

THE HON'BLE SMT. JUSTICE JUVVADI SRIDEVI

WRIT PETITION No.8500 of 2020

ORDER:

This writ petition, under Article 226 of the Constitution of India, is filed by the petitioners, wherein the following prayer is made:

“...to call for the records pertaining to proceedings Rc.No.359/suits/2019, dated 13/11/2019 and proceedings Rc.No.463/TREI RB/2019, dated 05/12/2019 issued by the 3rd respondent and set them aside as bad illegal arbitrary and unconstitutional besides being contrary to the letter and spirit of the power of relaxation conferred on respondents 1-3 and contrary to the object and spirit of the judgment of this Hon'ble court dated 22-1-2019 in WP 16595/2019 and consequently direct the respondents to appoint the petitioners as degree lecturers (English) in pursuance of notification 4/2018 dated. 02-08-2018 under BCA category in Zone V with all consequential benefits by issuance in the Writ of Mandamus or any other appropriate writ order or direction and to pass such other order or orders...”

2. I have heard the submissions of Sri J.Sudheer, learned counsel for the petitioners, Sri N.Ramesh, learned Standing Counsel for Telangana Residential Educational Institutions Recruitment Board representing the respondents and perused the record.

3. Shorn of unnecessary details, the facts of the case, in brief, are that both the petitioners herein are post graduates. They belong to BC-A category. They appeared for State Eligibility Test (SET) conducted by Osmania University pursuant to the notification dated 08.03.2018 and were waiting for results. Meanwhile, respondent No.3/Telangana Residential Educational Institutions Recruitment Board ('the Board', for brevity) issued notification No.4/2018 on

02.08.2018 for filling up the posts of degree college lecturers in respondent Nos.1 and 2 Societies. Though the last date for submission of applications was initially fixed as 13.09.2018, the same was extended till 20.09.2018. There is a clause in Para-I(4) of the said notification that the applicants must possess the prescribed qualifications to be selected for the posts notified therein, as on the date of notification, i.e., 02.08.2018. However, SET results were declared on 07.09.2018 and both the petitioners herein stood successful. Since the SET-2018 passed out candidates became ineligible for applying to the posts notified by the Board in Notification No.4/2018 as they could only acquire the prescribed qualification on 07.09.2018, i.e., after the date of notification, the Vice Chancellor of Osmania University addressed a letter, dated 11.09.2018, requesting the Board to consider the candidature of the SET-2018 passed out candidates in the notification No.4/2018. However, the Board accepted the applications of the petitioners and accordingly, they appeared for the examination and stood meritorious amongst the aspirants. However, during verification of certificates, the petitioners were eliminated from selection process on the ground that they did not possess prescribed qualification (SET) as on the date of notification, but they acquired it subsequently. Resultantly, the candidates who stood less meritorious than the petitioners were selected for the notified posts *inter alia* on the

ground that they obtained SET as on the date of notification. Aggrieved thereby, the petitioners along with some other similarly situated persons filed W.P.No.16595 of 2019 before this Court seeking a Mandamus directing the Board to exercise power of relaxation in view of peculiar circumstances and fill up the unfilled vacancies with the petitioners therein. This Court, by order, dated 22.10.2019, disposed of the writ petition directing the petitioners herein to submit a representation afresh seeking appointment as degree college lecturers against unfilled vacancies within a period of two weeks from the date of receipt of a copy of the said order and directed the respondents therein (who are also respondents herein) to consider the same in accordance with the Bye-laws of the respondents, if necessary, by relaxing the clauses therein and pass appropriate orders within a period of eight weeks thereafter. Accordingly, the petitioners made a representation dated 30.10.2019 to respondent No.1 Society to consider their candidature to fill up the unfilled posts. However, by letter dated 13.11.2019, the respondent No.1 Society rejected the same holding that giving relaxation to the condition of acquiring prerequisite qualification (SET) stipulated in the notification is against the rules of notification and also Rule 12(3)(a) of Telangana State and Subordinate Service Rules, 1996 ('the Rules' for brevity) and that if the candidature of the petitioners is considered, the prospects of already selected degree college

lecturers would be seriously affected. Thereafter, the petitioners again made a representation on 21.11.2019 requesting to reconsider their candidature for filling up of unfilled posts of degree college lecturers. However, the Board, vide proceedings dated 05.12.2019, again rejected the request of the petitioners reiterating that the petitioners did not possess the requisite qualification (SET) as on the date of notification. Aggrieved thereby, the petitioners filed this writ petition seeking the relief stated *supra*.

