

CASE NO.:  
Appeal (civil) 1726-28 of 2001

PETITIONER:  
P.M. Latha and Another

RESPONDENT:  
State of Kerala and Others

DATE OF JUDGMENT: 05/03/2003

BENCH:  
Brijesh Kumar & D.M. Dharmadhikari.

JUDGMENT:

### J U D G M E N T

Dharmadhikari J.

These appeals have been preferred by the candidates seeking recruitment to the post of lower primary/upper primary teachers in the Government Schools of the State of Kerala. They questioned their non-selection to the post due to inclusion of B.Ed. candidates in the select list prepared by the Public Service Commission of the State of Kerala. Their contention before the High Court was that in the advertisement issued for recruitment to the post of teachers in Government Primary Schools, B.Ed. is not the prescribed qualification and only candidates with prescribed educational qualifications of Teachers Training (Certificate) (shortly referred to as TTC) were entitled to compete for the selection and seek appointment.

Learned Single Judge of the High Court of Kerala by judgment dated 25.1.1999 allowed the petition of the present appellants holding that B.Ed. candidates could not have been included in the select or rank list as they were not eligible under the terms of the advertisement. The learned single judge issued directions to the State Public Commission to prepare the rank list afresh by excluding B.Ed. candidates. A further direction was issued that all orders of appointment issued in favour of B.Ed. degree holders be cancelled. The relevant part of the directions given by the learned single judge deserves to be reproduced:

"In the above mentioned circumstances, Original Petition succeeds and it is declared that B.Ed. holders who are not having TTC and who have been included in the rank list should be deleted from the rank list. Accordingly, there will be a direction to the Public Service Commission to rearrange the rank list in the Pathanamthitta District, after excluding above-mentioned persons. This exercise should be done within a period of one month from the date of receipt of a copy of this judgment.

There will also be a direction to the PSC to cancel the advice which has already been made as far as B.Ed. holders are concerned who are not having TTC and there will be a direction to the Government to cancel the appointment already made to all those persons whose advice are to be cancelled by the PSC.

Original Petition is allowed to the above extent."

By the impugned judgement dated 18.2.2000, the Division Bench of the High Court in Writ Appeals and Original Writ Petition before it, preferred by the B.Ed. candidates (who are private respondents before us), upheld the decision of the learned single judge that under the terms of the advertisement, the B.Ed. candidates were not qualified to compete for the post. Despite this strangely it upset the directions made in favour of the present appellants as TTC candidates, because of an undertaking given by the State of Kerala that they would be suitably amending the Rules of recruitment for providing avenues of recruitment to B.Ed. degree holders as teachers in Government Primary Schools. The relevant part of the observations with reasoning and conclusion drawn by the division bench in its order to allow the appeal of the B.Ed. candidates also needs to be reproduced: "The learned judge finally held that in view of the principles laid down in the aforesaid decisions, B.Ed is not a qualification prescribed and therefore B.Ed. holders are ineligible to apply. When the matter is thus considered only in the premise of Ext.P3 notification we cannot say that the learned judge has committed any error in holding that PSC is not justified in searching for an equivalent or better qualification. But we have before us other lively and stimulating issues for decision which we prefer to discuss presently.

The Government have expressed in the affidavit dated 19.1.2000 that they would frame rules in accordance with the decision taken on 2.6.1999 in consultation with the PSC for future appointments of TTC hands only in LP Schools and B.Ed. holders and TTC hands in UP Schools as expeditiously as possible. This is a solemn undertaking which should be implemented with extreme swiftness. We do not want to keep the position uncertain and vague as far as future appointments are concerned. It is made clear that we have validated the appointments already made for apparent reasons referred to above. We therefore direct the government to frame rules as above expeditiously, at any rate within a period of three months from today and to regulate all future selections and appointments accordingly.

