

(2008) 08 MAD CK 0118

In the Madras High Court

Case No : Writ Appeal No. 48762 of 2006, 1215, 1152, 27823 of 2007, M.P. No. 1 of 2007 in W.A. No. 1152 of 2007, M.P. No. 2 of 2007 in W.A. No. 1215 of 2007, M.P. No. 4 of 2006 in Writ Petition No. 48762 of 2006 and M.P. No. 1 of 2007 in Writ Petition No. 27823 of

Higher Secondary School Computer Teachers Association APPELLANT
Vs

Tamil Nadu Computer Science B. Ed. Graduate Teachers RESPONDENT
Welfare Society and Others
State of Tamil Nadu Vs N.
Jayalakshmi, Tamil Nadu Arasu Melnilai Palli Kanini Asiriyargal
Nala Sangam and Ewde District Computer Teachers
Association
E. Chandravadana Vs State of Tamil Nadu

S. Rajamani and Others Vs The Government of Tamil
Nadu

Date of Decision : 22-08-2008

Acts Referred:

Constitution of India, 1950 — Article 16(1), 320, 320(3)

Citation : (2008) 08 MAD CK 0118

Hon'ble Judges : M. Venugopal, J; Elipe Dharma Rao, J

Bench : Division Bench

Advocate : Muthukumarasamy for A Jenasen, in W.P. No. 27823/2007, Nalini Chidambaram for Gladys Daniel, in W.A. No. 1215/2007 and Hema Sampath, in WP. 48762/2007, for the Appellant; Muthukumarasamy for A Jenasen, for R1 in W.A. No. 1152/2007, Nalini Chidambaram for Gladys Daniel, for R. 2 to R. 5 in W.A. No. 1152/2007, for Respondents in W.P. Nos. 27823/2007 and W.P. No. 48762/2006, N. Kannadasan, A.A.G.-IV assisted by Dakshayani Reddy, Addl. Govt. Pleader (Education) for R. 6 in W.A. No. 1152/2007, Hema Sampath, W.A. No. 1215/2007, R. Meenal for R. 2 in W.A. No. 1215/2007, A.R. Nixon, for R. 3 in W.A. No. 1215/2007, N.G.R. Prasad, for Row and Reddy and C.K. Chandrasekhar, for the Respondent

Final Decision : Dismissed

Judgement

Elip Dharma Rao, J.—Two warring groups, fighting for their respective causes and claims are before this Court in this batch of proceedings. While one group viz. The Higher Secondary School Computer Teachers Association, justifies the

action of the Government, in calling for applications from the suitable candidates from within the Computer Teachers already working in various Schools on consolidated pay so as to be absorbed in the computer teacher posts, after conducting a special drive test, the other group, viz. The Tamil Nadu Computer Science B. Ed., graduate Teachers Welfare Society are opposing such of the action of the Government.

2. A brief history of the case, as has been gathered from various materials placed on record, would unfold the respective claims of the parties.

Prior to 1999, graduates with Post Graduate Diploma in Computer Applications (PGDCA) from a recognised University were appointed by Parents and Teachers Association of various schools as Computer Teachers in various schools. In the year 1999, the Government took a policy decision to bring out a Scheme to offer computer education in about 1200 Government Higher Secondary Schools from the academic year 1999-2000. On 17.3.1999, the Chief Minister, while presenting the Budget for the year 1999-2000 before the Legislative Assembly informed on the floor of the Assembly that the Government had decided to utilize the maximum of contemporary innovation in the Information Technology for economic and social development of the State and thus proposed to draw a Scheme for offering Computer Education teased on curriculum designed by experts as an elective subject in the 11th and 12th standards in all 1200 higher secondary schools in the State from the academic year 1999-2000.

