

(2010) 08 MAD CK 0198

In the Madras High Court

Case No : Writ Petition No. 12720 of 2010 and M.P. No. 1 of 2010

Y. Manimegalai

APPELLANT

Vs

The Director, Teacher Education, Research and Training and
Correspondent, Duraimurugan Teacher Training Institute

RESPONDENT

Date of Decision : 05-08-2010

Acts Referred:

Constitution of India, 1950 — Article 162, 19(1)

Citation : (2011) 1 MLJ 1210

Hon'ble Judges : V. Dhanapalan, J

Bench : Single Bench

Advocate : T.P. Prabakaran, for the Appellant; Dakshayini Reddy, Government Advocate for R-1, for the Respondent

Final Decision : Allowed

Judgement

V. Dhanapalan, J.—Heard Mr. T.P. Prabakaran, learned Counsel for the petitioner and Mrs. Dakshayini Reddy, learned Government Advocate (Education) appearing for the first respondent. In spite of service of private notice on the second respondent by the learned Counsel for the petitioner, the second respondent—Correspondent of Duraimurugan Teacher Training Institute, has not chosen to appear either in person or through its counsel.

2. By consent of the learned Counsel appearing for the respective parties, the Writ Petition itself is taken up for final disposal.

3. The prayer in the Writ Petition is for issuance of a Writ of Mandamus, to direct the second respondent to consider the petitioner's admission into the Teacher Training Course for the academic year 2010-2011 and issue the application form to the petitioner and accept the filled in form of the petitioner without any further delay.

4. As the petitioner has passed the Higher Secondary Course Certificate during September 1999 in Government Higher Secondary School, Arcot, and she being

a candidate of Most Backward Class Community, filed this Writ Petition for a direction as stated above to the second respondent-Institute, to issue application form for admission under the Management Quota.

5. It is stated by the petitioner that the maximum age limit prescribed for admission into the Teacher Training Course for the candidate belonging to MBC is 30 years and the petitioner's Date of Birth is 29.11.1980, thereby she would complete 30 years by 29.11.2010.

6. When the petitioner approached the second respondent-Institute for issuance of the application form for joining the Teacher Training Course, it was refused by them on the ground that she secured 536 marks out of 1200, and that the minimum qualifying marks prescribed for admission into the said Course is 540.

7. It is stated by the petitioner that she had secured 44.6% in the Higher Secondary Examination and the same can be rounded off to 45% being the minimum qualifying percentage of marks for admission into the said Course. It is further contended by the petitioner that this would be her last opportunity to join the Course in this academic year, as she crosses 30 years by 29.11.2010.

8. Relying on an order passed by this Court in a similar case in W.P. No. 9678 of 2006, dated 10.4.2006, the petitioner states that her case may be directed to be considered by the respondents, the same being covered by the said order of this Court.

9. Taking a ground that refusal to issue the application form is in violation of Article 19(1) of the Constitution of India, the petitioner states that the last date for issuing the form having ended on 28.6.2010, this Court may consider her prayer for a direction to the second respondent to issue the application form for admission into the said Course under the Management Quota.

10. Learned Government Advocate appearing for the first respondent, while agreeing that the case of the petitioner is covered by the said order of this Court, the same issue also having been affirmed by a Division Bench of this Court in the Writ Appeal in another similar case, and the said Division Bench in Writ Appeal No. 1582 of 2007, by judgment dated 23.3.2009, relying on the decisions of the Supreme Court, confirmed the order passed by this Court in connected Writ Petition, states that this Court, in the case on hand, may issue similar directions.

11. Having considered the submissions of the learned Counsel on either side, it is seen that this Court, in similar circumstances, considered the issue and passed orders in W.P. No. 9678 of 2006, dated 10.4.2006, relevant portion of which reads as follows:

3. In exercise of power under Article 162 of the Constitution of India, the Government evolves a policy containing eligibility norms, qualification, age restrictions etc. for admission to the first year Diploma in Teacher Education Course. On the basis of the said policy, the Director of Teacher Education, Research and Training, Chennai issued the information and instructions to the

applicants for admission to the said course for the academic year 2005-2006. As per 1.1 of the prospectus, for the purpose of eligibility, a candidate should have passed the Higher Secondary Examination or its equivalent with 45% marks in aggregate.

4. The said Clause does not refer to the marks totally secured by the candidate out of 1200. But it refers only the percentage of marks secured by a candidate. As the petitioner has secured 539 marks out of 540, the admission has not been approved. However, if 539 marks is converted into one of percentage, the petitioner has secured 44.91%, which is above 45%. It would be reasonable to hold that if a candidate secures more than 44.5% of marks, the said mark has to be rounded off as 45%. Equally, it should be held that if a candidate secures 44.4% and lesser percentage marks, then it should be computed as one of 44%. If this yardstick is applied, the petitioner should be considered as a candidate secured 45% and in such case, she would be eligible as per Clause 1.1 of the information to the candidates issued by the respondent for the admission to the Teacher Training Course for the academic year 2005-2006.

5. On the other hand, the approval has been denied solely by taking into consideration of the total number of marks, namely, 539 marks secured by the petitioner.

6. For my above reason, the impugned order is unsustainable and accordingly, it is set aside. The writ petition is allowed. The first respondent Director, Teacher Education, Research & Training, Chennai is directed to approve the admission of the petitioner as proposed by the second respondent Institute. No costs. Consequently, W.P.M.P. No. 10776 of 2006 is closed.

