

(2015) 03 MAD CK 0402

In the Madras High Court

Case No : Writ Petition (MD) No. 7676 of 2008

K.S. Thirunavukkarasu

APPELLANT

Vs

State of Tamil Nadu and Others

RESPONDENT

Date of Decision : 27-03-2015

Acts Referred:

Right of Children to Free and Compulsory Education Act, 2009 — Section 2, 23, 38

Citation : (2015) 03 MAD CK 0402

Hon'ble Judges : V.M. Velumani, J

Bench : Single Bench

Advocate : S.S. Sundar, for the Appellant; T.S. Mohamed Mohideen, Addl. Government Pleader, Advocates for the Respondent

Final Decision : Allowed

Judgement

V.M. Velumani, J.—This Writ Petition has been filed to direct the first respondent herein to appoint the petitioner as Secondary Grade Teacher either in the existing vacancies or by removing the respondents 5 and 6 herein, by following the registration seniority of the District Employment Exchange Officer, Karur.

2. The petitioner is a permanent resident of Karur District and belonged to backward community. He completed his Higher Secondary Education in March 1992 and joined in the District Institute of Education and Training (DIET), Uthamapalayam, during May 2002, for doing Diploma in Teacher Education for two years. After completing the course, the petitioner registered his name in the District Employment Exchange on 05.04.2004. His Registration number is 2004 M 00558.

3. After issuance of various Government Orders, the first respondent issued G.O. (Ms) No. 241, dated 22.09.2007, permitting the third respondent to fill up all the vacancies from among the candidates, who have registered themselves in the Employment Exchange and appoint them as per District-wise seniority.

4. The petitioner received call letter on 19.02.2008 from the fourth respondent

for certificate verification. On 26.02.2008, the petitioner appeared for certificate verification along with all the documents at Karur Municipality Boys Higher Secondary School. All his certificates were verified and it was informed that all the candidates would be called for counselling in one or two days. Through Newspapers all the candidates were called for counselling on 28.02.2008.

5. On 28.02.2008, the petitioner was waiting in the Campus for getting an appointment order. But, he was not given any appointment. On the other hand, respondents 5 and 6, who were juniors to the petitioner were given appointment order. On verification, the petitioner was informed that the fourth respondent has committed some mistake in furnishing the seniority of the petitioner. On being informed about the mistake, the fourth respondent rectified the mistake and informed the third respondent on 29.02.2008 itself to give appropriate place to the petitioner according to his seniority.

6. The third respondent in spite of realising the mistake, did not give any appointment. Subsequently, the petitioner received another call letter, dated 17.03.2008. He appeared on 25.03.2008 and informed the second respondent that his certificates were already verified. In spite of such verification, the second respondent did not issue any appointment order. The second respondent also did not give any reason for not giving appointment order to the petitioner.

7. The method of recruitment to the post of Secondary Grade Teacher is based on the seniority in the Employment Exchange and on verification of certificates. It was found that the respondents 5 and 6, who are juniors to the petitioner, due to date of birth, were given appointment order. The petitioner and the respondents 5 and 6 were called for certificate verification and the respondents have not given any reason for not issuing appointment order to the petitioner.

8. Therefore, the petitioner has filed the present writ petition for the relief stated supra.

9. The second respondent filed counter affidavit denying the averments made by the petitioner. It is stated that during the year 2007-2008, the Elementary Educational Authorities initiated recruitment process to fill up 136 Secondary Grade Teacher vacancies and to that effect, a direction was also issued by the third respondent to the second respondent to fill up the existing vacancies. Till 2008, the recruitment process was made based on the District Level Seniority maintained by the District Employment Office, Karur District.

