

(2009) 04 MAD CK 0449

In the Madras High Court

Case No : Writ Petition No. 33943 of 2007

Puducherry Computer Science and B.Ed. Graduates Welfare
Association

APPELLANT

Vs

The Director of School Education, Department of Education,
The Union of India (UI) and The Regional Director, National
Council of Teacher Education

RESPONDENT

Date of Decision : 29-04-2009

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 226, 309

Citation : (2009) 5 MLJ 17

Hon'ble Judges : P. Jyothimani, J;Aruna Jagadeesan, J

Bench : Division Bench

**Advocate : V. Lakshminarayan, for the Appellant; R. Natarajan, Govt. Pleader,
for the Respondent**

Judgement

Aruna Jagadeesan, J.—This Writ Petition has been filed seeking for a Writ of Certiorarified Mandamus to call for the records on the file of the first Respondent in notification No. 300/DSE.Accts.11/ UI/2007-2008 dated 05.10.2007 and quash the same as illegal, incompetent, unconstitutional and arbitrary and further direct respondents 2 and 3 to recruit the petitioners as computer teachers in the institutions under its control.

2. The facts leading to the filing of this Writ Petition are as follows:

The petitioner is an association called "Puducherry Computer Science and B.Ed. Graduates Welfare Association", represented by its Joint Secretary. It is a society, registered with the Registrar of Companies, Puduchery under Societies Registration Act, 1860. The members of the petitioner's Association are qualified and trained teachers in Computer Science. The members have completed their educational course from Pope John Paul II, College of Education, Puducherry, which is affiliated to the Puducherry University and also professionally trained to teach Computer Science and Mathematics both in High Schools and Higher

Secondary Schools. They are qualified to impart computer education in the following disciplines : (i) B.Sc., Ed., (Computer Science); (ii) M.C.A., B.Sc., Ed., (iii) M.Sc., B.Sc., Ed., (iv) M.C.A., B.Sc., Ed., (Mathematics) (v) M.C.A., B.Com., Ed. It is stated that they have given several representations and finally on 21.03.2007 and 28.03.2007, requesting the Government to appoint them for the post of Computer Science Teachers both in High School and Higher Secondary School level. But no positive measures have been taken by the respondents in this regard.

3. At present, Computer Science students in Higher Secondary Schools are taught by some private agencies on contract basis and most of them are not qualified. It appears the Government of Puducherry has proposed to introduce computer education from IV Standard to X standard following the Kerala State Government Curriculum from the academic year (2007-2008) and for the said purpose, the Central government is providing 15 computers to each high school. The Government of Puducherry has not devised proper recruitment rule for the appointment of computer teachers for High School and Higher Secondary School despite the fact that Computer Science is no longer an optional subject but has become compulsory for +2 students. For the above said purpose, the respondents are again contemplating to appoint private agencies to impart computer education to high school students. By allowing such act, it would amount to regularizing the illegal appointment of persons who are not suitably qualified. It is not only perverse but also opposed to the basic tenets of the Constitution of India which enshrines the concept of equality under Article 14 and 16.

4. The members of the petitioner Association having completed their B.Ed. Degree in Computer Science as a main subject, are entitled for consideration as teachers/ instructors on regular basis in Higher Secondary Schools and it is their legitimate expectation to provide them with a decent employment as they have registered themselves with the Employment Exchange. A Writ of Mandamus was sought for in W.P. No. 23961/2007 to direct the respondents to take appropriate action on the representation made by the petitioner association on 21.03.2007 and 28.03.2007 and this Court directed the second respondent - Union of India, to consider the said representations within eight weeks from 19.06.2007. Ignoring such direction, the first respondent issued a notification calling for tender from recognized/ authorised computer teaching/training institution for imparting Computer Science on contract basis for about 48 Government Higher Secondary Schools in Puducherry for a period of five academic years from 2007-08 to 2011-12 and the same was challenged by the petitioner association in W.P. No. 23961/2007. However, the said notification was withdrawn by the respondents and it has now issued another notification on 05.10.2007, verbatim reproducing the earlier notification.

