

(2011) 08 MAD CK 0503

In the Madras High Court

Case No : Writ Petition (MD) No. 3172 of 2006 and MP (MD) No. 1 of 2007

I. Siriya Pushpam

APPELLANT

Vs

The Director of Elementary Education, The District
Elementary Educational Officer and The Assistant Elementary
Educational Officer

RESPONDENT

Date of Decision : 09-08-2011

Acts Referred:

Constitution of India, 1950 — Article 14, 16

Tamil Nadu Recognised Private Schools (Regulation) Act, 1973 — Section 20(3), 56, 57

Citation : (2011) 08 MAD CK 0503

Hon'ble Judges : Vinod K. Sharma, J

Bench : Single Bench

Advocate : A. Thirumurthy, for the Appellant; D. Muruganandam, Addl. Govt.
Pleader, for the Respondent

Final Decision : Allowed

Judgement

Vinod K. Sharma, J.—The Petitioner prays for issuance of a Writ in the nature of Certiorari, to quash the order dated 05.04.2004 passed by the Director of Elementary Education, denying the claim of the Petitioner for upgrading her post to Full-Time Craft Teacher and release the benefits of secondary school Teacher, from the date of initial appointment.

2. The Petitioner passed her 8th standard and underwent Technical Teacher's Certificate Course in Sewing in the year 1984, on completion of course was issued a certificate on 18.12.1985.

3. The Petitioner claims that she was qualified to be appointed as a Craft Teacher. This averment is factually incorrect as under the statutory rules, the qualification prescribed for appointment as Instructor in Home Crafts is:

1. S.S.L.C. Completed.

2. Government Technical Examination(Higher Grade in Needle Work and Dress-

making and Higher Grade in Embroidery) Industrial School Certificate;

or

National Trade Certificate awarded by the National Council for Training in vocational Trades. Government of India or the Diploma awarded by the Director-General of Re-settlement and Employment, New Delhi, in Embroidery and Needle work;

or

Diploma in Costume Designing and Dress-making issued by the State Board of Technical Education and Training,(Chennai).

and

(3) Technical Teacher's Certificate.

4. A reading of the rule shows that though the Petitioner had the qualification of Technical Teachers Certificate, but was not having the qualification of S.S.L.C thus was not qualified to be appointed to the post, under the statutory rules.

5. The Government issued G.O. Ms. No. 1366, dated 5.9.1986, which reads as under:

GOVERNMENT of TAMIL NADU

ABSTRACT

Copy of

Education - School Education - General Educational qualifications for the post of Craft Instructors in Middle Schools, High Schools - Revision of scale of pay to craft teachers - Recommendations of the one man committee - orders issued.

EDUCATION DEPARTMENT

G.O. Ms. No. 1366

Dated 5.9.1996

G.O. Ms. No. 1267/Finance(PC-1), dated 8.12.1985 ORDER:

The One Man Commission constituted as per G.O read above, has recommend as that the minimum general educational qualification for the post of Craft Teachers working in the Middle Schools may be raised as S.S.L.C pass on par with their counter-parts in High Schools, and the scale of pay of Rs. 610-20-730-25-995-30-1075 be given to the persons so qualified among them. The One Man Committee has also recommended that the unqualified craft teachers may be allowed for a minimum period of three years to qualify themselves in S.S.L.C for obtaining the secondary Grade sale of pay.

2. The Government after careful examination accept the above recommendation

and accordingly direct that the general educational qualification for the post of Craft Teachers in the Middle Schools, under all kinds of managements be raised to S.S.L.C as prescribed in the Tamil Nadu Private Schools Regulation Act, 1973. The Craft teachers with the S.S.L.C qualification shall be allowed Secondary Grade Teachers scale of pay of Rs. 610/20-730-25955-30-1075 irrespective of the fact whether they are working in middle/High schools. The unqualified craft teachers that is, with the VIII standard qualification, shall be allowed time for a minimum period of three years to qualify themselves and after that they shall be allowed secondary Grade scale of pay of Rs. 610-20-730-25-995-30-175.

3. This order issues with the concurrence of the Finance Department vide its D.O. No. 99567. F.C.II/86-1, dated 2.9.1986.

