

(2009) 07 SC CK 0007

In the Supreme Court Of India

Case No : Civil Appeal No. ... of 2009 (Arising out of SLP (C) No. 25097 of 2008) and Civil Appeal No's. ... of 2009 (Arising out of SLP (C) No's. 26768-26769 of 2008)

T. Nadu Computer SC B.Ed. G.T. Welf. Society

APPELLANT

Vs

Higher Sec. Scl. Computer Tech. Assn. and Others

RESPONDENT

Date of Decision : 09-07-2009

Acts Referred:

Citation : (2009) 9 JT 70 : (2009) 9 SCALE 319 : (2009) 14 SCC 517

Hon'ble Judges : P. Sathasivam, J; Mukundakam Sharma, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Mukundakam Sharma, J.—Leave granted.

2. The present appeals were filed and directed against the common Judgment and Order passed by the Division Bench of the Madras High Court allowing the writ appeals filed by Respondent No. 1 and thereby dismissing the writ petitions filed by the appellant herein. The writ petitions were filed by the appellant herein contending, inter alia, that prior to 1999, graduates with Post Graduate Diploma in Computer Applications from a recognized University were appointed by Parents and Teacher Association of various schools as Computer Teachers in the said schools. In the year 1999, the Government took a policy decision to bring out a Scheme to offer computer education as a subject 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 State 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 based on curriculum designed by experts as an elective subject in the 11th and 12th standards in all the 1200 higher secondary schools in the State from the

academic year 1999-2000. Pursuant to the aforesaid statement and assurance of the Chief Minister and the policy decision of the Government, the State Government on 19.03.1999 invited sealed tenders from reputed organizations and computer training centers for leasing out computer hardware and software and for providing computer training in 1200 Higher Secondary Schools in four regions, namely, Chennai, Trichy, Coimbatore and Madurai for five years by engaging qualified instructors of their choice. Thereafter, the State Government entered into a contract with the Electronic Corporation of Tamil Nadu (ELCOT) for a period of five years giving them the responsibility to take all the steps for conducting the computer classes in about 1200 Higher Secondary Schools.

3. Pursuant to the instructions issued by the State Government, the ELCOT selected many agencies to fill up the vacancies by selecting qualified Computer Instructors. Such Computer Instructors were thereafter came to be appointed in two phases. In Phase-I, 1332 instructors were appointed in the year 1999 and in Phase-II 1062 Instructors were appointed in the year 2000, on a consolidated salary of Rs. 1,500/-, which was later on enhanced to Rs. 2,000/- per month.

4. In 1999, a writ petition came to be filed before the Madras High Court. While dismissing the said writ petition on 23.04.1999, the Madras High Court observed that in future, if the Government creates any permanent or sanctioned posts to impart education on Computer Science in Government Higher School, such posts should be filled up by recruiting candidates sponsored by the Employment Exchange and by following the rule of Reservation.

5. The aforesaid contract entered into with the private agencies 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. Consequent thereto a G.O. Ms No. 187, dated 04.10.2006 was issued, creating 1880 posts of Computer Instructors for the aforesaid various schools. It was also stated that the aforesaid posts of Computer Instructors would carry a pay scale of Rs. 5500-175-9000. It was also mentioned in the said Memorandum that all the aforesaid posts which are created would be permitted, on temporary basis subject to the rules in force and would be valid for one year from the date of its filling up. In continuation of the aforesaid policy decision another Memorandum was issued intimating the decision of the Government that the Government itself can appoint computer instructors, for the purpose of implementing computer education scheme in all such schools. A broad criteria as to how selection process would take place was also conveyed in the aforesaid letter. It was stated in the said communication that Special test would be conducted by the teachers' selection Board for computer teachers who are serving in Government High Schools and that selection would be made on the basis of the marks obtained. It was also made

clear by the State Government in the said communication dated 04.10.2006 that educational qualification like B.Ed. for selection of computer instructor would not be insisted upon. On 10.10.2006 the State Government took a decision that those Computer Instructors appointed by the contractors and who were in service on the dates when the Government took over the responsibility of payment of their salary in Government schools immediately after the expiry of the contract period would be eligible to appear in the Special Test to be conducted by the Teachers Recruitment Board. It was also stated therein that the minimum qualifying marks would be 50%.

