
(2010) 01 MAD CK 0026

In the Madras High Court

Case No : W.A. No's. 1636 to 1638, 1345 and 1628 of 2009 and W.P. No's. 27203, 24603, 24597, 26037, 25314, 24269, 24587, 26748, 26749, 27181, 25244, 25155, 29649 and 27261 of 2008

The Member Secretary, Teachers Recruitment Board, The
Director of School Education, (Higher Secondary) and The
Chief Educational Officer and Others

APPELLANT

Vs

M. Somasundaram and Others etc. etc.

RESPONDENT

Date of Decision : 22-01-2010

Acts Referred:

Constitution of India, 1950 — Article 14, 16

Citation : (2010) 01 MAD CK 0026

Hon'ble Judges : H.L. Gokhale, C.J.; K.K. Sasidharan, J

Bench : Division Bench

Advocate : G. Sankaran, Spl. G.P Edn. in W.A. Nos. 1636, 1637 and 1638 of 2009, K. Selvaraj, in W.A. No. 1345 of 2009, K.M. Ramesh, for P. Thirunavukkarasu, in W.A. No. 1628 of 2009, C. Selvaraju, SC for T. Sellapandian, in W.P. Nos. 27203, 24603, 24597 and 26037 of 2008, R. Subramanian, in W.P. Nos. 25314 and 27261 of 2008, J. Rajmohan, in W.P. No. 24269 of 2008 and K. Selvaraj, in W.P. Nos. 24587, 26748, 24749, 27181, 25244, 25155, 29649 of 2008, for the Appellant; J. Raja Mohan in W.A. No. 1636 of 2009, R. Muthukumarasamy, SC for V. Ravi Kumar in W.A. No. 1637 of 2009, K. Selvaraj, for R2 in W.A. No. 1638 of 2009, G. Sankaran, Spl. G.P.(Edn.) for R1 and R2 in W.A. Nos. 1345 and 1628 of 2009, G. Sankaran, Spl. G.P.(Edn.) in W.P. Nos. 27203, 24603, 24269, 24597, 25314, 26037 and 27261, 24587, 26748, 24749, 27181, 25244, 25155 and 29649 of 2008, for the Respondent

Final Decision : Dismissed

Judgement

H.L. Gokhale, C.J.—The first three of these matters are appeals filed by the Teachers' Recruitment Board and other officers concerned

with the School Education in the State of Tamil Nadu, whereas other matters are appeals and petitions filed by some of the teachers, who were in

charge of computer education. The Teachers Recruitment Board and the officers of the Government concerned with Education are respondents in

the appeals and the writ petitions filed by the Computer Instructors, whereas some of the Computer Instructors are the respondents in the three

appeals filed by the Teachers' Recruitment Board.

2. All these matters relate to the appointment of Computer Instructors in the Government Aided schools and the question of their absorption after

participating in the requisite examination for the same.

3. Mr. Sankaran, learned Special Government Pleader (Education) has appeared for the Teachers Recruitment Board and the officers concerning

education, whereas Mr. Muthukumarasamy, learned Senior Advocate, Mr. C. Selvaraju, learned Senior Advocate with Mr. T. Sellapandian, Mr.

K. Selvaraj, Mr. K.M. Ramesh and Mr. R. Subramanian have appeared for the Computer Instructors.

4. The short facts leading to the present group of matters are as follows:

The Government of Tamil Nadu permitted the Educational Institution to engage Computer Instructors on a consolidated remuneration of about Rs.

2,000/- (later revised to 2,600/-) per month. For engaging these Instructors, the Government of Tamil Nadu entered into a contract with

Electronics Corporation of Tamil Nadu (ELCOT for short) to engage such suitable persons. ELCOT made available such Computer Instructors to

the State. The Computer Instructors were posted in various educational institutions for a period of five years from 1999 to 2004 and the period

was subsequently extended by one more year upto August 2005. The employment was purely on a contract basis.

5. It so happened that although the period of contract and the extended period were over, some of the Computer Instructors were still retained in

the institutions and their number was around 772. The Computer Instructors represented to the Government for their absorption. The Government

considered the representation and issued G.O.Ms. No. 187, dated 04th October 2006 creating some 1880 posts of Computer Instructors for the

educational institutions. The Government also decided to conduct a Special Qualifying Examination for absorbing these Instructors as a one time

measure. This was because, most of the Instructors were not having the B.Ed.Degree, which is necessary in an educational institution. The

Instructors were however having the other qualifications, such as, a Degree in Computer Engineering (B.E.) or a Degree in Bachelor of Computer

Science (B.Sc.) or a Degree in Master of Computer Applications (M.C.A). Additionally, they were also having the postgraduate diploma obtained

after one year's course.

