

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 26.10.2016

Delivered on: 17.11.2016

Coram

The Honourable Mr.Justice HULUVADI G.RAMESH
and
The Honourable Mr.Justice V.PARTHIBAN

W.A. No. 1311 of 2016 and
CMP No.17074 of 2016

P.Yasodha

Vs.

.. Appellant

The Chairman,
Teachers Recruitment Board,
4th Floor, EVK Sampath Building,
DPI Compound, College Road,
Chennai-600 006

...Respondent

Writ Appeal is filed under Clause 15 of the Letters Patent, seeking to set aside the order dated 06.06.2014 passed in W.P.No.3214 of 2013 this Court.

Petition presented under art 226 of Constitution of India praying to issue a Writ of Certiorarified Mandamus Calling for the records pertaining to the result announced in the respondent official web site for the direct recruitment of Post Graduate Assistants/ Physical Educational Directors Gr.1 in Tamil Nadu Higher Secondary Educational Service for the year 2011 & 2012 in so far as petitioner Role Number 12 PG11120071 concern and quash the same and consequently issue direction directing the respondent to accept the petitioner Post Graduate Degree of Master of Commerce in Banking and Insurance Management and select the petitioner to the post of Post Graduate Assistant in Tamil Nadu Higher Secondary Educational Service on the basis of the petitioner written examination qualification and on the basis of respondent's appointment order dated 12.12.12 in Na.Ka.No.097659/W3E2/2012.

For Appellant : Mr. G.Sankaran

For Respondent : Mr.P.Karthikeyan, GA

JUDGMENT

P.PARTHIBAN, J.

This Writ Appeal has been directed against the order of the learned single Judge passed in W.P.No.3214 of 2013, dated 06.06.2014 dismissing the writ petition filed by the appellant herein, seeking appointment to the post of Post Graduate Assistant (Commerce) in Tamil Nadu Higher Secondary Educational Service.

2. The appellant, on completion of her schooling, qualified with Commerce degree in the year 2000 from Bharathiyar University and thereafter, completed Post Graduation in Commerce (Banking and Insurance Management (M.Com.) in December, 2003 and thereafter, she had also qualified with B.Ed., in the year 2009. In response to the Notification issued on 27.05.2012 by the Teacher Recruitment Board for recruitment of post of P.G.Assistant (Commerce), among others, the appellant applied for consideration of the same by way of direct recruitment.

3. During the process of selection, the appellant was subjected to written examination and thereafter, participated in certificate verification and on completion of the selection process, the appellant was declared as selected for the post of PG Assistant (Commerce) by the Teachers Recruitment Board by communicating the results in its official website. On being selected, the appellant was also issued an appointment order vide proceedings of the Joint Director of School Education (Higher Secondary), dated 12.12.2012 with instructions that she will be allotted school based on the counselling to be conducted for the said purpose.

4. Consequent upon the issuance of the appointment letter, the appellant was directed to attend the counselling on 31.12.2012. However, according to the appellant, she was not allowed to attend counselling and she was at a loss to understand why was she not allotted to attend the counselling, despite her selection and appointment.

5. On verification, the appellant came to know that in January, 2013, the respondent herein issued a communication stating that she was not selected since her P.G.Degree with Bannking and Insurance Management, is not equivalent to regular M.Com. Degree.

6. In the above said circumstances, the appellant herein was constrained to approach this Court by way of Writ Petition in

W.P.No.3214 of 2013, seeking issuance of a writ of certiorarified mandamus, for the following relief, viz.,

"to call for the records pertaining to the result announced in the respondent official web site for the direct recruitment of Post Graduate Assistants/ Physical Educational Directors Gr.1 in Tamil Nadu Higher Secondary Educational Service for the year 2011 & 2012 in so far as petitioner Role Number 12 PG11120071 concern and quash the same and consequently, to direct the respondent to accept the petitioner Post Graduate Degree of Master of Commerce in Banking and Insurance Management and select the petitioner to the post of Post Graduate Assistant in Tamil Nadu Higher Secondary Educational Service on the basis of the petitioner written examination qualification and on the basis of respondent's appointment order dated 12.12.2012 in Na.Ka.No.097659/W3/E2/2012."