6. The decision of the Government to dispense with the B.Ed. qualification was challenged by the qualified B.Ed. graduates in Computer Science before the High Court of Madras. Such qualified B.Ed. graduates in Computer Science filed a batch of writ petitions before the High Court of Madras. A learned Single Judge of the High Court while disposing of the writ petitions held that the said Government M.S. Letter No. 188, dated 04.10.2006 is unsustainable and consequently quashed the same. Aggrieved by the same the Higher Secondary School Computer Teachers Association preferred writ appeal whereas the Government of Tamil Nadu preferred a separate Writ Appeal. All the aforesaid appeals were taken up for consideration by the Division Bench of the High Court. By the impugned order dated 22.08.2008, the Division Bench of the High Court set aside the order of the learned Single Judge holding that the learned Single Judge was not justified in setting aside the policy decision of the Government. It was held by the Division Bench of the High Court that it would accept the statement of the State that the present recruitment is a special recruitment for absorption of existing Computer Instructors, who were lawfully engaged with due sanction of the Government and that for employment of future vacancies for the posts of Computer Instructors, the recruitment would be made from all eligible applicants (with B.Ed. qualification) without any preference being shown to the already employed Computer Instructors in Government Higher Secondary School and that such recruitment would be made on employment on seniority basis. The High Court accepted the aforesaid statement of the Government, which was taken as genuine and reasonable and consequent thereto the High Court issued a direction to the Governmental authorities that the entire process of selection on the basis of special drive examination would be conducted strictly only as a one time measure. It was also directed that the process of holding the examination shall be completed within six months from the date of receipt a copy of the judgment and that the left over vacancies and the other vacancies, if any, arising in the meantime would be filled up within three months thereafter, as has been assured before the High Court, making open the recruitment to all eligible B.Ed. and M.Ed. candidates and giving employment on seniority basis, without any preference to the already employed Computer Instructors in Government Higher Secondary Schools.

7. Being aggrieved by the Judgment and Order dated 22.08.2008 passed by the Division Bench of the High Court, the present appeals have been preferred by the

appellants herein.

8. While issuing notice on 13.10.2008, this Court passed an interim order holding and observing that the appointment of Computer Instructors pursuant to the orders passed by the High Court allowing the State Government to proceed with the process of appointment of Computer Instructors would be subject to the result of the appeals. The effect of the aforesaid order was that there was no bar on the part of the State Government to proceed and continue with the appointment process of such Computer Instructors but would be subject to further orders of this Court. Consequently the State Government announced the date of the Special Recruitment Test as 12.10.2008, which was incidentally a Sunday.

9. The said test was held on the said notified date and the result of the examination was also published. A list of the candidates, who appeared and succeeded in the said test, was also published. It transpires from the records placed before us that a total of 1714 candidates appeared in the Special Recruitment Test in terms of the criteria laid down by the Selection Board. The minimum qualifying marks for the posts of "Computer Instructors" was fixed as 50% i.e. 75 marks out of total 150 marks. The said qualifying criteria was laid down in the meeting held on 10.10.2006 wherein representatives of the Government was also present. On the night of 12.10.2008, the respondent No. 3 published the list of provisionally selected candidates for appointment to the post of Computer Instructors based on the Special Recruitment Test on the Internet. While publishing the said marks of the candidates, it was made clear that all candidates, who have secured 35% marks in the Special Recruitment Test would be called for Certificate Verification. It is thus established, that the State Government reduced the minimum qualifying marks for the post of Computer Instructors to 35% which is contrary to an earlier decision taken in a meeting held on 10.10.2006 that the minimum qualifying marks for filling up the posts of Computer Instructors would be 50% i.e. 75 marks out of total 150 marks.

10. It is thus established that the Government changed the rules of recruitment and terms and conditions of appointment in the mid-way after the selection process was initiated. The said decision was taken on a Sunday i.e. on 12.10.2008, after the candidates had taken their exams. It also transpires from the record that out of 1686 candidates only 857 candidates had in fact secured 50% marks i.e. 75 marks out of 150 marks whereas 829 candidates secured marks between 35% and 50% i.e. less than 75 marks out of 150 marks. It is also indicated from the said result published that out of 1714 candidates, who had taken the Special Recruitment Test it is 1686 candidates who were found to have secured more than 35% marks, and they were provisionally selected for certificate verification.

11. The appellants have challenged before us the aforesaid alleged arbitrary decision of the Government in conducting a special recruitment test against the Rules and Guidelines issued for the recruitment of Computer Instructors and also

by altering the minimum qualifying marks from 50% to 35% so as to absorb a larger number of candidates of its choice and thereby violating its own norms and guidelines.

12. We heard learned Counsel appearing for the parties on the aforesaid issues which were raised before us. The contract employees who were appointed by the contractor were discharging their duties as Computer Instructors in the Government Schools for a number of years on a consolidated pay. Their plea for regularization of their service was, however, rejected by the Court holding, *inter alia*, that they have no such vested right to claim for such regularization. However, in order to give them one opportunity to get themselves properly selected and then absorbed against regular posts, one time opportunity was given to them by the Government for getting themselves selected and then recruited and absorbed considering the fact that they were engaged and paid from the fund released by the Government. Qualifications and norms for such Special Recruitment Test for the post of Computer Instructors were also laid down by issuing a policy decision and instructions wherein it was provided that the minimum qualifying marks would be 50%. The Government on 04.10.2006 laid down the said instructions whereas the Special Recruitment Test was scheduled to be held on 12.10.2008, which was a Sunday. The test as scheduled was also held in which undisputedly only 894/857 candidates had received more than 50% marks whereas 906/829 candidates secured marks below 50% but above 35% and they have also been shown as qualified in the test in terms of the amended decision taken by the Government of Tamil Nadu on the night of 12.10.2008 i.e. after the recruitment process was started and even after the Special Recruitment Test was held.

