

**SUPREME COURT OF INDIA**

K.Gunavathi

Vs.

V.Sangeeth Kumar

C.A.No.3342 of 2014

(P. Sathasivam CJI., Ranjan Gogoi and N.V.Ramana JJ.)

07.03.2014

**JUDGMENT**

**RANJAN GOGOI, J.**

1. Leave granted.

2. What clearly has been a long drawn tussle between under-qualified Computer Instructors appointed on ad-hoc basis (many of them have acquired the requisite qualification i.e. B.Ed. Degree in the meantime) and the B.Ed. qualified candidates who are yet to be appointed but claim to have been waiting for such appointment for long have surfaced once again, albeit, in a different manner. The challenge in these appeals is in respect of the directions of the Madras High Court in the common order under challenge dated 18.09.2013, particularly, direction No. (vi) and (vii) contained in para 53. To better comprehend the dimensions of the challenge para 53 of the impugned order is reproduced hereinbelow.

“53. Summary of conclusion:-

(i) The Government was correct and justified in terminating the services of failed computer instructors;

(ii) The failed computer instructors have no right to continue after the conclusion of second round of regularization process;

(iii) The writ petitioners have no right to continue even temporarily, pending regular recruitment;

(iv) The failed computer instructors are not eligible or entitled for regularization in view of the finding recorded by the Supreme Court in Civil Appeal No. 4187 of 2009;

(v) The names of the failed computer instructors (whose names were earlier registered in the Employment Exchange) should be re- entered in the Employment register of the concerned Employment Exchange and their earlier seniority also should be restored;

(vi) The Government shall follow the present policy of recruitment of teachers, while appointing computer instructors viz. recruitment through Teachers Recruitment Board;

(vii) The writ petitioners are eligible to apply along with others pursuant to the notification issued by the Teacher Recruitment Board. The writ petitioners are not entitled for any kind of preference. However, they are at liberty to apply for age relaxation to apply for the recruitment and the request for age relaxation, if any, would be considered on merits.”

3. The reference to the recurrent dispute between the two warring groups seeking either to retain or obtain employment would necessarily require this Court to traverse the complex factual matrix once again notwithstanding the fact that in each of the challenges before the High Court as well as this Court a sequential narration of the relevant facts has been made. As, unless the same are repeated herein the issues will not crystallize and, therefore, there is no option but once again to recapitulate the events of the past.

4. Some time in the year 1999, the Government of Tamil Nadu took a policy decision to offer computer science as an elective subject to students of classes 11 and 12 in the government higher secondary schools of the State. To give effect to the said policy the State Government awarded a five year contract to the Electronic Corporation of Tamil Nadu (ELCOT) to provide not only computer hardware and software but also the man power for conducting the classes. ELCOT therefore engaged Computer Instructors numbering 1332 in the first phase (1999) and 1062 in the second phase (2000). Such placements were made through different employment agencies.

5. After the contract with ELCOT had ended in February, 2005, the State Government by a G.O. MS No. 187 dated 4.10.2006 notified its decision to create one post of Computer Instructor in every government higher secondary school of the State (1880 schools) in the payscale of Rs. 5500-175-9000/-. A decision was also taken to regularize the services of the Computer Instructors appointed by ELCOT against the said posts subject to their clearing a special test to be held by the Teachers Recruitment Board. The minimum marks in order to be selected was fixed at 50%. Inbuilt in the said decision was to relax the educational qualifications for such Computer Instructors, namely, the B.Ed. degree which they did not possess. The aforesaid order was challenged before the Madras High Court in a batch of writ petitions by the B.Ed. degree holders which were allowed by order dated 13.03.2007. In the Writ Appeal before the Division Bench (Writ Appeal No. 1215/2007), the State Government took the stand that the recruitment test proposed for serving Computer Instructors by waiving the eligibility requirement of B.Ed. degree was a one time exception and that all future recruitments would be made from eligible candidates having the B.Ed. qualification, based on employment exchange seniority, without any preference to the existing Computer Instructors. The Division Bench of the High Court by order dated 22.08.2008 allowed the Writ Appeal in the above terms.