6. This decision of the State Government was challenged by the Computer B.Ed. Graduates Association by filing Writ Petition No. 50371 of 2007

etc. as a batch. Their main contention was that Computer Instructors were appointed only on a contract basis and they were not having the B.Ed.

Degree, which is necessary for a teacher. That group of writ petitions was allowed by a learned Single Judge by his judgment and order dated

13.3.2007. The State Government challenged that judgment and order by filing W.A. Nos. 1152 of 2007 and other appeals. The Division Bench,

which heard the matter, found that the Government decision to consider the in-service candidates by way of Special Qualifying Examination was a

one time measure to help those Computer Instructors, who had been continued even after the expiry of the original contract. The Division Bench,

therefore, upheld the decision of the State Government to consider the case of 772 Computer Instructors, who were not holding the B.Ed.

qualification. They were permitted to sit for the Special Qualifying Examination by another Division Bench by a judgment and order dated

22.8.2008.

7. The Tamil Nadu Computer Science B.Ed. Government Teachers' Welfare Society challenged the order of the Division Bench by filing Civil

Appeal No. 4187 of 2009 to the Apex Court. During the pendency of that appeal, the examination proposed by the State Government had

already been held. The Apex Court upheld the judgment and order of the Division Bench and permitted the exercises undertaken by the State

Government only as one time concession and exception. The Court held that those candidates, who had obtained more than 50% qualifying marks

shall be treated as qualified and recruited as Computer Instructors and they shall be absorbed and their services will be regularized in accordance

with law. The remaining candidates, who had secured less than 50% marks but above 35% will be held to be unsuccessful. However, they will be

allowed to appear in the next recruitment test to be held for that purpose. That

examination is now proposed to be held on 24th January 2010.

8. Some of these candidates, who had not been permitted to appear for this examination for various reasons, filed writ petitions, being W.P. Nos.

24270, 24598 and 24600 of 2008. They prayed that they may be permitted to write the Special Qualifying Examination, which was then to be

conducted on 12.10.2008 and which is now postponed and which is to be held on 24th January 2010. The learned Single Judge, who heard those

matters, allowed the petitions in some cases. Thus W.P. No. 24598 of 2008 filed by one V.Kalaivani was allowed in spite of the fact that she was

not available for work during 01st March 2005 to 31st July 2006. That is a period of year and five months, which she claimed to have not

attended because of maternity. Similarly, W.P. No. 24270 of 2008 filed by one M.Somasundaram was allowed though he had a break in service

from 03.12.2005 to 31.5.2006, i.e. for about six months. W.P. No. 24600 of 2008 was filed by three candidates. The petition was not allowed in

the case of the first of the three petitioners, i.e. one Renuka, who was not available for work for a period of about 2 years and 3 months. But the

same was allowed in the case of the second and third petitioner, i.e. one S. Mohan Raja and N. Kothai, who were not available for a period of

one year and one month and seventeen days, and one year and four months respectively.

9. The State Government is aggrieved by the common judgment and order rendered by the learned Single Judge in these three matters, dated 20th

April 2009 to the extent the learned Judge allowed these candidates to take the examination.

10. As against these three appeals filed by the State Government, the other petitions and appeals are by candidates who were not being allowed

by the State Government to appear for the proposed examination.

11. Mr. Sankaran, learned Special Government Pleader appearing for the Teachers' Recruitment Board and the Government Officers, submitted

that under the relevant G.O.Ms. No. 187 issued by the State Government dated 04.10.2006, the candidates had to be engaged through ELCOT

and they had to be in service on the date on which the G.O. was issued. Paragraphs 1 and 2 of this Government Order, when translated from

Tamil, read as follows:

1. Persons eligible to apply : Persons who have been engaged as Computer Instructors on a contract basis by the contractors selected through

ELCOT for working in Government/ Municipality/ Corporation/Adidraavidar Welfare/ Kallar Reformation Higher Secondary Schools and who

have worked as such till the contract period is over by receiving a remuneration of Rs. 2000/- from the Government and are continuing to work as

such alone shall apply.

2. Educational Qualifications: The aforesaid eligible persons should possess any one of the following Degrees:

1. B.E. Degree in Computer Science/ECE/EEE from a recognised University.

2. B.Sc. Computer Science

3. M.C.A.

4. B.C.A.

5. Any degree from a recognised University in the State with one year P.G. Diploma Course in Computer Application offered by a recognised

University.

