



W.P.No.59 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED: 02.04.2024

CORAM :

THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

W.P.No.59 of 2022
and W.M.P.Nos.52 & 53 of 2022

Pagolu Neelima

.. **Petitioner**

Vs.

1.State of Tamil Nadu
Rep.by its Principal Secretary to Government
School Education Department
Fort St.George, Secretariat
Chennai – 600 009.

2.The Joint Director of School Education (Personnel)
Office of Commissioner of School Education
DPI Campus, College Road
Chennai – 600 006.

3.The Chief Educational Officer
Tiruvallore District
Tiruvallore.

.. **Respondents**

Prayer: Petition filed under Article 226 of the Constitution of India seeking
a Writ of Certiorarified Mandamus, to call for the records relating to



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G.O.Ms.No.106, School Education Department dated 14.07.2021 in so far as restricting the monetary benefits to the petitioner only with effect from the date of passing of second class language test, i.e., 27.03.2019 is concerned and the consequential order of recovery issued by the 3rd respondent in O.Mu.7736/A3/2021 dated 28.10.2021, served on the petitioner dated 15.11.2021 and to quash the same and consequently directing the respondents to pay monetary benefits to the petitioner as on the normal date of declaration of probation, with all consequential and other attendant benefits, within a time frame.

For the Petitioner : Mr.G.Sankaran
Senior Counsel for
Mr.S.Nedunchezhiyan

For the Respondents : Mrs.Mythreye Chandru
Special Government Pleader

ORDER

This Writ Petition is filed challenging the G.O.Ms.No.106, School Education Department dated 14.07.2021, in so far as it restricts the monetary benefits to the petitioner, only with effect from the date of passing of the second class language test, i.e., 27.03.2019 is concerned and the consequential order of recovery issued by the 3rd respondent dated



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28.10.2021 to quash the same and consequently direct the respondents to pay monetary benefits to the petitioner as on the normal date of declaration of probation with all consequential and other attendant benefits.

2. It is the case of the petitioner that her mother tongue is Telugu. She is the resident of *Pallipet, Tiruvallur* District, bordering the neighbouring State of *Andra Pradesh* and it is common knowledge that Telugu is a widely spoken language in that area and in the Government Schools in that area, the medium of instruction is only Telugu. Considering those border District Schools, where the mother tongue is Telugu, Kannada or Malayalam as the case may be, the Government has given certain exemptions.

3. The petitioner was appointed as a BT Assistant with effect from 09.12.2012 as such the petitioner's probation ought to have been declared with effect from 09.12.2014. The petitioner has been rendering unblemished service and is otherwise qualified to get her probation declared as on that date and all her further increments etc., have been granted from the said date. The petitioner did not study the Tamil language as one of the subjects



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in her School Education. She also did not pass the Tamil second language test conducted by the Tamil Nadu Public Service Commission. Thus, the petitioner's declaration of probation was withheld. However, the Government considering the plight of these teachers who are working in these minority medium schools has always been considering their cases.

4. The petitioner had also made representation to exempt her from passing the said examination. In the said representation she also undertook that she would not claim promotion to any administrative post. The said representation was kept in cold storage by the Government for a long time and only in the year 2018, the petitioner was informed that she had to pass the Tamil second language test and immediately thereupon, the petitioner appeared for the examination and passed the same during December 2018. After the same was recorded in the service records of the petitioner, her probation was ordered to be declared effect from 27.03.2019 and her salary was ordered to be re-fixed with effect from the same date and the earlier increments granted to her were ordered to be recovered. Aggrieved by the



same, the petitioner is before this Court.

5. The Writ Petition was resisted by the respondents by filing a detailed counter affidavit.

6. It is the case of the respondents that the exemption which is granted by the Government Order is applicable only in respect of minority language teachers. Since the petitioner is an English Teacher, the exemption is not applicable to her. Therefore, by considering the relevant rules, viz., Section 21 (2) and Sections 31 and 33 of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016 and the applicable relevant rules, the probation has rightly been declared and the pay has been rightly fixed from the date of passing of the said examination.

7. Heard, the learned Senior Counsel appearing for the petitioner and the learned Special Government Pleader appearing for the respondents.