(BY ORDER of THE GOVERNOR)

Sd.T.D. Sundarraj

Commissioner & Secretary to Government

6. This G.O. Ms does not disclose as to under which authority this was issued. Section 56 of the Tamil Nadu Recognised Private Schools(Regulation)Act,1973, gives powers to the Government to frame the rules to carry out the purpose of the Act.

7. In pursuance to the power conferred u/s 56 of the Tamil Nadu Recognised private Schools(Regulation)Act, 1973, the Governor of Tamil Nadu has already framed the rules, called the "Tamil Nadu Recognized Private Schools (Regulation) Rules 1974". The rules therefore can only be amended, in exercise of statutory powers under the Act, no general government orders can be issued, which go contrary to statutory rules. Whenever any government order is issued in exercise of powers u/s 56 of the Act, it has to be notified in the official gazette, and also is to be placed before State Assembly. Till the time the Government amending rules is notified in Gazette, it can only be treated as executive instructions, and are to be ignored if it goes contrary to the statutory rules.

8. The G.O. Ms. No. 1366, dated 5.9.1986 also does not disclose as to which rule was to be amended, as the qualification earlier prescribed was also S.S.L.C. It is also does not show whether it was published in Government Gazette, not these government orders have been placed before the State Assembly in terms of Section 57 of the Tamil Nadu Recognized Private Schools(Regulation)Act, 1973. It is made clear that mere non placing of the amended rules before the State Assembly does not make the rules invalid or unenforceable in law, but the State Government is under statutory duty to place all the government orders, amending the statutory rules before the State Assembly. The directions are hereby issued to place the government order amending/framing the service rules under the Tamil Nadu Recognized Private Schools(Regulation)Act, 1973.

9. A clear distinction is also required to be drawn between, statutory instructions/rules under the provisions of the Constitution of India; statutory rules in exercise

of statutory powers under the Act, Administrative instructions to fill up gaps between the statutory rules and ordinary administrative order, like implementing a decision of the law/Government directions etc.

10. The government order referred to above and other circular orders therefore are required to be placed before State Assembly it is so ordered.

11. The Petitioner passed S.S.L.C examination in the year 1991, thus fulfilled the qualification, for appointment as Instructor in Home Crafts under the statutory rules as she already held the Technical Teachers Certificate.

12. The State Government, thereafter issued another G.O. Ms. No. 224, dated 24.03.1994, in pursuance of the announcement that the qualified part time Craft Teachers, will be appointed in the Secondary Grade against future vacancies in Elementary and Middle Schools.

13. This Government Order, also does not take note of the fact that under the statutory rules, there is no post of part-time Craft Teacher. When service conditions are governed by the statutory provisions of law, then such general instruction cannot be issued unless these are issued in exercise of statutory jurisdiction under the the statute or the rules.

14. This rule, creating a new source of recruitment again for the reasons best known to the Government, has neither been published in the Government Gazette nor placed before the State Assembly in terms of Section 57 of the Act.

15. It is also not understood as to how the refresher course was prescribed for regularising the service as the statutory rules prescribed qualification for appointment. The government order in this regard is again outcome of misreading of the judgment of this Court. The Honourable Division Bench of this Court while dealing with the case of termination of services of certain employee not possessing requisite statutory qualification, had merely advised to government if possible to exercise jurisdiction under the Act to relax the statutory rules, for special class of persons specifically named. The grant of relaxation of statutory rules for a set of people cannot become either a rule/or even administrative instructions for being followed.

16. We are not concerned with this for the present, as the Petitioner has not challenged the constitutional validity of the G.O. Ms. referred to above, rather under the Government Order, the Petitioner went for refresher course, but could not qualify, as she failed in English. The passing of refresher course could have given her right to fresh appointment. It certainly could not have given a right to retrospective regularisation of service on regular basis as claimed.

17. The case of the Petitioner, is that the Petitioner gave a representation to allow her to write English paper for the second time, but the permission was not granted. Nothing has been pleaded in the Writ Petition, as to under which authority or rule/Regulation, the Petitioner was claiming the right to write the English paper for the second time.