12. Mr. Sankaran, therefore, submitted that it was necessary that the candidates concerned ought to have been appointed through ELCOT. They

ought to have the qualifications, which are mentioned in paragraph 2 of that Government Order and thirdly they must be in continuous service upto

the date of the Government Order. He has submitted to us the list of all the candidates concerned in these appeals and the writ petitions to point

out as to how they were not being entertained either for the reason that they were not appointed by ELCOT or they were not having the necessary

qualifications or that they are not in continuous service and had the break for quite a large period. These persons are some 33 persons. He

however, considered the case in favour of three of the candidates, i.e. one K. Suresh and G.S. Mubarak Ali, who had filed W.P. No. 24603 of

2008 along with other candidates. They are fulfilling all the requirements. One K. Sridevi, who has filed W.P. No. 27261 of 2008 also fulfills the

test. These candidates were working as Computer Instructors as on the date of the G.O. They had the qualifications and they had been employed

through ELCOT and had worked continuously. They had however left the service a little thereafter. He stated that they were eligible to take the

examination and if they pass it, were eligible for employment. As far as the remaining 30 persons are concerned, he has pointed out that they were either not having the necessary qualifications or were not appointed by ELCOT or were not in continuous service all throughout. The original list of the 33 candidates submitted by Mr. Sankaran giving reasons for their ineligibility is as follows:

Sl. W.P.No. Sl. Name of the Reason for Ineligible

No. No. Petitioner

1 26037/2008 1 G. Krishnakumar No Educational Qualification as per the Govt. Letter

No.188 Dated 04.12.2006 for the Computer Instructor

Post. The petitioner got PGDCA Certificate Course from SISI Computer Centre and the certificate course does not have the mark sheet and convocation. The course is not a university reconized course.

2 S. Ramesh No Educational Qualification as per the Govt. Letter

No.188 Dated 04.10.2006 for the Computer Instructor

Post. The petitioner got PGDCA Certificate Course from DCL Software Ltd and the certificate course does not have the mark sheet and convocation. The course is not a university recognized course.

3 Y. Silviya joice Presilla Not appointed by ELCOT in Contract Basis.

Appointed through PTA after the contract period.

4 S. Gandhi (Petitioner in W.P.666/07 already dismissed in this

Hon"ble Court wide Order Dt.13.03.07) Not appointed by

ELCOT in Contract Basis. Appointed through PTA on

05.11.05 after the contract period.

5 Miss T.Christilda Not appointed by ELCOT in Contract Basis. Appointed

through PTA on 05.12.05 after the contract period.

6 S. Suriyaprabha Left the service on 04.06.07. Not appointed by ELCOT

in Contract Basis. Appointed through PTA on 28.08.08

afte the contract period.

7 R. Ramalingam No Educational Qualification as per the Govt. Letter No.188 Dated 04.10.2006 for the Computer Instructor Post. The petitioner got only DCA private certificate course does not have the mark sheet and convocation. The course is not university recognized course.

8 A. Ganesan No Educational Qualification as per the Govt. Letter No.188 Dated 04.10.2006 for the Computer Instructor Post. The petitioner got DNCC Certificate Course from Aptech Computer Centre and the certificate course does not have the mark sheet and convocation. The course is not a university recognized course.

9 S. Sumandirar No Educational Qualification as per the Govt. Letter No.188 Dated 04.10.2006 for the Compute Instructor Post. The petitioner got DCP Certificate Course from S.P.Mandali"s and the certificate course does not have the mark sheet and convocation. The course is not a university recognized course. The petitioner not completed the PGDCA Course.

10 C .Ravindran Break Of Service Left the service from 01/09/2004 to 01/06/2005 and rejoined on 02/06/2005 through PTA.

11 R. Vijayalakshmi Break Of Service Left the service from 15/10/2003 to 20/11/2006 and rejoined on 21/11/2006 through PTA.

12 R. Natarajan Break Of Service Left the service from 22/10/2004 to 07/09/2006 and rejoined on 08/09/2006 through PTA.

13 R. Gopalakrishnan Break Of Service Left the service from 14/04/2001 to 03/09/2006 and rejoined on 04/09/2006 through PTA.

14 R. Umamageswari Break Of Service Left the service from 01/06/02 to 07/06/05 and No Educational Qualification as per the Govt. Letter No.188 Dt. 04.10.2006 for the Computer

Instructor Post. The petitioner got DCA Certificate and the certificate course is not a university recognized course.

15 S. Ivy Rajaknai Not appointed by ELCOT in Contract Basis. Appointed on 01.08.2006 through PTA after the contract period and No Educational Qualification as per the Govt. Letter No.188 Dated 04.10.2006 for the Computer Instructor Post. The petitioner got PGDCS, HDCA, CIT Certificates and the certificate courses are not a university recognized course.

16 C. Maheswaran Not appointed by ELCOT in Contract Basis. Appointed through PTA on 04/07/2005 after the contract period.

17 M. Umamaheswari The petitioner working School is not under ELCOT Contract and the Petitioner not appointed by ELCOT in Contract Basis. Appointed through PTA.

18 P. Sri Priya Not appointed by ELCOT in Contract Basis. Appointed on January 2006 through PTA after the contract period.

