

In the High Court of Judicature at Madras

Dated: 03.03.2015

Coram:

The Hon'ble Mr.Justice SATISH K. AGNIHOTRI
and
The Hon'ble Mr.Justice M.VENUGOPAL

W.A.No.288 of 2015
and M.P.Nos.1 & 2 of 2015

- 1.The Government of Tamil Nadu,
Rep. by Secretary to Government,
School Education Department,
Secretariat,
Chennai-600 009.
 - 2.The Director of School Education,
Nungambakkam,
Chennai-6.
 - 3.The Chief Educational Officer,
Tiruvannamalai,
Tiruvannamalai District. ... Appellants
- Vs.
- R.Malarvili ... Respondent

Prayer: Writ Appeal filed under Clause 15 of the Letters Patent, against the order dated 18.04.2013 and made in W.P.No.28868 of 2012 by the learned Judge of this Court. Writ petition praying to writ of Mandamus directing the respondents to include the name of the petitioner in the panel as on 1.1.12 for promotion as Tamil Pandit in the appropriate place there in and to promote him as such with retrospective effect from the date of promotion of his immediate junior with consequential benefit.

For Appellants : Mr.K.Karthigeyan
Government Advocate (Education)

J U D G E M E N T

[Judgment of the Court was made by
M.VENUGOPAL, J.]

The Appellants/Respondents have focused the instant intra-Court Writ Appeal before this Court as against the order dated 18.04.2013 in W.P.No.28868 of 2012 passed by the Learned Single Judge.

2.The Learned Single Judge while passing the impugned order dated 18.04.2013 in W.P.No.28868 of 2012 in para 4 inter-alia had observed as under:

"The particulars found in the above tabular statement would show that there is no dispute about the qualifications possessed by the petitioners for continuing in the post of Secondary Grade Teachers or Primary School Head Masters or Drawing Masters or for promotion to the next higher post is denied is that they did not undergo a Higher Secondary Course. As a matter of fact, some of these writ petitioners have undergone a Higher Secondary Course or a Foundation Course, after completing their Degrees or Post Graduate Degrees. But, de hors courses undergone by them, they had also undergone a Diploma Course in Teacher Education of a duration of two years, before acquiring their Degrees. The question as to whether this two year Diploma in Teacher Education can be considered as a valid substitute for a pass in the Higher Secondary Course, was considered by atleast three learned Judges of this Court. The first such consideration was by K.Suguna,J, in W.P.Nos.25432 of 2011 etc. batch of cases, decided on 02.07.2012 in M.Valarmathi Vs. Government of Tamil Nadu. The second batch of cases was decided by S.Nagamuthu,J, in W.P.Nos.23382 of etc. batch on 10.09.2012. The third batch was decided by K.Chandru,J, by his order dated 27.11.2012 in W.P.Nos.22488 of 2012 etc. batch."

and further in para 5 had observed as follows:

"In addition to the above, the Government had also come up with an order in G.O.Ms.242, Higher Education Department dated 18.12.2012, i.e., after the pronouncement of the orders of the three learned Judges, holding that a regular Diploma of a duration of three years obtained even in unrelated subjects could be considered as equivalent to a pass in

Higher Secondary Course. Therefore, the petitioners are entitled to the claim that they have made.” and resultantly, allowed the Writ Petition by directing the Appellants/Respondents to consider the claim of the Respondent/Petitioner and pass appropriate orders within a period of eight weeks from the date of receipt of copy of the order. Further, the Appellants/Respondents were directed to verify the particulars of the qualification secured by the Respondent/Petitioner as indicated in para 3 of the tabular statement:

S.No.	W.P.No.	Name & Designation	Qualification	Date of appointment & post
6	28868/12	R.Malarvili Drawing Teacher	Oct.1986-SSLC March 1990-Teacher Certificate Course (Drawing) May 2006-B.Litt. May 2008-Tamil Pandit	21.12.1996 Drawing Teacher

3.The Learned Government Advocate appearing for the Appellants urges before this Court that the Writ Court should have appreciated the fact that the Government in G.O.Ms.No.107, Personnel and Administrative Reforms Department, dated 18.08.2009, had ordered that the Degrees, P.G. Degrees and Diplomas obtained after undergoing X Standard and Higher Secondary Course would be eligible for appointments/promotions in public service.