6. The aforesaid order of the Division Bench dated 22.08.2008 was challenged by the B.Ed. qualified teachers before this Court in Civil Appeal No. 4187 of 2009 (arising out of SLP(C) No. 25097 of 2008). While issuing notice on 13.10.2008, this Court had passed an interim order to the effect that the appointment of Computer Instructors pursuant to the order dated 22.08.2008 of the Division Bench of the High Court will be subject to the result of the appeals. The recruitment test was held on 12.10.2008. However, contrary to the government decision that only those candidates who had secured 50% marks would be selected, in the result published, 1686 number of candidates were shown as selected out of which only 894 had secured 50% or more marks whereas the remaining 792 candidates had secured between 35% and 50% marks. It also appears that based on the aforesaid selection the government proceeded to appoint a total of 1683 candidates. Out of the remaining 197 posts that remained vacant (1880-1683 = 197) 22 posts were covered by various interim orders of the High Court leaving the actual number of vacancies at 175. The figures mentioned above would be relevant in the light of the developments that took place subsequently which are being noted separately.

7. The fact that in the special recruitment test held on 12.10.2008 candidates who had secured between 35-50% marks were also selected and appointed were brought to notice of this Court in the pleadings in Civil Appeal No. 4187 of 2009. By order dated 09.07.2009, the aforesaid Civil Appeal was disposed holding that the special recruitment test held on 12.10.2008 pursuant to the High Court's order dated 22.08.2008, being a one time exception and dictated by sympathetic grounds insofar as the adhoc Computer Instructors working for long years are concerned, was justified. But, the decision/action of the government to reduce the minimum marks and the selection of candidates securing less than 50% marks was held to be arbitrary and was consequently not approved. However, this Court permitted the holding of another recruitment test (without insisting on a B.Ed. degree) for those candidates who had secured more than 35% but less than 50% marks (hereinafter referred to as the 'failed candidates'). It was also made clear that the aforesaid recruitment test would again be a one time exception and same would be held also by issuing an advertisement besides permitting candidates sponsored by the employment exchange to take part therein. It must also be specifically noticed that this Court by its order dated 09.07.2009 did not expressly issue any direction for cancellation of the appointments of the candidates who had secured less than 50% marks. However, such a conclusion would inevitably follow from the conclusion that the reduction of minimum marks was arbitrary and unjustified and the fact that all such failed candidates were permitted to appear in another recruitment test.

8. Several applications for clarification etc. of the order dated 09.07.2009 came to be filed before this Court. Of the said applications, I.A. No. 4 of 2009 filed by the State Government would be of particular significance insofar as the present adjudication is concerned. The prayer made in the said I.A. are, therefore, extracted below.

“(a) Clarify and permit the State Government to conduct examination to the candidates who have secured 35% to 49% marks in the examination and declare the results of the candidates who secured more than 50% marks as eligible candidates for appointment.

(b) Clarify and permit the State Government to recruit Vocational Computer Instructors for the existing vacancies 175 and future vacancies for the post of Compute Instructors through the Employment Exchange based on the seniority with the Employment Exchange as per the policy decision and also as per the G.O. Ms. 290, School Education Department, dated 06.12.2007 and G.O. Ms. No. 66, School Education Department, dated 02.03.2009;

(c) Direct the correction of the figures appearing in paras 10, 12 & 14 of the Judgment dated 09.07.2009 passed by this Hon'ble Court in C.A. No. 4187 of 2009 as "857 to read as 894 and 829 to read as 792".

9. This Court, in para 11 of its order dated 19.11.2009 while observing that it was not inclined to alter or review its earlier order dated 09.07.2009, however, clarified the said order by permitting the State Government to:

“(a) .....

(i) .....

(ii) recruit Vocational Computer Instructors for the existing 175 vacancies and future vacancies for the post of Computer Instructors through the Employment Exchange based on the seniority with the Employment Exchange as per the policy decision of the State Government as well as Government Orders applicable to appointment to the post of Computer Instructors. (b) .....

