

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.11.2016

CORAM:

THE HONOURABLE MR.JUSTICE S.MANIKUMAR
and
THE HONOURABLE MR.JUSTICE N.AUTHINATHAN

W.P.No.39442 of 2016
and
WMP No.33727 of 2016

Vinodh Valappil ... Petitioner

versus

1. Union of India
rep. by its Secretary to Government (Education)

Government of Puducherry, Puducherry.

2. The Director,
Directorate of School Education,
Puducherry.

3. The Registrar,
Central Administrative Tribunal,
Chennai - 600 104.

... Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying for a Writ of certiorarified Mandamus, calling for the records relating to OA.No.155 of 2015, dated 29.08.2016 passed by the 3rd respondent Tribunal, quash the same and to direct the Official Respondents to appoint the petitioner to the post of Physical Education Teacher (PET) against a regular post with all consequential benefits.

For Petitioner : Ms.Y.Kavitha
for M/s.Giridhar and Sai
For Respondents : Mr.R.Syed Mustaffa (for R1 & R2)
Additional Government Pleader (Pondy)
R3-Tribunal.

ORDER

(Order of the Court was made by S.MANIKUMAR, J.)

Challenge in this writ petition is to an order made in O.A.No.155 of 2015 dated 29.08.2016, by which the Central

Administrative Tribunal, Madras, declined to quash the notifications No.36518/DSE/Estt.III/C/2014 dated 31.12.2014 issued for 30 posts and 22 posts of Physical Education Teachers, respectively and consequently refused to issue directions to the respondents 1 and 2 herein, to regularise the services of the writ petitioner, by appointing, him in the regular post of Physical Education Teacher against anyone of the vacancies sought to be filled up pursuant to the abovesaid notifications.

2. Facts of the writ petition are as follows:

Writ petitioner was initially appointed as Part-time Physical Education Teacher on 31.05.2005, duly sponsored by the Employment Exchange. According to the petitioner, though, the nomenclature of the appointment is Part-time, his services were utilised on full time basis as regular Bala Bhavan Instructor. With effect from 01.07.2013, he was posted as an ad-hoc Physical Education Teacher in a school. Though, many Physical Education Teachers have been regularised, the respondents have denied the same to the writ petitioner.

3. The writ petitioner has further submitted that in the year 2010, a notification was issued to fill up 18 vacancies for the post of trained Physical Education Teacher on contract basis, but later on, the said notification was cancelled. Thereafter, two notifications were also issued by the Government of Pondicherry to fill up the post of Physical Education Teachers and in one such notification dated 31.12.2014, 30 vacancies of Physical Education Teachers were notified, out of which, three were reserved for candidates belonging to Mahe region.

4. In yet another notification issued on the same date, i.e. 31.12.2014, 22 vacancies of Physical Education Teachers were notified and that no reservation was made for Mahe region. The writ petitioner applied under both the notifications. Simultaneously, the petitioner had given representations dated 19.01.2015 and 22.01.2015, respectively, to regularise his services in the post of Physical Education Teacher. But there was no response. In the abovesaid circumstances, the petitioner filed O.A.No.310/00155/0015, for the following reliefs;

"i) to call for the records pertaining to Order No.36518/DSE/Estt.III/C/2014 dated 31.12.2014 and Order No.36518/DSE/Estt.III/C/2014 dated 31.12.2014 issued by the 2nd respondent and to quash the same.

ii) to direct the Respondents to regularize the services of the Applicant by appointing him to the regular post of Physical Education Teacher against one of the available notified vacancies which are sought to be filled up pursuant to the notifications vide Order No. 36518/DSE/Estt.III/C/2014 dated 31.12.2014 and Order No. 36518/DSE/Estt.III/C/2014 dated

31.12.2014 issued by the 2nd Respondent with arrears of pay and all other consequential benefits."

5. Before the Central Administrative Tribunal, respondents 1 and 2 have submitted that two notifications to fill up 52 vacancies in the post of Physical Education Teacher, were issued. Out of 52 vacancies, 22 vacancies arose prior to April 2010. Respondents 1 and 2, therefore submitted that the abovesaid 22 vacancies have to be filled up on the basis of the extant rules in 1990 and the remaining 30 vacancies have to be filled up by the application of latter rules. The respondents 1 and 2 have further submitted that the writ petitioner applied for the post of Physical Education Teacher under both notifications.

