

(2015) 03 MAD CK 0074

In the Madras High Court

Case No : Writ Petition (MD) No. 1969 of 2009 and M.P. (MD) Nos. 1 to 3 of 2009

S. Andrews Jawahar

APPELLANT

Vs

The District Educational Officer and Others

RESPONDENT

Date of Decision : 10-03-2015

Acts Referred:

Constitution of India, 1950 — Article 14, 16

Citation : (2015) 03 MAD CK 0074

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

Bench : Single Bench

Advocate : M. Ajmalkhan, Senior Counsel for Ajmal Associates, for the Appellant; T.S. Mohamed Mohideen, Additional Government Pleader, Advocates for the Respondent

Final Decision : Dismissed

Judgement

V.M. Velumani, J.—This Writ Petition has been filed calling for the records relating to the order passed by the first respondent in his proceedings in Na.Ka. No. 1280/A3/2008, dated 17.04.2008, quash the same as illegal and consequently, direct the respondents to approve the petitioner's appointment as Junior Grade P.G. Assistant w.e.f., 02.06.2005 and confer all consequential benefits.

2. According to the petitioner, one M.K. Mohammed Yusuf was promoted as Headmaster and the post of P.G. Assistant held by him became vacant. On 11.04.2005, the petitioner was appointed to the said post by way of direct recruitment and he joined in the said post on the same day. He was appointed by one Chellam, the then Correspondent. According to the petitioner, the said post is a sanctioned one and the petitioner possessed necessary qualification and fully eligible to the said post.

3. The proposal for approval of the petitioner's appointment was sent to the first respondent on 10.02.2006. No order was passed on the said proposal by the first respondent. Therefore, the petitioner filed W.P. (MD) No. 3479 of 2007 seeking to

issue a direction to the first respondent to approve his appointment, dated 11.04.2005, as Junior Post Graduate Teacher in Commerce with effect from 01.06.2006 in the second respondent School. This Court, by order dated 07.03.2008, directed the first respondent to consider and pass orders on the proposal submitted by the second respondent within a period of four weeks.

4. The first respondent, by the impugned order dated 17.04.2008, rejected the said proposal.

5. Challenging the said order, the petitioner has filed the present Writ Petition to quash the impugned order, dated 17.04.2008 and consequently, direct the respondents to approve the appointment of the petitioner as Junior Grade P.G. Assistant w.e.f. 02.06.2005 and confer all consequential benefits.

6. The learned Senior Counsel appearing for the petitioner contended that the appointments of two other persons, viz., C. Sweetlin and T. Suganthi, who were appointed by the very same Correspondent, were approved by the first respondent. Therefore, the rejection of the petitioner's appointment is illegal. The said benefit must be extended to the petitioner also.

7. In support of his submission, the learned Senior Counsel appearing for the petitioner relied on the following Judgments:

(i) Maharaj Krishan Bhatt and Another Vs. State of Jammu & Kashmir and Others, , wherein in paragraph 14, it has been held as follows:

"14. The learned counsel also submitted that the impugned action was clearly violative of Articles 14 and 16 of the Constitution. It was submitted that initially such violation had been committed by the State authorities i.e. the Director General of Police and the State Government inasmuch as though cases of all the Constables were similar and representations were made on one and the same day, the Director General of Police, Jammu and Kashmir recommended the name of only Hamidullah Dar who was appointed as PSI and cases of other similarly situated applicants were rejected. The appellants and other adversely affected Constables approached the High Court and a Single Judge allowed the petitions and directed the Government to consider the cases of the writ petitioners. In spite of such an order, the Government did not appoint the applicants as PSIs without any reason whatsoever. Contempt Petitions were required to be filed but even those orders were not complied with. In letters patent appeal, again direction was issued by the Division Bench. In any case, after the decision in SWP No. 519 of 1987 (Abdul Rashid Rather), the Government ought to have granted benefits to the appellants which was not done. The learned Single Judge was, therefore, right in allowing the petition. By setting aside the judgment and order of the learned Single Judge and in allowing the letters patent appeal as also in dismissing the review petition, the Division Bench of the High Court had committed an error of law as well as of jurisdiction and the present appeals deserve to be allowed."

(ii) The Secretary, Vallalar Gurukulam Higher Secondary School Vs. District Educational Officer and G. Anbarasan, , wherein in paragraph 7, it has been held as follows:

"7. Learned counsel for the appellant submitted that another teacher has been employed in the place of the second respondent and he has been getting salary. In our opinion, if there is only one vacancy, then obviously the new teacher has to go out and the second respondent has to come in again because his suspension was clearly illegal as it has to be deemed that he was never guilty of the criminal offence."

(iii) State of Karnataka and Others Vs. C. Lalitha, wherein in paragraph 29, it has been held as follows:

"29. Service jurisprudence evolved by this Court from time to time postulates that all persons similarly situated should be treated similarly. Only because one person has approached the Court that would not mean that persons similarly situated should be treated differently....."

