

(2006) 08 MAD CK 0184

In the Madras High Court

Case No : Writ Petition No"s. 41237 of 2005 and 10771 of 2006 and W.P.M.P. No"s. 44284 of 2005, 12207 of 2006 and W.V.M.P. No. 438 of 2006

N. Baskaran

APPELLANT

Vs

V. Ranganathan, The Secretary, Union Public Service Commission, Government of Pondicherry and The Registrar, Central Administrative Tribunal, Chennai Bench
The Union Public Service Commission Vs V. Ranganathan, Shri N.Baskaran, Government of Pondicherry and Registrar, Central Administrative Tribunal

RESPONDENT

Date of Decision : 23-08-2006

Acts Referred:

Citation : (2006) 08 MAD CK 0184

Hon'ble Judges : K. Suguna, J;Elipse Dharma Rao, J

Bench : Division Bench

Advocate : N.G.R. Prasad, for Sai, Bharath and Ilan, in W.P. No. 41237 of 2005 and K. Sridhar, SCCG in W.P. No. 10771 of 2006, for the Appellant; Nalini Chidambaram for Gladys Daniel, for R1 in W.P. No. 41237 of 2005, K. Sridhar, SCCG for R2 in W.P. No. 41237 of 2005 and Syed Mustafa GP (P) for R3 in W.P. No. 41237 of 2005, Nalini Chidambaram for Gladys Daniel for R1 in W.P. No. 10771 of 2006, N.G.R. Prasad for Sai, Bharath and Ilan for R2 in W.P. No. 10771 of 2006 and Syed Mustafa GP (P) for R3 in W.P. No. 10771 of 2006, for the Respondent

Judgement

K. Suguna, J.—In the Judgment, the parties shall be referred to in the same rank as they are arrayed in W.P. No. 41237 of 2005.

2. These writ petitions have been filed challenging the order of the Central Administrative Tribunal, Chennai Bench, in O.A. No. 689 of 2004 dated 7.12.2005. The above said O.A. was filed by the 1st respondent /applicant therein with the following original prayer:

a. To direct the first respondent to appoint the applicant to the post of the Principal in a Higher Secondary School in Pondicherry under the Scheduled Caste

Category instead of the second respondent pursuant to Order No.F.1/114/2003-R.III dated 16.7.2004 issued by the first respondent.

b. and pass such further or other orders as may be deemed fit and proper in the circumstances of the case and thus render justice.

Subsequently, the said relief was requested to be amended in M.A. No. 453/2004 with the following prayer:

Under these circumstance, it is prayed that this Hon''ble Tribunal may be pleased to implead the third respondent as party respondent in O.A. No. 689/2004 consequently amend the relief in O.A. No. 689/2004 so as to quash the appointment order issued by the third respondent in his letter in Ref. No.A.12012/CS/EBN/E.1/2004 dated 13.8.2004 and thus render justice.

3. The facts leading to the above writ petitions are:

The 2nd respondent in W.P. No. 41237/2005 called for applications for appointment to the post of Principal, Government Higher Secondary School, Pondicherry, by advertisement bearing No.17 published in the Employment News on 13.9.2003 for three vacancies. Out of the said three vacancies, one was reserved for Scheduled Caste. In respect of Scheduled Caste vacancy, totally, 48 applications were received. On the basis of preliminary scrutiny and short-listing criteria, approved by the 2nd respondent, 11 candidates were called for interview on 9.3.2004. The petitioner and the 1st respondent were also among those eleven candidates. Basing on the performance in the interview, the petitioner was selected as per the selection list published on 16.7.2004. Subsequent to this, the 1st respondent herein filed the above said O.A. The Tribunal, by order dated 7.12.2005, allowed the O.A. and further directed the official respondents to appoint the 1st respondent as the Principal of the Higher Secondary School. Challenging the same, the petitioner herein has filed the above writ petition.

4. According to the learned Counsel for the petitioner, as per the advertisement, the qualification prescribed for appointment to the post of Principal, Government Higher Secondary School is,

A. Educational

(i) Master''s Degree from a recognised University or equivalent.

(ii) Degree in Teaching/Education from a recognised University or equivalent.

B. Experience

Ten years'' teaching experience in Higher Secondary School.