4. Before proceeding further, it is apt to state that this Court, on 19.06.2020, while issuing notice to the respondents, passed an interim order in this writ petition directing the respondents not to notify the posts of Degree College Lecturers in English in Zone-V, meant to be filled up to BC-A categories. Further, by order, dated 28.09.2020, this Court extended the interim order granted on 19.06.2020 until further orders.

5. Learned counsel for the petitioners vehemently contended that having accepted the applications of the petitioners and permitted them to appear in the examination in which they stood meritorious, the respondents are not justified in eliminating them at the fag end of recruitment process, even though the petitioners became fully eligible for the post they applied, as on the date of examination. The notification was issued just a few days before declaration of SET-

2018 results by Osmania University, which caused much prejudice to the candidates who stood successful in SET-2018. As many as 224 candidates were made ineligible on the ground that they did not possess SET qualification as on the date of notification, i.e., on 02.08.2018. Considering the plight of the SET-2018 passed out candidates, even the Vice Chancellor of Osmania University addressed a letter to the Board requesting to consider their candidature in the recruitment. Due to the arbitrary action of the Board, the candidates who were less meritorious than the petitioners got selected for the posts. The very purpose of calling applications from the open market is to select best available candidates to do a particular job/duty. In any event, merit cannot be allowed to be defeated on technical grounds. In Para XII of the subject notification, there is a specific mention that the Board reserves the right to alter and modify the terms and conditions laid down in the notification for conducting various stages up to selection, as warranted by any unforeseen circumstances arising during the course of process, as deemed necessary by the Board, at any stage. Further, Rule 32 of the Rules postulates that the Head of the Department shall have the power to relax any rule or rules of the Rules in favour of any person or class of persons or category of persons in such manner as may appear to him to be just and equitable in the public interest or where he considers the application

of such rule or rules would cause undue hardship to the person or persons concerned. If any Rule causes undue hardship to a person or class of persons, then the iniquitous consequence thereof may be mitigated by relaxing the concerned Rule, which course promotes the cause of dealing with the case in "a just and equitable manner in the public interest". Rigors of Rules contained in the subject notification shall not defeat its object. Moreover, this Court, in W.P.No.16595 of 2019, specifically directed the respondents to consider the candidature of the petitioners herein by giving relaxation to the clauses in the Bye-laws, if necessary. However, in utter disregard/disrespect to the said direction of this Court, the Board arbitrarily rejected the request of the petitioners. The Board ought to have exercised the power of relaxation of Rules vested in it and ought to have considered the candidature of the petitioners herein for appointment as degree college lecturers and ultimately prayed to allow the writ petition as prayed for.

6. Per contra, learned Standing Counsel for respondent No.3/Board representing the respondents strongly opposed the relief sought in this writ petition. He would contend that as per Para-I(4) of the subject notification, a candidate should have passed NET/SLET, as on the date of notification, i.e., 02.08.2018. The Board did not extend the last date for submission of applications upon the

request of the petitioners, but purely due to administrative contingencies. Prior to filing this writ petition, the petitioners herein and others filed W.P.No.12056 of 2016 seeking a direction to the respondents to appoint them in their respective posts as per their merit. But however, the petitioners herein and others have withdrawn the said writ petition might be with a thought that technicalities would override the merit and their chances of success in the said writ petition were bleak. The contention of the petitioners that the date of their passing SET, i.e., 07.09.2018 is to be treated as qualifying date for acquiring the requisite qualification for the post of degree college lecturers is sheer violation of rules contained in the subject notification as well as Rule 12(3)(a) of the Rules. Though the petitioners and some others made a representation to the Board pursuant to the direction of this Court in W.P.No.16595 of 2019 to consider the representation of the petitioners in accordance with the Bye-laws of the respondents, if necessary, by relaxing the clauses therein, since the decision of the Board is final at all stages till the culmination of selection process as per Para XII of the notification and in view of the rule position obtaining thereof, the Board rightly rejected the candidature of the petitioners. The Board strictly adhered to the rules to protect the meritorious candidates who already possessed the requisite qualifications as on the date of notification. Thus, the action of the Board cannot be said to be

