

**(2008) 09 MAD CK 0177**

**In the Madras High Court**

**Case No :** Writ Petition No's. 2861 and 8360 of 2006

N.K. Geetha

APPELLANT

Vs

The Government of Tamil Nadu

RESPONDENT

**Date of Decision :** 23-09-2008

**Acts Referred:**

**Citation :** (2009) 1 CTC 463

**Hon'ble Judges :** F.M. Ibrahim Kalifulla, J

**Bench :** Single Bench

**Advocate :** K. Ravichandrababu, for the Appellant; A. Suresh, G.A. (Edn.) for Respondents 1-3 and Isaac Mohanlal, for Respondent-4, for the Respondent

## Judgement

F.M. Ibrahim Kalifulla, J.—In W.P. No. 2861 of 2006, the Petitioner seeks a writ of Mandamus directing the Respondents to approve the appointment of the Petitioner as P.G. Assistant (Malayalam) in St. Mary's Higher Secondary School, Melpalai, established and administered by the fourth Respondent, from the date of her appointment, i.e. from 4.12.2001 with salary and other attendant benefits.

2. In W.P. No. 8360 of 2006, the Petitioner seeks a writ of Certiorarified Mandamus calling for the records relating to the second Respondent in his proceedings O.M. No. 128877/W/29/02 dated 13.2.2006 and quash the same and consequently, direct the Respondents to approve her appointment as P.G. Assistant (Malayalam) in St. Mary's Higher Secondary School, Melpalai, established and administered by the fourth Respondent and to pay her salary and other benefits.

3. Both these writ petitions have been filed by the same Petitioner. However, since the disposal of W.P. No. 2861 of 2006 is depended upon the outcome of W.P. No. 8360 of 2006, I prefer to dispose of W.P. No. 8360 of 2006 in the first instance.

4. In W.P. No. 8360 of 2006, the challenge is to the order of the second Respondent dated 13.2.2006, in and by which, the second Respondent declined

to grant approval of the Petitioner's appointment as a P.G. Assistant for Malayalam language in the fourth Respondent School. The Petitioner possesses a degree in History with Malayalam as the second language and Post Graduate degree in Malayalam itself. She also possesses a BJ Ed. Certificate. She was issued with an order of appointment dated 1.12.2001 by the fourth Respondent.

5. By the impugned proceedings, the second Respondent rejected the application of the fourth Respondent for approval of the Petitioner's appointment, since there were certain intervening proceedings litigation. In the impugned order, the second Respondent, after referring to G.O. No. 361 dated 31.12.1999 has held that the persons possessing both Under Graduate degree as well as Post Graduate degree in the same language can alone be appointed in the post of language teacher and since the Petitioner's Under Graduate degree is in a different subject, viz. History, her appointment could not be approved. The second Respondent curiously referred to the second proviso to the relevant rule, while rejecting the approval application relating to the appointment of the Petitioner.

6. It would be worthwhile to refer to the relevant rule, which has been stated in Annexure V(IV)(4) of the Tamil Nadu Recognised Private Schools (Regulation) Rules, 1974. The said relevant provision is to the following effect:

Post Graduate Assistants in Language (Other than Tamil (i) A Master's Degree in the Language in respect of which appointment is made or its equivalent; and

(ii) B.T. or B. Ed., Degree or its equivalent.

Provided that for appointment to the post by recruitment by transfer from the post of Pandit and Munshie in the High Schools, the Pandit Training or Secondary Grade Training shall be considered as equivalent qualification to the B.T. or B. Ed., degree.

Provided further that other things being equal, preference shall be given to those who have studied the same subject in degree and Master's degree levels.

7. A plain reading of the said regulation discloses that in order to satisfy the qualification for the post of Post Graduate Assistants in language, such as Malayalam in this case, what is required is a Masters degree in the language in respect of which the appointment is to be made or its equivalent, along with B.T. or B. Ed. Degree or its equivalent. The question of applying second proviso nor giving any preference will arise if at all there is more than one candidate to aspire for one single post of Post Graduate Assistant in language. Therefore, the application of the second proviso does not arise to the case on hand where there is no competitor other than the Petitioner who came to be appointed by the fourth Respondent School by the order dated 1.12.2001.

8. Under such circumstances, a reference to the second proviso in the impugned order by the second Respondent is totally uncalled for. It only reflects the total misreading of the relevant rule by the second Respondent.

9. As far as the reference to G.O. No. 361 dated 31.12.1999 is concerned, it is needless to state that when a statutory rule contains a specific provision as regards qualification to be satisfied by way of a Government Order, such a statutory rule cannot be altered. In any event, the question of considering a person holding the qualification of Under Graduate as well as Post Graduate in the same language, can, at the best, be considered if at all more than one person compete for the post, in which event, the second proviso to the relevant regulation itself will take care of such a situation, which provides for a preference to be given in the event of all other things remaining equal. Therefore, reference to G.O. No. 361 dated 31.12.1999, in the impugned order is also uncalled for.

10. The impugned order, looked at from any angle, cannot be sustained. While setting aside the order impugned in the writ petition, the second Respondent is directed to approve the appointment of the Petitioner from the date of her original appointment, viz. 1.12.2001 and pass appropriate orders expeditiously, preferably within four weeks from the date of receipt of a copy of this order. W.P. No. 8360 of 2006 is allowed. No costs.

11. In the light of the relief granted in W.P. No. 8360 of 2006, nothing survives in W.P. No. 2861 of 2006 and the same is disposed of accordingly. No costs.