



**IN THE HIGH COURT OF KARNATAKA AT BENGALURU**

**DATED THIS THE 12<sup>TH</sup> DAY OF OCTOBER, 2023**

**PRESENT**

**THE HON'BLE MR. PRASANNA B. VARALE, CHIEF JUSTICE**

**AND**

**THE HON'BLE MR. JUSTICE M.G.S. KAMAL**

**WRIT APPEAL No.305 OF 2023 (GM-CC)**

**C/W**

**WRIT APPEAL No.300 OF 2023 (GM-CC)**

**WRIT APPEAL No. 337 OF 2023 (GM-CC)**

**WRIT APPEAL No.482 OF 2023 (GM-CC)**

**WRIT APPEAL No.591 OF 2023 (GM-CC)**

**WRIT APPEAL No.886 OF 2023 (GM-CC)**

**WRIT APPEAL No.939 OF 2023 (GM-CC)**

**IN WA NO. 305 OF 2023**

**BETWEEN:**

1 . NARENDRA BABU G.V.

2 . YALLAPPA BAGALI

## **JUDGMENT**

These writ appeals arise out of order dated 30.01.2023 passed in W.P.No.23752/2022(GM-CC) filed by private respondents/petitioners by which learned Single Judge of this Court while allowing the said writ petition has quashed the provisional selection list dated:18.11.2022 insofar it relates to the petitioners being brought under the General Merit category and has directed the petitioners to be treated as belonging to category to which they applied for, *qua* the caste and income certificates appended to the applications. Further liberty has been reserved to the State to regulate its procedure by continuing recruitment and taking it to its logical conclusion.

2. Facts leading up to filing of these writ appeals briefly stated are;

By notification dated 21.03.2022 issued district wise, applications were invited from the eligible candidates for recruitment to the post of Graduate Primary School Teachers from sixth standard to eight standard classes in

the Government and Aided institutions. Competitive examinations were held on 21.05.2022 and 22.05.2022 and results were announced on 17.08.2022. A provisional list was published on 18.11.2022. Petitioners being aggrieved by exclusion of their names in the provisional list, filed the above writ petition seeking following reliefs;

*(a) Issue a writ in the nature of certiorari or any other appropriate writ order or direction quashing the provisional selection list dated 18.11.2022 by respondent No.3-(Annexure -A to A18).*

*(b) Issue a writ in the nature of mandamus or any other appropriate writ order or direction directing respondent No.3 to consider the case of the petitioner Nos.1 to 15 under category 2A, petitioner No.16 under category 2B, petitioner Nos.17 and 18 under category 3A and petitioner Nos. 19 to 21 under category 3B in the final selection list, taking note of the caste certificate issued by the Tahsildar without insisting on the income certificate from the husband of the petitioner (B to B20).*

*(c) Issue a writ in the nature of mandamus or any other appropriate writ, order or direction declaring that the action of the respondents herein changing the category of the petitioners from OBC to GM without intimation for the reason they and income certificate in the name of the husband of the petitioners without considering the caste and income certificates in the name of the father of the petitioners is highly arbitrary, illegal and without authority of law.*

*(d) Pass such other and further orders as may be necessary in the interest of justice.*

3. It is the contention of the petitioners that they belong to OBC category having completed their B.Ed., and D.Ed., and being eligible had applied for the post of teachers in respective subjects under reservation category of OBC through online application and had also submitted necessary documents as sought for. That after accepting the applications the concerned DDPI had invited the petitioners to appear for written and descriptive examination wherein the petitioners secured good score and ranking and were thus qualified for 1:2 document verification. It is further contended that in the notification dated 21.03.2022 calling for recruitment for Graduate Primary School Teachers there was no specification provided with respect to production of income and caste certificate of the husband of the petitioners. That on verification of the documents furnished by the petitioners, for some of the petitioners OBC categories was changed to General Merit and for some of the petitioners documents were returned back with no intimation with regard to defect in documents or otherwise. That the concerned

DDPI had rejected the caste cum income certificate of some of the candidates on the basis that though they were married, the certificates which they produced had been issued in the name of their father. That some of the candidates had approached this Court by filing the writ petition in W.P.No.22429/2022 and that this Court by order dated 15.11.2022 and on 18.11.2022 had directed that the names of the petitioners enlisted therein would be considered under the different categories of OBC and that in spite of the same, the provisional list had been issued without complying with the directions of this Court. That in the said provisional list, names of the petitioners were not included even though they had good ranking and the candidates who are below the petitioners were selected. That on an enquiry the petitioners were informed that the DDPI had rejected their income and caste certificates as they had obtained the same in their father's name. Being aggrieved by the same, the above writ petition is filed seeking the relief as extracted hereinabove.

4. The said writ petition was resisted by the state contending *inter alia* that the petition as presented was not maintainable and that the petitioners had to approach the Administrative Tribunal in terms of Section 15 of the Administrative Tribunals Act, 1985. That the authorities had rightly considered the documents furnished by the petitioners in accordance with the norms and policies of the Government which prescribed that in the case of married women candidates income of the spouse shall be taken into consideration and that it cannot be speculated that the spouse after the marriage is dependent on the parents. That the selection policy adopted by the respondent authorities is in accordance with the norms laid down by DPAR. That out of total 5978 married women candidates who had submitted income certificates of their spouse along with the application have been considered for verification in the ratio of 1:2. Among them 3700 meritorious married women candidates have been selected for provisional list of 1:1. That the married women candidates who had submitted income certificate of the

parents have been in fact short listed in the ratio of 1:1 in the provisional list by bringing such candidates under general merit category. That in the application a declaration had been provided that incorrect and incomplete application would be rejected and accordingly authorities on verification of the records have rejected the applications of the married women candidates who had furnished the income certificates of their parents instead of their spouse. That the State Government has issued Government order dated 19.09.1985 and 12.12.1986 regarding determination of income of the married women and the rejection of the candidature is on account of the defective certificates and the same is neither arbitrary or illegal. Hence, sought for dismissal of the petition.