disrespecting/disregarding to the orders passed by this Court. Though there are unfilled vacancies pertaining to the community to which the petitioners belong (BC-A), the same cannot be filled up with the petitioners, since they have not acquired requisite qualification as on the date of notification. If the ineligible cases of the petitioners are to be considered by relaxing the rules, the prospects of already selected, joined and working degree college lecturers would be seriously jeopardized. The Board cannot take any adverse decision in favour of unqualified candidates, contrary to Rule 12(3)(a) of the Rules and the principles of natural justice. Acquiring the qualification subsequent to the last date of submitting applications does not confer any right on the petitioners to consider their candidature. Though the Board has got ample power to relax the rules in deserving cases, if a rule of relaxation is invoked in a routine manner it will amount to neutralizing and degrading the recruitment rules in force. All appointments are to be made strictly by adhering the recruitment rules in force. Rule of relaxation is an exception and such an exception is to be exercised cautiously and sparingly in order to rectify the injustice caused in a particular case. Relaxation cannot be claimed as a matter of right by the candidates. In the instant case, since the petitioners did not possess requisite qualification as on the date of notification, the Board, exercising the powers vested in it, rightly rejected the candidature of the

petitioners. The relief sought by the petitioners in this writ petition cannot be granted and ultimately prayed to dismiss the writ petition. In support of his contentions, learned Standing Counsel had relied on the following decisions of the Hon'ble Apex Court.

1. **State of Rajasthan and another Vs. Anju Rini Saini**¹
2. **Alka Ojha Vs. Rajasthan Public Service Commission**²

7. I have given thoughtful consideration to the rival submissions and perused the entire material on record. The sole question that requires consideration in this writ petition is whether the respondents can be directed to grant relaxation of rules in favour of the petitioners and appoint them as degree college lecturers in pursuance of Notification No.4/2018, dated 02.08.2018, in view of the peculiar facts and circumstance of this case.

8. While the case of the petitioners is that in view of the order, dated 22.10.2019, passed by this Court in W.P.No.16595 of 2019, the Board ought to have granted relaxation of rules in their favour and considered their candidature for the post of degree college lecturer, the stand of the Board is that the candidature of the petitioners cannot be considered since they did not possess the requisite qualification as on the date of notification. Here it is apt to extract the operative portion of the order, dated 22.10.2019 passed

¹ 2022 LawSuit (SC) 174

² (2011) 9 SCC 438

by this Court in an earlier round of litigation concerning the subject matter, i.e., in W.P.No.16595 of 2019, which reads as follows:-

“Having considered the rival submissions made by the learned counsel on either side, this Court is of the considered view that this Writ Petition can be disposed of directing the petitioners to submit a representation afresh to the respondents seeking appointment as Degree College Lecturers against unfilled vacancies within a period of two weeks from the date of receipt of a copy of this order. On receipt of such representation, the respondents shall consider the same in accordance with the Bye-laws of the respondents, if necessary, by relaxing the clauses therein and pass appropriate orders within a period of eight weeks thereafter.”

9. Pursuant to the above order, the petitioners and some others made representation dated 30.10.2019, requesting the Board to consider their candidature against the unfilled vacancies of degree college lecturers. However, by proceedings dated 13.11.2019, the Board rejected the request of the petitioners. The relevant paragraph containing the reasoning given by the Board for rejecting the candidature of the petitioners reads thus:

“After careful consideration of the above final judgment dated 22nd October, 2019 and the representation of the above 14 petitioners under reference 3rd read above, it is found that the unfilled vacancies pertain to the special categories of Visually Handicapped (VH), Hearing Impaired (HH) & other communal roster points mean for SCs, STs and BCs, which cannot be filled up with the present petitioners who have not acquired one of the prerequisite qualifications i.e. the SET/NET as on the date of the Notification No.4/2018 i.e. as on 02.08.2018. Hence, the present petitioners are not called for Interview/Demonstration for final selection to the respective posts of DLs as they are ineligible. If the ineligible cases of the petitioners are considered by relaxing the rules regarding the date fixed for possessing the requisite qualification from the date of issue of the notification No.4/2018, dated 02.08.2018, the prospects of the already selected, joined and working DLs would seriously be jeopardized including the communal roster points and if the Board takes any adverse decision in favour of unqualified petitioners contrary to the rules of Notification No.4/2018, dated 02.08.2018 and Rule 12(3)(a) of the Telangana State and Subordinate Service Rules, which is against the natural justice under Articles 14 & 16 of the Constitution of India. It would also

seriously affect the already completed other selections in respect of TGTs and PGTs undertaken by the TREI-RB in the yesteryear, which become precedent cases.