10. It is further stated that as per the request made by the second respondent, a list of 101 eligible candidates were forwarded by the fourth respondent on 18.02.2008 including the petitioner's name. In the meanwhile, the Secondary Grade Trained Teachers Association sent periodical representations alleging that some of the candidates had produced fake nativity certificate, residential certificate and migrated certificate etc. Pursuant to the same, necessary action was initiated and list of unqualified candidates was prepared. Thereafter, on 21.02.2008, revised list of eligible candidates was forwarded by the fourth

respondent to the second respondent, in which some of the candidates' names including the petitioner were left out. Based on the revised candidates list dated 21.02.2008, recruitment process was made and on 28.02.2008, selected candidates were declared and necessary appointment orders were issued to the selected candidates and the petitioner's name did not find place in the revised list, dated 21.02.2008.

11. It is also stated that now those who had completed Teachers Eligibility Test alone will be eligible to be appointed to the post of Secondary Grade Teacher. The second respondent had received a communication from the fourth respondent only on 29.02.2008. Immediately, the second respondent vide Proceedings No. 5070/A2/2007, dated 03.03.2008 sought for clarification from the fourth respondent to the effect that as to why the petitioner's name had been left out in the revised list, dated 21.02.2008. But, the fourth respondent simply directed the second respondent to consider the petitioner's plea. As per the list forwarded by the fourth respondent alone, the recruitment will be conducted. If the petitioner's name found place in the revised list, dated 21.02.2008, then he will be considered in accordance with law. Hence, the respondents are not in a position to consider the case of the petitioner and prayed for dismissal of the writ petition.

12. I have heard the learned counsel appearing for the parties and perused the materials on record.

13. Mr. T.S. Mohamed Mohideen, the learned Additional Government Pleader appearing for the respondents 1 to 4 contended that as per the Right of Children to Free and Compulsory Education Act, 2009 [hereinafter referred to as "the Act"], which came into force from 01.04.2010, the National Council for Teacher Education [NCTE], is the academic authority empowered to fix minimum qualification for appointment as Teacher. The NCTE issued a Notification, dated 23.08.2010, fixing the possession of Teachers Eligibility Test [TET] Certificate necessary for appointment of a candidate as Secondary Grade Teacher. The petitioner is not possessing the TET Certificate and hence, he is not entitled to be appointed as Secondary Grade Teacher. The learned Additional Government Pleader also contended that the certificate verification or inclusion in the selection list or waiting list will not give any vested right to a person.

14. In support of his submission, the learned Additional Government Pleader relied on the following Judgments:

"(i) I.A. Nos. 3-4 of 2014 in Civil Appeal Nos. 9204-05 of 2014, dated 23.09.2014. [The State of Tamil Nadu, Rep. by its Secretary and others v. T.S. Anbarasu and others]. The relevant portion of the said Judgment reads as follows:

"At this juncture, it is apposite to mention that the N.C.T.E. issued a Notification on 23rd August, 2010 in exercise of power conferred by sub-section (1) of Section (23) of the Right of Children to Free and Compulsory Education Act, 2009

[for brevity "the 2009 Act"], providing certain eligibility criteria for appointment as a teacher in class I to VIII in a school referred to in Clause (n) of Section 2 of the 2009 Act. The conditions mentioned in the said notification relate to various aspects but in the present case we are singularly concerned with paragraph-5 of the notification. The said paragraph reads as under:

"5. Teacher appointed after the date of this Notification in certain cases:- Where an appropriate Government, or local authority or a school has issued an advertisement to initiate the process of appointment of teacher prior to the date of this notification, such appointments may be made in accordance with the NCTE [Determination of Minimum qualifications for Recruitment of Teachers in Schools] Regulations 2001 [as amended from time to time]."

From the aforesaid paragraph it is clear as crystal that the eligibility criteria stipulated in the notification dated 23rd August, 2010 issued by the NCTE would not apply to the post that had already been advertised by the competent authority of the State. Therefore, the advertisement issued on 29th June, 2009 remained undisturbed."