4.The Learned Government Advocate contends that the Writ Court ought to have seen that Government in G.O.Ms.No.242 Higher Education P1 Department, dated 18.12.2012, inter-alia had passed an order to the effect that those who studied X Standard and XII Standard examination and those who studied three years Degree Course and equivalent to them in order to get the employment opportunities and for getting promotion to be recognised and as such, the Respondent/Writ Petitioner would not come within the ambit of the aforesaid Government Order.

5.The prime submission of the Learned Government Advocate is that the Writ Court had failed to take into consideration that the Respondent/Petitioner acquired the following qualifications namely, 1)X Std New Pattern-October 1986 2)B.Litt. (Tamil)- May 2006 3)Tamil Pandit-May 2008 and XII Standard-September 2011 which are not to be considered in accordance with the order contained in G.O.Ms.No.107, Personnel and Administrative Reforms Department, dated 18.08.2009 and

G.O.Ms.No.242, Higher Education P1 Department, dated 18.12.2012 and as such, the order of the Writ Court is liable to be set aside.

6.Yet another stand of the Appellants is that the Respondent/Writ Petitioner was not eligible to get promotion in view of the fact that she had not undergone the Higher Secondary Course before obtaining Degree and Technical Teacher Diploma is not of two years duration.

7.The Learned Government Advocate projects an argument that the grant of equivalence and/or revocation of equivalence is an administrative decision which is the sole discretion of the authority concerned and the Court of Law is not concerned with such matters. Moreover, the Court of Law should exercise judicial restraint and should not interfere with the decisions of experts appointed by the Government unless they are against constitution or statutory provisions.

8.It is the contention of the Learned Government Advocate that Diploma in Teacher Education for two years is not equivalent to XII Standard Higher Secondary Course as per the relevant rules and orders in force till date.

9.According to the Respondent/Petitioner, she was appointed through Employment Exchange as Drawing Master in Tamil Nadu School Education Subordinate Service in the Government High School, Tiruvottur, Tiruvannamalai District. Further, she joined duty on 21.12.1996 in the said post and she completed the probation period and presently, serving at Government High School, Tiruvottur, Tiruvannamalai District. She had passed the B.Litt. Degree in May 2006. Later, she undergone Tamil Pandit Training Certificate Course through Tamil Nadu University, Thanjavur and passed the Examination held in May 2008 and by virtue of her educational qualification and seniority, she had become fully qualified and eligible for promotion as Tamil Pandit and her name ought to be included in the panel as on 01.01.2012 for promotion to the said post. However, her name was not included in the said panel, though she possessed required educational qualification.

10.The plea of the Respondent/Petitioner is that her name was not included because of the reason that she passed X Std examination and thereafter, passed three years B.Lit Degree in Tamil without passing Higher Secondary Course Examination and she had not passed under 10+2+3 pattern and hence, she is not entitled for promotion to the post of Tamil Pandit and such stand of the Appellants/Respondents is incorrect and contrary to the statutory rules.

11.The Respondent/Petitioner takes a stand that in Annexure II of Rule of the Tamil Nadu School Educational Subordinate Service the qualification for the post of Art Masters is prescribed and the same has run under:

"i)Pass in III Form of the Secondary School recognized by the Director of School Educational pass in the Standard Public Examination pass in the Standard Public Examination by the Director of Government Examination and

(ii)a)Group Certificate in drawing and painting and design Higher Grade or

b)Art Master Certificate in designing and painting or

c)A Diploma in drawing and painting of Government School of Arts and Crafts Madras, and other similar Certificate accepted equivalent thereto by the Director of School Education.

Provided that other things being equal preference shall be given to a person who in additional possess

i)A General Educational Qualification higher than that prescribed above or

ii)The teachers training certificate or the Technical Teachers certificate awarded by the Education Department."