5. Learned Single Judge on hearing respective counsel for the parties framed following points for consideration:

(i) Whether writ petitions challenging the action of interpretation of caste and income certificates by selecting authority-DDPI would be maintainable?

(ii) Whether the caste and income of the husband of the female applicant should be taken into consideration or the caste and income of the parents?

(iii) Whether the selecting authority-DDPI would get jurisdiction to interpret caste and income certificates issued by competent authorities?

6. While answering the issue No.(i) on maintainability learned Single Judge though has taken note of the Judgments of the Apex Court in the case of ***L.Chandra Kumar Vs. Union of India*** reported in ***(1997)3 SCC 261*** regarding jurisdiction of the Tribunal in the matters relating to process of recruitment to the service under the Services of the State, however relying upon the Judgment of the Apex Court in the case of ***T.K.Rangarajan Vs State of Tamil Nadu and others*** reported in ***(2003) 6 SCC 581*** has held that in the fact situation of the matter writ petition is entertainable. While answering the issue No.(ii) learned Single Judge relying upon the Judgment of the Apex Court in the case of ***Surinder Singh Vs Punjab State Electricity Board and others*** reported in ***(2014) 15 SCC 767*** and ***Sunitha Singh Vs State of UP*** reported



in **(2018) 2 SCC 493 and State of Karnataka Vs Smt.Yoeshwari and anr in W.P.No.24115/2018 and connected cases** decided on 19.11.2018, came to the conclusion that the decision of the selecting authority-DDPI in interpreting and holding the caste and income of the husband is to be taken into consideration is contrary to law and directed the respondent Authorities to consider the applications of the petitioners on the basis of caste and income certificates of the parents and not of their spouse and as belonging to their respective categories against which they have applied for. While answering issue No.(iii) relying upon the Judgment of the Division Bench of this Court in the case of **Executive Director, Karnataka Examination Authority and Selection Authority, Malleswaram, Bangalore Vs State of Karnataka and anr** reported in **(2018) SCC Online Karnataka 4112** held that the Selecting Authority-DDPI has no jurisdiction to interpret the caste certificate issued by the competent authority. Thus, having held as above, learned Single Judge quashed the provisional selection list so far as it

relates to the petitioners being brought under General Merit Category and issued further directions as noted above. Being aggrieved by the same, the present writ appeals are filed.

7. These appeals are filed by the appellants who are not parties to the writ petition. The principal grounds urged amongst other by the appellants in these writ appeals are:

*(a) Whether the writ petition is maintainable in view of the bar contained under Article 323A of the Constitution of India and in view of Section 15 of the Act, 1985;*

*(b) Whether a validly issued income certificate in terms of Government Order dated 12.12.1986, which order had been passed by the State in exercise of its power conferred under Article 16(4) of Constitution of India laying down classification of backward classes for the purpose of reservation of appointments and posts defining eligibility for reservation, could have been invalidated by the learned*

*Single Judge without there being challenge to the said Government Order;*

*(c) Whether without impleading the appellants who are the selected candidates, as party/respondents to the writ petition, the provisional list could have been set aside;*

8. Before advertng to the grounds urged in these appeals, it is necessary to note that an identical writ petition was filed in W.P.No.200032/2023 before Kalaburagi Bench of this Court and the same was dismissed by order dated:12.01.2023 as not maintainable reserving liberty to the petitioner therein to approach the Tribunal constituted under Act, 1985. Similarly, writ petitions filed before the Principal Bench of this court in W.P.No.5009/2023 C/w W.P.Nos.5820/2023, 5833/2023, 5879/2023, 5916/2023, 5926/2023, 5987/2023, 6237/2023, 6258/2023 and 6640/2023 were also disposed of as not maintainable with liberty to the petitioners therein to urge all grounds contended in the petitions before the Tribunal.

9. Sri.Lakshminarayana, learned Senior counsel appearing for the appellants in W.A.No.305/2023 reiterating the grounds urged in the memorandum of appeal and the contents of written synopsis submitted that;

(a) That the Graduate Primary School Teachers post is a civil post governed by Karnataka Education Department Services (Department of Public Instructions) (Recruitment) Rules, 1967, as such the said recruitment would fall within the provisions of Rules framed under Section 8 of the Karnataka State Civil Services Act, 1978 and the service as defined thereunder comes within the conditions of service specified under Article 323A(1)(c) of the Constitution of India.

(b) That in furtherance to the provisions of Article 323(A)(1) of the Constitution of India, the Parliament enacted the Administrative Tribunals Act, 1985. Section 15 of the said Act, 1985 conferred the jurisdiction on the Administrative Tribunal in respect of matters pertaining

to recruitment to Civil Services or to any Civil Post of the State.

(c) That the Administrative Tribunal is the Court of first instance and the High Court would get the jurisdiction under Article 226 read with Article 227 of the Constitution only in exercise of its power of judicial review over the order that may be passed by the Administrative Tribunal. He relied upon the Judgment of the Apex Court in the case of **L.Chandra Kumar** (supra). Thus, he submitted the learned Single Judge in the first place had no jurisdiction to entertain the writ petition and in the second place even exercise of judicial review of the order passed by the Administrative Tribunal could be exercisable only by the Division Bench and not by learned Single Judge.

