
(2011) 04 MAD CK 0357

In the Madras High Court

Case No : Writ Petition (MD) . No. 12812 of 2009 and M.P. (MD) . No's. 1 and 2 of 2009 and 1 of 2011

S. Rajamani

APPELLANT

Vs

The Director of School Education and Others

RESPONDENT

Date of Decision : 08-04-2011

Acts Referred:

Citation : (2011) 04 MAD CK 0357

Hon'ble Judges : B. Rajendran, J

Bench : Single Bench

Advocate : V. Panneerselvam, for C.S. Associates, for the Appellant; K. Balasubramanian, Addl Govt. Pleader, for the Respondent

Final Decision : Allowed

Judgement

B. Rajendran, J.—It is the case of the Petitioner that he studied upto 11th standard (Old S.S.L.C) and was appointed as Drawing Master in the year 01.07.1980. It was a regular appointment due to the retirement of another teacher. The audit objected to the payment of salary as Secondary Grade Teacher to the Petitioner citing G.O. Ms. No. 1366, Education Department dated 05.08.1996, by which the minimum qualification for Drawing Master was SSLC, which has not been completed by the Petitioner. Therefore, he made a representation on 13.05.2008 to fix the salary. Earlier, he filed a Writ Petition in W.P(MD). No. 6226 of 2009 for a direction to the Respondents therein to consider his representation dated 30.05.2008. The said Writ Petition was disposed of by this Court dated 15.07.2009. Pursuant to that, the present impugned order dated 19.10.2009 is passed, whereby, the Petitioner's request to exempt from from passing SSLC has been declined on the ground that as per G.O. Ms. No. 1366, Education Department, he has not completed his SSLC within the prescribed period of three years.

2. The learned Counsel for the Petitioner would only contend that the said Government Order fixing qualification can always only be prospective and it

cannot be retrospective since he was appointed way back in the year 1980. The Government Order itself was implemented in the year 1986, cannot be cited as against him at this length of time. In this connection, he submits that the issue in question is squarely covered by a decision reported in the case of R. Sankaran v. the Secretary, Education Department, Government of Tamil Nadu, Fort. St. George, Chennai-600 009 and Ors. reported in 2004 WLR 204. Following that, a latest judgment was also passed by this Court in W.P(MD). No. 9454 of 2010 dated 30.07.2010.

3. A detailed counter affidavit has been filed by the third Respondent stating that G.O. Ms. No. 1366, Education Department, would categorically indicate that the appointment is not become invalid, whereas, the appointees who have not got the eligible criteria was granted three years time to acquire the prescribed qualification. Therefore, within the prescribed period of three years, the Petitioner has not acquired the qualification. Hence, the scale of pay which has been paid wrongly to the Petitioner was ordered to be stopped and the audit department rightly made their objections in this regard. Therefore, the impugned order is valid in law.

4. Heard both sides. By consent, the Writ Petition itself is taken up for final disposal.

5. The only contention raised by the Petitioner is that he was appointed way back in the year 1980 and at that time, there was no prescribed qualification and he has not passed SSLC, but he has failed in the 11th standard. But, later on, G.O. Ms. No. 1366, Education Department, came into force in the year 1986 fixing the minimum qualification as SSLC. In this connection, the said G.O. Ms. No. 1366 would contemplate that those persons who have been appointed earlier though they did not have the qualification their appointment is still valid, but they were given an opportunity to acquire the qualification within a period of three years. The present impugned order only states that since the Petitioner did not acquire the prescribed qualification, the request for payment of secondary grade teacher which hitherto have been paid to the Petitioner is not legally sustainable and therefore, they would contend that it is no more possible to pay.

6. Be that as it may. In this connection, we are guided by the earlier decision of this Court in R. Sankaran v. the Secretary, Education Department, Government of Tamil Nadu, Fort. St. George, Chennai-600 009 and Ors. reported in 2004 WLR 204, wherein in para 9, it is held as follows:

9. However, the Respondents seek to rely on G.O. No. 1366, by which the basic qualification was revised viz., SSLC pass. The question, therefore, arises for consideration as to whether the subsequent revision of basic qualification would affect the benefits already accrued in favour of the Petitioner. Apart from that, the general Rule of interpretation is that any subsequent revision of qualifications cannot affect the already existing incumbents. A plain reading to the G.O. itself indicates that it is operative only prospectively. Learned Counsel for the