12.The clear cut case of the Respondent/Petitioner is that the authorities selected and appointed her as Arts Master in the year 1996 as she possessed the above said prescribed qualification and in fact, the aforesaid ingredients of the provisions would make it crystal clear that Diploma in Teacher Education is not a prescribed qualification for the appointment as Arts Master. Moreover, as per the proviso mentioned therein it is only a preferential qualification. Apart from that, she was admitted to B.Litt. Degree Course without passing Higher Secondary Course Examination would show that for acquiring B.Litt. Degree, pass in Higher Secondary Course examination was not necessary.

13.Besides the above, she had passed the Higher Secondary Course by way of additional qualification during the year 2006, after passing B.Litt. Degree Course (Tamil) and this cannot be put against her as an impediment for promotion.

14.The core emphatic plea taken on behalf of the Respondent/Petitioner is that the Appellants/Respondents after accepting the Technical Teacher Training Certificate and also

appointing her as Arts Master in the year 1990 in Tamil Nadu Sub ordinate Service now after the lapse of about 16 years cannot be permitted to take a stand that she had not undergone education under 10+2+3 pattern and therefore, she is not qualified and ineligible for appointment as Tamil Pandit. Also that the Appellants cannot take such a stand in view of the fact that there are no provisions in the statutory rules.

15.Lastly, the stand of the Respondent/Petitioner is that prior to 1984, those who were appointed as Secondary Grade Teacher without taking into consideration of +2 and P.U.C qualification. In case, those who had completed U.G., P.G. with B.Ed., B.Litt. qualification are promoted as B.T. Assistant and Tamil Pandit upto the year 2009. Subsequently, the Government had passed order in G.O.Ms.107 denying the above benefit for promotion. Apart from that, since she had finished her S.S.L.C and thereafter, completed Technical Teachers Certificate Course which is equivalent to Diploma in Teacher Education and then completed U.G. Course. Hence, she is entitled to get her name in the panel on 01.01.2012 for promotion as Tamil Pandit and as such with retrospective effect from the date of promotion of her juniors with consequential benefits. Also that there was no response from the Appellants/Respondents to the Respondent/Petitioner's representation dated 11.08.2012 and hence, she has filed the present Writ Petition.

16.As far as the present case is concerned, on going through the impugned order of the Learned Single Judge in W.P.No.28868 of 2012 dated 18.04.2013, this Court is of the considered view that the Learned Single Judge had observed in para 4 of the order that "the question as to whether this two year Diploma in Teacher Education can be considered as a valid substitute for a pass in the Higher Secondary Course, was considered by atleast three Learned Judges of this Court and such consideration was decided by order dated 02.07.2012 in W.P.Nos.25432 of 2011 etc (batch cases) in M.Valarmathi Vs. Government of Tamil Nadu. The second batch of cases was decided by order dated 10.09.2012 in W.P.23382 of 2012 etc. and the third batch was decided by order dated 27.11.2012 in W.P.No.22484 of 2012 etc. respectively. That apart, the Government had issued a G.O.Ms.242, Higher Education Department, dated 18.12.2012 holding that a regular Diploma of a duration of three years obtained even in unrelated subjects could be considered as equivalent to a pass in the Higher Secondary Course. Viewed in that perspective, this Court is of the considered view that the impugned order of the Writ Court in allowing the Writ Petition by issuance of a direction to the Appellants to consider the claim of the Respondent/Petitioner for promotion etc., does not suffer from any material infirmity or patent illegality in the eye of law and therefore, the said order cannot be

found fault with and further, it requires no interference in the hands of this Court. Consequently, the Writ Appeal fails.

17.In the result, the Writ Appeal is dismissed leaving the parties to bear their own costs. Consequently, connected Miscellaneous Petitions are also closed.

Sd/-
Asst.Registrar

/true copy/

Sub Asst. Registrar

DP

To

- 1.The Secretary to Government,,
State of Tamil Nadu,
School Education Department,
Secretariat,
Chennai-600 009.
- 2.The Director of School Education,
Nungambakkam, Chennai-6.
- 3.The Chief Educational Officer,
Tiruvannamalai,
Tiruvannamalai District.

+1 cc to Government Pleader Sr no.11673.

W.A.No.288 of 2015
and

M.P.Nos.1 & 2 of 2015

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RD 20/03/2015

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