According to the petitioner, totally, he is having teaching experience of 18 years and one month. But, according to the Union Public Service Commission (UPSC in short), as far as the Higher Secondary level is concerned, the petitioner is having only 10 years and 4 months of teaching experience. Apart from this, academically, the petitioner possesses Post Graduate Degree in Chemistry (M.Sc

(Chemistry)) and a Post Graduate Degree in Education (M.Ed). As such, according to the learned Counsel for the petitioner, the petitioner is fully qualified for selection and appointment to the post of Principal, Higher Secondary School. According to the learned Counsel for the petitioner, by the advertisement dated 13.9.2003, applications were called for, for the post of Principal, Government Higher Secondary School, on an All India level basis. The terminology "Higher Secondary School" is not in vogue in many States like Kerala, etc wherein it is High school, Pre-University, Plus One system and in some other parts of the country, it is Senior Secondary School, Junior College and Intermediate, etc. As such, it is totally erroneous for the 2nd respondent to go by the term "Higher Secondary School" to determine the number of years of teaching experience. Hence, according to the learned Counsel, for the above said reasons, the service rendered in the Higher Secondary Schools as well as service in Higher Secondary level, should be taken into account for calculating the qualifying service. If that is so, according to the learned Counsel, the petitioner, by taking into account the service rendered by him in various institutions, possess the qualifying service of 10 years and 4 months and it is as detailed below.

(a) In Bhartiya Vidya Bhavan's Rajaji Vidyashram, Chennai as PGT for the period from 1.6.1985 to 30.4.1986 amounting to 11 months period.

(b) In Guru Shree Shantivijai Jain Vidyalaya, Chennai as PGT for the period from 1.6.1986 to 31.5.1987 amounting to 1 year.

(c) In Govt. Hr. Sec. School, TR Pattinam for the period from 1.8.1988 to 2.8.1989 amounting to 1 year.

(d) In Govt. Karaikal Polytechnic for the period from 1.9.1989 to 11.4.1990 and 27.9.1990 to 11.4.1991 amounting to 1 year 3 months 27 days.

(e) In Govt. Hr. Sec. School Thondamanathan for the period from 28.8.1997 to 30.4.2000 amounting to 2 years 8 months 2 days.

(f) In DIET, Pondicherry for the period from 1.5.2000 to 3.10.2003 amounting to 3 years 5 months 3 days.

5. According to the learned Counsel for the petitioner, the interpretation given by the 4th respondent Tribunal with regard to experience qualification is totally incorrect. That is, according to the learned Counsel, the finding of the Central Administrative Tribunal that the service rendered as P.G. Assistant and handling higher secondary classes alone have to be taken into account for the purpose of calculating qualifying service is totally erroneous. That apart, according to the learned Counsel, relying on the following portion in the counter affidavit filed by the 2nd respondent, the Tribunal has held that the petitioner's application should have been rejected:

In fact, the second respondent in his application claimed to be in possession of 18 years one month experience, but on scrutiny, it was found that he actually had only 10 years 4 months of teaching experience of higher secondary level

which makes him eligible for consideration of the post.

But, according to the learned Counsel for the petitioner, this finding of the Tribunal is unsustainable. The learned Counsel contended that this averment has been taken out of context and basing on this, the Tribunal has held as if the 2nd respondent filed a counter stating that the petitioner had given wrong particulars and on this ground, his application should have been rejected. In fact, according to the learned Counsel, this finding of the Tribunal is totally incorrect and the UPSC has not filed counter stating that the petitioner had furnished wrong particulars. That apart, according to the learned Counsel, the Tribunal had not called for production of the application of the petitioner to satisfy itself whether the petitioner furnished false particulars, especially, when no pleading or evidence in writing was available to this effect before the Tribunal. Besides, the innocuous opinion expressed by the 2nd respondent while traversing the allegations made in the O.A. can never be put against the petitioner, especially, when the petitioner had given the correct and full particulars to the UPSC. That apart, according to the learned Counsel for the petitioner, if the interpretation given by the Tribunal with regard to experience is to be accepted, i.e, the service rendered in higher secondary schools alone has to be taken into account for determining qualifying service, then the advertisement would not have called for applications on an All India basis, but only where courses in the nomenclature "Higher Secondary School" are available. That apart, according to the learned Counsel for the petitioner, while the petitioner was working as P.G. Teacher in the Government Higher Secondary School, Thondamanatham, Pondicherry, his service was spared to Government Polytechnic, by order dated 13.10.97. Neither any transfer order nor any order with regard to deputation was issued and the service of the petitioner was vested only with the Government Higher Secondary School and all the communications were addressed as P.G. Teacher, Thondamanatham Higher Secondary School. That apart, according to the learned Counsel, as far as Polytechnic is concerned, after the completion of X standard, instead of joining XI standard, students join diploma courses in Polytechnic and as such, Polytechnic is equivalent to higher secondary level. As far as the petitioner is concerned, he has handled Chemistry subject, also at the Higher Secondary level. That apart, according to the learned Counsel, for teachers working in Polytechnic, the educational qualification prescribed is same as that of teachers working in Higher Secondary schools. Whenever there was necessity, the Government had spared the service of the petitioner to Polytechnic and merely because the petitioner had obeyed the Government Orders, the same cannot be put against him. That apart, as far as service rendered by the petitioner in District Institute of Education and Training (DIET in short) is concerned, according to the learned Counsel for the petitioner, after completing Plus two, students, who want to come to teaching field, join DIET. The learned Counsel submitted that the finding of the Tribunal that the service rendered in DIET cannot be considered as Higher Secondary level service, since the students of DIET will be focussing on teaching primary classes, is not correct. According to