3. On 19.3.1999, the State Government invited sealed tenders from reputed organizations and computer training centers for leasing out computer hardware and software and providing computer training in 1200 Higher Secondary Schools in four regions i.e. Chennai, Trichy, Coimbatore and Madurai for five years by engaging qualified instructors of their choice. The eligibility criteria fixed in the tender was that the Instructors should hold educational qualifications in Computer Science from recognised institutions and the Instructors must be graduates in any discipline, but with qualification in Computer Science. Thereafter, the State Government entered into contract with the Electronic Corporation of Tamil Nadu (ELCOT) for a period of five years in order to conduct the computer classes in about 1200 Higher Secondary Schools. As per the instructions of the Government, the ELCOT has selected many agencies to fill up the vacancies by selecting the qualified Computer Instructors and the agencies were instructed to select the qualified computer instructors and the ELCOT has prescribed the following qualifications:

- a) B.E. Degree in Computer Science/ECE/EEE from a recognized University;
- b) B. Sc. (Computer Science)
- c) M.C.A.
- d) B.C.A.
- e) Any degree from a recognized University in the State with one year P.G.

Diploma course in Computer Application offered by recognized University.

4. However, B. Ed, qualification was not prescribed as a necessary qualification. The Computer Instructors were appointed in two phases. In Phase-1, 1332 instructors were appointed in the year 1999 and in Phase-II 1062 Instructors were appointed in the year 2000, thus, in toto, 2394 Computer Instructors were appointed on a consolidated salary of Rs. 1,500/= which was later enhanced to Rs. 2,000/= per month.

5. In the meantime, aggrieved by the said policy of the State Government, W.P. No. 6564 of 1999 was filed before this Court. While dismissing the said writ petition on 23.4.1999 [E. Chandravadanam and 4 others Vs. The State of Tamil Nadu and 2 others, , a learned single Judge of this Court has observed as follows:

In the future, if the Government creates any permanent or sanctioned posts to impart Computer Science in Government Higher School, no doubt such posts shall be filled up by recruiting candidates sponsored by the Employment Exchange and by following the Rule of Reservation.

It has also been observed that:

While appreciating the "golden object" of the Government in imparting computer education to the students studying in 1200 Government Higher Secondary Schools, which is put forth as their policy and moulded in a scheme to implement such policy through contracts with reputed organisations/Institutions/Computer Training Centres, this Court repose its confidence in the Government, which is the custodian of the social justice, to take care of the interests of the qualified persons like Petitioners therein who are also hailing from the rural areas and to take appropriate decisions in its wisdom to provide suitable employment to such qualified persons as the Government may deem fit.

6. The contract came to an end by February, 2005, however, considering the welfare of the students, the contract employees were allowed to continue to work in the Government Schools. Thereafter, the Government had taken a policy decision in the year 2006 to have one post of Computer Instructor in every Government Higher Secondary School i.e. in all the 1880 Government/ Corporation/District Municipalities/Municipalities Higher Secondary Schools and accordingly, G.O. Ms. No. 187, dated 4.10.2006 was issued, creating 1880 posts of Computer Instructors. By this G.O., it was directed that all the said posts would be filled up temporarily on the basis of the "Existing Rules".

7. At this juncture, it is to be pointed out that in Para No. 13 of the common counter affidavit filed by the Government before the learned single Judge it has been stated that "there are already precedents in Education Department as well as in other Departments, where temporary employees of a similar nature were inducted into Government Service" giving details of such absorption. It seems, some of the vocational teachers working before 1999 were regularized by the Government of Tamil Nadu, by G.O. Ms. No. 7, dated 4.1.2000. Based on such

factual background, the Higher Secondary School Computer Teachers have represented to the Government for providing permanent posts to them.

8. Following the said G.O., and considering the request of the Computer Teachers working in the Government Higher Secondary Schools, the Government issued Government M.S. Letter No. 188, dated 4.10.2006, stating that a special test will be conducted by the Teachers Recruitment Board for Computer Instructors currently working in the Government Higher Secondary Schools and selection will be made based on the marks obtained. It has also been made clear that the educational qualification for the Computer Instructors recruited by contractors holds good for the Instructors who appear for competitive exam also and the B. Ed. Qualification has not been insisted upon them. Thus, the request for regularization was not considered in its entirety but, they were permitted to participate in the competitive examination and it has been made clear, in no uncertain terms, that appointment will be given only on the basis of their performance.