10. It will be necessary to take note of the fact that prayer (b) in I.A. No. 4 of 2009 and clarification (a) (ii) in the order dated 19.11.2009 was made in the light of a government policy then in force as detailed in G.O. (MS) No. 290 dated 06.12.2007 and G.O. (MS) No. 66 dated 02.03.2009 issued by the School Education Department. Under the aforesaid G.Os. vacancies in the post of Computer Instructors were to be filled up on the basis of the seniority in the employment exchange.

11. Pursuant to the order of this Court dated 9.7.2009 read with the clarificatory order dated 19.11.2009, a second recruitment test was held on 24.01.2010. The said test, for reasons not known, was however confined only to those Computer Instructors who had secured between 35-50% marks in the first recruitment test i.e. the "failed candidates" though in terms of the order of this Court dated 9.7.2009 there were three categories of candidates who were entitled to participate in the said recruitment test i.e. 'failed candidates', 'open market candidates' and 'employment exchange candidates'. The conduct of the recruitment test in a limited manner also did not come under challenge before any forum. Out of the 792 candidates (failed candidates) who had appeared in the second recruitment test only 125 secured 50% marks and above and 667 candidates once again failed. A

writ petition i.e. WP No. 7567 of 2010 was filed before the Madras High Court to declare the second recruitment test as null and void due to certain anomalies in the answer key. The said writ petition was dismissed. In the appeal filed (Writ Appeal No. 837 of 2010), by order dated 20.12.2012, the appellate Bench of the High Court while rejecting the prayer for a fresh examination had directed the Teachers Recruitment Board to reassess the merit of the candidates by eliminating 20 defective questions. Pursuant to the above exercise undertaken, only 15 out of the 667 failed candidates had passed, thereby, reducing the number of failed candidates to 652. As the services of the aforesaid failed candidates were being allowed to continue instead of being terminated and as the selection for the resultant vacancies consequential to such termination was not being undertaken, the B.Ed. qualified candidates filed a contempt petition before the High Court (Contempt Petition No. 1270 of 2013) alleging disobedience and contending that the vacancies (652) are required to be filled up on the basis of the employment exchange seniority. During the pendency of the said proceeding the services of the 652 candidates (twice failed) were terminated. Against the aforesaid terminations, several writ petitions were filed wherein a common interim order dated 30.04.2013 was passed by holding that:-

“(i) The petitioners have no right either to question their termination or to seek regularization. But till a regular process of selection is conducted by the Government, the schools cannot be left without Teachers and hence till a regular recruitment takes place, the writ petitioners shall continue.

(ii) As directed by the Division Bench of this Court, by order dated 20.12.2012, the Government shall expedite the process of regular recruitment.

(iii) On the question as to what method of recruitment the Government should follow, I would leave it to the Government to decide in the light of the various judgments of the Supreme Court and the Full Bench of this Court.”

12. Aggrieved by the aforesaid directions, both the B.Ed. degree holders and the terminated teachers had filed Writ Appeals which were numbered as W.A. No. 1307 of 2013 and W.A.Nos.1088 and 1089 of 2013 respectively. All the writ petitions that were filed by the terminated Computer Instructors were heard alongwith the writ appeals. All such cases were disposed of by the impugned common order dated 18.09.2003. It is the validity of the aforesaid common order,

particularly directions (vi) and (vii) contained in para 53 thereof (extracted above), that has been assailed in the present appeals. Three of the civil appeals (arising out of SLP(C) Nos. 36170/2013, 33677/2013 and 35624/2013) have been filed by the B.Ed. degree holders whereas the fourth civil appeal (arising out of SLP(C) No. 5044/2014) is by a terminated teacher who seeks to make a common ground with the B.Ed. degree holders as the said appellant had in the meantime obtained a B.Ed. degree.

