



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 25 .02.2016

C O R A M

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THE HONOURABLE Mrs.JUSTICE PUSHPA SATHYANARAYANA

Writ Petition (MD) No.17250 of 2014

S.Sivabala

.. Petitioner

Vs.

1. THE SECRETARY TO GOVERNMENT,
SCHOOL EDUCATION, GOVERNMENT OF TAMILNADU,
FORT ST. GEORGE, CHENNAI.
2. THE DIRECTOR OF SCHOOL
EDUCATION, COLLEGE ROAD, CHENNAI.
3. THE JOINT DIRECTOR OF SCHOOL
EDUCATION, HIGHER SECONDARY,
O/O. THE DIRECTOR OF SCHOOL EDUCATION,
COLLEGE ROAD, CHENNAI-6.
4. THE DISTRICT EDUCATION OFFICER,
CHERANMAHADEVI, TIRUNELVELI DISTRICT.
5. THE SECRETARY,
TILAK VIDYALA HIGHER SECONDARY SCHOOL
COMMITTEE, KALLIDAIKURICHI, TIRUNELVELI.

.. Respondents

Prayer: Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of Mandamus directing the respondents 3 & 4 to dispose of the petitioner's representation dated 5.3.2014 in the light of the order dated 29.11.2013 made in W.P.(MD)No.11681 of 2013 etc batch.

For petitioner ... Mr.T.Antony Arulraj

For Respondents .. Mr.V.Muruganandam
Additional Government Pleader

O R D E R

The writ petition has been filed seeking a direction to the respondents 3 and 4 to dispose of the representation of the petitioner, dated 05.03.2014, in the light of the order dated 29.11.2013 made in W.P. (MD)No.11681 of 2013.

2.The petitioner was appointed as Post Graduate Assistant in Botany in the fifth respondent School with effect from 04.08.2008. He is holding M.Sc., degree in Micro-Biology along with B.Ed. The Department had taken a stand that M.Sc., Micro Biology is not equivalent to M.Sc. Botany. Therefore, the petitioner had filed W.P.(MD)No.11299 of 2012. While the said petition was pending, G.O.Ms.No.72, Higher Education (K2)



Department, dated 30.04.2013 was passed, according to which, a Micro Biology candidate can teach Botany or Zoology at school level.

3. When the writ petition came up for final disposal, the Government took a stand that any Government Order has only a prospective effect and as the appointment of the petitioner was prior in point of time, the effect of the Government Order cannot be taken advantage of, by the petitioner. At this juncture, the respondent conceded that the case of the petitioner was considered and his appointment was approved from the date of issuance of the said Government Order i.e. From 30.04.2013. Accordingly, the petitioner's appointment was approved from 30.04.2013.

4. In the meanwhile, a Full Bench of this Court had an occasion to deal with the aspect whether the said Government Order in G.O.Ms.No.72, dated 30.04.2013, was prospective or retrospective. The Full Bench also held that the said Government Order was retrospective in effect. On the strength of the same, the petitioner had sent a representation, dated 05.03.2014 to the authorities, to consider his case, in the light of the said Government Order. If the G.O.Ms.No.72, dated 30.04.2013 has given effect to retrospectively, the petitioner's appointment would be approved from the date of his appointment viz., 04.08.2008. As the question of application of the Government Order is retrospective, the petitioner has filed the above writ petition seeking a direction to consider his case.

5. The contention of the petitioner was assailed by the respondents by a counter affidavit has been filed by the fourth respondent. It is the first contention of the respondents that even during the pendency of writ petition in W.P.(MD)No.11299 of 2012, the said G.O.Ms.No.72, dated 30.04.2013 was passed. Taking advantage of the said Government Order, the petitioner had sought for reckoning the date of approval of appointment from 30.04.2013. The statement of the learned counsel appearing for the petitioner to that effect was also recorded in paragraph No.5 of the order, dated 23.08.2013 in W.P.(MD)No.11299 of 2012.

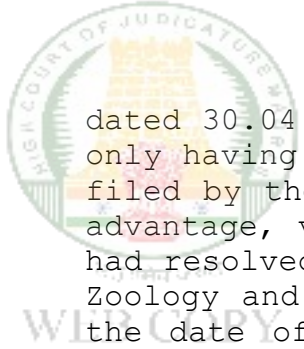
6. It is contended by the learned Additional Government Pleader that the petitioner has come to this Court to revise the date of approval of his appointment from 04.08.2008 instead of the approval already made from 30.04.2013, with his consent.

7. It is the contention of the respondents that even if the petitioner wanted to take advantage of the Judgment of the Full Bench of this Court, it was open to him to approach the respondents, instead of directly coming to this Court. The next contention of the respondents is that on the date of his appointment, M.Sc., Micro Biology degree was not considered as prescribed qualification for appointment in the Post Graduate teacher in Zoology. Hence, a person with irrelevant qualification cannot be approved from 04.08.2008 by virtue of the order dated 29.11.2013 made in W.P.(MD)No.16181 of 2013 etc., batch. Hence, the respondents prayed for dismissal of the writ petition.