(ii) Rakhi Ray and Others Vs. The High Court of Delhi and Others, AIR 2010 SC 932 : (2010) 124 FLR 867 : (2010) 2 JT 121 : (2010) 2 SCALE 93 : (2010) 2 SCC 637 : (2010) 1 SCC(L&S) 652 : (2010) 2 SCR 239 : (2010) 2 SLR 193 : (2010) 2 UJ 933 : (2010) AIRSCW 7068 , it has been held as follows:

"18. In Malik Mazhar Sultan and Another Vs. U.P. Public Service Commission and Others, (2007) 3 JT 352 , this Court made it clear that appointments in Judicial Service have to be made as per the existing statutory rules. However, direction was issued to amend the rules for future selections. This Court considered the correspondences between various authorities of the States and also the decision taken in the conference of the Chief Ministers and Chief Justices held on 11.03.2006, and observed as under:

"... Before we issue general directions and the time schedule to be adhered to for filling vacancies that may arise in subordinate courts and district courts, it is necessary to note that selections are required to be conducted by the authorities concerned as per the existing Judicial Service Rules in the respective States/ Union Territories... As already indicated, the selection is to be conducted by authorities empowered to do so as per the existing rules.... In view of what we have already noted about the appointments to be made in accordance with the respective Judicial Services Rules in the States, the apprehension of interference seems to be wholly misplaced...."

(emphasis added)

Therefore, it is clear that this Court clarified that selection was to be made as per the existing rules and direction was issued for amending the existing laws to adopt the recommendations of Justice Shetty Commission as approved by this Court for the future.

24. A person whose name appears in the select list does not acquire any indefeasible right of appointment. Empanelment at the best is a condition of eligibility for the purpose of appointment and by itself does not amount to selection or create a vested right to be appointed. The vacancies have to be filled up as per the statutory rules and in conformity with the constitutional mandate. In the instant case, once 13 notified vacancies were filled up, the selection process came to an end, thus there could be no scope of any further appointment."

15. The method of appointment for filling up the post of Secondary Grade Teacher as per G.O.(Ms) No. 241, dated 22.09.2007, is all the eligible persons registered with the District Employment Exchange were sponsored by the District Employment Exchange based on seniority. After certificate verification, the persons, who possess the requisite Educational qualification will be issued appointment and posting orders in the counselling. The petitioner was called twice for certificate verification. In the first instance, his juniors were appointed. The respondents 1 to 3 have not given any reason for not appointing the petitioner. The failure on the part of the respondents 1 to 3 to issue appointment order to the petitioner is contrary to the instructions contained in G.O.(Ms) No. 241, dated 22.09.2007 and the respondents 1 to 3 have issued appointment order to the respondents 5 and 6, who are juniors to the petitioner.

16. The Judgment of the Hon''ble Apex Court, dated 23.09.2014, made in I.A. Nos. 3-4 of 2014 in Civil Appeal Nos. 9204-05 of 2014, makes it clear that if selection process was initiated before the Notification, dated 23.08.2010, then the eligibility criteria prevailing before that date has to be applied. In the present case, the selection process itself was completed long before the Notification, dated 23.08.2010. This issue was considered by this Court in a batch of Writ Petitions in W.P.(MD) No. 2722 of 2013 etc. This Court, by the order dated 29.04.2013, held that as per Rule 18(5) of the Right of Children to Free and Compulsory Education Rules, 2009, framed by the Central Government under Section 38 of the Act, 2009, the teachers, who are appointed after six months from the date of Notification, must possess TET. In view of this order, a Teacher can be appointed within six months from 23.08.2010, the date of Notification, without Teacher Eligibility Test Certificate, but shall acquire Teacher Eligibility Test Certificate before 31.03.2015.

17. There is no dispute to the proposition of a person, does not get any vested right for appointment or certificate verification or inclusion in the selection list or in the waiting list. An Employer may not issue appointment orders to these persons. But, the Employer must give reasons for not issuing appointment order.

18. In view of the settled law, the respondents 1 to 3 are liable to be directed to consider the claim of the petitioner for appointment of Secondary Grade Teacher.

19. For the reasons stated above, this writ petition is allowed directing the respondents 1 to 3 to consider the claim of the petitioner based on the certificate

verification held on 26.02.2008 and 25.03.2008 and issue orders appointing the petitioner as Secondary Grade Teacher, within a period of six weeks from the date of receipt of a copy of this order. No costs.