
(2011) 12 MAD CK 0200
In the Madras High Court
Case No : W.P.No. 3482 of 2007 (T)

D.Jayanthi

APPELLANT

Vs

The Government of Tamil Nadu

RESPONDENT

Date of Decision : 13-12-2011

Acts Referred:

Citation : (2011) 12 MAD CK 0200

Hon'ble Judges : D. Hari Paranthaman, J

Bench : Single Bench

Advocate : M. Ravi, for the Appellant; V. Subbiah, Spl. GP, for the Respondent

Final Decision : Allowed

Judgement

Honourable Mr. Justice D. Hari Paranthaman

1. The petitioner passed Higher Secondary in Vocational stream in the year 1989. In the said course, Pre-School Teacher Training Course consisting of theory and practical, is one of the subjects. Thereafter, she registered her name in the employment exchange.

2. The unemployed Pre-basic Trained Teacher's Association filed O.A.No. 1744 of 1991 before the Tribunal challenging the action of the respondents in denying the appointment, to the persons, who completed Pre- Basic Training Course, as Higher Grade Teachers in various Elementary Schools in Tamil Nadu. The Tribunal granted interim order to keep 72 posts vacant. Finally, the Tribunal, after hearing both sides, allowed the said OA on 03.05.1993 and thereby, a direction was given to the respondents to appoint 72 Pre-Basic Trained Teachers in the Higher Grade Teachers Posts in the Elementary Schools, according to their seniority in the employment exchange.

3. In these circumstances, the Government issued G.O.Ms.No. 26, dated 13.01.1997, for appointment of 72 persons, who completed Pre-Basic Training Course.

4. However, the petitioner was not given appointment on the ground that 3 she was not qualified for appointment as Secondary Grade Teacher under the Special Rules for the Tamil Nadu Elementary Education Subordinate Rules.

5. While 72 persons were appointed, the petitioner made an application for giving her also appointment, as in the case of otherRs. But, the second respondent passed an order dated 04.05.2001, stating that the petitioner does not possess qualification for appointment to the post of Secondary Grade Teacher.

6. In these circumstances, the petitioner filed O.A.No. 5208 of 2001, before the Tribunal, seeking for a direction to the respondents to appoint her in the post of Secondary Grade Teacher. On abolition of the Tribunal, the same was transferred to the file of this Court and renumbered as W.P.No. 3482 of 2007.

7. Learned counsel appearing for the petitioner submitted the this matter is squarely covered by a decision of this Court dated 09.04.2009, passed in W.P.Nos.30128 of 2006 and 3779 of 2009 and also another order passed in W.P.No. 5855 of 2007, dated 29.11.2011.

8. On the other hand, learned Special Government Pleader seeks to 4 substantiate the impugned order based on the oral instructions and sought for dismissal of the writ petition.

9. Heard both sides.

10. As rightly submitted by the learned counsel for the petitioner, I have allowed a similar writ petition by order dated 29.11.2009, passed in W.P.No. 5855 of 2007. Paragraphs 8 to 13 of the said judgment are extracted hereunder:

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 5 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 6 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 V. 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 7 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.

11. In view of the aforesaid two judgments and also the instructions issued by the Teachers' Recruitment Board, that is referred to in para 11 of the order passed in W.P.No. 5855 of 2007, dated 29.11.2011, and also the order of Government issued 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 impugned order is liable to be quashed and accordingly, it is quashed.

12. The writ petition is allowed in terms of the order passed by this Court in W.P.No. 5855 of 2007, dated 29.11.2011. The respondents are directed to appoint the petitioner as Secondary Grade Teacher to handle classes 1 and 2 within a period of 12 weeks from the date of receipt of a copy of this order. No Costs.