In view of the above, the final orders dated 22nd October, 2019 in W.P.No.16595 of 2019 & and requests of Ms.K.Priyanka, D/o.Siva, Hyderabad & 13 others vide reference 3rd read above are carefully considered and rejected the requests of the petitioners for calling them afresh for Interview/Demonstration for further selection for the unfilled vacancies to the DL subjects of Maths, Chemistry, Zoology, English, Political Science, Statistics & Telugu herein by giving relaxation to the condition of acquiring the pre requisite qualification i.e. NET/SET as on the date of issue of the notification No.4/2018 i.e. as on 02.08.2018 of the TS State and Subordinate Services Rules and moreover the entire prospects of the selected and already working DLs would seriously be affected. The petitioners are not eligible for selection to the post of DLs in various subjects in TSTWRI Society & TTWREI Society as they have not acquired the prerequisite qualification of SET/NET as per the Notification No.4/2018 issued by TREI-RB.

Hence, this order."

10. A plain reading of the above rejection order, dated 13.11.2019, makes it clear that the Board has shown two main reasons for rejecting the candidature of the petitioners, viz., (1) the Board cannot take a decision contrary to the Rules of Notification No.4/2018 and Rule 12(3)(a) of the Rules; and (2) if the Board takes a decision relaxing the Rules, the prospects of the already selected, joined and working Degree College lecturers would seriously be jeopardized.

11. Let us deal with the first limb of the rejection order. True, as per Rule 12(3)(a) of the Rules, a candidate should possess the academic qualifications and experience including practical experience prescribed, if any, for the post, on the date of the notification for direct recruitment issued by the concerned recruiting agency.

However, Rule 32 of the Telangana State and Subordinate Service Rules, 1996 reads as follows:-

32. Relaxation of Rules by the Head of the Department:-

1. Notwithstanding anything contained in these rules or in the special rules and without prejudice to the power of the Governor under rule 31, the Head of the Department shall also have the power to relax any rule or rules in these rules or in the special rules in favour of any person or class of persons or category of persons for being appointed to or of any person or class of persons who have served or are serving in any civil post or posts carrying a scale of pay less than that of Junior Assistant in his department in so far as such cases relate to transfer, promotion or the service conditions governed by these rules or special rules in such manner as may appear to him to be just and equitable in the public interest or where he considers the application of such rule or rules would cause undue hardship to the person or persons concerned.

Provided that nothing in this sub-rule shall apply in regard to the appointment by transfer of a person who is not qualified for such appointment to the post of Junior Assistant or equivalent post in the Ministerial or any other Subordinate Service of the State of Telangana.

12. A plain reading of the above Rule 32 makes it clear that the Head of the Department has the power to relax any rule or rules in favour of any person or persons in such manner as may appear to him to be just and equitable in the public interest or where he considers the application of such rule or rules would cause undue hardship to the person or persons concerned. The object and purpose of conferring this power on the Head of the Department is to mitigate undue hardship in any particular case and to deal with a case in a just and equitable manner. Many a times, strict application of service rules create a situation where a particular individual or a set of individuals may suffer undue hardship and further, there may be a situation where requisite qualified persons may not be available

for appointment to the service. In such a situation, the Head of the Department has power to relax requirement of Rules. Unforeseen and complex situations often arise as will be obvious even from a bare perusal of the cases reported in the law journals arising out of "service controversies". Very often, it is found that an all too strict application of a Rule works undue hardship on a person or category of persons, resulting in injustice and inequity, causing disappointment and frustration to them and finally leading to the defeat of the very object aimed at by the Rules. It is for this reason that the Head of the Departments is vested with a reserve power under Rule 32, to deal with unforeseen and unpredictable situations, and to relieve a person or class of persons from infliction of undue hardship and to do justice and equity. As a matter of fact, as observed by the Hon'ble Apex Court in **Ashok Kumar Uppal Vs. State of J & K**³, under service jurisprudence, as also the administrative law, the power of relaxation has "necessarily to be conceded" to the employer, particularly the State Government or the Central Government who have to deal with hundreds of employees working under them in different departments.