19 R.Senthilkumar (Petitioner in W.P.2416/07 already dismissed in this Hon"ble Court wide Order Dt.13.03.07) The Petitioner working School is not under ELCOT Contract and the Petitioner not appointed by ELCOT in the Contract Basis. Appointed on 08.10.04 through PTA.

20 R.Kumaravel (Petitioner in W.P.2416/07 already dismissed in this Hon"ble Court wide Order Dt.13.03.07) Not appointed by ELCOT in Contract Basis. Appointed through PTA on 31.07.2006 after the contract period.

21 M. Senthilnathan Not appointed by ELCOT in Contract Basis. Appointed through PTA on 21.06.2006 after the contract period.

2 24597/2008 1 M. Ravichandran Not appointed by ELCOT in Contract Basis. Appointed

through PTA on 26.06.2006 after the contract period.

2 P. Amsakala Break Of Service Left the service from 22/06/2002 to 28/02/2006.

3 K. Sasikala (Petitioner in W.P.3063/07 already dismissed in this Hon"ble Court wide Order Dt.13.03.07) Break Of Service Left the service from 20/04/2000 to 30/05/2001, 01/07/2003 to 30/12/2004.

4 K. Devika (Petitioner in W.P. 2416/07 already dismissed in this Hon"ble Court wide Order Dt.13.03.07) Not appointed by ELCOT in Contract Basis. Appointed through PTA on 01.02.2006 after the contract period.

5 S. Sivasenthilkumar (Petitioner in W.P.49926/06 already dismissed in this Hon"ble Court wide Order Dt.13.03.07) Break of Service Left the service from 30/07/2003 and again appointed through PTA on 24/08/2005 after the contract period.

6 M. Ramesh (Petitioner in W.P.2416/07 already dismissed in this Hon"ble Court wide Order Dt.13.03.07) Not appointed by ELCOT in Contract Basis. Appointed through PTA on 15/09/2005 after the contract period.

7 P. Chithirai Selvan (Petitioner in W.P.49926/06 already dismissed in this Hon"ble Court wide Order Dt.13.03.07) Not appointed by ELCOT in Contract Basis. Appointed through PTA on 17/08/2006 after the contract period.

8 S. Palaniyandi (Petitioner in W.P. 49926/06 already dismissed in this Hon"ble Court wide Order Dt.13.03.07) Not appointed by ELCOT in Contract Basis. Appointed on 03.06.2005 through PTA after the contract period.

9 S. Aravazhi Not appointed by ELCOT in Contract Basis. Appointed

on 01.07.2005 through PTA after the contract period.

10 S. Banumathi (Petitioner in W.P.49926/06 already dismissed in this Hon''ble Court wide Order Dt.13.3.2007) Not appointed by ELCOT in Contract Basis. Appointed on 08.08.2005 through PTA after the contract period.

11 A. Tamil Break of Service Left the service from 04/11/2003 and again appointed on 18.01.2007 through PTA after the contract Period.

12 P. UmaMeheshwari (Petitioner in W.P.49926/06 already dismissed in this Hon''ble Court wide Order Dt.13.03.07) Not appointed by ELCOT in Contract Basis. Appointed through PTA on 01.12.2005 after the contract period.

13 R. Jeyanthi (Petitioner in W.P.49926/06 already dismissed in this Hon''ble Court wide Order Dt.13.03.07) Break of Service- Left the service from 28/11/2000 and again appointed on 01.07.2005 through PTA after the contract period.

14 T. Saravanan Not appointed by ELCOT in Contract Basis. Appointed through PTA on 19.06.2006 after the contract period.

15 M. Govindarasu Service Break Left the service from 26/07/03 to 31/07/05.

16 M. Bhuvaneswari (Petitioner in W.P.13/07 already dismissed in this Hon''ble Court wide Order Dt. 13.03.07) Break of Service Left the service from 01/11/2002 and again appointed on 01.09.2005 through PTA after the contract period.

17 V. Jamuna Break Of Service Left the service from 21/05/05 to 18/08/06 and 14/07/07 to 31/05/08.

18 S. Dhanamani (Petitioner in W.P.49983/06 already dismissed in this Hon''ble Court wide Order Dt.13.03.07) Break Of Service

Left the service from 04/06/2004 to 22/12/2005.

19 R. Lakshmi Prapa Break of Service Left the service from 01/03/03 to 19/07/05 and 10/11/07 to 31/05/08.

20 R. Kamalaveni Left her service on 19.09.2002. Not appointed by ELCOT in Contract Basis. Appointed through PTA on 28.08.2006 after the contract period.

21 D. Suresh Babu The petitioner is appointed as a Stand by Computer Instructor on 19/02/03 to 27/02/03 (9 days only) instead of B.Radhika. The petitioner left the service from 28/02/03 after the return of B.Radhika. The petitioner appointed on 03/06/05 through PTA after the contract period.

22 P. Suthamalini The Petitioner working school is not under ELCOT Contract and the Petitioner not appointed by ELCOT in Contract Basis.