13. The challenge to the directions contained in para 53 (vi) and (vii) of the impugned order being based on the appellants' perception of true purport and effect of the clarification made by this Court by order dated 19.11.2009 under paragraph 11(a) (ii) (already extracted) the same will require consideration, particularly, in the light of the stand taken by the State in its counter affidavit dated 31.1.2014 filed before this Court. The above, we may indicate, is the scope of the adjudication in the cases before us.

14. In the order dated 19.11.2009 this Court had made it clear that it is in no way inclined to alter or review the earlier decision dated 09.07.2009. The aforesaid order dated 09.07.2009 did not deal with the vacancies (175) that had existed after 1683 out of the 1880 posts were filled up during the pendency of Civil Appeal No. 4187 of 2009; neither did the said order deal with the manner of filling up of any of the posts that would require to be filled up in case any of the failed candidates, once again, were to be unsuccessful in the special recruitment test ordered by this Court as a one time measure by the order dated 09.07.2009. It is in these circumstances that the I.A. in question was filed by the State of Tamil Nadu on 16.09.2009 setting out the relevant GOs, namely, GO (MS) No. 290 dated 06.12.2007 and No. 66 dated 02.03.2009 under which the vacant posts were to be filled up through the employment exchange. In para 7 of the I.A. it was specifically mentioned that by means of the present application the State "seeks a clarification and a direction that it may be permitted to conduct the examinations for the unsuccessful candidates and the remaining vacancies viz. 175 candidates may be permitted to be recruited as per the seniority in the employment exchange. In addition to the above after the tests in respect of the candidates who secured marks between 35% and 50% are concluded such of the candidates who secure less than 50% marks would be declared ineligible for consideration and such vacancies would also be permitted to be filled in the order of seniority in the employment exchange." This Court, under para 11 (a)(ii) of the order dated 19.11.2009, granted permission to the State Government to recruit vocational Computer Instructors for the existing 175 vacancies and future vacancies through the employment exchange

“as per the policy decision of the State Government as well as Government Orders applicable to appointment to the post of Computer Instructors.”

15. On the basis of the above clarification dated 19.11.2009 the appellants claim that the 652 vacancies now available are required to be filled on the basis of the seniority in the employment exchange and not by a process of open recruitment. The aforesaid claim has been negated by the High Court by the impugned order (paragraph 46) on the ground that the government policy contained in G.O. (MS) No. 290 dated 06.12.2007 and G.O. (MS) No. 66 dated 02.03.2009 is no longer in force and that the government is at liberty to adopt a different policy. The High Court has also found that the policy as on date is to conduct a written test through the Teachers Recruitment Board by calling for applications from the open market as well as from the employment exchange. It has been further observed that the serving Computer Instructors (failed candidates) would be entitled to apply pursuant to such notice/advertisement as may be issued by the Teachers Recruitment Board and would also be entitled to seek relaxation of their age which claims are to be decided strictly on merit. The High Court has however made it clear that the serving Computer Instructors would not be entitled to any kind of preference.

16. The stand of the State in its counter affidavit dated 31.01.1994 (paragraph 17) may now be taken note of. It has been averred by the State that after coming into force of the Right to Children and Compulsory Education Act, 2009 (RTE Act) recruitment of Secondary Grade and Graduate Teachers (BT Assistants) (Classes I to VII) is being made by holding a teacher's eligibility test. According to the State, G.O.No.175 School Education Department dated 18.11.2011 has been issued for recruitment of post-graduate Assistant Teachers in higher secondary classes “through written examination and certificate verification instead of the earlier method of recruiting teachers by following the employment exchange seniority.” It is further averred that, as computer instructors teach in higher secondary classes, in order to provide quality education, the Government has introduced competitive examination to recruit teachers in all categories. According to the State in implementation of the High Court's order dated 18.09.2013, G.O. No.296 School Education Department dated 04.12.2013 has been issued directing the Teachers Recruitment Board to fill up the 652 posts of computer instructors through a competitive examination.

