36,895/- Crores. Out of which, major chunk of funds spent by way of salary to the Teachers. Thus, providing quality education becomes a mandate under the Constitution.

21. Children / Youth are the back-bone of our Great Nation. Providing quality education alone would lead to building of our great Nation. Unless quality education is provided, the students will not be in a position to develop their career in future. Thus, more deliberation is required by the State in this regard.

22. During the course of hearing, at the request of the Court, the 1st respondent / Dr.G.Arivoli, The Director of Elementary Education, Directorate of Elementary Education, Chennai-6, appeared before this Court, and made a submission that he will have a discussion with the Principal Secretary to Government, Education Department. The case was adjourned and the Director of Elementary Education filed a report and informed this Court that the Government agreed in principle to initiate all necessary steps to improve the quality education and by appointing persons, who acquired the educational qualifications through campus education, more specifically, paragraph-4 of the report reads as under:-

“4. It is further submitted that the Department understands the directions issued in the W.P.No.19534 of 2018 etc., batch. In

principle, we agree for the same, which will be very helpful in improving quality in Government Schools. Government need sometime to examine the same and to implement without affecting the teachers, who are already appointed. Because they depend only on distance mode to qualify themselves for further promotion.”

23. Since the decision has been taken to revisit the present position in consultation with the Principal Secretary to Government, School Education Department, this Court is inclined, suo motu to implead the Principal Secretary to Government, School Education Department, Fort St. George, Secretariat, Chennai-600 009 and the Principal Secretary to Government, Higher Education Department, Fort St. George, Secretariat, Chennai-600 009 as parties to the present writ petition i.e., as fourth and fifth respondents respectively, for the purpose of taking decision in these aspects.

24. Ms.S.Mythreye Chandru, learned Special Government Pleader takes notice on behalf of the fourth respondent-Principal Secretary

to Government, School Education Department, Fort St. George, Secretariat, Chennai-600 009 and Mr.G.Jaya Prakash, learned Government Advocate, takes notice on behalf of the fifth respondent-Principal Secretary to Government, Higher Education Department, Fort St. George, Secretariat, Chennai-600 009. Since the first respondent has filed the report stating that the Government in principle agreed to revisit the entire position, the above respondents 4 and 5 are suo motu impleaded.

25. State of Tamil Nadu is in need of quality education to be imparted to the children / students in Schools and Colleges. The respondents have now promised that they will re-visit the scheme of appointment of teachers, so as to ensure quality education in Schools and Colleges. The quality education being Statutory and Constitutional mandate on the part of the State, this Court has an undoubted opinion that an effective and urgent steps are imminent and warranted.

26. In respect of the present writ petition, the petitioner is found not suitable for promotion to the post of B.T. Assistant (English). However,

she may be suitable for appointment to the post of B.T. Assistant (Tamil) and her case is to be considered as and when the panel is prepared as per seniority and by following the procedures and the Rules in force.

27. In respect of the report filed by the Director of Elementary Education, the respondents 4 and 5 are directed to re-visit the scheme for appointment of Teachers in Education Department within a period of 3 months from the date of receipt of a copy of this order.

28. With the abovesaid observations, the writ petition stands disposed of. However, there shall be no order as to costs. Consequently, the connected miscellaneous petitions are closed.

30-11-2022

Index : Yes
Internet : Yes
Speaking Order
Svn/Jeni

Note: The Registry is directed to communicate the copy of this order to the fourth and fifth respondents.

To

- 1.The Director of Elementary Education,
D.P.I. Campus,
College Road,
Chennai-600 006.
- 2.The District Elementary Educational Officer,
Thiruvarur District,
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