9. It is also seen from the Minutes of the Meeting regarding Recruitment/Appointment of Computer Instructors in Government Higher Secondary Schools held on 10.10.2006 that the Government has decided as follows:

1. Those Computer Instructors appointed by the contractors and who were in service on the dates when the Government took over payment of their salary in Government/Corporation/Municipal Higher Secondary Schools immediately after the expiry of the contract period, will be eligible to appear for the Special Test to be conducted by the Teachers Recruitment Board. The Director of School Education should assess the number of eligible persons in this regard.

2. The Special Test for recruitment of Computer Instructors will be conducted by the Teachers' Recruitment Board. The Director of School Education will finalise the syllabus in consultation with the Teachers' Recruitment Board.

3. The Test in Education Methodology may not be necessary, since B. Ed. qualification has not been insisted.

4. The candidates may be required to apply through the Headmasters of the respective schools. Each candidate should obtain a certificate from the Headmaster of the respective school with regard to their eligibility.

5. The minimum qualifying marks will be 50%.

6. the posts of Computer Instructors will be filled up by the Director of School Education based on the list of candidates selected and furnished by the Teachers' Recruitment Board, subject to the availability of posts, 7. The Director of School Education should send draft Adhoc Rules for the post of Computer Instructors for approval by the Government.

10. This decision of the Government, dispensing with the qualification of B. Ed, qualification has paved way for the qualified B,Ed. graduates in Computer

Science to file a batch of writ petitions. A learned single Judge of this Court, by an elaborate order has held that the said Government M.S. Letter No. 188, dated 4.10.2006 is unsustainable and quashed the same. Aggrieved by the same, while the Higher Secondary School Computer Teachers Association has preferred Writ Appeal No. 1152 of 2007, the Government has preferred Writ Appeal Nos. 1215 of 2007.W.P. No. 48762 of 2006, which has been filed by a B. Ed, candidate challenging the said Government M.S. Letter No. 188, dated 4.10.2006 has been tagged with these matters. W.P. No. 27823 of 2007 has also been filed by the B Ed. or M. Ed. graduates praying to issue consequential orders to the authorities concerned, based on the order of the learned single Judge and one of the left out matter, which was filled challenging the has been tied along with this batch.

11. Since all these matters are inextricably interconnected with each other, they all are taken up together and are being disposed of by this common judgment.

12. The contention of the Tamil Nadu Computer Science B. Ed. Graduate Teachers Welfare Society is that the policy of the Government in not insisting on B. Ed, qualification is illegal; that Computer Science is a general subject and for general subjects, teachers are appointed with B. Ed, qualification; that for vocational subjects, instructors are appointed without B. Ed, qualification and no University offers B. Ed, in vocational course, but B. Ed, courses in Computer Science are offered in many recognised Universities and therefore, Computer Science is not a vocational course, but it is purely a general subject, for which only the teachers with B. Ed. qualification must be appointed.

13. Thus, the main thrust of these B. Ed. Graduates is that the subject "computer science" being in a general education stream, only the B. Ed. Graduates should be appointed. On the other hand, the Higher Secondary School Computer Teachers have submitted that the Computer Science is a vocational component in the General Education stream and hence, there is no need to appoint the B. Ed. Graduates.

14. The B. Ed. Graduates have relied on a communication of the Director of Government Examinations, Chennai-6 in Rc. No. 135585/HI/2004, dated 24.3.2005, to contend that "computer science" was included in the general education stream and not as a vocational subject and that in Higher Secondary Schools, B.T. and P.G. Assistants are appointed through direct recruitment for all General Educational stream subjects, with the Bachelors Degree and Masters Degree in the relevant subject, with B Ed. Degree from recognized University. Though the Government has earlier taken the stand that the Computer Science subject is coming under General Stream as an optional subject and regular teaching posts have not been sanctioned by the Government so far, subsequently they have argued that the subject of Computer Science is a vocational component in the general education stream. It has also been submitted on the part of the Government that the fact that the "Computer Science" subject is treated only as a vocational course is further clear from the pay scale of Rs. 5500-175-9000 fixed to the post of Computer Instructor, while for the teachers

of subjects in general stream, the pay scale is Rs. 6500-200-10500. In view of the rival contentions, now we have to see whether the "Computer Science" subject is a subject under General Stream or a vocational component.