7. In the meanwhile, it appears that the Government of Tamil Nadu has passed G.O.Ms.No.27 Higher Education Department, dated 13.2.2014, holding that M.Com. with Banking and Insurance Management, is equivalent to regular M.Com., on the basis of recommendations of 46th Equivalence Committee held on 29.1.2014.

8. On behalf of the appellant herein, it was contended before the learned single Judge that P.G.Degree with Banking and Insurance Management is equivalent to M.Com Degree for the purpose of employment in public services since it has been recognized by issuance of G.O.Ms.No.27 dated 13.02.2014. It was also contended that there were five employees whose names given in the affidavit, who were possessing similar degree, i.e. M.Com.(Banking & Insurance Management), were given promotions in their respective schools. It was also contended that there were more than 800 vacancies as on that date available and in view of the G.O.Ms.No.27, dated 13.2.2014, she could be accommodated from the past academic year.

9. The claim of the appellant was sought to be resisted by the respondent, by contending that the M.Com. with Banking & Insurance Management was not equivalent to regular M.Com., since no order, giving equivalence effect, was available at the time of appointment. Therefore, as the appellant did not hold requisite qualification, her candidature was rightly rejected. As regards the contention raised by the appellant that already five persons who were possessing similar M.Com.Degree with Banking and Insurance Management, were given promotions, it was contended that was the issue relating to the promotion in

respect of the persons who were already employed and the appellant cannot draw parallel to the same. With these contentions, the respondent sought for dismissal of the writ petition.

10. After adverting to the submissions put forth by the respective parties, the learned Judge, dismissed the writ petition, solely on the ground that as on the date when the appellant was selected, she was not eligible for the post and her claim based on the G.O.Ms.No.27, dated 13.02.2014 cannot be accepted because the said G.O. would be applied prospectively and cannot be allowed with retrospective effect. Therefore, the appellant having become ineligible, the question of existence of 800 vacancies did not matter at all, according to the learned Judge.

11. The present appeal is against the above said order passed by the learned single Judge.

12. Mr. G.Sankaran, learned counsel appearing for the appellant strenuously argued that the learned Judge erred in dismissing the writ petition having failed to appreciate the G.O.Ms.No.27, dated 13.2.2014 in proper perspective despite the same was in declaratory and clarification in nature and the benefit ought to have been given from the date of the Degree and not from the date of issuance of the G.O. In support of his contention, the learned counsel placed reliance upon two decisions rendered by the Full Bench and Division Bench of this Court respectively, reported in 2014(3) CTC 433 (Nadar Thanga Shubha Laxman, A. versus State of Tamil Nadu, rep. by its Principal Secretary, Department of School Education and another) and the order, dated 15.2.2016 in passed by the Division Bench in W.A.Nos.160 & 161 of 2016 (The Teachers Recruitment Board, rep.by its Chairman and another versus S.Padmavathy and another).

13. In the Full Bench decision, in para 23, it has been clearly held that the Equivalence Committee's recommendation and the Government Order would create rights from the date of acquisition of equivalent Degrees and it was not open to the authorities to take the stand that Degrees obtained by the candidates will only have prospective effect from the date of issuance of Equivalence Certificate.

14. As regards the Division Bench decision in W.A.Nos.160 & 161 of 2016 is concerned, having taken note of the conflicting decision of this Court in N.Geetha versus the State of Tamil Nadu, rep. by Principal Secretary and another, (W.A.(MD) No.312

of 2013, dated 1.7.2013, which held that the Equivalence Certificate will operate only prospectively, was overruled by the Full Bench decision, the Division Bench of this Court, by relying upon the Full Bench decision, particularly paragraphs 23 to 25 therein, concurred with the view of the Full Bench that the equivalence certificates issued by the Committee, will have retrospective effect, i.e., from the date of issuance of the Degrees by the Universities and ultimately, dismissed the writ appeals preferred by the Teachers Recruitment Board.