13. In State of Maharashtra Vs. Jagannath Achyut Karandikar⁴, the Hon'ble Apex Court held as follows:-

³ (1998) 4 SCC 179

⁴ AIR 1989 SC 1133

"The power to relax the conditions of the rules to avoid undue hardship in any case or class of cases cannot now be gainsaid. It would be, therefore, futile for the respondents to make any grievance."

14. In Sandeep Kumar Sharma Vs. State of Punjab and others⁵, the Hon'ble Apex Court, relying on its earlier decision in **J.C.Yadav Vs. State of Haryana and others⁶**, observed as under:-

"The power of relaxation even if generally included in the service rules could either be for the purpose of mitigating hardships or to meet special and deserving situation. Such rule must be construed liberally, according to the learned Judges. Of course arbitrary exercise of such power must be guarded against. But a narrow construction is likely to deny benefit to the really deserving case. We too are of the view that the rule of relaxation must get a pragmatic construction so as to achieve effective implementation of a good policy of the Government."

15. However, this Court is mindful that if a rule of relaxation is invoked in a routine manner, it will amount to neutralizing and degrading the recruitment rules in force and that the rule of relaxation is an exception and such an exception is to be exercised cautiously and sparingly and that relaxation cannot be claimed as a matter of right by the candidates. It, however, goes without saying that while exercising such a power, the authority must act judiciously keeping in mind the purport and object thereof. Considerations therefor, although may not partake a mathematical exactable, but should always be fair and reasonable. Further, granting relaxation in one case by the Government cannot be cited as a precedent in other

⁵ (1997) 10 SCC 298

⁶ (1990) 2 SCC 189

cases. Therefore, a striking balance in between has to be adopted, while exercising the powers of relaxation by the competent authorities. In the instant case, the reason given by the Board that it cannot take a decision contrary to the Rules has no basis and as stated above, it is vested with the power under Rule 32 to relax the Rules in deserving cases, in a just and equitable manner and in the public interest, so also to mitigate any undue hardship to the person or persons concerned.

16. Let us come to the second limb of the rejection order. It is not in dispute that SET notification was issued in March, 2018 and the petitioners appeared for the same and were waiting for results. Though the petitioners were technically ineligible to apply for the posts mentioned in Notification No.4/2018 since the results of SET were not declared as on the date of notification, but subsequently they became fully qualified as on the date of examination. Further, the contention of the petitioners that there are unfilled vacancies in BC-A category in Zone-V in English language is not disputed by the respondents. There is no specific denial by the respondents, either in the rejection order, dated 13.11.2019 or in the counter affidavit with regard to the same. During the course of hearing also, learned Standing Counsel for the Board fairly conceded that there are unfilled vacancies in BC-A category in Zone-V in English language, but

however he would submit that those unfilled vacancies would be carried forward to the next notification. Further, it has to be seen that the earlier writ petition filed by the petitioners in W.P.No.16595 of 2019 was not dismissed by this Court. This Court, having noticed that there are unfilled vacancies, disposed of the writ petition directing the petitioners to submit a representation afresh, seeking appointment as Degree College lecturers against the unfilled vacancies and further directed the respondents to consider the same in accordance with the bye-laws of the respondents, if necessary, by relaxing the clauses therein. Further, this Court, on 19.06.2020, while issuing notice to the respondents, directed the respondents not to notify the posts of Degree College lecturers in English in Zone-V meant to be filled by BC-A categories. Thus, visualizing the factual scenario, this Court, in W.P.No.16595 of 2019, directed the respondents to consider the candidature of the petitioners for their appointment as degree college lecturers, if necessary, by relaxing the clauses therein; and in this writ petition, an interim direction was passed to not to notify the posts of degree college lecturers in English in Zone-V meant to be filled by BC-A categories. Therefore, when there are certain 'unfilled' vacancies in BC-A category which fact was admitted by the respondents themselves, I do not see any merit in the contention that the prospects of the already selected, joined and working as Degree College lecturers would be

jeopardized, if the Board considers the candidature of the petitioners in the 'unfilled' vacancies in BC-A category, by granting relaxation of rules. No cogent ground had been made out on behalf of the Board to deny the privilege of relaxation of Rules in favour of the petitioners. I am unable to see any unreasonableness or capriciousness or depravity of the rights of anyone, if the Board exercises its power to relax the Rules and consider the candidature of the petitioners herein in the unfilled vacancies.