23 N. Kamatchi Left the service on 31.10.2004. Not appointed by ELCOT in Contract Basis. Appointed through PTA on 11.10.2006 after the contract period and no Educational Qualification as per the Govt. Letter No.188 Dated 04.10.2006 for the Computer Instructor Post. The petitioner not completed PGDCA course.

24 S. Jayalakshmi Break Of Service Left the service from 22/09/07 to 31/08/08.

25 D. Pushpa latha No Educational Qualification as per the Govt. Letter No.188 Dated 04.10.2006 for the Computer Instructor Post. The petitioner got DCSA Certificate Course from V Computer Centre and the ` certificate course does not have the mark sheet and convocation. The course is not a university recognized course.

26 L. Kumar Break Of Service Continuously absent the service from

07/07/04 to 20/11/04. From 01/07/07 to 31/05/08, attendance not produced at the time of Certificate Verification. Actually, the petitioner left the service from 07/07/04. He rejoined the school after the contract period. The petitioner got salary of Rs.1000/ month from PTA instead of the ELCOT salary of Rs.2000/ month.

27 A. Thahira Begum Break Of Service Left the service from 22/10/2004 to 31/05/06.

28 D.Vijyakumar Break Of Service Left the service from 29/01/2005. The petitioner rejoined through PTA.

29 K. Mohan Break Of Service 01/03/2001 to 31/05/2001, Left the service from 01/02/2004 to 19/10/2004.

30 P. Shajini Break Of Service Left the service from 08/10/2004 to 30/06.06.

31 G. Saranya The Petitioner working school is not under ELCOT Contract and the Petitioner not appointed by ELCOT in Contract Basis. Now the petitioner not in service.

32 B.S. Kavitha No Educational Qualification as per the Govt. Letter No.188 Dated 04.10.2006 for the Computer Instructor Post. The petitioner got PGDIT from BITS Information Technology. The course is not a university recognized course and PGDIT is not in Govt. Letter No.188.

33 P. Ashok Kumar (Petitioner in W.P.1374/07 already dismissed in this Hon"ble Court wide Order Dt.13.03.07) The petitioner left the service on 01/05/2001 from Govt.Boys HSS, Anthiyur, Erode Dt. And then the petitioner joined on 01/06/2001 in Govt.Girls HSS, Anthiyur, Erode Dt. This school is not under ELCOT Contract. Again the petitioner rejoined on 06/06/2005 in Govt. Boys HSS,

Anthiyur, Erode Dt. Through PTA after the contract period.

34 K. Venkatachalam No Educational Qualification as per the Govt. Letter No.188 Dated 04.10.2006 for the Computer Instructor Post. The petitioner got PGDCA from Vinayak Computer System and the certificate course does not have the mark sheet and convocation. The course is not a university recognized course.

3 24269/08 1 B. Suresh (Petitioner in W.P.2584/07 already dismissed in this Hon''ble Court wide Order Dt.13.03.07) Service Break Left the service from 07/07/04 to 02/07/06.

4 24270/08 1 M. Somasundaram (Petitioner in W.P.2584/07 already dismissed in this Hon''ble Court wide Order Dt.13.03.07) Service Break Left the service from 03/12/05 to 31/05/06.

5 24587/08 1 P. Arumugam No Educational Qualification as per the Govt. Letter No.188 Dated 04.10.2006 for the Computer Instructor Post. The Petitioner got PGDCA Certificate from NIT Computer Centre and the certificate course does not have the mark sheet and convocation. The course is no a university recognized course.

2 K. Rajeswari No Educational Qualification as per the Govt. Letter No.188 Dt.04.10.2006 for the Computer Instructor Post. The petitioner got Certificate in Computer Applications from Dept. of Employment and Training and the certificate does not have the mark sheet and convocation. The course is not a university recognized course. The petitioner not completed the PGDCA course.

3 L. Srenivasan No Educational Qualification as per the Govt. Letter No.188 Dated 04.10.2006 for the Computer Instructor

Post. The petitioner did not complete the PGDCA course.

4 G. Sampathkumar No Computer Science related Educational Qualification as per the Govt. Letter No.188 Dated 04.10.2006 for the Computer Instructor Post.

5 G. Kumaresan No Educational Qualification as per the Govt. Letter No.188 Dated 04.10.2006 for the Computer Instructor Post. The petitioner got Special High Level Computer Training Program Certificate from Backward Classes and Minorities Welfare Department and the certificate course does not have the mark sheet and convocation. The course is not a university recognized course.

6 S. Muraliraj No Educational Qualification as per the Govt. Letter No.188 Dated 04.10.2006 for the Computer Instructor Post. The petitioner got Special High Level Computer Training Program Certificate from Backward Classes and Minorities Welfare Department and the certificate course does not have the mark sheet and convocation. The course is not a university recognized course.