6. As per the notification for 22 posts, which occurred prior to April 2010, the qualifications were "A Degree of a recognised University with a Diploma in Physical Education of a recognised Institution (or) A Degree in Physical Education of a recognised University".

7. As the petitioner satisfied the educational and professional qualifications for the post of Physical Education Teacher, which arose prior to 2010, he was considered against the vacancies notified for 22 posts. As per the marks, the petitioner secured 97th position in the merit list, and therefore, he was not selected. Before the Central Administrative Tribunal, Madras Bench, the respondents 1 and 2 have further submitted that in so far as the first notification, is concerned in which, 30 posts were notified, the educational qualifications, are as follows:

- "(i) Bachelor's degree in any discipline from any recognised University;
- (ii) Bachelor of Physical Education (B.P.Ed.) from any recognised University, and
- (iii) Should have studied particular regional language (Tamil / Malayalam) as one of the subjects in the Secondary level.)

8. Inasmuch as the petitioner did not possess Bachelor's degree in any discipline from any University, he did not satisfy the qualifications prescribed in the notification for the recruitment of 30 Physical Education Teachers and therefore, case of the petitioner was not considered for selection, under the abovesaid notification. Thus, on the eligibility and inter se merit of the candidates, who appeared for the selection, under the abovesaid notifications, respondents 1 and 2 have submitted that the petitioner was not selected and for the abovesaid reasons, prayed for dismissal of the original application.

9. Before the tribunal writ petitioner has contended that the respondents have failed to earmark vacancies in the notification for Mahe Region by which, the recruitment was sought to be made for 22 vacancies of Physical Education Teachers and had it been made, he would have been selected. Further contention has been made that the petitioner is a senior most candidate in the employment exchange and on his own merits, respondents 1 and 2 ought to have selected him.

10. During the pendency of the original application, writ petitioner has filed M.A.No.310/00469/2016 for a direction to the respondents 1 and 2 to reserve one post of Physical Education Teacher pursuant to the notification dated 31.12.2014 notifying 22 posts of Physical Education Teachers.

11. Adverting to the rival submissions, the tribunal vide order in O.A.No.310/00155/2015 & MA No.310/00469/2016 dated 29.8.2016, at paragraph No.8 ordered as hereunder.

"On perusal it is seen that as per the applicant's qualification he is not eligible under the notification issued for 30 vacancies, wherein new Recruitment Rules will be applicable. The applicant is eligible only under the notification issued for 22 vacancies. The applicant has secured only 58.866% percentage of marks as per the guidelines stipulated in the notification and as per his marks, his place in the merit list is 97 and therefore, he was not selected. Under such circumstances, we do not see any merit in the OA. Accordingly, this OA is dismissed. MA 469/2016 is also dismissed. However, this order will not prevent the applicant from continuing in the part time Physical Education Teacher post till the regular candidate is appointed."

12. Ms.Y.Kavitha, learned counsel for the writ petitioner, assailed the order made in O.A.No.310/00155/2015 & MA No.310/00469/2016 dated 29.8.2016, on the very same points.

13. Per contra, Mr.R.Syed Mustaffa, learned Additional Government Pleader (Pondy) submitted that when Government of Pondichery, Director of School Education, issued notification in 2010, to fill up trainee Physical Education Teacher on contract basis, the same was opposed, before the Central Administrative Tribunal, Madras on the grounds inter alia that there is no such post, in the Education Department and that therefore, for filling up regular posts of Physical Education Teacher, contractual appointment should not be made and that the very nomenclature in the notification issued in 2010 i.e. trainee Physical Education Teacher was erroneous. He further submitted that considering the above objections, recruitment for 18 vacancies, notified earlier, was not processed. He further

submitted that subsequently, 22 vacant post of Physical Education Teachers were identified. Vacancies of Physical Education Teachers, which occurred prior to 2010, were identified and notification dated 31.12.2014 was issued with the following educational and other qualifications required for direct recruitment viz., "A Degree of a recognised University with a Diploma in Physical Education of a recognised Institution (or) A Degree in Physical Education of a recognised University".