17. The claims of the State, noticed above, is seriously disputed by the petitioners. Referring to the affidavit dated 12.8.2013 filed by the State before the High Court

in Contempt Petition No.1270 of 2013 and the order of the same date passed in the said proceeding it is pointed out that even on 12.08.2013 it was admitted by the State before the High Court that it is committed to complete the recruitment in question on the basis of the employment exchange seniority and further that the High Court had granted time to the State to commence and complete a substantial part of the recruitment process within a period of two months and, thereafter, file an action taken report before the Court. It is pointed out that pursuant to order dated 12.8.2013, action taken report dated 12.10.2013 has been filed stating that the whole matter is being examined by the Advocate General and his views are awaited. This is despite the directions in the impugned order dated 18.9.2013. On the basis of the above, it is contended that adoption of any other method of recruitment save and except employment exchange seniority will not be justified and the G.O. No.296 dated 04.12.2013 prescribing open/competitive examination is required to be interdicted.

18. An argument has also been advanced on behalf of the petitioners that computer instructors are not teachers and therefore even if a policy of recruitment of teachers by open competition is presently in vogue the same will not apply to the post of computer instructor. The aforesaid argument has been sought to be fortified on the basis of the averments made in this regard by the State of Tamil Nadu in its counter affidavit in C.A. No.4187 of 2009 (Arising out of SLP (C) No.25097 of 2008).

19. The above issue i.e. that Computer Instructors are not teachers need to hardly detain the Court. Not only the context in which the above statements were made must be kept in mind, the contention ex-facie deserves rejection in view of high degree of computer proficiency that is required in the contemporary world.

20. The affidavit filed on behalf of the State in contempt petition No.1270/2013 as well as the order of even date passed by the High Court in the said proceeding indicates that the State in an earlier affidavit dated 20.6.2013 had indicated that it is necessary to fill up the 652 vacancies of computer instructors through the Teachers Recruitment Board by conducting written examination. However in its order dated 2.8.2013 the High Court took the view that to such recruitments the clarificatory order dated 19.11.2009 of this Court should be adhered to and had fixed the matter on 12.8.2013 to enable the State to inform the Court the time that would be required to complete the recruitment process in terms of the direction of this Court dated 19.11.2009.

21. Accordingly, in para 10 of the affidavit dated 12.8.2013 of the State it was stated as follows:

“It is submit that, in view of the above to fill up 652 vacancies in the post of Computer instructors based on the Seniority with employment exchange through Teacher Recruitment Board in accordance with the Government Order in G.O. (Ms) No.66, school Education Department, dated 02.03.2009 and G.O. (Ms) No.332, School Education Department dated 11.12.2009, the Teachers Recruitment Board needs considerable time to complete the process by following the procedure from the time of notification till the publication of the result.

In these circumstances, it is prayed that this Hon’ble High Court may be pleased to extend the time granted by the Hon’ble High Court in W.A. No.837/2010 for further 6 months to implement the orders of this High Court and thus render justice.”

22. Thereafter, the High Court proceeded on the basis that the State is committed to fill up the vacancies on the basis of the employment exchange seniority and by order dated 12.08.2013 granted two months time to enable the State to initiate the recruitment process and complete a substantial part thereof, whereafter, the compliance report was to be filed which, as has been noticed, was submitted on 12.10.2013.

23. The record of the proceedings of Contempt Case No.1270/2013, therefore, clearly indicates that the High Court, while rendering the order dated 12.8.2013, was of the view that the recruitment should be on the basis of employment exchange seniority. This is notwithstanding the stand of the State to the contrary. Thereafter, the order in the present group of cases was passed on 18.9.2013. It appears that before doing so, the stand of the State with regard to the change of policy of recruitment and the efficacy of the GO No.290 dated 6.12.2007 and GO No.66 dated 2.3.2009 was again considered and the impugned directions for completing the recruitment not through the employment exchange but by open competition through the Teachers Recruitment Board were issued.

