
(2004) 11 MAD CK 0147
In the Madras High Court
Case No : Writ Petition No. 14599 of 1997

K. Vasuki

APPELLANT

Vs

The Correspondent Kalyani Primary Schools, The Director of
Elementary School Education, The Assistant Elementary
Educational Officer and The District Elementary Educational
Officer

RESPONDENT

Date of Decision : 25-11-2004

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2004) 11 MAD CK 0147

Hon'ble Judges : V. Kanagaraj, J

Bench : Single Bench

Advocate : K. Suguna, for the Appellant; R. Chandrasekaran Government
Advocate for Respondents 2 to 4, for the Respondent

Final Decision : Dismissed

Judgement

V. Kanagaraj, J.—The petitioner seeks a Writ of Certiorari to call for the records relating to the order of the second respondent dated 10.6.1997 issued in the Ref. No.Na. Ka.No. 13631/EG3/96 and the order of the third respondent dated 8.8.1997 issued in the Ref. No.Na. Ka.No. 936/m2/95 and quash the same.

2. The case of the petitioner is that by order dated 1.7.1995 she was appointed as Secondary Grade Assistant in the first respondent school and in pursuance of that order she has joined the first respondent school. Her appointment was approved by the order of the fourth respondent dated 13.7.1995. Her probation was also declared by the first respondent by his order dated 2.7.1997. The petitioner submits that the third respondent has passed an order dated 8.8.1997 ousting her from service. On enquiry, she was given to understand that the order of the third respondent has been passed based on the order of the second respondent dated 10.6.1997. Since the orders of the second respondent and third respondent dated 10.6.1997 and 8.8.1997 are prima facie illegal, the

petitioner has filed the above writ petition.

3. The third respondent filed a counter in which, it is stated that the petitioner was appointed without referring to the Employment Exchange and with a condition that the approval is subject to the final judgment of the cases, which were filed against the orders of the Government to sponsor teachers only through Employment Exchange. In the counter, it is further stated that the Government in G.O. Ms. No. 873 dated 13.11.95 have issued instructions to relieve the teachers, who were appointed without referring to Employment Exchange and the petitioner is now permitted to continue in service, as per the interim orders granted on 25.9.97 and the same was extended until further orders on 20.12.2001.

4. The learned counsel for the petitioner submits that the Government Order is dated 13.11.1995, whereas the petitioner was appointed on 1.7.95, so it will not have retrospective effect and based on the G.O, the petitioner's service cannot be ousted. The learned counsel for the petitioner further submits that having approved her appointment and without any notice, her service has been ousted, is nothing but violation of principles of natural justice.

5. In this connection, the learned counsel for the petitioner relies on Union of India (UOI) and Others Vs. N. Hargopal and Others, , wherein it is held as follows:

"It is, therefore, clear that the object of the Act is not to restrict, but to enlarge the field of choice so that the employer may choose the best and the most efficient and provide an opportunity to the worker to have his claim for appointment considered without the worker having to knock at every door for employment. We are, therefore, firmly of the view that the Act does not oblige any employer to employ those persons only who have been sponsored by the employment exchanges".

6. The learned counsel for the petitioner further submits that the petitioner enclosed xerox copy of her service book, wherein no such condition was extracted. Apart from that the G.O. Ms. No. 873 came on 13.11.1995, which is subsequent to the petitioner's appointment dated 1.7.1995. The learned counsel further submits that any Government Order should have only prospective effect and not retrospective effect. Further, the learned counsel submits the first impugned order was dated 10.6.1997 passed by the second respondent directing the Management to relieve the teachers who were not appointed through Employment Exchanges and the second impugned Order was dated 8.8.1997 passed by the third respondent to oust the teachers. The learned counsel for the petitioner further submits that the petitioner is fully qualified and the post is also a sanctioned post. Since all these conditions were satisfied, she was appointed.

