THE HON'BLE SRI JUSTICE PULLA KARTHIK

WRIT PETITION No.22593 of 2023

ORDER:

This Writ Petition is filed seeking to declare the action of respondent No.1 in not conducting Examination dated 01.08.2023 in Telugu language for the post of Art Teacher in Residential Educational Institutions Societies, as illegal and arbitrary.

2) Heard Sri Bhaglekar Akash Kumar, learned counsel for the petitioner, Sri Nayakwadi Ramesh, learned counsel appearing for the first respondent, and the learned Government Pleader for Services appearing for the second respondent.

3) Learned counsel for the petitioner has submitted that the first respondent has issued notification No.6/2023 dated 05.04.2023 inviting applications from eligible candidates, pursuant to which, the petitioner has applied for the post of Art Teacher, appeared for the examination conducted through online mode on 01.08.2023. Learned counsel has contended that though in the Notification it was categorically mentioned that the question paper is bilingual i.e. in English and Telugu, but the question paper did not contain the questions in Telugu language and only contained in English, contrary to the notification, due to which, the petitioner could not write the exam properly. Therefore, non-conducting of the examination in Telugu language is violative of Schedule-VIII of

Constitution of India, which recognizes Telugu as one of the languages and also violative of Article 14 of the Constitution of India as by providing the question paper only in English language, the respondents have discriminated against the candidates knowing Telugu. Therefore, it is prayed to allow the Writ Petition. In support of his submissions, learned counsel has relied on ***K.Manjusree v. State of Andhra Pradesh***[1].

4) Per contra, the learned Standing Counsel has submitted that the all the Residential Institutions working under the five Residential Societies are English Medicum Institutions and run with an objective to maintain the vocabulary and coaching patter, the teachers have to teach in English only to compete with that of the students studying in private and corporate English Medium schools. Learned Standing Counsel while admitting that the examination was conducted in English language only, has contended that during the previous direct recruitment conducted by the TSPSC to the post of Art Teacher under notification No.17/2017 dated 14.04.2017, the question paper was given only in English language and the selected candidates in the previous recruitment were appointed and working since last six years without any grievance. It is further stated that the candidates who will be called for an interview/demonstration in the ratio of 1:2 will

[1] (2008) 3 SCC 512

be asked to demonstrate before the Board in English language only and not in Telugu language as the Residential Schools are being run in English medium only. Therefore, the question paper was prepared in English medium only and accordingly the examined was conducted on 01.08.2023 for the post of Art Teacher. Learned Standing Counsel has further submitted that the first respondent-Society has issued 8 notifications on 05.04.2023 along with the present notification inviting applications for different posts viz., Degree College Lecturers, Junior College Lecturers, Librarians, Physical Directors, PGT, TGT, Craft, Music and Art Teachers and for all the nine notifications, the question paper would be in English version only as the Institutions are being run in English medium only. Therefore, there are no merits in the writ petition and prayed to dismiss the Writ Petition. In support of his submissions, learned counsel has relied on ***Ram Ratan v. Union of India***[2].

5) This Court has taken note of the submissions made by the respective counsel.

6) A perusal of the material on record reveals that admittedly the notification No.6/2023 dated 05.04.2023 issued by the first respondent inviting applications for the post of Art Teacher wherein

[2] 2006 SCC OnLine Raj 611

it was categorically mentioned at para (1) (v) that the question paper is bilingual i.e. English and Telugu. Therefore, the action of the respondents in conducting the examination only in English version is contrary to their own notification.

7) In similar circumstances, the Hon'ble Supreme Court in ***K. Manjusree (referred supra)***, has held as under:

> 27. But what could not have been done was the second change, by introduction of the criterion of minimum marks for the interview. The minimum marks for interview had never been adopted by the Andhra Pradesh High Court earlier for selection of District & Sessions Judges, (Grade II). In regard to the present selection, the Administrative Committee merely adopted the previous procedure in vogue. The previous procedure as stated above was to apply minimum m arks only for written examination and not for the oral examination. We have referred to the proper interpretation of the earlier resolutions dated 24.7.2001 and 21.2.2002 and held that what was adopted on 30.11.2004 was only minimum marks for written examination and not for the interviews. Therefore, introduction of the requirement of minimum marks for interview, after the entire selection process (consisting of written examination and interview) was completed, would amount to changing the rules of the game after the game was played which is clearly impermissible. We are fortified in this view by several decisions of this Court. It is sufficient to refer to three of them – *P.K. Ramachandra Iyer v. Union of India* (1984) 2 SCC 141, *Umesh Chandra Shukla v. Union of India* (1985) 3 SCC 721, and *Durgacharan Misra v. State of Orissa* (1987) 4 SCC 646.
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> 28. In *Ramachandra Iyer* (1 supra), this Court was considering the validity of a selection process under the ICAR Rules, 1977 which provided for minimum marks only in the written examination and did not envisage obtaining minimum marks in the interview. But the Recruitment Board (ASRB) prescribed a further qualification of obtaining

minimum marks in the interview also. This Court observed that the power to prescribe minimum marks in the interview should be explicit and cannot be read by implication for the obvious reason that such deviation from the rules is likely to cause irreparable and irreversible harm. This Court held that as there was no power under the rules for the Selection Board to prescribed the additional qualification of securing minimum marks in the interview, the restriction was impermissible and had a direct impact on the merit list because the merit list was to be prepared according to the aggregate marks obtained by the candidates at written test and interview. This Court observed :