13. The appellants herein have challenged the entire process of selection contending, *inter alia*, that such a Special Recruitment Test could not have been held for giving advantage to contract employees, who were not even qualified persons to be appointed as such Computer Instructors in Government schools. The rules provide that such posts of Computer Instructors, which are to be filled up as against permanent and sanctioned posts to impart education in computer science in Government Higher Secondary School would be filled up by following the rules of reservation in accordance with the existing Rules for such appointment. It was submitted by the counsel appearing for the appellants that entire action of holding the Special Recruitment Test for appointment of Computer Instructors was illegal since it was held in violation of the order of the Madras High Court dated 23.04.1999 in W.P. No. 6565 of 1999, wherein the High Court has specifically observed as follows:

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

14. Counsel appearing for the respondents, however, submitted that since these

contract employees have been working for a very long time in the Government Schools, therefore, the Government had taken the decision to reduce the minimum qualifying marks to see that at least some of them who could qualify in the Special Recruitment Test could be recruited and absorbed so as not to deprive them from getting absorbed in the Government employment through a regular process. It was also submitted that out of 1714 candidates, who have written the Special Recruitment Test only 894 candidates could receive more than 50% marks whereas 906 candidates could obtain less than 50%, which was minimum qualifying marks prescribed by the Government in its earlier policy decision but obtained more than 35% marks. Consequently, it was submitted that the Government thought it fit that the said minimum qualifying marks should be reduced to 35% so as to absorb more people, who are still working in the Government Schools as Computer Instructors.

15. We have considered the aforesaid rival submissions of the counsel appearing for the parties in the light of the records placed before us. It is clearly established from the records that in order to give one time opportunity, a Special Recruitment Test was ordered to be held for selection and recruitment as also absorption of existing Computer Instructors. The said decision was taken on sympathetic consideration and with the intention of doing justice to those existing Computer Instructors, who were working in Government Schools for a very long time. Such a recruitment drive and test was held by laying down Rules of Recruitment thereby providing a level playing field for all concerned. Prior to holding of the said Test guidelines were formulated through a policy decision laying down the criteria that the minimum qualifying marks in the said test would be at least 50%. The said guidelines of Recruitment as laid down through a policy decision was sacrosanct and was required to be followed for all practical purposes even if we accept that the Government could have filled up the said posts of Computer Instructors by holding a Special Recruitment Test of the aforesaid nature as one time exception. We, however, cannot hold that the subsequent decision of the Government thereby changing qualifying norms by reducing the minimum qualifying marks from 50% to 35% after the holding the examination and at the time when the result of the examination was to be announced and thereby changing the said criteria at the verge of and towards the end of the game, as justified for we find the same as arbitrary and unjustified. This Court in *Hemani Malhotra vs. High Court of Delhi* [2008 (7) SCC 11] has held that in recruitment process changing rules of the game during selection process or when it is over are not permissible.

16. Thus we hold and declare that those candidates who had secured more than 50% qualifying marks would be held to have qualified in the said test and the remaining candidates would be treated as unsuccessful/failed and therefore became ineligible to be permanently recruited and absorbed in Government Schools. However, we give a liberty to the State Government to hold a fresh examination/recruitment test to fill up all the remaining posts of Computer Instructors as against sanctioned and vacant posts of Computer Instructors,

which we are told would be more than 1000, by holding a recruitment test in terms of assurance given to the High Court. We, however, give liberty to those unsuccessful/failed candidates, who have secured less than 50% marks and more than 35% marks in the earlier Special Recruitment Test and desire to apply as against the advertisement, which shall be issued in newspapers and also by calling names from the Employment Exchange. The candidates, who had applied and appeared in the Special Recruitment Test and obtained above 35% marks would accordingly be allowed to appear if they so apply against the advertisement to be so issued in terms of this order although they may not have B.Ed. Degree which shall, however, be treated only as one time concession and exception.

17. Consequently, we give the following directions to the State Government that:

a) Only those candidates who had secured more than 50% qualifying marks in the Special Recruitment Test shall be treated as qualified and recruited as Computer Instructors and they shall be so absorbed and their service shall be so regularized in accordance with law;

b) The remaining candidates who had secured less than 50% qualifying marks but above 35% marks should be declared and held to be unsuccessful and failed in the said Special Recruitment drive but they would be allowed to appear in the next Recruitment Test to be held for filling up the remaining vacant posts of Computer Instructors without insisting upon them to have B.Ed. degree as one time exception and concession;

c) The State Government shall also hold the said test by inviting applications through issuing an advertisement and also allow candidates to take the test sponsored by the Employment Exchange. In the said test all other rules of appointment for such post and the rules of reservation would also apply. The only exception would be the candidates who had received more than 35% marks in the earlier Special Recruitment drive but less than 50% marks which was qualifying marks may not have B.Ed. degree, which would be treated as one time exception for them as they were working as Computer Instructor.

18. In the light of the aforesaid observations and directions, the present appeals are allowed to the aforesaid extent.