15. From the above, it is crystal clear that the claim of the writ appellant is to be sustained both on facts and law. Therefore, by virtue of the Full Bench decision, which held that the equivalence certificates issued by the Committee, will have retrospective effect, i.e. from the date of the issuance of the Degrees by the Universities, it is to be construed that as on the date of certificate verification, the appellant was having requisite qualification by possessing valid degree. It is to be noted that the Full Bench decision (cited supra) was not brought to the notice of the learned single Judge.

16. In the light of the above discussion, we are of the view that the order of the learned single Judge, is liable to be set aside.

17. Accordingly, the Writ Appeal stands allowed and the order of the learned single Judge, dated 6.6.2014 passed in W.P.No.3214 of 2013 is set aside. No costs. Consequently, connected CMP is closed. The respondent is directed to take up the matter with the authority concerned and grant appointment and posting to the appellant as P.G.Assistant (Commerce) in pursuance of the appointment letter, dated 12.12.2012 already issued to the appellant and pass appropriate orders, as expeditiously as possible, preferably within a period of three months from the date of receipt of a copy of this order.

Sd/-

Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

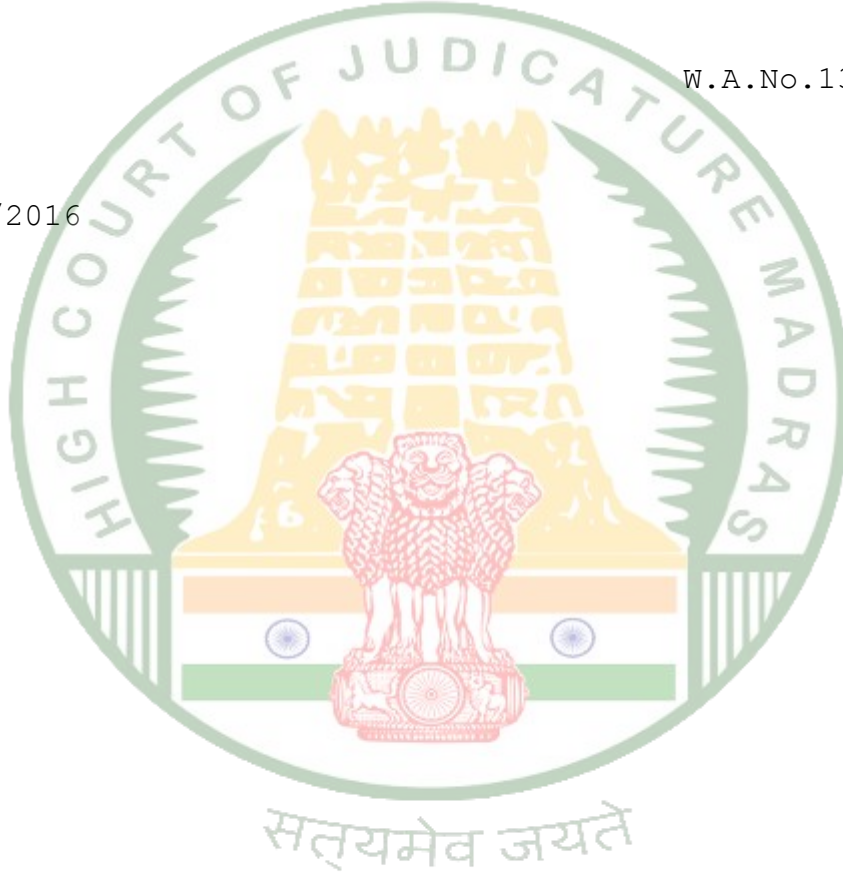
To

The Chairman,
Teachers Recruitment Board,
4th Floor, EVK Sampath Building,
DPI Compound, College Road,
Chennai-600 006.

+2cc to Mr.G.Sankaran, Advocate Sr.67203 & 62713
+1cc to the Government Pleader Sr.62483

W.A.No.1311 of 2016

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