him, whether the service rendered by the petitioner in DIET is at Higher Secondary level or not has to be determined only on the basis of the students level and not what the students in that institution are going to become in future. Since the students join DIET only after completion of Higher Secondary level, it cannot be construed otherwise, except that the same is on the Higher Secondary level. That apart, as far as DIET is concerned, teachers from Higher Secondary Schools are transferred and posted in DIET and Principals of Higher Secondary Schools are also posted as Principals of DIET. The educational qualification prescribed for teachers in Higher Secondary Schools as well as in DIET is one and the same and both the posts are interchangeable and carry the same scale of pay. Further, according to the learned Counsel for the petitioner, by directing the official respondents to appoint the 1st respondent in the place of the petitioner, the Tribunal acted as an appointing authority. Besides, the learned Counsel contended that the finding of the Tribunal that experience in Polytechnic is not of Higher Secondary level and the experience in DIET is not a relevant experience is totally incorrect, since basing on the opinion of the expert body alone, the said service was taken into account as qualifying service. Further, according to the learned Counsel, the finding of the Tribunal substituting the opinion of the expert body in this regard is contrary to the decision of the Hon'ble Supreme Court reported in 2003 12 SCC 47 (Sudershan Singh v. Harinder Mohan Sharma). So also, the finding of the Tribunal that UPSC has no power to interpret the words "Higher Secondary School" as "Higher Secondary Level" is directly contrary to the Judgment of the Hon'ble Apex Court reported in G.N. Nayak Vs. Goa University and Others, . Hence, the learned Counsel for the petitioner prayed for allowing the writ petition.

6. On the other hand, learned senior counsel appearing for the 1st respondent contended that since the word used in the advertisement is only "Higher Secondary School", the contention of the learned Counsel for the petitioner that the essential condition for recruitment is not 10 years service as P.G. Teacher, but 10 years service in Higher Secondary level is totally incorrect. The service rendered by the petitioner in the Polytechnic and in DIET cannot be taken as teaching experience at higher secondary level. As such, the petitioner does not possess the requisite teaching experience. Besides, according to the learned Counsel, the finding of the Tribunal that the service rendered as a teacher by handling Higher Secondary classes alone has to be taken into account is perfectly valid. According to the learned Counsel, the petitioner had not served in the Government Higher Secondary School, Thondamanatham during the period from 28.8.1997 to 30.4.2000 since the petitioner was relieved by the Headmaster of the said Higher Secondary School by order dated 6.10.1997 and from the Government Polytechnic, Yanam, he was relieved only on 6.4.1999. Therefore, the learned Counsel would submit that the petitioner had furnished false particulars in his application under the heading "employment" in Column No.2 and the 2nd respondent should have rejected his application. That apart, according to the learned Counsel, when the 1st respondent, who possess 10

years teaching experience in Higher Secondary School and also academic qualification, is available, overlooking his claim, by appointing the petitioner as the Principal, the 2nd respondent has committed an error apparent on the face of the record. According to the learned Counsel, the petitioner, who does not have the requisite qualification as per the advertisement has been given preferential treatment over the 1st respondent, who, possess the required qualification. As such, the learned Counsel would submit that the finding of the Tribunal with regard to the petitioner and the directions issued thereon are in order and the same have to be confirmed.