8. *Mr G. Sankaran*, the learned Senior Counsel appearing on behalf of



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the petitioner taking this Court to the typed set of papers filed along with the Writ Petition would firstly draw the attention of this Court to the G.O.No.376 Education Department dated 24.03.1986 whereunder, the exemption was granted to all the Teachers in the Schools and Colleges. The learned Senior Counsel thereafter drawing attention to G.O.No.245, Education (HS I) Department, dated 27.02.1989 would submit that even though in the first G.O., dated 24.03.1986, the relaxation was restricted only to the minority language Teachers, the second G.O., extends the same in respect of all the Teachers who teach in minority medium also. The petitioner is employed only in a minority (Telugu medium school) school and therefore would also be entitled to the relaxation under G.O.No.245 dated 27.02.1989. If the petitioner is entitled to the relaxation, merely because the petitioner subsequently wrote the examination and cleared, the same cannot be taken as a date for the purpose of declaration of probation and as such the petitioner would be entitled to the probation being declared in the year 2014 itself. The learned Senior Counsel would also rely upon the legal maxim “*Absoluta sententia expositore non indiget*” to contend that



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while construing the provisions of the Government Order, the language used in the G.O., has to be considered to its best intention and it must be accepted as decisive of it. The Judgment of the Bombay High Court in ***New Shorrock Spg. And Ors. Vs. N.U.Raval, Income-Tax Officer***¹ is relied upon in support of the proposition.

9. The third contention of the learned Senior Counsel is by further placing the information furnished under RTI which is filed as an Additional Typed Set of papers. He would contend that the benefit of exemption has already been granted to 43 other persons. Therefore, the petitioner alone cannot be singled out and discriminated against. Finally, he would also submit that when the petitioner sought for exemption and submitted her representation, it was open for the respondents to reject the same and direct her to comply with the condition of passing of the Tamil language test. However, the respondents kept the representation pending up to the year 2018. Once the respondents rejected the request, the petitioner appeared for the examination and cleared the same. Had the respondents intimated the

¹ AIR 1959 Bom 477



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same earlier to the petitioner, she would have cleared the test in the year 2012 – 2013 itself. On account of the administrative delay on the part of the respondents, the petitioner cannot be put to prejudice.

10. Per contra, *Mrs.Mythreye Chandru*, the learned Special Government Pleader appearing on behalf of the respondents would submit that in the appointment order dated 19.12.2012 itself in Clause 4, the petitioner was intimated that she has to pass the Tamil language test. The passing of the test was mandatory as per Rule 12 -A of the Tamil Nadu State and Subordinate Service Rules, which was applicable at the relevant point of time. The petitioner was also appointed in the Government School. The appointment was not only in schools where the medium of instruction is Telugu. The exemption from passing Tamil test is granted for the teachers in the High Schools in G.O.(Ms) No.376, Education Department dated 24.03.1986. The same is only for the minority language teachers and not for the other teachers. The G.O.245 dated 27.02.1989 referred to by the learned Senior Counsel is only in respect of the Higher Secondary School Teachers /



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PG Teachers and not applicable in respect of the petitioner. In the absence of any exemption being granted to the petitioner, the petitioner had knowledge at all times material that she had to pass the language test. Merely because the authority rejected the representation in the year 2018, the same would not mean that the requirement would arise only from that date. The requirement was there right from the date of appointment of the petitioner. Therefore, her probation has been declared rightly as per the Rules.

11.The learned Special Government Pleader would submit that the particulars produced by the learned Senior Counsel are not very clear as to whether they are similarly situated as that of the petitioner or not and even if such benefit is granted, the rule position is otherwise, the petitioner cannot place reliance upon the same.

12. I have considered the rival submissions made on either side and perused the material records of the case.

13. Firstly, the relevant rules that are applicable in the year 2012 when



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the petitioner was appointed is rule 12-A of the Tamil Nadu State and

Subordinate Service Rules and the same is extracted hereunder:-

“12-A. Linguistic qualification -(a) No person shall be eligible for appointment to any service by direct recruitment unless he has an adequate knowledge of the official language of the State, namely, Tamil:

Provided that a person, being otherwise qualified for appointment to the post to which recruitment is to be made, may apply for recruitment to the post, despite the fact that, at the time of such application, he does not possess an adequate knowledge of Tamil.

