

(2014) 01 MAD CK 0212

In the Madras High Court

Case No : Writ Petition No. 23028 of 2011 and M.P. No. 1 of 2011

G. Kannan

APPELLANT

Vs

The State of Tamilnadu

RESPONDENT

Date of Decision : 28-01-2014

Acts Referred:

Citation : (2014) 1 LLJ 617

Hon'ble Judges : T.S. Sivagnanam, J

Bench : Single Bench

Advocate : V. Ravikkumar, for the Appellant; N. Inbanathan, G.A., for the Respondent

Final Decision : Allowed

Judgement

T.S. Sivagnanam, J.—With the consent of the learned counsel appearing on either side, the Writ Petition itself is taken up for final disposal. The prayer in the Writ Petition is quash the order passed by the second respondent dated 17.8.2010, and the consequential order of the third respondent dated 27.8.2011 and to direct the respondents to regularise the service of the petitioner in the post of Junior Assistant with effect from 28.7.1999.

2. The petitioners father Mr. R. Gopalakrishnan, who was working as Driver in the Forest Department, died in harness on 30.1.1978, leaving behind the petitioner and his mother as his legal heirs. The petitioners mother appears to have re-married and therefore the petitioner was under the care and custody of his grand mother. The petitioner was aged about one year at the time of his fathers demise. Since his grand mother was in Kerala, he had studied there and passed Secondary School Leaving Certificate (SSLC) in the Kerala State. After attaining the age of 18 years, the petitioner submitted an Application for considering him to be appointed on compassionate ground. The petitioners certificates were verified by the authorities and by proceedings dated 30.6.1997, the petitioner was selected and appointed in the post of Junior Assistant on compassionate ground.

3. The petitioner joined service on 28.7.1999 and he also acquired other qualifications. Thereafter, the petitioner passed II Language Departmental Test conducted by TNPSC, during December 1999. Subsequently, he made a request for regularisation of his service. During 2003, the second respondent forwarded a proposal dated 5.8.2003 to the first respondent to regularise the petitioner's service on the ground that he has passed the II Language Departmental Test conducted by TNPSC in Tamil and as per the certificate of the Kerala Educational authorities, the petitioner has passed SSLC and therefore the petitioner's service should be regularised. Another similar proposal was also forwarded by the second respondent on 13.7.2004. While the proposal for regularisation was pending, by order dated 13.4.2005, the petitioner was reverted from the post of Junior Assistant on the ground that the petitioner has not obtained 35% of marks in each subjects in S.S.L.C., in Kerala State and therefore does not possess the requisite educational qualification.

4. Aggrieved by such order, the petitioner filed W.P. No. 15674 of 2005. This Court, by order dated 17.4.2007, held that while ordering reversion, the petitioner was not given an opportunity to which he is entitled to, the order of reversion was unilaterally passed and therefore the Writ Petition was allowed and the order of reversion was set aside. However, liberty was given to the respondents to take action for affording an opportunity to the petitioner.

5. Even thereafter, another proposal was sent by the District Forest Officer, Coimbatore dated 16.8.2010, to the second respondent to regularise the petitioner's services. Thereafter, the petitioner was issued with show cause notice stating that the 10th Standard Certificate obtained by the petitioner from the Kerala State Education Board cannot be equated to Plus one study in Tamil Nadu and therefore, the PG degree obtained by him i.e. M.A. degree through Open University without basic qualification cannot be considered as possessing P.G. degree for appointment in public service and accordingly an order of reversion was passed. Challenging the same, the petitioner has filed this Writ Petition.

6. The learned counsel for the petitioner submitted that the petitioner being a direct recruit, cannot be reverted, as held by the Hon'ble Supreme Court in the case of Hussain Sasan Saheb Kaladgi Vs. State of Maharashtra, which has been followed in W.P. No. 44666, 40746 of 2006 & 13557 of 2007, dated 7.9.2011. Further, the learned counsel submitted that the petitioner has passed the Secondary School Leaving Certificate of the Kerala State Board of Public Examination, all the petitioner's credentials were verified and only thereafter he was appointed in 1999, and it is highly arbitrary for the respondents now to take action after such a long period of time especially when there has been a proposal given by the third respondent requesting for regularisation of the petitioner's services.

7. The learned Government Advocate appearing for the respondents while seeking to sustain the impugned order submitted that as per the relevant Government Order, the petitioner does not possess the requisite qualification and

he cannot be considered as pass in SSLC, since he has not secured 35% of marks in each subject, which is minimum. Therefore, the impugned order has been rightly passed after following the principles of natural justice and therefore there is no illegality in the said impugned order.

8. I have considered the submissions made by the learned counsel appearing on either side, perused the materials available on record and the Secondary School Leaving Certificate issued by the Kerala Board of Public Examination, which has been filed in the typed set of papers.

9. It is seen that as per the pattern of education in Kerala State, the subjects are divided in two groups. Group-A consists of languages viz. First language Part I & Part II; Second Language English Paper I & Paper II; Third Language-Hindi. Group-B consists of Social Sciences Part I-History & the Cultural Heritage of India; Part II- Geography, Political Science & Economics; Science Part I-Physics, Part-II-Chemistry, Part III-Biology & Health Science; Mathematics-Paper I & Paper II. The Mark Statement also gives minimum marks to be secured for obtaining a pass. The minimum pass mark is given subjectwise as well as groupwise. On a perusal of the mark statement, it is evidently clear that the petitioner has secured much above the minimum pass marks both in the subjects as well as in the group. Further, the Kerala State authorities have certified that the petitioner has secured a total mark of 226 out of 600, which comes under "Third Class". Admittedly, those documents were verified by the authorities and then only the petitioner was appointed. The petitioner's probation was also declared and he continued to serve in the Department. The petitioner also passed his Departmental Tests conducted by TNPSC and his name was also recommended for regularisation.

10. In such circumstances, it is too late in the day for the respondents to now contend that the petitioner had not secured 35% of marks in each subjects. If the respondents had any doubt as regards the equivalence of qualification, then they ought to have raised the said objection even prior to the petitioner's appointment, i.e. prior to 2007. However, that was not done. That apart, the Hon'ble Supreme Court in the case of Hussain Sesan Saheb Kaladgi, (supra) has held that a direct recruit to a post cannot be reverted to a lower post. It is only a promotee who can be reverted from the promotional post to a lower post from which was promoted and these propositions are so elementary and that the same are incapable of being disputed and have not been disputed. Hence, for all the above reasons, order impugned in this Writ Petition is liable to be set aside. Accordingly, the Writ Petition is allowed and the impugned order is set aside. The respondents are directed to consider the petitioner's case for regularisation, if he is otherwise found fit. No costs. Consequently, connected Miscellaneous Petition is closed.