

(2010) 04 MAD CK 0065
In the Madras High Court

Case No : Writ Petition (MD) No. 8090 of 2008 and M.P. (MD) No. 1 of 2008

V. Sundaravadivel

APPELLANT

Vs

The State of Tamil Nadu

RESPONDENT

Date of Decision : 12-04-2010

Acts Referred:

Citation : (2010) 04 MAD CK 0065

Hon'ble Judges : P. Jyothimani, J

Bench : Single Bench

Advocate : M. Saravanakumar, for the Appellant; R. Manoharan, Government Advocate, for the Respondent

Judgement

P. Jyothimani, J.—The writ petitioner, who has passed typing higher grade in English and Tamil in the year 1984, was appointed as a part

time vocational instructor on 19.07.1989 at I.T.O. Higher Secondary School, Aykudi, Dindigul District. At the relevant point of time, as per the

Government Order in G.O.Ms. No. 476 School Education Department, dated 19.11.1997, the qualification for such appointment happened to be

a basic degree holder with typing higher grade in English and Tamil. Therefore, the petitioner was one among the large number of unqualified

vocational instructors appointed in the State.

2. It appears that the petitioner was ousted from service on 31.05.1994 due to the reason of want of students strength. Thereafter, the petitioner

filed W.P. No. 15319 of 1995 for a direction against the respondents to send him for short term training course in the District Institute of

Education and Training, Ottanchathram. In the meantime, the Director of School Education in the communication dated 11.07.1984 has stated that

mere want of qualification like that of the degree for a person who is technically qualified and having acquired experience in these years by such

appointment as a part time vocational instructor, the proficiency acquired during the course of his experience has to be taken note of and they

should not be ousted especially taking note of the fact that fully qualified person for holding the post of vocational instructors were not available. In

the meantime, the Government passed an order in G.O.Ms. No. 967, dated 16.10.1992 to regularise 587 fully qualified double part time

vocational instructors in the B.T. Scale of pay. It was in that Government Order while considering about the unqualified single part time teachers as

that of the petitioner has observed as follows;

Other unqualified single part time teachers may be give training and absorbed as secondary grade teachers in future.

That was reiterated again by a subsequent Government Order in G.O.Ms. No. 834, dated 23.09.1994, where the Government took a decision to

regularise the qualified vocational instructors according to their seniority. Incidentally in the said Government Order while referring to unqualified

single and double part time vocational instructors like that of the petitioner has directed to evolve a suitable training programme in consultation with

the Director of Teacher Education, Research and Training stating that till such time when such unqualified single part time vocational instructors are

sent for training, they should be kept in service under consolidated pay.

3. It is seen that the third respondent, the Chief Educational Officer, Dindugal in his proceedings in R.C. No. 15790/A5/94 dated 14.02.1995

based on the above said Government Orders and the instructions given by the educational authorities, has permitted the petitioner to undergo such

short term training course in District Institution of Education and Training at Ottanchatram. However, the petitioner was not in service at that time.

Since he was ousted on 31.05.1994, the petitioner could not be sent for the said short term training course. Thereafter, the petitioner has

approached this Court by filing W.P. No. 15319 of 1995 for a direction against the respondents to send him to the short term training course at

Ottanchatram so as to have his service regularised and grant B.T. pay scale as per the above said proceedings. The said writ petition was disposed

of by this Court by an order dated 03.08.2001 with the following direction;

If that be so, it is needless to add that the petitioner shall make a further representation and respondents 2 and 3 shall try to accommodate the

petitioner in case of vacancy in the cadre of vocational instructor is available in Dindigul District in any school, be it private or public school. The

2nd respondent may consider the request of the petitioner and send a reply without further delay. This direction is only to consider the request of

the petitioner for alternate employment in any other school if it is permissible and possible.

4. Based on the direction given in the said writ petition, by the above proceedings of the third respondent dated 23.05.2002, the petitioner was

again reappointed as office secretary which is in the form of a single part time vocational instructor and posted at Government Higher Secondary

School, Vambarpatti, Dindigul District on 23.05.2002 and the petitioner is working in the said capacity till date.