Explanation: For the purpose of this rule, a person shall be deemed to have an adequate knowledge of Tamil, if—

[(i) In the case of a post for which the educational qualification prescribed is the minimum general educational qualification and above, he has passed the S.S.L.C. Public Examination or its equivalent examination with Tamil as one of the languages; or studied the High School Course in Tamil Medium and passed the S.S.L.C. Public Examination or its equivalent Examination in Tamil Medium; or passed the Second Class Language Test in Tamil Conducted by the Tamil Nadu Public Service Commission.]

* Substituted in G.O.Ms.No.538, P & AR (Per.S) dt.28-9-89, w.e.f.15-11-88

{(ii) in the case of a post for which the educational qualification prescribed is VIII Standard and above but below S.S.L.C. he has studied in Tamil Medium in those standards or passed the Language Test in Tamil referred to in rule 12-B(i); and

(iii) in the case of a post for which the educational qualification prescribed is below VIII standard, he has studied in Tamil Medium in those standards or passed the oral test in Tamil referred to in rule 12-(B) (ii).}

Substituted in G.O.Ms.No.445, P&AR (Per.P) dt.4-5-84.

(b) Every such candidate as is referred to in the



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proviso to sub-rule (a), shall, if selected and appointed on or after 9th February, 1996, pass the Second Class Language Test in Tamil conducted by the Tamil Nadu Public Service Commission, or pass the language Test in Tamil referred to in rule 12-B (i) conducted by the appointing authority or pass the oral 12-B (ii) conducted by the appointing authority, as the case may be within a period of two years from the date of his appointment. If he fails to pass the said Language Test within the said period of two years, he shall be discharged from service.

Substituted in G.O.Ms.No.89, P & AR (Per.S) dt.9-2-96 w.e.f. 9-2-96.

(c) The syllabus for the Second Class Language Test in Tamil referred to in this rule shall be specified in Schedule I-A to these rules.”

14.It can be seen that as per Sub Rule (b), every candidate who has not studied Tamil as a second language and is being appointed as a Teacher has to clear the second language test conducted by the TNPSC within a period of two years. The exemption which was granted vide G.O.Ms.No.376 reads as under :-

“சிறுபான்மை மொழி ஆசிரியர்களை தமிழ் மொழித் தேர்வில் தேர்ச்சி பெற வேண்டும் என்று வற்புறுத்தாமல் அவர்களுக்கு விதிவிலக்கு அளிக்க வேண்டும் என்ற கோரிக்கை அரசால் சில காலமாகப் பரிசீலிக்கப்பட்டு வந்தது.

2.பள்ளி மற்றும் கல்லூரிகளில் சிறுபான்மை மொழி கற்பிக்கும் ஆசிரியர்கள் நிர்வாகப் பொறுப்புள்ள பதவிகளை ஏற்க விருப்பமாக அல்லது பதவி உயர்வுகள் வேண்டாம் என்கிற போது அவர்களுக்கு தமிழ் மொழியில் தேர்ச்சி பெற்றிருக்க வேண்டும் என்ற விதியிலிருந்து விலக்களிக்கப்படலாம் என்று அரசு தற்போது ஆணையிடுகிறது.”

15.Therefore, while all the teachers in Schools and Colleges are



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exempted, the same is specifically with reference to the minority language teachers alone.

16.As far as the G.O.No.245 dated 27.02.1989 is concerned, even though in the abstract portion it mentions the word “High and Higher Secondary Schools” it can be seen that paragraph No.2 refers only to the rules with respect to the Higher Secondary Teachers i.e., the PG Teachers or the Physical Directors who were appointed in the Higher Secondary Schools. The Paragraph 2 is extracted hereunder for ready reference:-

“2. The question of prescribing II Class language test uniformly for Higher Secondary Schools under all kinds of managements has been under examination. After detailed examination and in the light of the further instructions, the Government have decided that the teachers in Higher Secondary schools under all kinds of managements may irrespective of the fact, whether they teach minority language or in minority media should pass the II class language test in Tamil within the period of probation, and also that teachers who forgo promotion to administrative posts be exempted from passing the same. They accordingly direct as follows:-

(i) The P.G.Teachers and Physical Directors who were appointed in private and Government Higher Secondary Schools, prior to issue of G.O.Ms.No.720, Education dated 20.04.1981 are exempted from passing the II class language test.