(d) That the writ jurisdiction cannot be converted as an alternate forum enlarging the scope to include the disputes which are specifically excluded under the provisions of Constitution of India and by the law settled by the Apex Court in the case of **L.Chandra Kumar**

(Supra). He further relied upon the Judgment of the Apex Court in the case of ***Union of India Vs Alapan Bandopadyaya*** reported in ***(2022) 3 SCC 133*** in support of his submission.

(e) That the very notification was the subject matter of challenge before the Kalaburagi Bench of this Court in W.P.No.200032/2023 which was dismissed in view of law laid down by the Apex Court in the case of ***L.Chandra Kumar*** (supra) for want of jurisdiction. Thus, he submitted that the impugned order apart from being inconsistent to the order passed by the Coordinate Bench for want of jurisdiction also raises the territorial jurisdiction as it covers the recruitments in respect of candidates from Gulbarga District.

(f) That a decision rendered without impleading proper and necessary party is liable to be ignored by a party who is affected by the same is against the principles of natural justice. That in the instant case, since the names of the appellants were included in the provisional list and they not having been made party to

the writ petition, the impugned order is liable to be ignored as not binding on them.

(g) It is further contended that policy of reservation in terms of Government order dated 12.12.1986 is in force for more than 36 years and without a prayer or a challenge to the same, learned Single Judge could not have quashed the notification. That the entire process of recruitment was based on the said order dated 12.12.1986, which prescribes determination of income of the husband of a married woman and not of her parents. That as per the notification instructions have been issued to comply with the requirement of notification and since the recruitment pertains to civil posts same would fall within the provisions of Section 15 of the Administrative Tribunals Act and challenge to the same would only be before Administrative Tribunal.

10. Sri.P.S.Rajagopal, learned Senior counsel appearing for learned counsel for appellants in W.A.No.886/2013 submitted that;

a) The very relief sought in the writ petition is seeking quash of provisional select list dated 18.11.2022 and for direction to respondent No.3 to consider the case of the petitioners under category 2A, 2B and 3A and 3B in the final select list. He submits the entire issue pertains to a service concerning post of civil service of the state. Thus, in terms of paragraph 99 of **L.Chandra Kumar's** case jurisdiction of the High Court is ousted.

b) Learned Senior counsel referred to provisions of Education Department Services, Karnataka State Civil Services Rules 1978 more particularly Rule 7 thereof providing for reservation of posts. He insisted that since the said Rules provide for recruitment to State Civil Services, provision of Section 15 and 28 of the Act, 1984 would apply excluding the jurisdiction of the High Court.

(c) Adverting to the reasoning assigned by learned Single Judge at paragraph 8 of the impugned order with reference to Judgments of the Apex Court in the case of **L.Chandra Kumar (supra) and T.K.Rangarajan**



**(supra)** learned Senior counsel submitted that the facts of the case in **T.K.Rangarajan** are distinguishable in that, a case of "unprecedented extraordinary situation having no parallel" had involved. While the facts of the present case do not meet the factual situation of **T.K.Rangarajan** as there is no such extraordinary situation involved.

(d) That there is no whisper in the writ petition regarding approaching the Tribunal not being adequate and efficacious remedy. He contended that learned Single Judge had made out a new case which is not pleaded by the parties. In support of his contentions he referred to the Judgment of the Apex Court in the case of **Trozan & Co., Ltd., (1953) 1 SCC 456** paragraph 38 and the Judgment in the case of State of **W.B Vs W.B. Registration Copywriters Association (2009) 14 SCC 132.**

(e) Learned Senior counsel further submitted that concept of creamy layer at the national level was brought in the year 1992. As for as the State of Karnataka, the

same was introduced much prior to 04.03.1977. The Government order was issued on 28.12.1983 and a subsequent order dated 12.12.1986 is in the form of instruction to the candidates and to the authority issuing the income certificate. That there has been no challenge to any of the orders namely order dated 28.12.1983 and the order dated:12.12.1986. As such no mandamus could have been issued.

(f) The provisions of Karnataka Scheduled Caste and Scheduled Tribes and other Backward Classes (Reservation of Appointments Etc.,) Act, 1990, Karnataka Scheduled Caste and Scheduled Tribes and other Backward Classes (Reservation of Appointments Etc.,) Rules, 1992 and the Government orders issued under the provisions of Article 16(4) of the Constitution of India. The said Government Order apart from laying down modalities of operation of reservation has clarified that to compute "family income" in respect of women candidates who are married the income of the parents should not be added to her income and in

such case only income of their husband should be taken into consideration.

(g) That since the said Government orders have been passed in furtherance to the aforesaid Acts the same have become statutory orders and while making appointments to any office in the civil service of the State of Karnataka or a civil post under the State of Karnataka appointment or posts shall be reserved for scheduled castes, scheduled tribes and other backward classes to such extent and in such manner as may be specified from time to time. Rule 7 of the Recruitment Rules stipulates that the reservation of post shall be in accordance with the norms and extent provided under Rule 9 of the Karnataka Civil Services (General Recruitments) Rules, 1977.

(h) That the recruitment notification in the instant case stipulated that candidates claiming reservation as persons belonging to other backward classes, category-2A, 2B, 3A and 3B should submit along with their applications, caste cum income certificates in Form 'F' stipulated under

Order dated 08.02.2023 in accordance with Rules 3A(2) and (3) of Reservation Rules. Thus, he submitted that learned Single Judge contrary to the aforesaid rules and the recruitment notification which are not even challenged, erroneously relied upon an inapplicable Judgment in the case of ***Surinder Singh Vs Punjab State Electricity Board*** reported in ***(2014) 15 SCC 676*** to hold that while computing the family income in the case of married woman even the income of parents could be taken into consideration.

