

(2011) 11 MAD CK 0071

In the Madras High Court

Case No : Writ Petition No. 5855 of 2007 (O.A. No. 6274 of 2002)

A. Rajeswari

APPELLANT

Vs

State of Tamil Nadu

RESPONDENT

Date of Decision : 29-11-2011

Acts Referred:

Citation : (2011) 11 MAD CK 0071

Hon'ble Judges : D. Hariparanthaman, J

Bench : Single Bench

Advocate : Vedavalli Kumar, for the Appellant; R.M. Mutthukumar Government Advocate, for the Respondent

Judgement

Honourable Mr. Justice D. Hariparanthaman

1. The petitioner passed Higher Secondary in Vocational stream in the 1988. In the said course, Pre-School Teacher Training Course consisting of theory and practical, is one of the subjects. Based on the same, the petitioner was appointed as Higher Grade Teacher in Mohanoor Panchayat Union Elementary School, by the third respondent, by an order dated 18.11.1988. While so, she was terminated from service by an order dated 17.01.1989.

2. The petitioner filed Original Application in O.A.No.3687 of 2002 before the Tamil Nadu Administrative Tribunal seeking to quash the aforesaid order dated 17.01.1989. The Tribunal, disposed the said Original Application by an order dated 01.07.2002 directing the Government to pass orders on the petitioner's appeal dated 14.01.2002, within three months.

3. Based on the aforesaid order of the Tribunal, the first respondent Secretary to Government, Education Department passed an order dated 23.08.2002 rejecting the appeal preferred by the petitioner stating that she was not qualified to hold the post of either Higher Grade Teacher or Secondary Grade Teacher.

4. The petitioner filed Original Application in O.A.No.6274 of 2002 before the

Tamil Nadu Administrative Tribunal seeking to quash the said order dated 23.08.2002 of the first respondent and for a consequential direction to the respondents to appoint her as Higher Grade Teacher or Secondary Grade Teacher.

5. The respondents filed reply affidavit refuting the allegations made by the petitioner.

6. In view of the abolition of the Tribunal, the matter stood transferred to this Court and was renumbered as W.P.No.5855 of 2007.

7. Heard both sides.

8. The petitioner filed an additional affidavit stating that one Ms.Kalaiselvi, who was in possession of the same qualification, as that of the petitioner, was appointed as Higher Grade Teacher in 1988, along with the petitioner in Veppur Panchayat Union School and till now, she continues in the said post, while the petitioner is terminated.

9. In these circumstances, this Court, on 30.09.2009, directed the respondents to file a counter affidavit regarding the allegation made in the additional affidavit filed by the petitioner about the appointment of Ms.Kalaiselvi.

10. Accordingly, today when the matter is called, the learned Government Advocate produced a written remarks of the third respondent, wherein it is admitted that Ms.Kalaiselvi, who studied under the Vocational stream in Higher Secondary Course, was appointed as Higher Grade Teacher, by the District Educational Officer, Ariyalur and that Ms.Kalaiselvi still continues in service. No reason is stated for retaining Ms.Kalaiselvi in service.

11. Furthermore, the general instructions issued by the Teachers' Recruitment Board that was found at page No.24 of the typed-set makes it clear that the person possessing Pre-School Teacher Training Course certificate is also eligible for appointment to the post of Secondary Grade Teacher. It is stated that the Teachers' Recruitment Board selected persons as Secondary Grade Teachers, based on their Pre-School Teacher Training Course Certificates. Thus, apart from Ms.Kalaiselvi, others having similar qualification are employed all over Tamil Nadu. Furthermore, it is stated that the Government issued an order in G.O.Ms.No.172, School Education Department, dated 31.10.2002 stating that the persons possessing Pre-School Teacher Training Course Certificates would be eligible to handle classes 1 and 2. The said Government Order was issued immediately two months after the order impugned in this writ petition.

12. Further, as rightly contended by the Learned Counsel for the petitioner, this Court allowed the writ petitions in W.P.Nos.30128 of 2006 and 3779 of 2009 by a common order dated 09.04.2009, wherein 29 persons similarly situated like that of the petitioner were directed to be appointed as Elementary/Secondary Grade Teachers to conduct classes 1 and 2, based on G.O.Ms.No.172, referred to above. In this regard, paras 3 and 4 of the said order dated 09.04.2009 of this Court are extracted hereunder:

3. Despite notice, the respondents have not filed any reply affidavit till date. When the matter is called, the Learned Counsel for the petitioner brought to the notice of this Court the order passed in W.P.No.43313 of 2006 (M. Chandrasekar Vs. The Government of Tamil Nadu and Others) dated 25.3.2009. In paragraph Nos.2 and 3 of the said order it is stated as follows:

2. The petitioner is having Pre Primary Education Course Certificate. According to the petitioner the said certificate is valid for appointment as Elementary Grade Teacher/Secondary Grade Teacher to conduct classes 1 and 2. During the pendency of the Original Application, the Government considered the issue and passed G.O.Ms.No.172 School Education Department dated 31.10.2002 and ordered to appoint teachers having Pre Primary Teacher Training Certificate as Secondary Grade Teachers to handle classes 1 and 2 in primary sections.

3. In view of the issuance of the said G.O., there may not be any impediment to get appointment by the petitioner. If the petitioner is yet to be appointed, the respondents shall consider the claim of the petitioner for the said appointment as Secondary Grade Teachers to handle classes 1 and 2 in accordance with the aforesaid Government Order based on the statewide seniority as per the present policy of the Government in G.O.Ms.No.220 School Education Department dated 10.11.2008 at the time when the recruitment of the Secondary Grade Teachers are made."

4. In the light of the same, the writ petitions are ordered in terms of the earlier order and the respondents are directed to consider the case of the petitioners in accordance with law. However, there will be no order as to costs.

13. For all the aforesaid reasons, the impugned order is quashed and the third respondent is directed to appoint the petitioner as Secondary Grade Teacher to handle classes 1 and 2, in terms of G.O.Ms.No.172, School Education Department, dated 31.10.2002, within a period of six weeks from the date of receipt of a copy of this order. It is made clear that the period of non-employment would be counted for fixation of pay and for terminal benefits and the petitioner is not entitled to any actual monetary benefits.

14. The writ petition is disposed of in the above terms. No costs.