5. In the proceedings of the third respondent dated 12.07.2005, the petitioner's name has been recommended to the second respondent, the

Director of School Education, Chennai for the purpose of bringing the petitioner under the time scale of pay based on the subsequent Government

Order in G.O.Ms. No. 74, School Education (V.E) Department dated 10.06.2002. In spite of the same, the petitioner's service has not been

regularised for the reason that the petitioner has not undergone short term training course as directed in the above said Government Order in

G.O.Ms. No. 967 dated 16.10.1992 and subsequent Government Order in G.O.Ms. No. 834, 23.09.1994. It is the case of the petitioner that

subsequently he has qualified himself by obtaining post graduate degree in M.A. in open university without undergoing the basic graduation.

6. Even though it is the the case of the petitioner that by virtue of the post graduate qualification, he has qualified himself as per the original

Government Order in G.O.Ms. No. 1719 dated 14.09.1978, the case of the respondent as it is seen in the counter affidavit that the post graduate

obtained by the petitioner is in the form of open university without basic degree and therefore, as per the rules available in existence such degree

cannot be treated as under graduate degree which is a necessary qualification as per the Government Order and therefore, it is not possible to send

the petitioner for short term training course.

7. Further, it is not in dispute that in the order of the Chief Educational Officer, Dindigul dated 14.02.1995, the petitioner was chosen to undergo short term training course in District Institution of Education and Training at Oddanchatram even though he was not having qualification as required under G.O.Ms. No. 1719 dated 14.09.1978. In fact at that time, he was not even having M.A. degree from the open university. In spite of it, the petitioner was selected to undergo short term training course so as to enable his service to be regularise as vocational instructor. Now that when the petitioner has undergone his M.A. post graduate degree in open university, it is certainly not open to the third respondent to say that it is because of obtaining M.A. in the open university, the petitioner cannot be sent for training as required by the Government Order in G.O.Ms. No. 1719 dated 14.09.1978. Though the petitioner was chosen for undergoing such training, he was not sent to training of course at that relevant point of time, the petitioner was not actually in service and the petitioner was ousted on 31.05.1994 for want of vacancy and not for want of qualification and subsequently, he has approached this Court as stated above. As per the order dated 03.08.2001, the petitioner came to be reappointed by the third respondent on 23.05.2002. Therefore, it is clear that the petitioner could not be sent for the training between 31.05.1994 to 23.05.2002 due to the reason that he was not in service during that time and the reason for want of qualification namely obtaining of basic degree has never stood in the way of the petitioner obtaining the short term training. That was the view of the Division Bench of this Court in the batch of writ petition W.P. Nos. 9780 of 1995 etc., wherein by a common order dated 08.07.2004, this Court has directed that even unqualified vocational instructors who have of course underwent short term course should be treated as regularly appointed person and they should be regularised in the light of G.O.Ms. No. 834, dated 23.09.1994. Therefore, it remains the fact as it is seen from the Division Bench judgment referred to above, the respondent has been sending various part time vocational instructors for the short term course in spite of the fact that they are unqualified as per the Government Order in G.O.Ms. No. 1719 dated 14.09.1978. If that is so, such benefit need not be denied to the petitioner. The petitioner's case has to be definitely referred to as that individual case wherein it was due to want of vacancy for some period during which time the benevolent

order was passed in his favour sending him for the training that could not be executed for the reason of non availability in the post. Therefore, I am

of the considered view that the case of the petitioner has to be taken as a special case taking note of the fact that he has been working as part time

vocational instructor from the year 1989 onwards, of course with a gap between 31.05.1994 to 25.05.2002. It is also brought to the notice of this

Court that the petitioner has got only a few years of service to attain the age of superannuation. In such view of the matter, the third respondent is

directed to consider the claim of the petitioner as a special case in sending him for short term training course in District institution of education and

training at Oddanchatram, if there are no other legal impediments. Such order shall be passed within a period of four weeks from the date of

receipt of a copy of this order. After the petitioner is send for such training and after successful completion of the said training, it is open to the

educational authorities to regularise the petitioner in the full time vocational instructor as per the Government Order in G.O.Ms. No. 834 dated

23.09.1994. It is made clear that the above said order is passed in the peculiar facts and circumstances of the present case taking note of the

above said situation and this order shall not be a precedent for any other case. The writ petition is ordered accordingly. Consequently, the

connected miscellaneous petition is closed. No costs.