15. The Government of Tamil Nadu, in their orders Ms. No. 453, Education dated 7.4.1986 and G.O. Ms. No. 1452 (HS2) Department, dated 19.9.1986 have introduced altogether ten Vocational component subjects as detailed below:

1. Banking
2. Office Management
3. Typewriting
4. General Insurance
5. Electronics
6. Electrical Domestic Appliances
7. Electrical Motor Rewinding
8. General Machinist
9. Radio and TV Maintenance and Repairs
10. Computer Science

16. During 1993-94, a High Level Committee on Vocational Education has submitted a report and as could be seen from the said report, Computer Science has been included under the heading "vocational Component Subject-Theory under general stream" in Part III. In G.O. Ms. No. 588 Education, Science and Technology (VE) Department, dated 21.7.1995, qualifications were prescribed for the post of part-time vocational instructors (Computer Science) in Higher Secondary Schools with effect from 3.9.1994. By G.O. Ms. No. 790, Education, Science and Technology (VE) Department, dated 6.11.1996, the fully qualified part-time Vocational Instructors (Computer Science) were absorbed in the regular time scale of pay i.e. Rs. 1400-40-1600-50-2300-60-2600. As could be seen from "the Status note on vocationalisation of Education in Tamil Nadu, submitted by the Director of School Education, Chennai, dated 25th and 26th September, 1997", some of the vocational courses introduced in Higher Secondary standards were also included as vocational component subjects under General stream, Part-III optional, which include "Computer Science" subject also.

17. Public Examination Question Paper for the Computer Science subject for the year March, 2006 has been submitted before us. The propriety or contents of this document has not been disputed by anybody. Even as could be seen from this Question Paper it has been clearly mentioned therein that "Part-III Vocational Component, Computer Science". Therefore, from the above materials available on record, it is clear that the subject "Computer Science" has always been treated only as a Vocational Component.

18. However, the B. Ed. Graduates have relied on a communication of the Director of Government Examinations, Chennai-6 in Rc. No. I35585/HI/2004, dated 24.3.2005, to contend that the subject "Computer Science" was included in the general education stream and not as a vocational subject and that in Higher Secondary Schools, B.T. and P.G. Assistants are appointed through direct recruitment for all General Educational stream subjects, with the Bachelors degree and Masters Degree in the relevant subject, with B. Ed. Degree from recognized University.

19. For better appreciation, we extract hereunder the translated version of the said communication dated 24.3.2005:

From Director of Government Examinations, Chennai-600006.

To All Headmasters/Headmistresses of Higher Secondary Schools, Tamil Nadu and Pondi-cherry.

Rc. No. I35585/HI/2004 Dated: 24.3.2005.

Sir/Madam Sub: Examinations/Higher Secondary Examinations/ Introduction and implementation of new syllabus - Regarding.

Ref: Government Order No. 46, Department of School Education (Q2) dated 14.5.2004.

With reference to the above, Government order has been issued introducing new syllabus for the 11th and 12th standard from the Academic year 2004-2005 and 2005-2006 respectively. This Government order envisaged under General Education Stream, certain changes by deleting a few lessons from and adding new lessons to the existing higher education syllabus. Accordingly, 1. Higher Secondary School Examinations, under General Education Stream, shall be conducted from March 2006 as per the lessons given in Annexure-2.

2. Vocational subjects, such as Banking, Electrical Domestic Appliances Repair and Maintenance, Electrical Motor Rewinding, Electronics General Insurance, General Machinist, Office Management, Radio & T.V. Maintenance and Repairs, Typewriting shall not be included in the General Education Stream. These lessons shall be taught only under Vocational Courses.

3. The subjects,

(a) Nursing under Vocational course,

(b) Foundation Science under Medical Lab Assistant Course, and

(c) Psychology under Child care and Nutrition course have been deleted from the respective courses.

4. Nursing, Nutrition and Dietetics, Bio-Chemistry, Micro Biology and English are included in the General Education stream as per the new syllabi.