7 T.K. Sravanan No Educational Qualification as per the Govt. Letter No.188 Dated 04.10.2006 for the Computer Instructor Post. The petitioner got PGDCA Certificate from Vertex Computers and the certificate course does not have the mark sheet and convocation. The course is not a university recognized course.

8 R. Bakiyalakshmi No Educational Qualification as per the Govt. Letter No.188 Dated 04.10.2006 for the Computer Instructor Post. The petitioner not completed the PGDCA course.

9 T. Lakshmi No Educational Qualification as per the Govt. Letter No.188 Dated 14.10.2006 for the Computer Instructor

Post. The petitioner got DCA and HDCA Certificates from Board of Computer Exam. The course is not a university recognized course and DCA, HDCA is not in Govt. Letter No.188.

10 K. Srenivasan No Educational Qualification as per the Govt. Letter No.188 Dated 04.10.2006 for the Computer Instructor

Post. The petitioner got Special High Level Computer Training Program Certificate from Backward Classes and Minorities Welfare Department and the certificate course does not have the mark sheet and convocation.

The course is not a university recognized course.

6 24603/08 1 K. Suresh Break Of Service Left the Service from 01/04/08.

2 P. Kumari Ida No Educational Qualification as per the Govt. Letter No.188 Dated 04.10.2006 for the Computer Instructor

Post. The petitioner got PGDCA Certificate from Microteck Computer Education. The course is not a university recognized course.

3 G. Meenatchi Break Of Service Left the service from 16/02/2002 to 06/06/2005.

4 R. Prakash No Educational Qualification as per the Govt. Letter No.188 Dated 04.10.2006 for the Computer Instructor

Post. The petitioner got HDCA Certificate from Lakhotia Computer Centre and the certificate course does not have the mark sheet and convocation. The course is not a university recognized course.

5 G.S. Mubarak Ali Break Of Service Left the service from August 2005.

The petitioner rejoined on August 2006 through PTA after the contract period. The petitioner did not attend the Certificate Verification held at CEO Office, Erode on 26/09/2008.

6 V. Govindaraj Break Of Service Left the service from 07/0/04 to 03/08/05.

7 C.S. Umasankari No Educational Qualification as per the Govt. Letter No.188 Dated 04.10.2006 for the Computer Instructor Post. The petitioner got PGDCA Certificate from Excellent Institute of Engineering & Technology and the certificate course does not have the mark sheet and convocation. The course is not a university recognized course.

8 S. Senthilnathan Not appointed by ELCOT in Contract Basis. Appointed through PTA after the contract period. Resigned his job on 14.07.2008.

9 G. Santhi No Educational Qualification as per the Govt. Letter No.188 Dated 04.10.2006 for the Computer Instructor Post. The petitioner got HDSE Certificate from SISI. The course is not a university recognized course and HDSE is not in Govt. Letter No.188.

7 24589/08 1 P. Aravamudhan No Educational Qualification as per the Govt. Letter No.188 Dated 04.10.2006 for the Computer Instructor Post. The petitioner got HDNCC Certificate from NIIT and the certificate course does not have the mark sheet and convocation. The course is not a university recognized course and HDNCC is not in Govt. Letter No.188.

8 24425/08 1 P.K. Verivelraja Terminated his service from GHSS, Ganapathipalayam, Erode Dt. On 31/10/2006 by Chief Educational Officer, Erode in his proceedings No.10285/B2/06 Dated:26.10.06 for his bad behaviors (Petition given by Parent

Teachers Association, Old Students Association,

President of Ganapathipalayam Panchayat, Parents and

Public as misbehavior with girl students)

9 24598/08 1 V. Kalaivani Break of service Left the service from 01/03/05 to 31/07/06.

10 24485/08 1 G. Vanaja Not appointed by ELCOT in Contract Basis. Appointed through PTA after the contract period.

11 25314/08 1 M.C. Arulprakasam Break of service Left the service from 08/08/03 to 30/11/05, 04/06/08 to 14/08/08.

12 27470/08 1 K. Rajasekar Break of Service Left the service from 19/10/01 to 01/07/06. Appointment by PTA after the contract period on 01/01/06.

13 27471/08 1 K. Yasotha Not appointed by ELCOT in Contract Basis. Appointed through PTA after the contract period.

14 25244/08 1 T. Sathiyamoorthi Not appointed by ELCOT in Contract Basis. Appointed on 20.06.2005 through PTA after the contract period.

15 23135/08 1 A. Praveen Left the service from 19/01/07. Now not in Service.

16 27203/08 1 M. Latha No Educational Qualification as per the Govt. Letter No.188 Dated 04.10.2006 for the Computer Instructor Post. The petitioner got Diploma Certificate from Private Centre. The petitioner not completed the PGDCA Course.