14. Learned Additional Government Pleader further submitted that as the petitioner was eligible to be considered as against 22 vacancies, which occurred prior to 2010, his case was considered on merits and as per the merit list, he secured 97th position and thus, on the basis of inter se merit, he was not selected. Referring to the educational qualifications prescribed in the other notification issued for filling up 30 vacancies, he submitted that as the writ petitioner, did not satisfy the eligibility criteria, he was not considered. He further submitted that the selection was finalised on 07.05.2015.

15. Heard the learned counsel for the parties and perused the materials available on record.

16. As per the extant rules prevailed before 2010, the writ petitioner was qualified and accordingly, considered for selection, as against 22 vacancies, but his inter se merit position is 97. Though, the petitioner has contended that there was no separate reservation, for the candidates from Mahe region and that therefore, the notification dated 31.12.2014, issued for filling up 22 post of Physical Education Teachers, ought to have been quashed, this Court is not inclined to accept the said contentions for the reasons that perusal of the prospectus issued in the year 2010 shows that when the Government intended to appoint the trainee Physical Education Teachers on contract basis, there was no reservation for the candidates belonging to Mahe. However, the said notification issued for filling up 18 trainee Physical Education Teachers, did not proceed further. Subsequently, when Government of Puducherry issued two notifications, one for filling up 22 vacancies, which occurred prior to 2010, there was no reservation for Mahe candidates. Knowing fully well the terms and conditions of the notification, which did not contain any reservation for Mahe candidates, writ petitioner has participated in the selection and ultimately, became unsuccessful.

17. According to respondents 1 and 2, vacancies were notified, regionwise only and, there was no reservation provided in the notification issued for recruitment of 22 Physical Education Teachers. That is the answer given by the Public Information Officer cum Deputy Director (Administration), Directorate of School Education, Puducherry, dated 22.01.2014,

to Ms.Nisha Venu, Valappil House, Parakkal, Mahe. During the course of hearing, when we posed a question to the learned counsel for the writ petitioner as to the relationship of Ms.Nisha Venu, the applicant under the RTI Act, 2005, with the petitioner, reply of the learned counsel for the writ petitioner is that the said Ms.Nisha Venu is the wife of the writ petitioner. Even taking it for granted that there was an erroneous reply given by the Public Information Officer cum Deputy Director (Administration), Director of School Education, Puducherry, there are no materials to indicate as to whether the said reply was challenged on appeal under the Right to Information Act, 2005.

18. Therefore, from the material on record, it can reasonably be inferred that vacancies are notified region wise and the notification issued by the Government of Pondicherry dated 31.12.2014, by which there was no reservation for the candidates belonging to Mahe, can be justified. Yet another factor to be taken note of is that knowing fully well the terms and conditions of the prospectus issued for filling up 20 vacancies, which occurred prior to 2010, the writ petitioner has participated in the selection and became unsuccessful. In the inter se merit, his position is 97, as against 22 vacancies notified.

19. Though, Ms.Y.Kavitha, learned counsel for the writ petitioner submitted that when the educational qualifications is relaxable, in the 2nd notification issued for filling up 30 vacancies, which occurred after 2010, respondents 1 and 2 could have exercised the discretion in favour of the writ petitioner and also allowed him to compete against 30 vacancies, this Court is not inclined to accept the said contention. Relaxation cannot be claimed as a matter of right, moreso, when there are eligible candidates. For the reasons stated supra, we are not inclined to entertain the writ petition. Accordingly, the same is dismissed. No costs. Consequently, the connected Miscellaneous Petition is closed.

Sd/-

Asst.Registrar

/true copy/

Sub Asst. Registrar

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To

1. The Secretary to Government (Education),
Union of India
Government of Puducherry, Puducherry.

2. The Director,
Directorate of School Education,
Puducherry.

3. The Registrar,
Central Administrative Tribunal,
Chennai - 600 104.

+1cc to Mrs.Giridhar & Sai, Advocate Sr.65173

+1cc to The Government Pleader, Puducherry, Advocate Sr.65183

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and
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EV(CO)
RVR 19/01/2017



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