(i). That learned Single Judge erred in holding that the selecting authority acted without jurisdiction in rejecting the reservation claim of the petitioners on the premise that validity of the reservation certificates can be adjudicated only by District Caste and Income Verification Committee constituted under the Act and Rules.

11. Sri. Naik Nityanand Venkataraman, Sri.Mithun G.A., and Sri.Harish M.G., for the appellants

submitted their arguments supplementing the submission made by the learned Senior counsel.

12. Sri.K.N.Phanindra, learned Senior counsel appearing for the counsel for respondent Nos. 24 to 47 who were the petitioners in the writ petition submitted that;

(a) the core issue that was before the learned Single Judge was with regard to jurisdiction of the DDPI in interpreting the caste certificate and income certificate issued by the competent authorities. That since the said issue did not pertain to process of recruitment the writ petition was entertainable. That the judicial review is part of the basic structure of the Constitution of India. That the issue of "maintainability" of a writ petition being different from the issue of "entertainability" of the petition, there is no express constitutional bar in maintaining a writ petition. That learned Single Judge in exercise of his discretionary any power has given the finding with regard to the entertainability of the writ petition and with regard to the

jurisdiction of Deputy Director of Public Instruction in interpreting the caste certificate and income certificate, as such there is no infirmity in the impugned order.

(b) He submitted that the finding of the learned Single Judge is based on the Judgment of the Apex Court in the case of **T.K.Rangarajan** (supra) as it involved several thousands of candidates and the issue was only relating to interpretation of the caste and income certificate.

(c) That the learned Single Judge came to the conclusion that the caste verifying certificate is to be issued only on the income of the parents and the said conclusion has been arrived at based on the Judgment of the Apex Court in the case of **Surinder Singh vs. Punjab Electricity Board and others (2014) 15 SCC 767, Sunita Singh vs. State of U.P. (2018) 2 SCC 492, Ashok Bhushan Takhur vs. State of Bihar (1995) 5 SCC 403** and on the basis of judgment dated 19.11.2018 passed by the Coordinate Bench of this Court in the case of

***State of Karnataka vs. Smt. Yogeshwari and another (W.P.No.24119/2018).***

(d) As regard the issue concerning Deputy Director of Public Instruction having jurisdiction to interpret the caste and income certificate, the learned Single Judge relying upon the judgment of the Division Bench of this Court in the case of ***Executive Director, KEA vs. State and another 2018 SCC Online Kar.4112*** has held that such interpretation can only be by authority which has issued the certificate and not the selecting authority.

e) Thus, he submitted the aforesaid core issues and the finding given by the learned Single Judge is based on the precedents and to the said extent the writ petition was entertainable and no infirmity could be found.

(f) Bringing to the notice of this Court the subsequent events that have taken place after passing of the impugned order, whereby the State Government conducted the proceedings on 07.02.2023 under the Chairmanship of Ministry of Primary and Secondary

Education resolving to implement the direction issued by the learned Single Judge, learned Senior counsel submitted that the State Government has published new provisional list on 27.02.2023 and after considering the objections to the said provisional list, the State Government has published the final selection list on 08.03.2023. As such, the writ appeals have become infructuous as nothing survives for consideration in view of the subsequent development. He submitted that if the appellants are aggrieved by the selection list dated 08.03.2023 they have separate cause of action and have to agitate the same before the appropriate forum. In support of his submission, learned Senior counsel relies upon the Judgment of the Apex Court in the cases of ***Ramachandraprasad Singh vs. Sharad Yadav (2021) 13 SCC 794, Pasupulipi Venkateshwaralu vs. The Motor and General Traders (1975)1 SCC 770 and K.N. Rajakumar vs. V. Nagarajan and others (2022) 4 SCC 617.*** Thus, he seeks for dismissal of the writ appeals.



13. Sri. Vikram Huilgol, learned Additional Advocate General for the respondent-State submitted that subsequent to the impugned order passed by the learned Single Judge a final selection list has been prepared taking into consideration both the Government order dated 12.12.1986 and the directions issued by the learned Single Judge. A total number of 67892 candidates were found eligible for selection in all the subjects, namely, English Language, Social Studies in Kannada, Urdu and Marati Medium , Mathematics and Science in Kannada, Urdu and Marati Medium, Biological science in Kannada, Urdu and Marati medium including Kalyana Karnataka Region. That out of said 67,892 eligible candidates a list in the ratio of 1:2 was prepared and instead of 30,000 required candidates only 22,432 candidates were selected on roster and merit basis from all 35 districts, as some of the categories did not have twice the required number of candidates. That even though in some districts candidates are more they cannot be selected as the selection is district wise. In other words, an applicant who applied in a

particular district and wrote competitive exam in that district cannot be considered for some other district. That out of the 22,432 eligible candidates selected as above, after considering the income certificate of both husband and parents a list consisting of 13,342 candidates was prepared based on merit cum roster. Out of them 8,376 are women candidates 4,973 are male candidates and 3 are transgender. That on account of redoing the exercise by applying both circular dated 12.12.1986 and the judgment of learned Single Judge and by redrawing of a fresh list based on the individual merits of the candidates 451 candidates who were present in the earlier selection list dated 18.11.2022 have not found place in the revised selection list published on 08.03.2023. Thus, he submits that the final selection list is based on the order of the learned Single Judge and the Government order dated 12.12.1986 and that there is no departure from the reservation policy of the Government. Hence, seeks for dismissal of the appeals.