5. The Government of Puducherry had not framed rules for recruitment nor prescribed any qualification while seeking for the bid and the tender notification

appears as if wares are to be sold in the market place rather than concentrating on relevant issues i.e. Qualification of the teachers, leaving the choice of sending personnel to the schools for teaching computer education with the contractor. If it is allowed, welfare of the children will be ignored and ultimately, the cause of education will be defeated. In spite of several representations and memorandum from the petitioner Association, the respondents have not taken any steps to recruit professionally trained teachers nor devised recruitment rule which necessitated the petitioner Association to file this Writ Petition.

6. The first respondent has filed counter contending that the petitioner Association has no locus standi to file the Writ Petition and the affidavit discloses that it is more or less a Public Interest Litigation which cannot be initiated under the garb of a Writ Petition by any person, much less a society, which claims to be a registered one. In the wake of an urgent need for educating all the students in computer technology, the Government of India has framed a scheme "Information and Communication Technology @ Schools" (ICT @ Schools) whereby the Government of India is providing 75% of the total expenditure while the State has to bear 25% of the total expenditure. This programme is launched in all the States and Union Territories and the Government of Puducherry is processing steps for engaging persons under contractual basis for the purpose of imparting computer education to the students in schools. This scheme had sanctioned covering 169 schools in the Union Territory of Puducherry under BOOT model for the year 2007-08 on the recommendations of the project monitoring and evaluation group in its meeting held on 02.11.2007. Further, the project having been sanctioned by the Union of India under the Boot model, the 1st respondent has called for tender from reputed computer teaching institutions, authorized institutions in computer education training for imparting computer education on contract basis and recruitment of regular teachers is not contemplated under the scheme as alleged by the petitioner. As regards rules, it was framed in the year 1986 and it has to be suitably amended in order to meet the requisite qualification for a computer teacher which is a long and time consuming process. In order to implement the scheme, at present, tender has been called for from eligible teaching institutions to impart computer education under BOOT model. It is further contended that it is the policy of the Government and therefore, it is not open to the petitioner association to suggest or advice anything.

7. Mr. V.Lakshminarayan, the learned Counsel appearing for the petitioner strenuously contended that if education is out-sourced by the Education Department of the Government of Puducherry, it would lead to undesirable and disastrous consequences, as person appointed through tender notice will not take up the responsibility seriously, nor would he owe any allegiance to the students or the institution. He would further submit that due to lack of security of employment and commitment towards teaching, that would drive those persons to always look out for a greener pasture with better emoluments. He would submit that regular staff with requisite qualification if appointed would be a boon

to the institution and would be in a position to secure continuity and harmony in studies. He would contend that there could be no two avenues of selection for imparting education i.e. (a)selection based on merits; (b)selection through private agencies and such mode of selection would offend Article 14 and 16 of the Constitution of India. The learned Counsel would stress that by appointing teachers on contract basis excluding qualified heads who are already available, such appointment would be arbitrary, unreasonable and without jurisdiction.

8. The impugned tender notification is also assailed by the petitioner association on the ground that it does not set out the qualification of the instructors who are required to teach Computer Science and the discretion is left to the contractor who can keep on rotating the staff which would affect the welfare of the children.

9. On the other hand, Thiru.R.Natarajan, the learned sGovernment Pleader for Puducherry would contend that the claim of the petitioner association, challenging the tender notification on the ground that regular recruitment cannot be substituted by the Government resorting to contractual appointment is obviously a public interest litigation in service matter and it cannot be initiated under the garb of a Writ Petition by any person much less a society which claims to be a registered one. He would further submit that in the wake of an urgent need for educating all the students in computer technology, as the existing rules framed in the year 1986 does not cater to the immediate need of appointment of teacher with requisite qualification and amending the said rule would consume a long time, the Government of India has framed a scheme which covers 169 schools in Union Territory of Puducherry under Boot Model for the year 2007-08. In pursuance of the scheme, the first respondent has called for tenders from the reputed and authorized computer teaching institutions for the lease of computer hardware and software and connected accessories and also to provide computer education, Spoken English and Personality Development Services in Government Higher Secondary schools in the Union Territory of Puducherry. The learned Government Pleader would assert that the said scheme does not contemplate recruitment of regular teachers and the contractor has to supply and maintain computer hardware and software and also provide computer instructors and teachers to teach students. He would rely on a decision reported in Dattaraj Nathuji Thaware Vs. State of Maharashtra and Others, wherein the Hon"ble Supreme Court had cautioned High Courts in entertaining Public Interest Litigation and observed that in a large number of cases, unmindful of the real intentions and objectives, courts are entertaining such petitions and wasting valuable judicial time. The relevant portion is extracted below:

16. As noted supra, a time has come to weed out the petitions, which though titled as public interest litigations are in essence something else. It is shocking to note that courts are flooded with a large number of so-called public interest litigations where even a minuscule percentage can legitimately be called as public interest litigations. Though the parameters of public interest litigation have been indicated by this Court in a large number of cases, yet unmindful of the real

intentions and objectives, courts are entertaining such petitions and wasting valuable judicial time which, as noted above, could be otherwise utilised for disposal of genuine cases. Though in *Duryodhan Sahu (Dr.) v. Jitendra Kumar Mishra* this Court held that in service matters PILs should not be entertained, the inflow of so-called PILs involving service matters continues unabated in the courts and strangely are entertained. The least the High Courts could do is to throw them out on the basis of the said decision.

At a time when it was difficult to draw a strict line of demarcation as to what matters, and to what extent a PIL should be entertained, the Hon"ble Supreme Court has rendered broad guidelines, reiterating, rather stressing, that neither the Hon"ble Supreme Court nor the High Court should undertake an unnecessary journey through Public Interest Litigation path unless there existed strong reasons to defeat or depart along such a path. However, it has been held that in a situation where the matter was governed by a statute, the Court should not supplant, ignore or bypass a statute.

10. In the present case, the members of the association, who claim to be a registered society, are having requisite qualification with Degree in Computer Science as the main subject. They claim that they are entitled to be appointed as teachers/instructors in Computer Science in Higher Secondary Schools.

11. Therefore, there is a legitimate expectation from the said eligible members of the petitioner association, who claim to have registered themselves with the employment exchange, that the State would provide them with a decent employment. Their contention is that by resorting to ad hoc arrangements in appointing instructors/teachers to impart computer education through contractors, their rights would certainly be restricted in participating in the selection process, despite their eligibility with requisite qualification.

12. It is settled law that doctrine of legitimate expectation can be invoked if the decision of the administrative authority affects the person by depriving him of some benefit or advantage. In this case, although there was no assurance given by the Government or the Department concerned to the petitioner Association, but due to the mandate of Article 309 of the Constitution of India, the entire process of recruitment for services is controlled by a procedure, which specifies necessary qualification, mode of appointment etc. and when the Constitution does not envisage any employment outside this parameter, for the preservation of the said commitment, the members of the petitioner association, who are said to have possessed requisite qualification, come within the ambit of legitimate expectation and can maintain this Writ Petition under Article 226 of the Constitution of India. Therefore, the contention of the learned Government Pleader cannot be sustained for the reasons stated above.

13. The learned Government Pleader would further contend that it is the policy of the Government and therefore, it is not open to the petitioner in any manner to suggest or devise anything in that regard and placed reliance on the Judgment of

the Hon"ble Supreme Court reported in Union of India v. Pushpa Rani (2008) 9 SCC 242, wherein the Supreme Court has held thus:

37. Before parting with this aspect of the case, we consider it necessary to reiterate the settled legal position that matters relating to creation and abolition of posts, formation and structuring/restructuring of cadres, prescribing the source/mode of recruitment and qualifications, criteria of selection, evaluation of service records of the employees fall within the exclusive domain of the employer. What steps should be taken for improving efficiency of the administration is also the preserve of the employer. The power of judicial review can be exercised in such matters only if it is shown that the action of the employer is contrary to any constitutional or statutory provision or is patently arbitrary or is vitiated due to mala fides. The court cannot sit in appeal over the judgment of the employer and ordain that a particular post be filled by direct recruitment or promotion or by transfer. The court has no role in determining the methodology of recruitment or laying down the criteria of selection. It is also not open to the court to make comparative evaluation of the merit of the candidates. The court cannot suggest the manner in which the employer should structure or restructure the cadres for the purpose of improving efficiency of administration.

14. It is not in dispute that only when there is deficiency in decision making process, it is open to the Court to interfere in administrative decision. At the same time, Court will not interfere unless the decision suffers from illegality, irrationality and procedural impropriety. It is for the petitioner to establish that the impugned action falls within any of the above said categories. It is no doubt true that the authority in which the discretion is vested can be compelled to exercise that discretion but one cannot compel the authority to exercise it in any particular manner. If the state acts within the bounds of reasonableness, it would be legitimate to take into consideration the national priorities like educational policy.