It is, therefore, advised that the subjects, other than those mentioned in the Annexure-2 under General Education Stream, are to be taught in School, the same may be notified forthwith to the Chief Educational Officer, concerned....

20. Our endeavour to find whether the subject "Computer Science" has been included in the general education stream, by way of this communication, as has been submitted on the part of the B. Ed. graduates, has ended in vein, since nowhere, either in this document or in any other document submitted before us, such a categorical instruction was given by the Government to its authorities, holding that the subject "Computer Science" is a subject in the general education stream. Moreover, if the contention of the B. Ed. graduates that by way of this communication, the subject "Computer Science" was included in the general education stream, is accepted, since the changes in the syllabi are directed to be effective from 2004-2005 and 2005-2006 for standards 11th and 12th, in the question paper for the year March, 2006, for the subject "Computer Science" it should have been mentioned only as a subject under general educational stream and not as "Part-III Vocational Component, Computer Science", as it bears. Even though under the above said communication dated 24.3.2005, the subject "Computer Science" was re-codified as theory and practical for the benefit of the students, it can ? not be said that the subject "Computer Science" has lost the character of "vocational component", since there is no conclusive proof in support of this contention. Therefore, this argument advanced on the part of the B. Ed. graduates cannot be accepted.

21. The other argument advanced on the part of the B. Ed. graduates is that the subject "Computer Science" has been re-codified as theory and practical and the marks have been shown in the marks lists like that of the main stream subjects. For this argument, a strong reply has been submitted on the part of the Government that the ultimate object of the Government is to see that the persons who chose these vocational oriented subjects are benefited by immediate placements and are in a better position to start a self employment business project. We find no reason to reject this argument advanced on the part of the Government, in view of the above discussed facts that the subject "Computer Science" has always been considered only as a vocational subject and by the communication dated 24.3.2005, it has been treated as a "vocational component" and even the pay scale of the Computer Instructors has been fixed only on par with other teachers of the vocational subjects and thus, the subject "computer science" has not lost the characteristics of vocational component. Thus deciding this point, now we shall proceed to decide the other aspects involved in the cases.

22. On the part of the B. Ed. graduates it has been argued that even in the agreements entered into by the ELCOT with the contractors, clause No. 22 has been inducted into, which says that "the manpower employed by the contractors will have no right in any manner to claim any benefit/rights with the lessee and the staff deployed by the contractor in the schools shall be well behaved and

compliance thereof will be the responsibility of the contractor" and therefore, the question of "absorbing" or "regularising" the services of the contractor workers does not at all arise. It has also been argued that the instructors were appointed by private contractors and hence they cannot be absorbed into Government sanctioned posts.

23. There is no dispute regarding the said clause finding place in the contract. But, it is seen that in the welfare of the students, the Government has issued G.O. Ms. No. 17, dated 23.1.2006, agreeing to bear the expenditure involved in providing computer education to the students, including the consolidated pay of Rs. 2,000/= per each Computer Instructor. At this juncture, it is to be pointed out that all along the Computer Instructors are working for a meager salary of Rs. 1,500/=, which was thereafter enhanced to Rs. 2,000/= and in this manner, they have rendered their services to the school education of the students for all these years. From the particulars furnished by the learned Additional Advocate General, it is seen that for the year 1999 and 2000, all the required 2394 computer instructors were appointed by ELCOT, which also include the persons with B. Ed. (Computer Science) qualification and registered in Employment Exchange and during the years 2001 to 2005, some of the Computer Instructors left their jobs, but, out of the 2394 candidates appointed in two phases in the years 1999 and 2000, a considerable number of 772 Computer Instructors are still working continuously till date, rendering their services to the School Education and by their long service in the same field of imparting computer education to the pupil, by now, they have gained necessary and considerable experience.

24. It is apt to state here that by now, it is a settled law that the want of educational qualification, if any, can be compensated by long experience in the same field and long experience of a candidate in a particular field/post is always considered as a ground for relaxing the required qualifications. For this, we draw inspiration from a catena of judgments of the Honourable Supreme Court, like B.N. Saxena Vs. New Delhi Municipal Committee and others, and Gujarat Agricultural University Vs. Rathod Labhu Bechar and Others, .