14. Heard. Perused the records.

15. Considering pleading and reliefs sought in the writ petition, reasons assigned by learned Single Judge in the impugned order, grounds urged in these appeals and the submissions made by learned counsel for the parties, at the outset what needs to be considered is;

a) Whether writ petition as filed seeking the reliefs thereunder is entertainable under Article 226 of the Constitution of India?

16. In this regard at the first instance it is necessary to point out the nature and scope of the issue involved in the matter. It is beneficial to refer the impugned notification dated 21.03.2022 issued by the respondent-State Department of Public Education, Selection and Appointment Authority and District Deputy Director (Administration), Bangalore North Taluk. The title of the notification is "Recruitment Notification". The subject mentioned therein is the "recruitment to the post of Graduate Primary Teacher (for class 6 to 8) for the years 2020-21 to be filled by direct recruitment through District

Level Competitive Examination". The said notification further refers to Karnataka Education Department Services (Public Education Department)(Recruitment)(Special) Rules, 2022, under which the same is issued. It further clarifies that the said notification for selection is issued for public information following the prevailing Rules as per the Recruitment Rules, Reservation Rules and Government Orders issued from time to time mentioned in reference for selection.

17. The aforesaid Rules 2022, have been framed by the State Government in exercise of powers conferred by Section 3 and 8 of the Karnataka State Civil Services Act, 1978. The recruitment process as mentioned in the notification consist of a competitive examination and preparation of select list on the basis of marks secured in the competitive examination with the weightage added in terms of Rule 6. Rule 7(i) of the Rules, 2022 stipulate that the reservation of post shall be in accordance with extant orders of Government and extant law including current orders of the State Government relating to reservation of

posts for the persons belonging to Scheduled Caste, Scheduled Tribes and other backward classes. Rule 8 under the heading "Selection List" envisages publication of provisional select list, receiving and considering objections, if any, to the provisional select list and publication of final select list thereafter.

18. The policy providing for reservation of posts for the persons belonging to Scheduled Caste, Scheduled Tribes and other backward classes is traceable to the Government order dated 28.12.1983 which was issued under clause (4) of Article 16 of the Constitution of India providing the meaning of the phrase "family income" and the manner and method of its computation. The said order provides that while computing "family income" in the case of married women candidate income of her parents should not be added and only the income of her husband to be taken into consideration if they are staying separately as an independent family. If they are living in a joint family income of the candidate along with income of the joint

family should be taken into consideration for calculation of family income. In the case of candidate who is a widow her income alone shall be taken into consideration irrespective of whether or not she lives independently.

19. By another order dated 12.12.1986 the Government reiterated the modalities of operation of reservation.

20. With effect from 01.06.1992 the Karnataka Scheduled Castes, Scheduled Tribes and other backward classes (Reservation of Appointments etc.) Act, 1990 (hereinafter referred to as 'Reservation Act') was enforced. By the said Act all the Government Orders issued under clause(4) of Article 16 of the Constitution of India became statutory orders and it mandated that while making appointment to any office in a civil service of State of Karnataka or a Civil Post under the State of Karnataka, appointments or posts shall be reserved for Scheduled Caste, Scheduled Tribes and other backward classes to such extent and in such manner as may be specified from

time to time in the order made by the Government under clause (4) of Article 16 of the Constitution of India. The Act defines other backward classes to mean Communities, Castes and Tribes notified by the State Government from time to time under clause (4) of Article 15 and clause (4) of Article 16 of Constitution of India. The Act further provides mechanism and protocol for issuance of caste certificate, income and caste certificates and their validation.

21. In exercise of powers conferred under Section 13 of the Reservation Act, the State framed the Rules called the Karnataka Scheduled Caste, Scheduled Tribes and Backward Classes (Reservation of Appointment etc.) Rules, 1992. The order dated 08.02.2000 issued by the Government under the Rules stipulates that the income and caste certificate being issued to the candidates belonging to backward classes other than category-I to be in Form F.

22. Thus, the recruitment notifications subject matter of the present *lis* which were issued for each District in the State on the same day stipulated that the candidates claiming reservation as persons belonging to other backward classes, category 2A, 2B, 3A and 3B to submit along with their applications caste cum income certificate in Form F as stipulated under the Government Order dated 08.02.2000 in accordance with Rule 3-A(2) and (3) on or before 22.04.2022 being the last date for submission of applications. The notification further states that the reservation certificates which are not as per the formats prescribed by Government Order dated 08.02.2000 and not issued in accordance with Rule 3-A(2) and (3) and if received after the stipulated date for receipt of applications, would be rejected.

23. Thus, the above undisputed material facts would reveal that the primary school teacher post of which recruitment is sought is a 'civil post' governed by the Karnataka Education Department Services (Department of Public Instruction) (Recruitment) Rules, 1967 and



Amendment Rules, 2017. Thus, the said post being civil post under the State is governed under the Rules framed under Sub-Section (1) of Section 3 read with Section 8 of the Karnataka Civil Services Act, 1978.

24. The Administrative Tribunals Act, 1985 has been promulgated for adjudication or trial by the Administrative Tribunals of disputes and complaints with respect to recruitment and conditions of service of persons appointed to public services and posts in connection with the affairs of the Union or of any State or any local or other authority within the territory of India under the control of Government of India or of any corporation or society owned or controlled by the Government in pursuance of Article 323A of Constitution and the matters connected therewith are incidental thereto.

25. Section 15 of the Act, 1985 provides for exclusive jurisdiction of the Administrative Tribunal in relation to recruitment and matter concerning recruitment to any civil service or the State or to any civil post under

the State. In other words the matters involving recruitment or matter concerning recruitment are to be dealt with adjudicated and determined by the Administrative Tribunal in terms of Section 15 of the Act, 1985.