24. Though Contempt Case No.1270/2013 and the present group of cases are independent of each other, the proximity of the controversy arising in both cases i.e. the mode and manner of recruitment of Computer Instructors, cannot be underscored. There is seemingly different understandings of the same issue in the

two sets of proceedings. No explanation is available in the impugned order to justify the change of judicial vision. In fact, in the order dated 18.09.2013 there is no reference to the order dated 12.8.2013 in the contempt case. There is also no indication, whatsoever, as to what could have been the compelling reason(s) that had weighed with the Court to depart from its earlier order dated 12.8.2013 passed after full consideration of the claims of the State with regard to change of policy. Furthermore, if according to the State there had been a change of policy with regard to mode and manner of recruitment, the GOs No.290 dated 6.12.2007 and No.66 dated 2.3.2009 ought to have been cancelled. Neither any government order of cancellation is before the Court nor is there any statement that such a cancellation has been made. In the counter affidavit of the State dated 21.01.2014 filed before this Court though there is a mention of G.O.No.175 dated 18.12.2011 providing for recruitment of post-graduate assistant teachers in higher secondary classes through written examination instead of the earlier method of employment exchange seniority, the said G.O. has not been placed on record. Even if the facts claimed on the basis of the said G.O. No.175 are assumed, there is no explanation as to why the Teachers Recruitment Board had issued advertisement No.1/2013 dated 8.5.2013 specifying in Clause 9 thereof that the vacancies covered by the said advertisement are to be filled up on the basis of the State level employment registration seniority. Incidentally the said Advertisement covered a sizeable number of posts (approx. 800) in different vocational streams. In view of the above, we have not been able to persuade ourselves to take the view that the recruitment to 652 posts should be made by a process other than what was directed by the clarificatory order dated 19.11.2009.

25. The order dated 19.11.2009 directing filling up of 175 existing vacancies and future vacancies of Computer Instructors on the basis of the employment exchange seniority was a conscious decision taken in departure from the virtually settled position in law that recruitment to public service, normally, ought to be by open advertisement and requisitions through the employment exchange can at best be supplemental. (See: Excise Superintendent Malkapatnam, Krishna Distgrict, A.P. Vs. K.B.N. Visweshwara Rao & Ors.[1], Arun Kumar Nayak Vs. Union of India & Ors.[2] and State of Orissa & Anr. Vs. Mamata Mohanty[3]). Such departure was felt necessary due to the compulsive needs dictated by the peculiar facts of the case. At that point of time, out of the 1880 available posts 1683 posts had already been filled up by the adhoc and underqualified Computer Instructors already working leaving only 175 vacancies and an unknown number of further vacancies which was contingent on the result of the second recruitment test ordered by this Court as a one time measure. Both the recruitment tests, ordered by the High Court

as well as this Court, were exclusive to the adhoc and unqualified persons leaving a large number of qualified candidates like the petitioners out of the arena of consideration.

26. What would be the extent of the 'adverse' effect on the failed teachers if the remaining appointments are to be made on the basis of employment exchange seniority cannot be determined with any degree of accuracy at this stage inasmuch as a large number of such persons had qualified in the meantime and by virtue of clause (v) of Para 53 of the impugned order, the names of the failed computer instructors who were earlier registered in the employment exchanges have been directed to be re- entered and their earlier seniority restored. While it is also correct that by ordering recruitment on the basis of employment exchange seniority other eligible candidates who could have taken part in the competitive examination would loose out, no such person is presently before us to persuade us to take the view that for the purpose of recruitment to the 652 posts of Computer Instructors the earlier order of this Court dated 19.11.2009 should not prevail.

27. We accordingly allow these appeals and set aside directions (vi) and (vii) of Para 53 of the impugned order dated 18.09.2013 of the High Court and direct that recruitment to the 652 vacant posts shall be made on the basis of employment exchange seniority. We also make it clear that the above direction shall also govern the 175 existing vacancies covered by the order of this Court dated 19.11.2009 if the same continue to remain vacant as on date. To all other vacancies, existing or future, as may be, the State will be at liberty to follow such policy as may be in force or considered appropriate.

[1] (1996) 6 SCC 216

[2] (2006) 8 SCC 111

[3] (2011) 3 SCC 436