25. Coming to the other limb of the argument that the Computer Instructors were appointed only by private contractors and hence, they cannot be absorbed into Government sanctioned posts, it is to be stated that though they were appointed through agencies of ELCOT, a Government organisation, they were not under the control of the said agencies and for all practical purposes, they were under the direct control and supervision of the Government and only for this reason, even after the contract period is over, the Government, for the welfare of the students, has accepted to bear the expenditure involved in providing computer education to the students, including the consolidated salary of the instructors. Further more, it has been submitted before us that the Government has imparted the Child Psychology Training to such Computer Instructors and the Director of School Education has also conducted an examination and all those

instructors who failed in the said examination were replaced. For all these reasons, we are not able to accept this argument advanced on the part of the B. Ed. graduates.

26. Much has been argued on the part of the B. Ed. Graduates that since the opponent Computer Instructors were appointed dehors the recruitment rules, they should not be "absorbed" or "regularised" and in support of their contentions, they have relied on a Constitutional Bench judgment of the Honourable Apex Court in *Secretary, State of Karnataka and Others Vs. Umadevi and Others*, wherein regularisation or absorption of contract workers or daily wagers, appointed dehors the public scheme of employment was held to be impermissible. But, it must be clarified that at the time when the Government sought to impart computer education to the students of VI to XI, i.e. in the year 1999, there were no sufficient candidates to fill up the vacancies, and therefore, the task was entrusted to an organisation of the Government of Tamil Nadu, ELCOT to select the candidates and ELCOT by following a procedure of selection, by way of written test and interview, has appointed the candidates through 43 agencies and thereafter they were imparted with necessary training, at the cost of the Government. Even now, the Government is not going to "absorb" or "regularise" the services of such candidates, as has been commented on the part of the B. Ed, graduates, but is going to conduct a special recruitment test, wherein the Higher Secondary School Computer Teachers were permitted to participate. Thus, the principles enunciated by the Honourable Apex Court in *Umadevi's* case have no application to the facts of the case on hand. Furthermore, it is not that the Computer Instructors were appointed without any written test or recruitment process. From the materials available on record, it is crystal clear that they all have been appointed pursuant to a written test and interview conducted by ELCOT, either directly or through its agencies and even after appointment, they have been provided with necessary training.

27. At this juncture, we also feel it apt to quote a recent judgment of the Honourable Apex Court in *U.P. State Electricity Board Vs. Pooran Chandra Pandey and Others*, , wherein the Honourable Apex Court has held as follows:

16. We are constrained to refer to the above decisions and principles contained therein because we find that often *Uma Devi's* case (supra) is being applied by Courts mechanically as if it were a Euclid's formula without seeing the facts of a particular case.... Hence, in our opinion, *Uma Devi's* case (supra) cannot be applied mechanically without seeing the facts of a particular case, as a little difference in facts can make *Uma Devi's* case (supra) inapplicable to the facts of that case.

28. At the cost of repetition, we must held that it is not a process of "absorption" or "regularizauon" as has been termed and commented on the part of the B. Ed, graduates but it is only a special recruitment process intended for the benefit of such employees, who have rendered their valuable services to the field of education, continuously all these years and the Government has restricted this

benefit only to those candidates who are "in service after termination of the contract, receiving direct payment from the Government". These employees are working all these years and have spent their best part of life in imparting education to the students, probably with a hope that their posts would be regularized or they would be absorbed in future, as in the earlier occasions, about 1000 vocational teachers were absorbed into Government service in regular time scale of pay. But, in spite of their specific request for absorption, the Government has prescribed a special test for them and the candidates who could succeed in the selection, could only be appointed. Thus, only a limited benefit has been conferred upon such contract instructors. The State being the Welfare State cannot be find fault with in taking such a decision, having factual regard to the welfare of the students and the long serving contractor instructors. At this juncture, it is also to be pointed out that we are apprised of the fact that as of now, many of the contract Computer Instructors have acquired the qualification of B. Ed, and that they are not "less qualified" as has been contended on the part of the B. Ed, graduates.