17 27261/08 1 K. Sridevi Break of Service Left the service from 21/08/07 to 21/09/08.

18 24110/08 1 A. Usharani The Petitioner working school is not under ELCOT Contract and the Petitioner not appointed by ELCOT in Contract Basis.

19 24117/08 1 S. Thiruvarul Selvan The petitioner working school is not under ELCOT

Contract and the Petitioner not appointed by ELCOT in Contract Basis.

20 24551/08 1 D. Mohan Left the service from June 2005. Now not in Service.

21 27360/08 1 C. Thangammal No Educational Qualification as per the Govt. Letter

No.188 Dated 04.10.2006 for the Computer Instructor Post. The petitioner got B.Com(CA) degree. This qualification is not in Govt. Letter No.188.

22 24600/08 1 R. Renuka Break of Service 01/02/02 to 04/04/02, 06/11/03 to 31/05/04, 01/04/05 to 02/10/06, 16/10/07 to 31/10/07.

2 S. Mohanraj Break of Service Left the service from 06/09/05 to 18/06/06.

3 N. Kothai Break of Service 01/12/04 to 12/06/05, 18/02/07 to 15/03/07, 21/03/07 to 18/04/07. Left the service from 16/11/07 to 15/06/08.

23 24601/08 1 B. Arangan Break of Service Left the service from 13/06/05 to 05/07/06.

2 V. Mirunalini Break of Service - Left he service from 01/07/04 to 31/12/05.

3 A. Sangeetha Not appointed by ELCOT in Contract Basis. Appointed on 04.12.2006 through PTA after the contract period.

24 24602/08 1 R. Sivanandam No Educational Qualification as per the Govt. Letter

No.188 Dated 04.10.2006 for the Computer Instructor Post. The petitioner got 6 Computer Centre and the certificate course does not have the mark sheet. The course is not a university recognized course and not in Govt. Letter No.188.

25 26243/08 1 J. Sagaya Mary The Petitioner worked school is not under ELCOT Contract and the Petitioner not appointed by ELCOT in

Contract Basis. Appointed by PTA on 05.06.05.

26 25155/08 1 P. Durgadevi The petitioner left the job on 02.06.2005. And then appointed on 01.06.2006 through PTA after the contract period. Again the petitioner left the service from 05.07.08. Now the petitioner not in service.

27 1424/09 1 M. Maheswari The petitioner resigned the job on 03.05.2007 FN. She

is working as Data Entry Operator in V.K.Pudhur Taluk Office, Tirunelveli District from 03.05.07 AN to till date.

28 28538/08 1 V. Rajarajeshwari The petitioner not appointed by ELCOT in Contract

Basis. Already two contract based computer instructors had worked in that school. The petitioner additionally appointed through PTA.

2 S. Narmadhadevi The petitioner not appointed by ELCOT in Contract Basis. Already two contract based computer instructors had worked in that school. The petitioner additionally appointed through PTA.

3 V. Selvaraju Not appointed by ELCOT in Contract Basis. Appointed on 06.09.2007 through PTA after the contract period.

29 28702/08 1 T. Kannan The Petitioner working school is not under ELCOT Contract and the Petitioner not appointed by ELCOT in Contract Basis.

30 30538/08 1 S. Mariappan The Petitioner worked school is not under ELCOT Contract and the Petitioner not appointed by ELCOT in Contract Basis.

31 2511/09 1 A. Arumugam The Petitioners failed in the Examination conducted by TRB.

2 S. Ganesh

3 A. Jahubar Sathik

4 G.S. Senthil Velavan

5 M. Manivannan

32 1204/09 1 G. Thangamani The Petitioner failed in the Examination conducted by

TRB.

33 30327/08 1 S. Vijaya The Petitioner failed in the Examination conducted by

TRB.

13. He has referred to and relied upon the judgment of the Division Bench which was carried to the Supreme Court and the approach of one time

measure was accepted in the judgment. He emphasized that the approach of the Government was to accommodate these persons who were

continuously in service for a long time for over six years or so as a one time measure and this approach had been accepted by the Division Bench.

We quote paragraphs 28 and 29 of the judgment of the Division Bench for ready reference, which read as follows:

Para 28. : At the cost of repetition, we must held that it is not a process of "absorption" or "regularization" 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 service 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.

Para 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.

14. Mr. Muthukumarasamy, learned Senior Advocate, Mr. C. Selvaraju, learned Senior Advocate with Mr. T. Sellapandian, Mr. K. Selvaraj, Mr.

K.M. Ramesh and Mr. R. Subramanian, who have appeared for the Computer Instructors, submitted that what was required was only to have the

educational qualifications, which the candidates were having and that they should be in the service of the educational institution on the date of the

G.O. It was submitted that the G.O. did not require that the person should be continuously in service during that period. We have quoted the

relevant provision of the G.O. above and the interpretation thereon placed by the Division Bench in the earlier judgment. The learned Counsel for

the candidates submitted that the intention of the Government was to accommodate these candidates who had put in long years of service and

some break need not be read against them. In this connection, we must note that from the tabular statement given by the Recruitment Board, it is

seen that the candidates are rejected only where there are large breaks in their service and not breaks of a few days here and there.