(ii) The orders issued in G.O.Ms.No.1585, Education dt 6.10.1987 will be applicable to both (High and Higher



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Secondary Schools) categories.
and

(iii) The teachers who forgo promotion to administrative posts in writing be exempted from passing the language test.”

17. On a plain reading of the said Government Order, it is clear that the exemption is granted only in respect of the Higher Secondary Teachers / PG Teachers and the same will not be applicable to the petitioner. When there is a rule, the exemption if any granted by the Government has to be read as such and cannot be construed liberally nor the scope can be enlarged by this Court. Even by following the legal maxim, which is relied upon by the learned Senior Counsel, if one goes by the intention also, it is possible that at the Higher Secondary level, the Teachers can explain the concept without resorting to Tamil and therefore, the Government has specifically considered same to the extent at the High Secondary Level. Therefore, I am unable to accept the said contentions of the learned Senior Counsel and I hold that the petitioner is not entitled to exemption.

18. The further contention is that in respect of the other similarly



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placed persons, exemption has been granted. Even assuming that the said individuals are similarly situated, when the rule position is to the contrary a benefit, which is extended contrary to the rules cannot be pressed into service for the purpose of claiming parity or equality under Article 14 of the Constitution of India and therefore, I am unable to accept the said submission.

19.Finally coming to the ground of delay, Clause 4 of the appointment order of the petitioner is extracted hereunder:-

“4.தேர்வாளர் உயர்நிலை / மேல்நிலைப் பள்ளிப் படிப்பில் தமிழ் மொழியினை பாட மொழியாக பயிலாதவராகவோ பிற மொழிகளைப் பட்டப்படிப்பில் மொழிப்பாடமாகப் பயின்றவராகவோ இருப்பின் இவர் தமிழ்நாடு அரசு பணியாளர் தேர்வாணைய குழுமத்தால் நடத்தப்படும் தமிழ் இரண்டாம் நிலை தேர்வில் பணியில் சேர்ந்த இரண்டாண்டுகளுக்குள் தேர்ச்சி பெற வேண்டும்.”

20. Therefore, the petitioner has been specifically put to notice and it cannot be contended that the request for exemption has been belatedly rejected and therefore, the petitioner is put to prejudice. However, the same would be a relevant factor for considering the question as to the recovery. Firstly, it can be seen that the respondents themselves have granted the



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increments. Secondly, even though the petitioner has been making representation for exemption without taking any decision in this regard or even requesting the petitioner to immediately pass the examination or taking recourse to rule 12 -A, the respondents also kept the matter in cold storage and after a period of 7 years of delay, belatedly the recovery cannot be ordered and the same would be duly covered by the Judgment of the Hon'ble Supreme Court of India in *State of Punjab Vs. Rafiq Masih*¹. Accordingly, the consequential direction in the impugned order to recover the amounts already paid cannot be sustained.

21. In view thereof, the Writ Petition is partly allowed, on the following terms:-

(I) the prayer of the Writ Petitioner challenging the G.O.Ms.No.106 dated 14.07.2021 shall stand rejected;

(ii) The consequential impugned order of the respondents dated 28.10.2021 is quashed only in as much as it relates to the recovery of increment amounts already paid to the petitioner and no recovery can be

¹ AIR 2015 SC 696



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effected from the salary of the petitioner;

(iii) No costs. Consequently connected miscellaneous petitions are closed.

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Index : Yes
Neutral Citation : Yes
Speaking order : Yes

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To
1.The Principal Secretary to Government
State of Tamil Nadu
School Education Department
Fort St.George, Secretariat
Chennai – 600 009.

2.The Joint Director of School Education (Personnel)
Office of Commissioner of School Education
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D.BHARATHA CHAKRAVARTHY, J.

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