In view of the discussion herein above we hold that the rank list published by the PSC for appointment to the post of UPSC/LPSA (Malayalam) in Pathanamthitta district is valid. The direction given by the learned single judge in the impugned judgment to the PSC to re-arrange the rank list in Pathanamthitta district and to cancel all the appointments of B.Ed. holders to the post of UPSC and LPSA is

set aside. All the appointments of B.Ed. holders so far made to the post of LPSA/UPSA are declared valid. The judgment of the learned single judge in OP No.19187 of 1999 is accordingly set aside."

Aggrieved by judgment of the division bench, the present appellants who are holders of TTC and have not been able to get selected for the post of lower/upper primary teachers have approached this Court in these appeals.

In the advertisement which was published in the Notification in the Gazette dated 22.11.1994, the qualifications for the post of lower/upper primary teachers were prescribed thus:

(1) Pass in SSLC conducted by the Commissioner for Government Examination, Kerala, or any other equivalent qualification.

(2) Pass in TTC conducted by the Commissioner for Government Examinations, Kerala, or pass in Pre-degree of Kerala University with pedagogy as optional subject or pass in basic TTC examination (Malayalam) conducted by the Government of Madras or pass in Malayalam Vidhvan examination.

Learned counsel appearing for the appellants contends that when the terms of advertisement, quoted above, are very clear to indicate that B.Ed. degree is not the prescribed qualification, such candidates were clearly ineligible to compete and they could not have been allowed to take up the selection test and to be included in the select list. Learned counsel placed before us two judgments of Kerala High Court in Thulasibhai Amma vs. Asst. Educational officer [1993 (2) KLT 245] and Mathew vs. State of Kerala [1992 (2) KLT 116] and pointed out that those decisions were wrongly referred to and relied by the division bench for allowing the appeal of the B.Ed. candidates and directing the authorities to suitably amend the Rules. Those judgments related to recruitment to the post of primary teachers in private primary schools aided by the Government and to which the provisions of Kerala Education Act and Rules were applicable. Recruitment to Government Primary Schools is regulated by a Government Resolution or Order and this legal position is not in dispute.

Learned counsel appearing for the State of Kerala, the State Public Service Commission and some of the private respondents have strongly urged that B.Ed. qualification is a higher qualification than TTC and as in the process of recruitment of primary teachers in Government Primary Schools, candidates with B.Ed. degree were allowed to compete, the division bench was right in not upsetting the select list and the appointment of B.Ed. candidates on undertaking given by the authorities to suitably amend the recruitment Rules.

On behalf of the State of Kerala, learned counsel pointed out that pursuant to the directions of the division bench, Kerala Education Rules framed under the Kerala Education Act of 1958 have been amended and for Upper Primary Teachers now along with TTC, B.Ed./BT/LT of recognized Universities of Kerala have also been prescribed as qualifications with effect from the date

of Notification i.e. 8.6.2000.

It is not disputed before us by the parties that Kerala Education Act of 1958 and the Kerala Education Rules framed thereunder regulate recruitment to the posts of teachers in private schools aided by the Government. It is not brought to our notice that correspondingly the Government Memorandum or Order which regulated recruitment to Government Primary Schools has also been amended to prescribe B.Ed. and equivalent degree qualification as eligibility qualification for the post.

We find absolutely no force in the argument advanced by the respondents that B.Ed. qualification is a higher qualification than TTC and therefore, the B.Ed. candidates should be held to be eligible to compete for the post. On behalf of appellants, it is pointed out before us that Trained Teachers Certificate is given to teachers specially trained to teach small children in primary classes whereas for B.Ed. degree, the training imparted is to teach students of classes above primary. B.Ed. degree holders, therefore, cannot necessarily be held to be holding qualification suitable for appointment as teachers in primary schools. Whether for a particular post, the source of recruitment should be from the candidates with TTC qualification or B.Ed. qualification, is a matter of recruitment policy. We find sufficient logic and justification in the State prescribing qualification for post of primary teachers as only TTC and not B.Ed. Whether B.Ed. qualification can also be prescribed for primary teachers is a question to be considered by the authorities concerned but we cannot consider B.Ed. candidates, for the present vacancies advertised, as eligible. The division bench in the impugned order upheld the decision of the single judge that in terms of the advertisement, B.Ed. candidates were not eligible to take up the selection and to be included in the rank list. We fail to understand that having thus upheld the decision of the learned single judge what was the justification for the division bench to refer to statutory recruitment Rules applicable to teachers in private primary schools, aided by the Government and the judgments rendered by the High Court in their cases, for reversing the judgment of the Single Judge and maintaining the Rank List including names of the B.Ed. candidates and their appointments on the basis of rules yet to be framed.