17. The Board might be fighting this case on principle. It may be correct in its view. Applying the Rules strictly, the petitioners might not have been eligible for the selection process in Notification No.4/2018 issued by the Board. But in view of the peculiar facts and circumstances of this case, there is no reason, much less cogent and convincing reason for the Board to not to exercise the power of relaxation of Rules in favour of the petitioners and consider their candidature for the post of Degree College lecturers in BC-A category in Zone-V in English subject.

18. In **Anju Rini Saini's** case (1 supra) relied by the respondents, the Hon'ble Apex Court held that *"It is undoubtedly true that Article 136 is a special and extraordinary jurisdiction but that is a far cry from holding when a clear case of respondent not holding the required qualification is made out, the Court can still direct*

appointment. It will be palpably illegal and unconstitutional.” The facts of the cited case are that a widow applied for the post of Lower Division Clerk, which were earmarked in the category of ‘widows among women’. The Rule which is the very premise of the judgment of both the Division Bench and the learned single Judge of the Hon’ble Rajasthan High Court was Rule 266-A of the Rajasthan Panchayati Raj Rules, 1996, which stipulates that a widow/divorcee women, who have been given appointment on the post of teacher after relaxing required educational qualification of BSTC/B.Ed. under the erstwhile proviso to Rule 266 shall be regularized from the date they acquire the requisite educational qualification. Hence, the facts of the cited case are distinguishable and not applicable to the facts of the present case, inasmuch as in the instant case, in view of the peculiar facts and circumstances of the case, one of the learned single judge of this Court specifically directed the respondents herein to consider the candidature of the petitioners even by relaxing the Rules and another learned single Judge of this Court directed the respondents not to notify the posts of degree college lecturers in English in Zone-V meant to be filled by BC-A categories.

19. In **Alka Ojha’s** case (2 supra) relied by the respondents, the Hon’ble Apex Court had drawn a distinction between “driving licence” and “learning licence”. It was held that the incumbents who do not

possess prescribed qualifications, work experience and driving licence on the last date fixed for submission of application are not eligible for the post and that the fact that they possessed learner's licence was not good enough. The facts of the cited decision are distinguishable and not applicable to the facts of the case on hand.

20. In view of the peculiar facts and circumstances of this case, this Court is of firm opinion that it is a fit case to direct the respondents to exercise the power of relaxing the Rules and appoint the petitioners as degree lecturers (English) in pursuance to the notification No.4/2018 dated 02.08.2018 under BC-A category in Zone-V with all consequential benefits.

21. Learned Standing counsel for the 3rd respondent/Board representing the respondents raised an apprehension that if the relief sought by the petitioners in this writ petition is granted, the same would become a precedent and several candidates would approach this Court seeking similar relief. The said apprehension is misconceived and without any substance. It is settled law that each case has to be decided on its own merit. To allay even such apprehension, I deem it appropriate to clarify that this order is being passed keeping in view the peculiar facts and circumstances of this particular case and is no precedent with respect to the subject regarding which the respondents have conceived an apprehension.

22. For the foregoing reasons, this writ petition is allowed. The Proceeding in R.C.No.359/Suits/2019, dated 13.11.2019, as well as the Proceedings in R.C.No.463/TREI-RB/2019, dated 05.12.2019, issued by respondent No.3 are hereby set aside. The respondents are directed to appoint the petitioners as degree lecturers (English) under BC-A category in Zone-V with all consequential benefits pursuant to the Notification No.4/2018, dated 02.08.2018, issued by respondent No.3/Board, by exercising the power of relaxation of Rules vested in them, in view of peculiar facts and circumstances of this case, within six (6) weeks from the date of receipt of a copy of this order.

Miscellaneous petitions, if any, pending in this writ petition, shall stand closed. There shall be no order as to costs.

JUVVADI SRIDEVI, J

_____June, 2023

Note:-

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(B/O) DS