26. Section 28 of the Act, 1985 exclude the jurisdiction of all courts except the Supreme Court under Article 136 of the Constitution of India and the Labour Courts and other authorities under the Industrial Disputes Act.

27. The Apex Court in the case of **L.Chandra Kumar Vs Union of India reported in (1997) 3 SCC 261** has held that the Administrative Tribunals constituted under Act, 1985 have jurisdiction to consider all the matters covered under the Act including issue relating to constitutional validity of the provisions relating to recruitment of employees and regulations governing the service conditions. The Apex Court has further held that all decisions of Administrative Tribunals would be subject to

the scrutiny by the Division Bench of their respective High Courts. Paragraph 93 and 94 of the said judgment of the Apex Court are extracted hereunder;

"93. Before moving on to other aspects, we may summarise conclusions on the jurisdictional powers of these Tribunals. The Tribunals are competent to hear matters where the vires of statutory provisions are for the High Courts and the Supreme Court which have, under questioned. However, in discharging this duty, they cannot act as substitute constitutional set-up, been specifically entrusted with such an obligation. Their function in this respect is only supplementary and all such decisions of the Tribunals will be subject to scrutiny before a Division Bench of the respective High Courts. The Tribunals will consequently also have the power to test the vires of subordinate legislations and rules. However, this power of the Tribunals will be subject to one important exception. The Tribunals shall not entertain any question regarding the vires of their parent statutes following the settled principle that a Tribunal which is a creature of an Act cannot declare that very Act to be unconstitutional. In such cases alone, the High Court concerned may be approached directly. All other decisions of these Tribunals, rendered in cases that they are specifically empowered to adjudicate upon by virtue of their parent statutes, will also be subject to scrutiny before a Division Bench of their respective High Courts. (We may add that the Tribunals will, however, continue to act as the only courts of first instance in respect of the areas of law for which they have been constituted. By this, we mean that it will not be open for litigants to directly approach the High Courts even in cases where they question the vires of statutory legislations (except, as mentioned, where the legislation which creates the particular Tribunal is challenged) by overlooking the jurisdiction of the Tribunal concerned.

94. The directions issued by us in respect of making the decisions of Tribunals amenable to scrutiny before a Division Bench of the respective High Courts

will, however, come into effect prospectively i.e. will apply to decisions rendered hereafter. To maintain the sanctity of judicial proceedings, we have invoked the doctrine of prospective overruling so as not to disturb the procedure in relation to decisions already rendered".

28. Further the Apex Court in the case of ***Union of India vs. Allapan Bandyopadhyay*** reported in (2022) 3 SCC 133 following its judgment passed in ***L.Chandra kumar's*** case at paragraph 38, 39 and 40 has held as under;

"38. When once a Constitution Bench of this Court declared the law "all decisions of Tribunals created under Article 323-A and Article 323-B of the High Court within whose jurisdiction the Tribunal concerned falls", of the Constitution will be subject to the scrutiny before a Division Bench It is impermissible to make any further construction on the said issue. The will cover and take within its sweep orders passed on applications or otherwise b expression "all decisions of these Tribunals used by the Constitution Bench to another Bench of the Tribunal in exercise of the power under Section 25 of in the matter of transfer of original applications from one Bench of the Tribunal the Act.

39. In other words, any decision of such a Tribunal, including the one a Division Bench of a High Court within whose jurisdiction the Tribunal passed under Section 25 of the Act could be subjected to scrutiny only before concerned falls. This unambiguous exposition of law has to be followed scrupulous while deciding the jurisdictional High Court for the purpose of bringing in challenge against-an-order of transfer of an original application from one Bench of

Tribunal to another Bench in the invocation of Section 25 of the Act.

40. The law thus declared by the Constitution Bench cannot be revisited by the bundle of facts to ascertain whether they would confer territorial jurisdiction a Bench of lesser quorum or for that matter by the High Courts by looking into to the High Court within the ambit of Article 226(2) of the Constitution. We are of the considered view that taking another view would undoubtedly result in indefiniteness and multiplicity in the matter of jurisdiction in situations when a decision passed under Section 25 of the Act is to be called in question especially in cases involving multiple parties residing within the jurisdiction of different High Courts albeit aggrieved by one common order passed by the Chairman at the Principal Bench at New Delhi".

29. Thus, from the aforesaid factual aspect of the matter, applicable provisions of law and the judgments of the Apex Court it is clear that in the matters of recruitment process, it is the Tribunal under the Act, 1985 which is the court of first instance and the role of Division Bench of the High Court within whose jurisdiction the Tribunal is situated is only in exercise of and judicial review under Article 226/227 of constitution of India.

30. The Apex Court in the case of ***Rajendra Diwan vs. Pradeep Kumar Ranibala*** reported in **(2019) 20 SCC 143** at para 86 has held as under;

*"86. In exercise of its extraordinary power of superintendence and/or judicial review under Articles 226 and 227 of the Constitution of India, the High Courts restrict interference to cases of patent error of law which go to the root of the decision; perversity; arbitrariness and/or unreasonableness; violation of principles of natural justice, lack of jurisdiction and usurpation of powers. The High Court does not re-assess or re-analyse the evidence and/or materials on record. Whether the High Court would exercise its writ jurisdiction to test a decision of the Rent Control Tribunal would depend on the facts and circumstances of the case. The writ jurisdiction of the High Court cannot be converted into an alternative appellate forum, just because there is no other provision of appeal in the eye of the law".*