> "44. ...Once an additional qualification of obtaining minimum marks at the viva voce test is adhered to, a candidate who may figure high up in the merit list was likely to be rejected on the ground that he has not obtaining minimum qualifying marks at viva voce test. To illustrate, a candidate who has obtained 400 marks at the written test and obtained 38 marks at the viva voce test, if considered on the aggregate of marks being 438 was likely to come within the zone of selection, but would be eliminated by the ASRB on the ground that he has not obtaining qualifying marks at viva voce test. This was impermissible and contrary to rules and the merit list prepared in contravention of rules cannot be sustained."

29. In Umesh Chandra (2 supra), the scope of the Delhi Judicial Service Rules, 1970 came up for consideration. The rules provided that those who secured the prescribed minimum qualifying marks in the written examination will be called for viva voce; and that the marks obtained in the viva voce shall be added to the marks obtained in the written test and the candidate□s ranking shall depend on the aggregate of both 27 candidates were found eligible to appear for viva voce on the basis of their having secured the minimum prescribed marks in the written examination. The final list was therefore, expected to be prepared by merely adding the viva voce marks to the written examination marks in regard to those 27 candidates. But the final list that was prepared contained some new names which were not in the list of 27 candidates who passed the written examination. Some names were omitted from the list of 27 candidates who passed the written examination.

30. It was found that the Selection Committee had moderated the written examination marks by an addition of 2% for all the candidates, as a result of which some candidates who did not get through the written examination, became eligible for viva voce and came into the list. Secondly, the Selection Committee prescribed for selection, a minimum aggregate of 600 marks in the written examination and viva voce which was not provided in the Rules and that resulted in some of the names in the list of 27 being omitted. This Court held neither was permissible. Dealing with the prescription of minimum 600 marks in the aggregate this Court observed:

"14. ...There is no power reserved under Rule 18 of the Rules for the High Court to fix its own minimum marks in order to include candidates in the final list. It is stated in paragraph 7 of the counter-affidavit filed in Writ Petition 4363 of 1985 that the Selection Committee has inherent power to select candidates who according to it are suitable for appointment by prescribing the minimum marks which a candidate should obtain in the aggregate in order to get into the Delhi Judicial Service. ... But on going through the Rules, we are of the view that no fresh disqualification or bar may be created by the High Court or the Selection Committee merely on the basis of the marks obtained at the examination because clause (6) of the Appendix itself has laid down the minimum marks which a candidate should obtain in the written papers or in the aggregate in order to qualify himself to become a member of the Judicial Service. The prescription of the minimum of 600 marks in the aggregate by the Selection Committee as an addition requirement which the candidate has to satisfy amounts to an amendment of what is prescribed by clause (6) of the Appendix. ... We are of the view that the Selection Committee has no power to prescribe the minimum marks which a candidate should obtain in the aggregate different from the minimum already prescribed by the Rules in its Appendix. We are, therefore, of the view that the exclusion of the names of certain candidates, who had not secured 600 marks in the aggregate including marks obtained at the viva voce test from the list prepared under Rule 18 of the Rules is not legal."

31. In Durgacharan Misra (3 supra), this Court was considering the selection under the Orissa Service Rules which did not prescribe any minimum qualifying marks to be secured in viva voce for selection of Munsifs. The rules merely required that after the viva voce test the State Public Service Commission shall add the marks of the viva voce test to the marks in the written test. But the State Public Service Commission which was the selecting authority prescribed minimum qualifying marks for the viva voce test also. This Court held that the Commission had no power to prescribe the minimum standard at viva voce test for determining the suitability of candidates for appointment of Munsifs.

32. In Maharashtra SRTC v. Rajendra Bhimrao Mandve [(2001) 10 SCC 51], this Court observed that the rules of the game, meaning thereby, that the criteria for selection cannot be altered by the authorities concerned in the middle or after the process of selection has commenced. In this case the position is much more serious. Here, not only the rules of the game were changed, but they were changed after the game has been played and the results of the game were being awaited. That is unacceptable and impermissible.