On behalf of respondents, it is submitted that since large number of B.Ed. candidates were allowed to compete and actual appointment orders were also issued in their favour, the division bench has tried to adjust the equities between the parties.

Equity and law are twin brothers and law should be applied and interpreted equitably but equity cannot over-ride written or settled law. The division bench forgot that in extending relief on equity to B.Ed. candidates who were unqualified and yet allowed to compete and seek appointments contrary to the terms of the advertisement, it is not redressing the injustice caused to the appellants who were TTC candidates and would have secured a better position in the Rank List to get appointment against the available vacancies, had B.Ed. candidates been excluded from the selections. The impugned judgment of the division bench is both illegal, inequitable and patently unjust. The TTC candidates before us as appellants have been wrongly deprived of due chance of selection and appointment. The impugned judgment of the division bench, therefore, deserves to be set aside and of the learned single

judge restored.

Learned counsel for the respondent states that two interim orders were made by this Court during the pendency of Special Leave Petitions and after grant of leave for these appeals. The relevant orders dated 3.7.2000 and 1.3.2001 read as under:

Court Order dated 3.7.2000  
"Taken on Board. Issue notice.  
Any appointment in the meanwhile made will be subject to the result of any order passed in this SLP."

Court Order dated 1.3.2001  
".

Mr. PP Rao, learned Senior Counsel submitted on behalf of the State of Kerala that TTC holders alone will be appointed in the vacancies arising in respect of lower primary schools (LPS). This will continue for the future posts also until otherwise decided by this Court. He submitted that so far as upper Primary Schools (UPS) are concerned, until otherwise decided, TTC holders as well as B.Ed. holders will be considered and the Public service Commission (PSC) will select the persons out of this as one category who are more competent among them for appointment. We make it clear that all such appointments made after 3.7.2000 will be treated as only provisional appointments and be subject to the final result of the appeals.

This order will apply only to non-private schools."

Learned counsel for the private respondents relying on the above orders of this Court, submits that since the B.Ed. candidates have been appointed after amendment of the Rules and on the statement made by the counsel for the State and the Public Service Commission, this Court should not upset the appointment of B.Ed. candidates already made.

We have held that the impugned judgment of the division bench is liable to be set aside and that of the single judge maintained. Having thus reached a conclusion in favour of the present appellants who are TTC candidates, it would be highly unreasonable to deny them relief merely because of the interim orders or arrangements made thereby this Court: Under the aforesaid two orders, B.Ed. candidates were allowed to be appointed only provisionally. We take note of the fact that all the B.Ed. appointees are not before us and even though all B.Ed. candidates who have been arrayed as respondents to these appeals, have been served with notices of these appeals, only a few of them are represented through counsel. In these circumstances, we would restrict the relief to the candidates who were petitioners before the learned single judge including the present appellants.

The exercise of preparation of a fresh Rank List directed to by the learned single judge shall be undertaken and after fresh list is prepared by exclusion of B.Ed. candidates, if the appellants get the necessary rank against available vacancies at the relevant time, they would be given appointment and to

make room for them, by terminating appointment, if necessary, of B.Ed. candidates who might have been selected in their places.

Consequently, we allow these appeals. The impugned judgment dated 18.2.2000 of the division bench is set aside and order of the learned single judge dated 25.1.1999 is restored with the modification made above. Since the petitioners in the High Court and in this Court have been waiting for selection and appointment, so long, let the directions made by the learned single judge as modified by this Court be carried out with expedition and within an outer limit of four months. The appellants will also be entitled to get costs from the respondents State of Kerala with Counsel's fee as per rules.

JUDIS