8. Heard both sides.

<https://hcservices.ecourts.gov.in/hcservices/>

9. The petitioner had joined service on 04.08.2008 and his appointment was approved only from 30.04.2013 by virtue of G.O.Ms.No.72,



dated 30.04.2013 on the date when the Government Order was passed, it was only having a prospective effect. Therefore, in the earlier writ petition filed by the petitioner, which was disposed on 22.11.2013, he had double advantage, viz., the equivalence committee of School Education Department had resolved to recommend M.Sc., Micro Biology is equivalent to Botany or Zoology and also had an opportunity to get his appointment approved from the date of the Government Order. However, whether the said Government Order was prospective or retrospective came to be considered only later by the Full Bench of this Court in NADAR THANGA SHUBHA LAXMAN, A. v. STATE OF TAMIL NADU reported in 2014 (3) CTC 433. It is useful to extract the relevant portion of the said Judgment, which reads as follows:-

"23. Also, in the present case, neither the Equivalence Committee nor the Government Orders in G.O.Ms.No.72, dated 30.04.2013 and 117, dated 02.07.2013, confined the validity of the Degree obtained by the candidates to operate prospectively, therefore, as per the above Judgments, when the vested rights are created from the date of their acquisition of equivalent Degrees, the Respondents cannot take a stand that the Degrees obtained by the petitioners will only have prospective effect from the date of issuance of Equivalence Certificate. When both the Equivalence Committee and the Government Order have consistently not mentioned the effect of the validity of the Degree, it is not proper to hold prospective by any one, more so, by the Court. That apart, a Degree or a Certificate issued by any University or competent Educational Authorities always have the effect on par with a Decree issued by a Competent Civil Court. Besides, it is well settled legal position that even an Executing Court cannot go behind its Decree and this principle will mutatis mutandis undoubtedly apply to the case on hand as well."

10. It is evident from the above Judgment that the G.O.Ms.No.72, dated 30.04.2013 would operate prospectively. A right whether accrued or acquired can be held to be protected, provided the right survives. When the right itself is not available, the question of protection of the same does not arise. In the case on hand, admittedly, the equivalence committee considered and approved the equivalent nature of the degree obtained by the petitioner and the petitioner was also approved of his appointment from 30.04.2013 and subsequently, as the Larger Bench clarified on the fact that it is retrospective in nature, the benefit has to be given to the petitioner. The Full Bench also has categorically held that when both the equivalence committee and the Government Order issued by the State Government, have not chosen to restrict the validity of the degree obtained by any person, it goes without saying that the validity of the degree from the date of acquisition will stand to benefit the candidates. Therefore, in all its fairness, the benefit of holding that the Government Order is retrospective, should be extended to the petitioner. The Law is meant to protect people from inconsistency and to come out of the legal confusion and confrontation.

11. When the petitioner is given the benefit of the Government Order, which is held to be retrospective, his appointment has to be approved from the date of his original appointment viz., 04.08.2008. Admittedly, the petitioner had obtained his M.Sc., Micro Biology in 2005 April and obtained his B.Ed., decree in 2006. When G.O.Ms.No.72, dated



30.04.2013, had equated the degree equivalent to Botany or Zoology, then even on the date of his appointment, his qualification is deemed to be relevant. Therefore, the contention that the petitioner cannot be given retrospective effect is unacceptable.

12. In view of the above, the writ petition is disposed of directing the respondents to consider the representation of the petitioner, dated 05.03.2014 and pass appropriate orders, in the light of the order dated 29.11.2013 in W.P.(MD)No.16181 of 2013 etc., batch, within a period of four weeks from the date of receipt of a copy of this order. No order as to costs.

Sd/-

Assistant Registrar(P&A)

/True copy/

Sub Assistant Registrar

To

1.THE SECRETARY TO THE GOVERNMENT,
DEPARTMENT OF EDUCATION,
FOR SAINT GEORGE,
CHENNAI-600 009.

2.THE DIRECTOR OF SCHOOL EDUCATION,
COLLEGE ROAD,
CHENNAI - 600 009.

3.THE JOINT DIRECTOR OF SCHOOL EDUCATION, HIGHER SECONDARY,
O/O. THE DIRECTOR OF SCHOOL EDUCATION,
COLLEGE ROAD, CHENNAI-6.

4.THE DISTRICT EDUCATION OFFICER,
CHERANMAHADEVI, TIRUNELVELI DISTRICT.

+1cc to Mr.T.Antony ArulRaj, Advocate SR.No.10770

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25.02.2016