31. Viewed in that light the next question that arises is whether the reasoning assigned by learned Single Judge while answering issue No.1 regarding maintainability of the writ petition is justified. As seen at paragraph 8 of the impugned order though learned Single Judge has taken note of the law laid down by the Apex Court in the case of **L.Chandra Kumar** has chosen to rely upon judgment of the apex court in the case of **T.K.Rangarajan vs. State of Tamil Nadu** reported in **(2003) 6 SCC 581**. The facts which involved in the case of **T.K.Rangarajan** as narrated at para 2 therein reveal that the Tamil Nadu Government had terminated services of all employees who had resorted to strike for their demands. The said

'unprecedented action' was challenged before the High Court of Madras by filing petitions under Articles 226 and 227 of the Constitution of India, in which by an interim order the learned Single Judge had directed the State Government that the suspension and dismissal of employees without conducting any enquiry be kept in abeyance until further orders and the such employees were directed to resume the duty. The said interim order was questioned in the writ appeal before the Division Bench of the High Court which set aside the interim order by arriving at a conclusion that without exhausting alternative remedy of approaching the Administrative Tribunal, writ petitions were not maintainable. The said case also involved total detention of about 2211, out of which 74 were ladies and only 165 male and 7 female personals had been released on bail. Considering the pathetic conditions of arrestees who were mainly clerks and subordinate staff the Court had directed their release on bail. This order of the Division Bench was challenged by filing an appeal seeking similar reliefs under Article 32 of the Constitution. The Apex Court

in the aforesaid factual background of the matter at paragraphs 5 held that,

*"5. At the outset, it is to be reiterated that under Article 226 of the Constitution the High Court is empowered to exercise its extraordinary jurisdiction to meet unprecedented extraordinary situation having no parallel. It is equally true that the extraordinary powers are required to be sparingly used. **The fact of the present case reveal that this was most extraordinary case which called for interference by the High Court as the State Government has dismissed about two Lakhs employees for going on strike.**"*

(Emphasis supplied by us)

32. At paragraph 6 and 7 taking note of the law laid down in the case of **L.Chandrakumar**, and also the observation of the Court at para 77, 78 and 81 of **Keshvananda Bharathi** case, at para 10 has held as under;

*"10. There cannot be any doubt that the aforesaid of judgment of the larger Bench of this Court and we respectfully agree with same. However, in a case like this , thousand of employees are directed to approach the Tribunal, the Tribunal would not be in a position to render justice to the cause. **Hence, as stated earlier because of very very exceptional circumstances that arose in the present case, there was no justifiable reason for the High Court not to entertain the petition on the ground of alternative remedy provided under the statute.**"*

(Emphasis supplied by us)



33. It is further seen in the said judgment the larger issue involved was also with regard to the consideration of fundamental right to go on strike.

34. As rightly pointed out by Sri. P.S.Rajagopal, learned Senior counsel appearing for some of the appellants, that the facts obtained in the case of **T.K.Rangarajan** (supra) on completely different and distinct from that of the facts involved in the case at hand. In the instant case it is only rejection of caste and income certificates of some of the candidates during the recruitment process. Their names are only figured in a selection provisional list. No vested right as such is created in their favour except expectation of being selected. This cannot be construed as "*an unprecedented extraordinary situation having no parallel*", as pointed out by the Apex Court in its judgment in **T.K.Rangarajan's** case.

35. It is also relevant to note at this juncture that a similar petition seeking quash of endorsement had been filed in W.P.No.200032/2023 (S-RES) before learned Single

Judge at Kalburagi Bench of this court and another batch of writ petitions in W.P.No.5009/2023 (S-RES) connected with other matters were filed before learned Single Judge of this Court. Taking note of the law laid by the Apex Court in the case of **L.Chandra Kumar** (supra) and relevant provisions the Administrative Tribunal Act, 1985, these writ petitions were dismissed/disposed of by orders dated 12.01.2023 and 26.5.2023 respectively, reserving liberty to the petitioners their in to approach the Tribunal constituted under the Administrative Tribunal Act, 1985.

36. As rightly pointed out by Sri. Lakshminarayan, learned Senior counsel appearing for some of the appellants the aforesaid orders passed by the Coordinate Benches in dismissing the writ petitions and the impugned order in entertaining the writ petition on the very ground of jurisdiction by interpreting the law laid down by the Apex Court in the **L.Chandra Kumar's** case has lead to an irreconcilable anomalous situation.

37. Necessary to note at this juncture the submissions made by Sri. K.N.Phanindra, learned Senior counsel who sought to make a distinction between "maintainability" and "entertainability" of a writ petition. True it is that any writ petition in exercise of review jurisdiction of the high Court under Article 226 and 227 is maintainable. The question whether relief sought therein in the given facts and the position of law could be entertained?. As noted in the instant case, in view of statutory bar contained under the Administrative Tribunals Act, 1985 and the legal position enunciated by the Apex Court in **L.Chandra Kumar's** case, it is very clear that the Tribunals constituted under the Act, 1985 are the courts of first instance in the matters pertaining to the process of recruitment and it is only a Division Bench of the respective High Courts vested with power of judicial review against the decision/orders passed by the Tribunals.

38. For the aforesaid reasons and analysis, we are of the considered view that the writ petition filed by the respondent Nos. 27 to 47 seeking reliefs as sought for

therein, under the facts and circumstances of the case could not have been entertained that too solely relying upon the judgment of the Apex Court in the case of **T.K.Rangarajan** (supra), facts of which are palpably different and distinguishable.

39. Since our conclusion on the entertainability of the writ petition having been arrived at in the negative, we refrain from expressing any opinion on the merits or otherwise of the contentions raised on the two other issues dealt with by learned Single Judge. It is therefore, appropriate that impugned order be set aside and all the contentions regarding the said issues be kept open to be urged before the Tribunal.