7. In consideration of the facts pleaded, having regard to the materials placed on record and upon hearing the learned counsel for the petitioner and the respondents as well, what is relevant in the circumstances of the case is neither

the date of the Government Order nor the date of appointment or regularisation, and the date of judgment of the Division Bench of this Court rendered in W.A. No. 879 of 1993 dated 17.2.1995 in which the appointments of teachers made without reference to the Employment Exchange have been regularised further declaring that any appointments made after the judgment of this court mentioned supra are to be declared null and void.

8. But, at the time of writing the order, this court was able to find that on facts, vital point has been misconstrued based on the representation of the counsel for the petitioner under the impression that in the order cited by the petitioner delivered by a learned single Judge of this court dated 19.2.2004 in W.P. No. 13220 of 1997, wherein dealing with the similar case, the learned Judge has arrived at the conclusion to regularise the appointment of the petitioner in that case on ground that the petitioner therein had been appointed in the leave vacancy that arose in that particular school even prior to the date of judgment made by the Division Bench in W.A. No. 879 of 1993 dated 17.2.1995 and a little after the judgment of the Division Bench, the same position having fallen vacant permanently, the institution has appointed the petitioner therein, thus regularising her appointment as a teacher in that school and the said appointment has been accepted by the learned single Judge in that case, further making it clear that "the petitioner's case can be considered favourable for these reasons", thus passing the order only in the case of the individual petitioner and not holding it a precedent.

9. So far as the case in hand is concerned, the factual situation that was prevalent in the other case cited by the learned counsel is not the same here, and therefore, this case cannot be decided following the order made by the other learned single Judge of this court. So far as the facts of the case in hand are concerned, it is an admitted case that the petitioner got appointment after the coming into being of the Government order in G.O. Ms. No. 873 dated 13.11.1995 afresh and the appointment of the petitioner to the fifth respondent school since being from 1.07.1995, the Division Bench Judgment made in W.A. No. 879 of 1993 since being dated 17.2.1995 i.e., much earlier to the said Division Bench Judgment, thereby declaring that the appointments of the teachers made without reference to the employment exchange i.e., after the judgment of the Division Bench of this court cited supra are to be declared null and void. G.O. Ms. No. 873 dated 13.11.1995, in para 3(iv), clearly states that "all the appointments made upto 17.2.1995, i.e., the date of judgment in the writ appeal in the Private Aided Educational Institutions without consulting the Employment Exchange shall be regularised, if the appointments are found to be otherwise regular and in accordance with the rules", thereby further holding that "the Private Aided Educational Institutions shall make all appointments in their institutions through Employment Exchange and only when no candidate is available in the Employment Exchange or the candidates who are sponsored from the Employment exchange are found to be unfit, it would be open to the private Educational Agency to seek the permission of the concerned authority and go

ahead with the recruitment from open competition". This order has become effective from 17.2.1995, i.e., the date of judgment of the High Court in W.A. No. 879 of 1993 and therefore, the appointment of the petitioner made after the crucial date of the delivery of the judgment, i.e., after 1.07.1995 is, no doubt, erroneous and illegal.

10. In the case in hand, the petitioner has been appointed without reference to the Employment Exchange as on 1.07.1995 i.e. after the crucial date of judgment of this court made in W.A. No. 879 of 1993 and therefore the appointment of the petitioner has been rightly held by the respondents in the impugned order as erroneous, thus relieving the petitioner from the post and the said impugned order having been passed in the manner held in the High Court judgment and as emphasised by the Government Order concerned, this court does not find any valid reason to cause its interference into the impugned order dated 1.9.1997 passed by the second respondent and third respondent respectively dated 10.6.1997 and 1.9.1997 and hence with the following result.

In result,

- (i) For the reasons stated above, the above writ petition does not merit acceptance but becomes liable to be dismissed and is dismissed accordingly; and
- (ii) The order passed by the 2nd respondent dated 10.06.1997 in Reference Na. Ka.No. 13631/EG3/96 and the order issued by the 3rd respondent in Ref. Na. Ka. No. 936/A2/95 dated 8.8.1997 are confirmed;

There shall be no order as to costs.