15. We must note herein that the law regarding the employment in the State service has been laid down by the Constitution Bench of the Apex

Court in the case of Secretary, State of Karnataka and Others Vs. Umadevi and Others, . The Apex Court has in terms held that under the

scheme of our Constitution, the employment in the State service has to be after a uniform process of recruitment available to all the persons

interested. Normally, it will be through some competitive examination and or through Employment Exchange. Any other method of backdoor entry would be unfair to large number of young persons who are waiting for their employment. In paragraph 53 of its judgment, the Apex Court however noted that there are cases where candidates have been employed for number of years without following proper procedure of selection. The Court, therefore, granted liberty to the Government and the public authorities to undertake a one time exercise wherein an opportunity would be given to such candidates to prove their merit. The Court mentioned that such exercise should be available to those candidates, who had put in about 10 years of service and who had been employed by a process otherwise than the normal entry method. In the present case, the State Government resorted to a somewhat similar one time exercise for candidates who had put in a little over six years of service. Thus the State Government had to some extent departed in favour of these candidates though they had put in just over six years of service and not 10 years, as referred in paragraph 53 of the above referred judgment. This approach of the State Government was left undisturbed by the Division Bench of this Court and subsequently by the Apex Court.

16. The observations of the Division Bench as occurring in paragraphs 28 and 29 of its judgment, which were left undisturbed by the Apex Court, have been quoted hereinabove. We are in agreement with the view taken by the Division Bench and also by the State Government. In the instant cases, nearly some 1880 posts have been created and a very large number of candidates are allowed to take this examination for regularization. It is only some 33 (and now 30) candidates, who are being objected for participation, basically on the ground that they had not been employed through ELCOT or they did not have the required qualifications or they were not in service on the date of the Government Order.

17. Over and above this, the Government is insisting that by and large the candidates concerned must be in continuous service during this period upto the date of the notification. Those candidates who have not been available for service for months together are excluded from this opportunity to give this examination. As stated above, this opportunity itself is an exception to the general rule of employment through a uniform procedure,

which is in consonance with Articles 14 and 16 of the Constitution of India. The State Government is giving this opportunity to the candidates, who had put in just over six years or so, as against the yardstick of 10 years referred to in paragraph 53 of the judgment in Uma Devi's case (supra). In the circumstances, if the State insists that the candidates ought to have worked by and large continuously throughout this entire period, the State cannot be faulted. The opportunity cannot be given to candidates who were not available continuously for the service. Basically, the representation of the candidates to the Government had been that they had put in long years of service and, therefore, the Government came out with this one time exercise. If that was the representation of the Computer Instructors, obviously, it was expected of them that they were available for service during the entire period.

18. For the reasons stated above, we accept the submissions on behalf of the Teachers' Recruitment Board. The order of the learned Single

Judge, to the extent it allows the candidates, found non-eligible by the Board, to appear for this examination, cannot be sustained.

19. When the arguments were almost complete, Mr. C. Selvaraju, learned Senior Counsel appearing for some of the petitioners submitted that

some five persons, who were perhaps not eligible for not having been in long continuous service, were allowed to give this examination. They are,

1. Lakshmi
2. P.V. Kumar
3. Sathyanarayanan
4. Dhanalakshmi and
5. Usharani

It was submitted that if those persons are given the concession, similar concession should be given to the candidates, who are being represented by

the respondents. Mr. Sankaran, firstly objected to the furnishing of this information at late stage, but in any case, he stated that he will look into the

matter and if any correctional steps are possible to be taken, the same will be taken. We may, however, add that assuming that any such five

persons are allowed to give the examination or appointed contrary to the stand taken by the Government, such wrong action cannot be the basis to

seek a direction that similar concession should be given to other persons. One wrong order does not justify seeking another wrong order as held

by the Apex Court in Chandigarh Administration and another Vs. Jagjit Singh and another, .

20. Although the order is being passed, as recorded earlier, the appellant Teachers" Recruitment Board will permit the three candidates, viz.,

K.Suresh, K.Sridevi and G.S. Mubarak Ali to give the concerned examination and if they pass or have passed the same, the Board will offer them

the consequent employment.

21. In the result, the three appeals filed by the Teachers" Recruitment Board are, therefore, allowed and the order passed by the learned Single

Judge to the extent it is against the Board is set aside. The other two appeals and the writ petitions filed by the candidates will consequently stand

dismissed. However, there will be no order as to costs. Consequently, the connected miscellaneous petitions are also dismissed.