8. The first respondent filed counter affidavit stating that the appointment of Thiru. D. Chellam as Correspondent was cancelled, as he was not appointed by the competent committee. The promotion of M.K. Mohammed Yusuf as Headmaster from 11.04.2005 was approved. But one Tmt. D.M. Percis Rajammal, Senior most Post Graduate Teacher challenged the said appointment and approval. The Joint Director of School Education (Higher Secondary Education), Chennai, in his proceedings in Mu.Mu. No. 29796/W5/E3/2008, dated 17.10.2008, held that the promotion of M.K. Mohammed Yusuf and the approval accorded to his promotion by the first respondent were irregular and cancelled the promotion of M.K. Mohammed Yusuf as Headmaster. Tmt. D. Percis Rajammal was promoted as Headmaster from 10.11.2008 and M.K. Mohammed Yusuf was reverted to his original post of Post Graduate Teacher in Commerce. On such reversion of M.K. Mohammed Yusuf, the petitioner was vacated from the post of Junior Post Graduate Assistant. The petitioner is no longer holding the post of Post Graduate Assistant in Commerce from 10.11.2008. The first respondent also stated that the approval of appointment of Tmt. C. Sweetlin and Tmt. T. Suganthi were done as per the orders of this Court. The first respondent also denied the various contentions raised by the petitioner in the grounds of writ petition.

9. The second respondent in his counter affidavit, has elaborately dealt with the dispute in the Management of the School and denied the various allegations made by the petitioner and prayed for dismissal of the writ petition.

10. Heard Mr. M. Ajmal khan, learned Senior Counsel appearing for the petitioner, Mr. T.S. Mohamed Mohideen, learned Additional Government Pleader for the first respondent and Mr. Issac Mohanlal, learned counsel for the second respondent.

11. I have carefully perused the pleadings and all the materials on record and considered the arguments of the learned counsel appearing for the parties.

12. At the out set, the contention of the learned Senior Counsel appearing for the petitioner that the benefit given to C. Sweetlin and T. Suganthi must be extended to the petitioner also, is untenable. As per the Judgments of the Hon''ble Apex Court, the petitioner is not entitled to the extension of benefit given to those two persons.

13. In the Judgment reported in 1995 (Supp) 4 SCC 706 [Harpal Kaur Chahal (Smt.) Vs. Director, Punjab Instructions, Punjab and another], the Apex Court held that Article 14 cannot be extended to legalise the illegal orders, though others had wrongly got the benefit of the orders. The relevant portion is extracted herein:

"3..... The view of the High Court is obviously illegal and the Judgment rendered would not form the ground for our holding that the others who got the benefit by illegal orders will be extended in favour of other candidates though illegally appointed. Article 14 cannot be extended to legalise the illegal orders though others had wrongly got the benefit of the orders....."

14. The same issue was considered by the Division Bench of this Court in the Judgment reported in The State of Tamil Nadu Vs. M. Seeniammal, [in which I was also a party] and rejected the very same contention raised by the respondents therein.

15. Secondly, the promotion of M.K. Mohammed Yusuf was cancelled and he was reverted as P.G. Assistant with effect from 10.11.2008, in whose place the petitioner was appointed. Once M.K. Mohammed Yusuf was relieved and joined as P.G. Assistant on 10.11.2008, the petitioner has left the service and he is no longer working as Junior Grade Post Graduate Assistant.

16. From the records, it is seen that D.M. Percis Rajammal retired on 31.05.2011 on attaining the age of superannuation and M.K. Mohammed Yusuf was promoted as Headmaster with effect from 14.08.2012. One S. Maria Hepsi Bai was appointed as Post Graduate Assistant in Commerce on promotion of said M.K. Mohammed Yusuf.

17. The contention of the learned Senior Counsel for the petitioner that the benefit given to C. Sweetlin and T. Suganthi must also be extended to the petitioner and the petitioner must be appointed in the place of S. Maria Hepsi Bai. The learned Senior Counsel relied on paragraph 7 of the Judgment reported in The Secretary, Vallalar Gurukulam Higher Secondary School Vs. District Educational Officer and G. Anbarasan, . The ratio in the said Judgment is not applicable to the petitioner's case. In that case, the teacher was suspended on account of Criminal Case. Subsequently, he was acquitted in the Criminal Case. In view of acquittal, the Division Bench of this Court held that the teacher was entitled to reinstatement and the newly appointed teacher has to go out. The

petitioner's case is entirely different and the petitioner is not entitled to appointment in the place of S. Maria Hepsi Bai.

18. In view of the fact that the appointment of the petitioner is illegal and that the petitioner has left the service and subsequent promotion of M.K. Mohammed Yusuf and the appointment of one S. Maria Hepsi Bai, the petitioner is not entitled to the relief sought for in the writ petition.

19. In the result, this Writ Petition fails and the same is dismissed. No costs. Consequently, connected Miscellaneous Petitions are also dismissed.

20. From the records, it is seen that the petitioner worked as Junior P.G. Teacher (Commerce) from 11.04.2005 till 10.11.2008, when M.K. Mohammed Yusuf was reverted back to his original post of Post Graduate Teacher in Commerce. The petitioner is entitled to salary for this period, as he worked in a sanctioned post. In the circumstances, the second respondent is directed to send a proposal to the first respondent claiming salary for the petitioner for the period from 11.04.2005 to 10.11.2008 with supporting documents within three weeks from the date of receipt of a copy of this order. On receipt of said proposal, the first respondent is directed to consider the said proposal and sanction and disburse salary for the period from 11.04.2005 to 10.11.2008 to the petitioner within eight weeks from the date of receipt of proposal from the second respondent.