7. Learned Counsel for the 2nd respondent submitted that, in response to the advertisement, totally 48 applications were received for one post of Principal, Government Higher Secondary School, under the Scheduled Caste category. According to the learned Counsel, the 2nd respondent, in discharge of its constitutional obligations, is vested with the power to devise their internal mode of functioning and procedures objectively in a just and equitable manner. According to the learned Counsel, though 48 applications were received for one post, by adopting the process of short-listing, eleven candidates were called for interview. The petitioner and the 1st respondent were also among those eleven candidates. Basing on the merit position in the interview conducted, the 2nd respondent is to recommend for appointment to the post of Principal. The 1st respondent could not be recommended by the interview board for the post of Principal as his merit position based on this performance in the interview was not within the number of posts to be filled up. According to the learned Counsel, as far as qualification with regard to teaching experience is concerned, the service rendered by candidates in Higher Secondary Schools or above was taken into account and accordingly, the petitioner, who possessed the required teaching experience of 10 years was recommended for appointment. As far as the 1st respondent is concerned, his name could not be recommended since, his merit position was far below. That apart, the learned Counsel would submit that in matters of direct recruitment, where selection is based on interviews only, the best available experts in the concerned field are associated in the Interview Boards for assessment of candidates' suitability. In the case on hand, the President of the Board had taken a holistic view considering the advice of the experts and the Commission had discharged its duty and constitutional obligation in a just and equitable manner and the selection made by the UPSC is in order. The learned Counsel therefore prayed for upholding the selection of the petitioner.

8. We have considered the submissions of the learned Counsel for the petitioner as well as the respondents.

9. Admittedly, as per the advertisement, the required qualification is,

A. Educational

(i) Master's Degree from a recognised University or equivalent.

(ii) Degree in Teaching/Education from a recognised University or equivalent.

B. Experience

Ten years" teaching experience in Higher Secondary School.

The word used in the advertisement is "Ten years" teaching experience in Higher Secondary School". There is no whisper in the said advertisement that the said "Ten years" teaching experience" relate to the experience in handling Higher Secondary classes. That apart, the advertisement has been given calling for application on an All India basis. As far as Higher Secondary Schools are concerned, it is in vogue only in some States and in other States, it is High School, Pre-University, Plust One system and in various other parts of the country, it is Senior Secondary School, Junior College, Intermediate, etc. As such, it is totally impossible to go by the term "Higher Secondary School". If as per the finding of the Tribunal, the experience in handling Higher Secondary classes alone have to be taken into account, candidates, who had handled classes in Plus one system, Senior Secondary Schools, Junior Colleges, etc, cannot be considered at all. Hence, the method adopted by the 2nd respondent, ie. the service rendered in the Higher Secondary level would be the criterion for calculating the qualifying service of 10 years, is a reasonable one. Otherwise, the choice of candidate should be restricted only wherein Higher Secondary classes are available. That apart, as far as the petitioner is concerned, as a P.G. Teacher, he had handled Higher Secondary classes during the following periods:

(a) In Bhartiya Vidya Bhavan's Rajaji Vidyashram, Chennai as PGT for the period from 1.6.1985 to 30.4.1986 amounting to 11 months period.

(b) In Guru Shree Shantivijai Jain Vidyalaya, Chennai as PGT for the period from 1.6.1986 to 31.5.1987 amounting to 1 year.

(c) In Govt. Hr. Sec. School, TR Pattinam for the period from 1.8.1988 to 2.8.1989 amounting to 1 year.

(d) In Govt. Karaikal Polytechnic for the period from 1.9.1989 to 11.4.1990 and 27.9.1990 to 11.4.1991 amounting to 1 year 3 months 27 days.

(e) In Govt. Hr. Sec. School Thondamanathan for the period from 28.8.1997 to 30.4.2000 amounting to 2 years 8 months 2 days.

(f) In DIET, Pondicherry for the period from 1.5.2000 to 3.10.2003 amounting to 3 years 5 months 3 days.

As far as the service of the petitioner in Polytechnic is concerned, it comes to 1 year, 3 months and 27 days. The diploma courses in Polytechnic institutions are also at the Higher Secondary level since, only those students, who complete X standard join such institutions instead of studying Plus one course. Besides, the prescribed educational qualification is the same for the teachers working in Polytechnic as well as for those in Higher Secondary Schools. That apart, according to the learned Counsel for the petitioner, the petitioner had taught Chemistry subject during his tenure in Polytechnic, which is at the Higher

Secondary level. For this specific contention of the petitioner, there is no denial in the counter affidavit filed by the 1st respondent. That apart, when the nature of duties and responsibilities of teachers and the students level are one and the same for Polytechnics and Higher Secondary Schools, though the courses offered in Polytechnics are technical in nature, it cannot be held that it is not at the Higher Secondary level when an expert body has gone into this aspect in detail and has given an opinion that Polytechnics are also of Higher Secondary level and the teaching experience would be the same as in Higher Secondary Schools. Therefore, merely on the ground that they are technical institutions, a different finding cannot be given.