15. A claim based on mere legitimate expectation without anything more cannot ipso facto give a right. There is no statutory obligation for the Government to provide employment to the petitioner merely because they have qualified in computer education and registered themselves with the employment exchange.

16. It is true that adherence to the rule of equality in public employment is the basic feature of our constitution and since rule of law is the core of our constitution, Court would certainly be disabled from passing an order upholding violation of Article 14 or ordering the overlooking of the need to comply with the requirements of Article 14 read with Article 16 of the Constitution of India. However, where an ad hoc or temporary employment is necessitated on account of the exigencies of administration, a total embargo on such casual or a temporary employment is not possible. In Secretary, State of Karnataka and Others Vs. Umadevi and Others, , the Hon"ble Supreme Court has held as follows:

12. In spite of this scheme, there may be occasions when the sovereign State or its instrumentalities will have to employ persons, in posts which are temporary, on daily wages, as additional hands or taking them in without following the required procedure, to discharge the duties in respect of the posts that are sanctioned and that are required to be filled in terms of the relevant procedure established by the Constitution or for work in temporary posts or projects that are not needed permanently. This right of the Union or of the State Government cannot but be recognised and there is nothing in the Constitution which prohibits such engaging of persons temporarily or on daily wages, to meet the needs of the situation. But the fact that such engagements are resorted to, cannot be used to defeat the very scheme of public employment. Nor can a court say that the Union or the State Governments do not have the right to engage persons in various capacities for a duration or until the work in a particular project is completed.

17. Now coming to the core of the issue, the scheme framed by the Government of India is titled "Information and Communication Technology @ Schools" to impart computer education to the students in schools. The Government of Puducherry in pursuit of implementation of the scheme is processing steps for engaging persons under contractual basis. The scheme is sanctioned for 169 schools in Union Territory of Puducherry under Boot Model for the year 2007-08 and on the said basis, the first Respondent has called for tender from reputed authorized institutions which is impugned in this Writ Petition. The scheme deals with the objects and details of the revised scheme, implementation partners, financial parameters, appropriate number of teachers required for the year 2007-08 to 2011-12, their training method and so on. It stipulates appointment of one computer teacher in each of the school with qualification as applicable to the post Graduate Teachers (P.G.) for teachign classes from IX to XII. It is specifically stated that it will be permissible for the State/Union Territories in exceptional cases to hire services of contractual teachers.

18. In the present case, the purpose for which discretion of the Government has been exercised is clearly spelt out in the scheme itself. On matters affecting the policy and requiring technical expertise, it should be left with the decision of the Government unless the said policy or action is inconsistent with the Constitution and is arbitrary or irrational or abuse of power. It is seen that various measures have been undertaken by the Government of Puducherry, which could be seen from the scheme and they are relevant for imparting of computer education in the grass root levels in the schools. Even if it is assumed that there is some force in the submission made by the learned Counsel for the petitioner, in view of the reasons given by the Government justifying its stand that it is not in a position to appoint teachers on a regular basis without amending the existing rule, cannot be said to be unreasonable or arbitrary.

19. It is the submission of the learned Government Pleader that the existing rule framed under Article 309 of the Constitution of India in G.O.Ms. No. 27 dated

10.04.1987 would specify the educational qualification for direct recruits for instructors in Computer Science as:

- (i) Degree in mathematics or science of a recognized University;
- (ii) A diploma in Computer Science by a recognized Polytechnic/Board of Technical Education.

It is desirable if there is some experience in teaching.

In the scheme, it is specifically stated that the qualification prescribed for the computer teaching is as applicable to P.G. Teachers teaching class IX to XII. As the educational qualification prescribed in the existing rule is not in consonance with the scheme, there is a need to amend the existing rules to suit appointment of computer teachers with requisite qualification on regular basis. Till such time, in order to implement the scheme in letter and spirit, to meet the challenges of the competitive globalization, the decision of the Government in calling for the impugned tender is justified.

20. On a perusal of the scheme, it is seen that it is specifically stated that it will be permissible for the State/Union Territories in exceptional cases to hire the services of contract teachers during initial period i.e. for a period not exceeding one year. It also stipulates that all efforts should be made to create regular posts of computer teachers. So safeguard is made in the scheme itself by permitting the Government to hire contractual services only for a period not exceeding one year and to make efforts to create regular posts thereto.