29. At this juncture, it has been argued on the part of the B. Ed. graduates that some of the Computer Instructors were appointed only recently and therefore, they should not be permitted to take the special examination. When, the Government, in its wisdom, has restricted this benefit only to those candidates who are "in service after termination of the contract, receiving direct payment from the Government", we see no reason to cause our further interference into the matter, since the Government is completely within its power to fix the norms for such selection and the same cannot be interfered with unless malafides are proved, which is not the case here.

30. For the argument of the B. Ed, graduates that Tamil Nadu Public Service Commission has not been consulted, the answer lies in the judgment of the Honourable Apex Court in I.J. Divakar and Others Vs. Government of Andhra Pradesh and Another, , "Proviso to Clause (3) of Article 320 confers power on the Government as respects services and posts in connection with the affairs of the State to make regulations specifying the matters in which either generally or in any particular class of case or in any particular circumstances it shall not be necessary for a Public Service Commission to be consulted".

31. For the argument of the B. Ed. graduates that the impugned action of the Government in restricting the selection process only to a limited candidates, thus offending Article 16(1) of the Constitution, we must refer to the judgment of the Honourable Apex Court in Prabodh Verma and Others Vs. State of Uttar Pradesh and Others, , wherein a Three Judge Bench of the Honourable Apex Court has held:

The differentia which distinguished the class of reserve pool teachers from the class of other applicants for the posts of teachers in recognized institutions is the service rendered by the reserve pool teachers to the State and its educational system in a time of crisis and this differentia bears a reasonable and rational

nexus or relation to the object sought to be achieved by Ordinances 10 and 22 of 1978 read with the Intermediate Education Act, namely, to keep the system of High School and Intermediate Education in the State functioning smoothly without interruption so that the students may not suffer a detriment. Those two classes of persons, namely, the class of reserve pool teachers and the class of other applicants for the posts of teachers in the recognized institutions, are not similarly circumstanced and, therefore, there cannot be any question of giving these two classes of persons equality of opportunity in matters relating to employment guaranteed by Article 16(1) of the Constitution.

This judgment of the Honourable Apex Court is a fitting answer to the said contention raised on the part of the B. Ed, graduates and we have nothing to add.

32. At this juncture, it is also to be pointed out that conducting such special competitive examination for such temporary/contract employees is a recognised and accepted legal phenomenon. Under similar circumstances, when the State Government has issued G.O. Ms. No. 155 Personnel and Administrative Reforms (P) Department, dated 19.9.1006, proposing to conduct a special competitive examination in Group-IV standard through the Tamil Nadu Public Service Commission, so as to absorb temporary Assistants/Junior Assistants in Secretariat and various Departments in the Districts, who are on contract basis in the Tamil Nadu Ministerial Service/Tamil Nadu Judicial Ministerial Service, the said decision of the Government was challenged in W.P. Nos. 36731 and 43626 of 2006 [M. Gnanasekar v. State of Tamil Nadu], praying to quash the said G.O. and to direct the Government to take immediate action or cause initiation of action to fill up all the vacancies accrued in all the posts under the State or other authorities including the vacancies occupied by the temporary appointees, appointed dehors the relevant statutory rules, by regular appointees immediately either through the Tamil Nadu Public Service Commission or through other recruitment agencies by conducting open competition given equal opportunities to all the qualified citizens. A Division Bench of this Court, after analysing all the facts and circumstances and following the decisions of the Honourable Apex Court, by the common order dated 11.6.2007, has held that:

Therefore, the contention of the Petitioners that the present attempt of the State Government providing for a Special Competitive Examination to be conducted for the temporary employees alone was contrary to the Rules, is under a total misconception. On the other hand, it will have to be held that such a methodology resorted to by the Respondent-State under the impugned G.O. was permissible under the Rules as well as the proviso to Article 320(3) of the Constitution.

33. In the light of the above discussed factual aspects of the case and the judgments of the Honourable Apex Court, cited *supra*, which were followed in the above said Division Bench judgment of this Court, the other arguments advanced on the part of the B. Ed, graduates that the Government should have notified the vacancies through Employment Exchanges as is mandated under the

Employment Exchanges (Compulsory Notification of vacancies) Act, 1959 and that the rule of reservation should be followed, have no application to the case on hand.