18. The Petitioner filed W.P. No. 38484/2003 directing the Respondent to upgrade, her to Full-Time Craft Teacher and to pay Secondary Grade scale of pay w.e.f. date of initial appointment with monetary benefits.

19. The Writ Petition was disposed of by this Court, with direction to the Respondent to consider and dispose of the representation filed by the Petitioner.

20. In pursuance to the direction issued by this Court, the impugned order, has been passed rejecting the prayer of the Petitioner.

21. The only ground for rejection, is that the Petitioner failed to clear the refresher course, therefore she was not entitled to the relief claimed, as she could not be upgraded to the post of Full-Time Craft Teacher, nor she was held entitled to the grade of Secondary School Teacher.

22. The Learned Counsel for the Petitioner has challenged the impugned order, primarily on the ground that because of the delay in disposing of the representation, petitioner has attained the age of superannuation, thus is no longer in service. Therefore, now the benefit of regularisation should be given to her by relaxing the rules u/s 20(3) of the Tamil Nadu Recognized Private Schools(Regulation) Act, 1973, keeping in view, the fact that the Petitioner has rendered 23 years of service.

23. This plea again is not to be considered by this Court, as it is for the State Government to consider, as to whether in the facts and circumstance of the peculiar case, it is necessary to relax the rules in exercise of jurisdiction u/s 20(3) of the Tamil Nadu Recognised Private School(Regulations)Act, 1973.

24. The next contention, of the Learned Counsel for the Petitioner is that some other similarly placed persons/employees, have been given the benefit of up-gradation of the post, even without passing the course or undergoing the training, therefore the impugned order is violative of Article 14 and 16 of the Constitution of India.

25. This plea again is totally misconceived. Even if a person is given the benefits wrongly, to which he/she is not entitled, it does not give a right to the Petitioner to allege the violation of Article 14 and 16 of the constitution of India, as a wrong committed cannot be directed to be perpetuated. The benefits of Article 14 and 16 cannot be extended to the wrongs.

26. The Learned Counsel for the Petitioner, thereafter contended that the impugned order, cannot be sustained as passing of refresher course was not mandatory. The impugned order therefore cannot be sustained.

27. There is force in this contention of the Learned Counsel for the Petitioner. The Government order, prescribing refresher course, does not disclose the authority under which this was issued. The service conditions of the employees working in private schools are governed by the Act and statutory rules framed therein. The Refresher Course was prescribed, to give relaxation, in pursuance to observation

made in Writ petition filed by unqualified persons challenging this termination.

28. The Government before, issuing, instructions is required to take into consideration, the existing rules and also the procedure laid under the statute. It is also not permissible to the Government to issue Government Orders, in violation of the statutory service rules.

29. The Respondent by passing the impugned order, has failed to take note of the statutory rules, under which the Petitioner was qualified to hold the post of Craft Teacher on regular basis after qualifying S.S.L.C examination in the year 1991, as she had passed Technical Teachers Certificate course even prior to her appointment as part time.

30. Once she was qualified under the rules, the authorities were to consider whether the refresher course was at all necessary. This important aspect was not considered while passing the impugned order as the relief was declined to the Petitioner for the reason that she failed in refresher course. This course was not required to be undergone by her, in view of her qualifications. The authorities are required to consider, under what provision of the statute or rule the claim for upgradation can be considered or benefit given retrospectively as claimed.

31. The impugned order does not show the application of mind, nor takes note of statutory rules and Regulations, or the qualification possessed by the Petitioner since the year 1991, when she passed her S.S.L.C examination.

32. The Writ Petition is therefore allowed, the impugned order is quashed. The matter is remitted back to the first Respondent to reconsider the matter in terms of statutory rules governing the service conditions.

33. The Government is further directed to place the Government orders issued in exercise of power u/s 56 of the "Act", before the state Assembly as provided u/s 57 of the "Act".

34. The authority may also consider keeping in view the long service rendered by the Petitioner, as to whether, the power u/s 20(3) is to be exercised, to relax any rule to consider her claim of up-gradation from part-time to full time Craft Teacher.

35. consequently, connected Miscellaneous petition is closed.

36. No costs.