21. But the terms and conditions of the notification with regard to the period of contract appears to be contrary to the terms made in the scheme. The terms and conditions of the impugned tender notification reads as follows:

- a) To lease by way of supply of new computer hardware and relevant software (Licensed Version) along with connected accessories required for imparting quality Computer Education/Training Services in about 48 Government Higher Secondary Schools spread across the Union Territory of Puducherry.
- b) To provide and maintain of Computer hardware, printers, modem software in working condition and necessary equipment like Telephone connection with Internet provision, UPS, Furniture etc. as prescribed in the Tender document during the contract period.
- c) To teach Computer Science as per syllabus approved by the Government of Puducherry.
- d) To provide necessary infrastructure and teaching of Internet applications as part of the syllabus, broad band internet connection must be made in all computers of the schools by using suitable software wherever broadband is available or 500 hours internet connection per year if Broadband facility is not available in any area during the contract period for the exclusive use of the students. Tenderers must also maintain log book for each computer usage for the

students and same must be available for inspection.

e) To equip each school with the minimum equipment prescribed as per technical specifications given in Sl. No. 26.

f) There will be about 50 students in each class in Plus 1 and 2 standards.

22. The Clause (e) of the terms and conditions regarding eligibility criteria states that the minimum qualification of instructor must be Bachelor's Degree/B.Tech in Computer Science/Computer Engineering/Computer Application/ Information Technology from a recognized University. Therefore, regarding qualification, there is no quarrel as requisite qualification for instructor has been specified in the tender conditions in consonance with the scheme. Hence the contention of the petitioner that the tender notification does not set out the qualification of the instructors is not tenable.

23. As regards period of contract, even in the beginning of the tender schedule, it is stated as follows:

Sealed tenders in two bid system viz., part I Technical bid and part II Commercial price bid on behalf of the President of India are invited from reputed Computer Teaching Institutions/ Authorized Institutions in Computer Education/ Training for imparting computer education competent to impart spoken English and Personality Development courses in about 48 Government Higher Secondary Schools in Puducherry/Karaikal/ Mahe/ Yanam regions for a period of five academic years from 2007-08 to 2011-12 on the guidelines and terms and conditions prescribed by the Director of School Education.

24. Clause 9 of the Special terms and conditions reads thus:

9. Then contract period shall be up to 31.05.2012 from the date of installation of systems and acceptance.

25. It is seen that the technical bid includes not only tender for the lease of computers, hardware, software and connected accessories, but also provision for computer education, spoken English and personality Development services in the Government Higher Secondary Schools in the Union Territory of Puducherry. The relevant portion is extracted below:

The technical bid and the Price bid should be sealed by the bidders in two separate covers duly superscribing as "Technical bid" and "Price/Commercial Bid" and both these sealed covers are to be kept in a bigger cover which should also be sealed and duly superscribed "Tender for the lease of computer hardware, software and connected accessories and provision of computer education spoken English and Personality Development services in Government Higher Secondary Schools in the U.T. of Puducherry". The technical bid should contain all technical details pamphlets/leaflets/ computer specifications, Teaching experience/Training capacity, details of infrastructure facilities available, availability of teaching facilities & experts the terms & conditions of lease, photocopy of the approval/

affiliation recognition issued by the AICTE/Govt./DOEACC/University/any other Competent authority for running the institution etc. along with other technical details. No document or D.D. should be kept in the Price Bid cover.

Whereas the price bid cover contains only the details of price/rate etc. So, it is evident that the period of five years from 2007-08 to 2011-12 includes both computer hardware, software and connected accessories and also imparting computer education to students, Spoken English and Personality Development Services. The above said tender condition specifying contract period for five years is contrary to the stipulation made in the scheme that the period shall not exceed one year. Therefore, to that extent, the tender condition is against the tenor of the scheme. Therefore, the first Respondent could be directed to restrict the period of contract initially for a period of one year and the tender condition could be suitably amended to that extent.

26. In our considered opinion, the impugned tender notification cannot be held to be not in consonance with the objects of the scheme envisaged by the Central Government except the period of contract which could be restricted to one year as mentioned in the scheme. In other respects the impugned tender notification is upheld.

27. The Writ Petition is ordered accordingly. In the meantime, the Government can amend the existing rules in order to appoint computer teachers on regular basis. No costs. M.P. No. 2/2007 is closed.