34. However, as a matter of fact, it is to be stated that the Government in their additional counter affidavit filed before the learned single Judge has categorically stated as follows:

As mentioned earlier, this recruitment is a special recruitment drive to facilitate absorption of all the serving computer instructors as a matter of policy decision of the Government by a regular recruitment process through Teacher Recruitment Board which is a body equivalent to that of the Public Service Commission of the State. As this is not a regular recruitment open to all rather restricted to distinct class of persons, the application of rule of reservation is not mandatory. Hence and for the first time the posts of 1880 Computer Instructors were sanctioned for the purpose of absorption of the instructors who were in continuous service till now. The element of direct recruitment is totally lacking in this case and therefore violation of general rule cannot be attributed. Notwithstanding the above and interestingly the Teachers Recruitment Board in this case has received 1724 applications out of which 157 belongs to Scheduled Caste, 433 belongs to Most Backward Classes, 1056 belongs to Backward Classes, 71 belongs to Open Competition and 7 applications without specification of communal particulars. In all probabilities the rule of reservation is otherwise said to have been satisfied, without prejudice to the Respondent's earlier contention.

This reply of the Government serves as a fitting answer to the contentions raised on the part of the B. Ed. graduates.

35. From the above discussions, the following conclusions would emerge:

1. The subject "computer science" is a Vocational Component and therefore, there is every justification on the part of the Government in not insisting the B. Ed. qualification.

2. The proposed action of the Government is only a special drive competitive examination and it is not a matter of pure "absorption" or "regularization", in its true sense, as has been commented and apprehended on the part of the B. Ed. graduates and therefore, it is not the appointment dehors the recruitment rules and the action of the State Government is permissible under the proviso to Article 320(3) of the Constitution.

3. The impugned action of the Government has not offended Article 16(1) of the Constitution as has been contended on the part of the B. Ed. graduates.

36. However, the matter cannot be allowed to rest here. Admittedly, the opponents are B. Ed. or M. Ed. Qualified candidates and are waiting for an opportunity to secure Government jobs, based on their qualification. They genuinely apprehend that if such a massive number of posts are filled up by way

of special recruitment test, then, there may not be sufficient posts left for them to occupy. But, since it is not a process of absorption or regularisation, in its true sense and since a competitive examination has been proposed by way of this special recruitment drive, we are told that there will still be left with substantial number of posts, since it cannot be expected that all the applicants would be successful. The fact that the B. Ed, or M. Ed, candidates are fully qualified and are eagerly waiting for the opportunity can never be forgotten. In our eagerness to render justice between the parties, when we enquired with the learned Additional Advocate General, after getting instructions, he produced a copy of the Letter No. 35991/HS2/2006-14, dated 4.2.2008, addressed by the Secretary to Government, School Education (HS2) Department, Chennai to the Additional Advocate General, wherein it has been stated that:

The present recruitment is a special recruitment for absorption of existing Computer Instructors who were lawfully engaged by a due sanction of the Government. For employment of future vacancies for the posts of Computer Instructors, the recruitment will be made open to all eligible applicants (with B. Ed.) without any preference to the already employed Computer Instructors in Government Higher Secondary School. Such recruitment will be made on employment seniority basis.

37. The above said proposal of the Government appears to be genuine and reasonable in the facts and circumstances of the case. Therefore, we direct the Governmental authorities that the entire process of selection on the basis of special drive examination shall be conducted strictly, as a one time measure, and complete the same within six months from the date of receipt a copy of this judgment and the left over vacancies and the other vacancies if any arose in the meantime shall be filled up within three months thereafter, as has been assured before us, making open the recruitment to all eligible B. Ed, and M. Ed. Candidates on employment seniority basis, without any preference to the already em-ployed Computer Instructors in Government Higher Secondary Schools.

The writ appeals are allowed and both the writ petitions are dismissed accordingly. No costs. Consequently, connected miscellaneous petitions are closed.