40. Before parting, it is necessary and imperative to note, at the cost of repetition, that in the affidavit dated 24.08.2023 filed on behalf of the respondents -State it is deposed that in terms of the notifications dated 21.03.2022 issued for each of the 35 Districts 15,000 posts were notified for recruitment of Graduate Primary Teachers

in Government primary schools (6 to 8 standard) (5,000 for Kalyana Karnataka District and 10,000 for other Districts). It is further deposed that 1,06,083 applicants had participated, out of which a total number of 67,892 candidates were found eligible for selection in all subjects. That out of said 67,892 eligible candidates an eligible list in the ratio of 1:2 was prepared and instead of 30,000 candidates only 22,432 were selected on roster and merit basis from all 35 Districts. It is deposed that it is because some of the categories did not have required number of candidates, as such, there was a shortfall in numbers of candidates selected in specific subject. It is further deposed that subsequent to the impugned order passed by the learned Single Judge a selection list in the ratio of 1:1 was prepared and published on 08.03.2023. That the said list was prepared taking into consideration both the Government order dated 12.12.1986 and the order of the learned Single Judge. In that, out of 22,432 eligible candidates, income certificate of both husband and parents was considered and a list consisting of 13,352 candidates

was prepared on the basis of merit cum roster. Out of this 8,376 are women candidates, 4,973 are male candidates and 3 are transgenders. It is further deposed that on account of re-doing the exercise by applying both circular dated 12.12.1986 and the order of the learned Single Judge while drawing up a fresh list on the basis of individual merits of the candidates 451 candidates whose names were enlisted in the earlier selection list dated 18.11.2022 have been left out and have not found place in the revised selection list published on 08.03.2023.

41. Referring to aforesaid contents of the affidavit and the documents produced at Annexure-R1, R2, R3 R4, R5 and R6 to the said affidavit, Sri. Vikram Huilgol, learned Additional Advocate General submitted that the respondent-State Government be permitted to proceed with appointments at least in respect of the said 13352 candidates. He submitted that acute shortage of teachers is impacting the State function in imparting education which is a constitutional obligation of the State. He further submitted that the candidates whose names that were

found in the earlier selection list dated 18.11.2022 and did not find place in the revised selection list published on 08.03.2023 is only numbering 451 and the names of the remaining candidates were in any case existed in the said earlier selection list dated 18.11.2022. He submitted that the State would ensure that such appointments would be subject to the outcome of the challenge being made by the petitioners in these petitions.

42. In response, it was contended on behalf of the appellants that if such a process is adopted same would adversely affect the carrier prospects of the appellants. It is also contended on behalf of the appellants that the effect of the impugned order passed by the learned Single Judge is that around 350 selectees are now substituted by another set of 350 candidates. Therefore, it is contended on behalf of the appellants that even the appellants herein be appointed against the admitted vacant posts subject to outcome of the challenge being raised by them.

43. In response, learned Additional Advocate General, submitted that the request of the appellants to accommodate them in the selection process was not practicable inasmuch as different notifications were issued for each of the 35 districts and the candidates who have applied in one district cannot be considered for another district merely because vacancy available in other districts. Also because the requirement in each district varies as the notification has been issued considering the local requirement arising on subject wise. Such accommodation of the appellants would also impact the reservation roster.

44. We have given our anxious consideration to the aforesaid submissions made on behalf of the State and the appellants. It is not in dispute that the Deputy Director of Public Instruction the appointing authority had rejected the candidature of the writ petitioners on the premise of they not furnishing the caste cum income certificates as prescribed in the notifications and had brought them under General Merit Category. This issue however requires



consideration in a properly constituted petition before the Administrative Tribunal as held by us hereinabove.

45. Thus, considering imminent requirement of the Graduate Primary School Teachers and large vacancy across the State and in the interest of the students of 6 to 8 standards who are left high and dry for want of teachers, we are of the considered view that the respondent-State be permitted to proceed with appointing teachers from 13352 selected candidates as per the list dated 08.03.2023 produced at Annexure-R6 to the affidavit. It is however made clear since it is deposed in the affidavit that the said list at Annexure-R6 has been prepared and published on 08.06.2023 by taking into consideration income certificate of both husband and parents, as well as on merit cum roster, the appointment of the candidates who have not submitted the caste cum income certificate in the form prescribed in the notification and which is not in terms of Government Order dated 12.12.1986, and who are included in the list in view of the

order passed by learned Single Judge be deferred until the outcome of the result of the challenge.

46. As regards the remaining 451 posts since it is contended that their names have been excluded purely on the merit basis, it is clarified that if in the event the eligibility of such candidates who have not furnished the caste cum income certificate in the prescribed form is held to be invalid, such posts may be filled from amongst the candidates who have been excluded on merits and the candidates who have submitted certificates in the prescribed form.

47. We further make it clear that this provision enabling the State Government to proceed with the process of appointment is made under the peculiar fact situation of the matter wherein the present litigation has brought the process of appointment of teachers of class 6 to 8 across the State to a grinding halt only on account of rejection of application of some of the candidates by the Deputy

Director of Public Instruction for want of caste cum income certificate in the prescribed form.

With the above observation, writ appeals are partly allowed. Impugned order dated 30.01.2023 passed in W.P.No.23752/2022 (GM-CC) is set aside. Respondent-State is permitted to proceed appointing the teachers in the lines of observation made in paragraphs 45 and 46 hereinabove.

**Sd/-  
CHIEF JUSTICE**

**Sd/-  
JUDGE**

SBN/RU