12. As stated by the learned Government Advocate appearing for the first respondent-Director of Teacher Education, Research and Training, the Writ Appeal in W.A. No. 1582 of 2007, filed by the Director of Teacher Education, Research and Training, and the Principal of the concerned Institution therein, was dismissed by the Division Bench on 23.3.2009, thereby, the Division Bench confirmed the order dated 15.12.2006 passed in Writ Petition No. 48851 of 2006, wherein similar prayer was made as in the present Writ Petition, and the same has been disposed of by this Court with a direction.

13. In the said Writ Appeal No. 1582 of 2007, by judgment dated 23.3.2009, the Division Bench, relying on the similar order passed by this Court in connected case in W.P. No. 9678 of 2006, dated 10.4.2006, and the observations and directions of the Supreme Court in *Raj Kumar Khaitan and others Vs. Bibi Zubaida Khatun and another*, and 2005 (2) SCC 10 (*State of U.P. and Anr. v. Pawan Kumar Tiwari and Ors.*), observed as under:

2. A candidate by name Selvi. K. Sudha was admitted in Joseph Chellamuthu Teacher Training Institute, Keerambur, Namakkal District in the academic year 2004-2005 for the I year Diploma in Teacher Education Course. There is no controversy that the minimum eligibility marks for admission to the II year

Diploma Teacher Education Course, is 45% in +2 Examinations. Equally, there is also no controversy or dispute that the said candidate had secured only 44.8% of marks in +2 Examinations. When a proposal was forwarded to the first appellant for approval of the selected candidates, by the proceedings dated 16.11.2005, the admission of the said candidate by name Selvi. K.Sudha was not approved by the first appellant on the ground that she did not secure 45% marks in +2 Examinations. On a challenge to the said order in the writ petition, the learned Judge had set aside the order and directed the Director of Teacher Education, Research and Training to approve the admission of the said candidate and also to allow her to write I and II years examinations scheduled to be held from 18.12.2006. The said order is now questioned in the writ appeal. For completion of facts, it appears that pursuant to the directions of this Court, the said candidate had written examinations and also completed her course.

3. The question as to how the marks obtained by a candidate could be rounded off came up for consideration before the Apex Court in *Raj Kumar Khaitan and others Vs. Bibi Zubaida Khatun and another*, . In that case, while considering the awarding of marks by the Public Service Commission, the Apex Court approved the practice of rounding off marks from 32.5% to 33%. Again in *State of U.P. and Anr. v. Pawan Kumar Tiwari and Ors.* 2005 (2) SCC 10, when a similar question came up for consideration, it has been held thus:

7. We do not find any of the two reasonings adopted by the High Court. The rule of rounding off based on logic and common sense is: if part is one-half or more, its value shall be increased to one and if part is less than half then its value shall be ignored. 46.50 should have been rounded off to 47 and not to 46 as has been done. If 47 candidates would have been considered for selection in general category, the respondent was sure to find a place in the list of selected meritorious candidates and hence entitled to appointment.

8. It was submitted by the learned Counsel for the appellants that if this principle of rounding off is to be applied then the percentage of reservation in Scheduled Tribe category would come to 2 by rounding off 1.86, to the nearest higher value, and in that case a candidate from Scheduled Tribe category and not the respondent would be entitled to appointment....

4. A similar question came up for consideration before the single Judge of this Court (D. Murugesan, J.) in W.P. No. 9678 of 2006 (*K. Sangeetha v. The Director, Teacher Education, Research and Training, Chennai-6 and Anr.*) and this Court has held as follows:

(extracted in the present order in the earlier paragraphs)

5. The procedure of rounding off marks has been consistently adopted by this Court for eligibility of a candidate and in that view of the matter, we do not find any infirmity in the order dated 15.12.2006 made in W.P. No. 48851 of 2006 and the writ appeal fails.

6. In the result, the writ appeal is dismissed. The candidate by name Selvi. Sudha, on whose behalf the Teacher Training Institute has questioned the order in not approving her admission is entitled to all the benefits of her training including the certificates, if not already issued. No costs. Consequently, M.P. No. 2 of 2007 is closed.

14. In the light of the above principles laid down by the Division Bench of this Court by relying on the decisions of the Supreme Court and also the order passed by this Court in a similar prayer as in the present Writ Petition, it should be held that as the petitioner herein secured 44.6% in the Higher Secondary Examination, it has to be rounded off to 45% and if the same is done, the petitioner is entitled to have her request considered for issuance of application form for the admission sought for in the said Course.

15. Hence, for the reasons stated above, the Mandamus sought for by the petitioner has to be issued. Accordingly, the second respondent-Institute is directed to issue necessary application form to the petitioner, consider her case for admission into the Teacher Training Course for the academic year 2010-2011 and approve her admission, in accordance with law and as per the rules and norms fixed by the first respondent-Director of Teacher Education, Research and Training for admission into the said Course. The respondents shall consider the case of the petitioner as directed above, even though the last date for issuance of application form and the admission formalities are stated to have been over, while taking note of the fact of pendency of the Writ Petition filed by the petitioner in the meantime, fighting for the genuine cause.

16. The Writ Petition is allowed to the extent indicated above. No costs. The Miscellaneous Petition is closed.