Petitioner has placed before the court a copy of the letter dated 18.11.1986 of the Deputy Secretary to the Government, to the Director of Elementary Education in which the Government Order 1366 dated 5.9.1980 is extracted. Paragraph 2 of the said letter shows that the Government had directed that the Orders issued in the said G.O. in so far as the revision of scale of pay to the Craft Teachers with SSLC qualification was considered, will take effect from 1.10.1984 notionally and with monetary benefits with effect from 1.4.1986. Therefore, even on the strength of the said Government Order, the Government Order is to take effect only from 1.4.1986. In the present case, it is not disputed that the Petitioner was appointed in the year 1974 and he was also conferred with the Selection Grade with effect from 1.10.1984. The Government Order which is sought in support of the impugned order, being prospective cannot affect the rights of the Petitioner.

7. This above-said judgment has been followed by the latest judgment made in W.P(MD). No. 9454 of 2010 dated 30.07.2010, wherein in paras:8&9, it is held as follows:

8. It is seen from the judgment in R. Sankaran Vs. The Secretary, Education Department, Government of Tamil Nadu, The Director of Elementary Education and The Addl. Assistant Elementary Education Officer, that by subsequent G.O., qualification cannot be prescribed in respect of persons who were appointed earlier and refix his scale of pay and it has been held that G.O. Ms. No. 1366, Education Department dated 05.09.1986, is prospective in nature. Thereafter, the Petitioner filed a writ petition in W.P(MD) No. 6103 of 2009 for issuance of Writ of Mandamus directing the Respondents to pay the Secondary Grade salary with all the consequential benefits in the light of the judgment in R. Sankaran Vs. The Secretary, Education Department, Government of Tamil Nadu, The Director of Elementary Education and The Addl. Assistant Elementary Education Officer, and this Court has directed the Respondent to consider the representation of the Petitioner and pass orders on merits. As per the direction of this Court, the second Respondent has passed the impugned order stating that the Petitioner is not entitled to the Secondary Grade salary with all consequential benefits as he did not possess SSLC qualification as per G.O. Ms. No. 152, School Education(D2) dated 05-08-2005, he is not entitled to the same.

9. According to me, the issue is covered by the judgment in R. Sankaran v. The Secretary, Education Department, Government of Tamil Nadu, Fort. St. George, Chennai-600 009 and Ors. reported in 2004 Writ L.R.204. Admittedly, when the Petitioner was appointed, the Department did not prescribe the minimum qualification as SSLC and thereafter, they cannot refuse the basic qualification so as to affect the persons who are already appointed. Further, G.O. Ms. No. 152, School Education(D2) dated 05-08-2005, was based on G.O. Ms. No. 1366, Education Department dated 05.09.1986 and it is held by this Court in the above judgment that G.O. Ms. No. 1366 dated 05.09.1986 was only prospective and it cannot affect the persons who are appointed earlier. Even though, in G.O.

Ms. No. 152 School Education(D2) dated 05.08.2005, it was stated that the Petitioner is not entitled to the increment, it was only on the basis that the Petitioner did not have the minimum qualification of SSLC which has been struck down by this Court in R. Sankaran Vs. The Secretary, Education Department, Government of Tamil Nadu, The Director of Elementary Education and The Addl. Assistant Elementary Education Officer, Hence, the second Respondent is not justified in passing the impugned order on the basis of G.O. Ms. No. 152 School Education(D2) dated 05-08-2005. Further this Court has held in various judgments that excess salary paid to a Government servant when no fraud was played by him and when the same was paid without any demand or request by him, cannot be recovered later. Therefore on that ground also, the writ petition is has to be allowed.

8. From the above-said decisions, it is very clear that G.O. Ms. No. 1366, Education Department can only be prospective and the imposing of condition or prescribing a qualification will give effect only from 1986. Therefore, the persons who are appointed earlier merely because they have not acquired the qualification later as per G.O. Ms. No. referred to above, will not be an embargo or bar to get secondary grade teacher pay.

B.RAJENDRAN ,J.

ssm

9. Under these circumstances, the impugned order passed by the Respondents is not in conformity with the orders passed by this Court and liable to be set aside. Hence, the impugned order is set aside and the Writ Petition is allowed as prayed for. Consequently, the connected miscellaneous petitions are also closed. No costs.