10. As far as the service rendered by the petitioner in DIET is concerned, it comes to 3 years 5 months and 3 days. Students, who want to come to the teaching field, after completing higher secondary courses, join DIET. As far as DIET is concerned, teachers working in Higher Secondary Schools and also Principals of Higher Secondary Schools are transferred and posted in DIET. Therefore, when the posts are interchangeable, the service rendered in the said institution is also equivalent to the service rendered in Higher Secondary Schools, especially, when the scale of pay and the duties and responsibilities are one and the same. Besides, the finding of the Tribunal that the service rendered by the petitioner in DIET cannot be considered as Higher Secondary level, since, the students of DIET will be focussing on teaching primary classes is concerned, as mentioned above, the teaching staff in DIET handle classes for students, who have successfully completed their higher secondary course and unless and until both the posts are equal, the same would not be termed as interchangeable. Besides, while working as P.G. Teacher, on deputation, the petitioner was sent to DIET and basing on this deputation order, the petitioner had served in DIET during the above said period. In such circumstances, if the petitioner is denied the benefit of this service, while calculating the qualifying service, then, in our opinion, it will amount to depriving the petitioner of 3 years 5 months 3 days service, which he had rendered in DIET basing on the orders of the Government. That apart, normally, the service rendered in equal cadre cannot be excluded for calculating qualifying service. That apart, the Tribunal, after holding that the 2nd respondent had committed an error in construing the qualifying service as Higher Secondary level service, since the word "level" is not used in the advertisement, cannot come to the conclusion that the service rendered in handling Higher Secondary Classes alone should be taken into account, when it has not been specifically stated in the advertisement, that only teaching experience in handling Higher Secondary classes should be taken into account. As such, the service rendered by the petitioner in the Higher Secondary level comes to more than 10 years and 4 months and he possesses the required qualifying service of 10 years teaching experience as mentioned in the advertisement.

11. With regard to the next contention of the learned Counsel for the petitioner that the Tribunal cannot give a finding that the petitioner had given wrong particulars based on the innocuous opinion expressed by the 2nd respondent in

meeting allegations made in the application, without even calling for the application submitted by the petitioner from the 2nd respondent, especially, when there is no pleading to that effect, the Tribunal ought not have held that the petitioner had given wrong particulars.

12. That apart, the original application has been filed with the following prayer:

a. To direct the first respondent to appoint the applicant to the post of the Principal in a Higher Secondary School in Pondicherry under the Scheduled Caste Category instead of the second respondent pursuant to Order No.F.1/114/2003-R.III dated 16.7.2004 issued by the first respondent.

By way of amendment, the 1st respondent had sought for quashing of the appointment order issued to the petitioner dated 13.8.2004. Neither in the prayer sought for originally nor in the amended prayer, there is a mention with regard to quashing of the selection of the petitioner. Without asking for quashing of the order by which the petitioner was selected, the appointment of the 1st respondent to the post of Principal cannot be sought for. That apart, the appointment order has been issued by the 3rd respondent herein. But, the impleading application has been allowed along with the O.A. by order dated 7.12.2005. When the appointment order has been issued by the 3rd respondent, without even providing an opportunity to the 3rd respondent, the appointment order issued to the petitioner has been set aside by the Tribunal. Further, though the 1st respondent had not prayed for quashing of the selection, as mentioned above, in the operative portion of the order, the Tribunal has given a finding as if the 1st respondent had filed the O.A. challenging the selection of the petitioner herein. No specific prayer with regard to quashing of the selection of the petitioner has been made. That apart, the 2nd respondent has produced the selection list and in the said list, the 1st respondent has been placed at rank No. 10 in the reserve list. Even in the reserve list, there are three more candidates placed above the 1st respondent. As such, directions cannot be issued basing on the merit position, to appoint the 1st respondent. Hence, the order of the Tribunal is set aside and W.P. No. 41237/2005 is allowed. For the above reasons, W.P. No. 10771 of 2006 is also allowed. No costs. Connected W.P.M.Ps and W.V.M.P. are closed.