33. The Resolution dated 30.11.2004 merely adopted the procedure prescribed earlier. The previous procedure was not to have any minimum marks for interview. Therefore, extending the minimum marks prescribed for written examination, to interviews, in the selection process is impermissible. We may clarify that prescription of minimum marks for any interview is not illegal. We have no doubt that the authority making rules regulating the selection, can prescribe by rules, the minimum marks both for written examination and interviews, or prescribe minimum marks for written examination but not for interview, or may not prescribe any minimum marks for either written examination or interview. Where the rules do not prescribe any procedure, the Selection Committee may also prescribe the minimum marks, as stated above. But if the Selection Committee want to prescribe minimum marks for interview, it should do so before the commencement of selection process. If the selection committee prescribed minimum marks only for the written examination, before the commencement of selection process,

it cannot either during the selection process or after the selection process, add an additional requirement that the candidates should also secure minimum marks in the interview. What we have found to be illegal, is changing the criteria after completion of the selection process, when the entire selection proceeded on the basis that there will be no minimum marks for the interview.

34. It was submitted that Administrative Committee and Interview Committee were only delegates of the Full Court and the Full Court has the absolute power to determine or regulate the process of selection and it has also the power and authority to modify the decisions of the Administrative Committee. There can be no doubt about the proposition. The Administrative Committee being only a delegate of the Full Court, all decisions and resolutions of Administrative Committee are placed before the Full Court for its approval and the Full Court may approve, modify or reverse any decision of the Administrative Committee. For example when the resolution dated 30.11.2004 was passed it was open to the Full Court, before the process of selection began, to either specifically introduce a provision that there should be minimum marks for interviews, or prescribe a different ratio of marks instead of 75 for written examination and 25 for interview, or even delete the entire requirement of minimum marks even for the written examination. But that was not done.

35. The Full Court allowed the Administrative Committee to determine the method and manner of selection and also allowed it to conduct the examination and interviews with reference to the method and manner determined by the Administrative Committee. Once the selection process was completed with reference to the criteria adopted by the Administrative Committee and the results were placed before it, the Full Court did not find fault with the criteria decided by the Administrative Committee (as per resolution dated 30.11.2004) or the process of examinations and interviews conducted by the Administrative Committee and Interview Committee. If the Full Court had found that the procedure adopted in the examinations or interviews was contrary to the procedure prescribed, the Full Court could have set aside the entire

process of selection and directed the Administrative Committee to conduct a fresh selection. The resolution dated 30.11.2004 was approved. It did not find any irregularity in the examination conducted by the Administrative Committee or the interviews held by the Selection Committee. The assessment of performance in the written test by the candidates was not disturbed. The assessment of performance in the interview by the Selection Committee was not disturbed.

36. The Full Court however, introduced a new requirement as to minimum marks in the interview by an interpretative process which is not warranted and which is at variance with the interpretation adopted while implementing the current selection process and the earlier selections. As the Full Court approved the resolution dated 30.11.2004 of the Administrative Committee and also decided to retain the entire process of selection consisting of written examination and interviews it could not have introduced a new requirement of minimum marks in interviews, which had the effect of eliminating candidates, who would otherwise be eligible and suitable for selection. Therefore, we hold that the action of Full Court in revising the merit list by adopting a minimum percentage of marks for interviews was impermissible.

37. The Division Bench of the High Court while considering the validity of the second list, has completely missed this aspect of the matter. It has proceeded on an erroneous assumption that the resolution dated 30.11.2004 of the Administrative Committee prescribed minimum marks for interviews. Consequently, it erroneously held that the Administrative Committee had acted contrary to its own resolution dated 30.11.2004 in not excluding candidates who had not secured the minimum marks in the interview and that the Full Court had merely corrected the wrong action of the Administrative Committee by drawing up the revised merit list by applying marks for interview also. The decision of the Division Bench therefore, cannot be sustained.

8) In view of the above law laid down by the Hon'ble Supreme Court, the action of the respondents in conducting examination in single language i.e. English, in spite of mentioning as bilingual in

the notification, cannot be sustained and therefore is liable to be set aside.

9) Coming to decision relied by the learned Standing Counsel in ***Ram Ratan (referred supra)***, in the said case, the petitioners therein have approached the Court after declaration of results and in the said case no complaint was made by anyone until the results were declared. But, in the present case, admittedly, the examination was conducted on 01.08.2023 and immediately the petitioners have approached this Court and this Court has also passed interim orders directing the respondents not to declare the results of the examination held on 01.08.2023. Therefore, the said judgment has no application to the facts of the present case.

10) Accordingly, the Writ Petition is allowed and the respondents are directed to conduct fresh written examination for the post of Art Teacher in first respondent Society in two languages i.e. English and Telugu, as specified in notification No.6/2023, dated 05.04.2023, without any deviation.

Miscellaneous petitions pending, if any, shall stand closed. No costs.

PULLA KARTHIK, J

Date : 04-04-2024
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