



IN THE HIGH COURT OF JUDICATURE AT MADRAS
Reserved on : 18.09.2017
pronounced on : 11/12/2017

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DATED: 11.12.2017

CORAM

THE HON'BLE MR. JUSTICE M.V.MURALIDARAN

W.P.No.11517 of 2012

S.Bhaskar

.. Petitioner

vs

1. The Director of School Education,
DPI Complex, College Road,
Chennai - 6.

2. The Joint Director of School Education (Personal),
DPI Complex, College Road,
Chennai - 600 006.

.. Respondents

Writ Petition filed under Article 226 of the Constitution of India for issuance of a writ of certiorarified mandamus to call for the records relating to the impugned order passed by the second respondent in his proceedings Na.Ka.No.100154/C2/E1/2011, dated 12.04.2012, to quash the same and to direct the respondents to promote the petitioner to the post of Tamil Pandit with due regard to seniority and all other consequential benefits.

For Petitioner : Mr.G.Sankaran
for Mr.K.H.Ravikumar

For Respondents : Mrs.K.Venkataramani
Additional Advocate
General
assisted by
Mr.R.Govindasamy
Special Government Pleader

ORDER

The petitioner has filed this writ petition seeking issuance of a writ of Certiorarified Mandamus to call for the records relating to the impugned order passed by the second respondent in his proceedings Na.Ka.No.100154/C2/E1/2011, dated



12.04.2012, to quash the same and to direct the respondents to promote the petitioner to the post of Tamil Pandit with due regard to seniority and all other consequential benefits.

2. The petitioner, who was working in the Census Department, on retrenchment was appointed as Junior Assistant on 01.03.2004 by the proceedings of the District Educational Officer, Villupuram. His services were regularized by proceedings dated 10.11.2009, of course, with effect from 01.03.2004. The petitioner's probation was declared on 31.03.2008.

3. The petitioner passed his SSLC in 1980 and thereafter appearing for Twelfth Standard Examination in April, 1982, but as he failed in one subject, he completed it only in September, 2010. In the meanwhile, the petitioner completed B.Lit. From Alagappa University and thereafter completed M.A. Tamil in December, 2011. It is the case of the petitioner that he is fully qualified for being considered for promotion to the post of B.T. Assistant/Tamil Pandit in the 2 per cent quota for non-teaching staff as provided under G.O.Ms.No.175, School Education Department, dated 19.07.2007.

4. It is stated that based on the above said qualification, a seniority list was drawn by the first respondent on 01.01.2011 and the petitioner's name finds place in Serial No.2. Based on such seniority, the petitioner was granted promotion through recruitment by transfer as Tamil Pandit by proceedings of the second respondent dated 12.03.2012 and the petitioner also joined in the said position at Shavelimedu Government High School, Kancheepuram on 14.03.2012.

5. It is averred that when things stood thus, the second respondent vide proceedings dated 02.04.2011 called for explanation from the petitioner alleging that the petitioner has not fulfilled the criteria stipulated in G.O.Ms.No.107, dated 18.08.2009. Thereafter, on consideration of the explanation submitted by the petitioner, the second respondent passed the impugned order dated 12.04.2012 cancelling the promotion granted to the petitioner, and stating that the petitioner is absorbed as Junior Assistant.

6. Under such circumstances, the present writ petition is filed for the relief stated supra.

7. The learned counsel appearing on behalf of the petitioner submits that as on the date of drawing of seniority panel, i.e., on 01.01.2011, the petitioner was fully qualified having the qualification of 10+2+3 as contemplated under G.O.Ms.No.107, dated 18.09.2009, and, therefore, the



cancellation of the promotion order issued to the petitioner is unjustified and unreasonable.

8. The learned Additional Advocate General appearing on behalf of the respondents submitted that the petitioner's name was wrongly included in the promotion panel and he does not have the educational qualifications as per G.O.Ms.No.107, dated 18.08.2009 and, therefore, the respondent authorities were justified in cancelling the promotion granted to him.

9. In the case on hand, admittedly, the petitioner was fully qualified as on 01.01.2011 and even during the existence of G.O.Ms.No.107, dated 18.09.2009, the respondent authorities after due verification of the qualification of the petitioner included his name and promoted him and thereafter, permitted him to join duty in the promoted post only on the ground that he had completed +2 course after completion of his degree.

10. The issue raised in this writ petition is no longer res integra in view of the decision of this Court in C.S. Srinivasan v. The Vellore Central Co-operative Bank Limited and Ors. (MANU/TN/2663/2016), wherein, interpreting the very same government order in G.O.Ms.No.107, dated 18.08.2009, it was held as under:

"11. For better appreciation of the case, relevant portion of the order passed by this Court in W.P. No. 1068 of 2014 on 11.03.2014 is extracted hereunder:

"6. For the sake of convenience, let me first consider the Division Bench judgment of this Court in T.L. Muthukumar v. The Registrar General, Madras High Court (cited supra). That was a case where G.O. Ms. No. 107, Personnel and Administrative Reforms (M) Department, dated 18.08.2009 referred to above was challenged. While upholding the said G.O. Ms. No. 107, dated 18.08.2009, in paragraphs 18 and 19, the Division Bench held as follows:

"18. As discussed above, the rule framed by the High Court inter alia clearly lays down the qualification for the purpose of promotion from Categories 7, 8 and 9 to Category 6. It is clearly mentioned that for the purpose of promotion, a person must possess and hold the B.A./B.Sc./B.Com or other Bachelor's degree of the Madras University or of a recognized University. The rule does not recognize B.A. or B.B.A. degree from an Open University obtained by a candidate without having the basic +2 qualification. The condition contained in



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has obtained degree only through open university, the appellant had subsequently appeared for the higher secondary examination and completed the same in June, 2010. The management sent the proposal on 07.08.2010 to the second respondent for approval as the appellant has completed his higher secondary examination in June, 2010. By the order dated 16.12.2010, the second respondent has again returned the proposal on the ground that the appellant has not studied in the pattern of 10 +2+3 as per G.O. Ms. No. 107 P&AR Department dated 18.08.2009.

9. The learned senior counsel for the appellant submitted that since the appellant has completed his higher secondary examination in June, 2010, proposal for approving the appointment of the appellant may be approved at least from June, 2010."

In paragraph 11, the Division Bench has held as follows:

"11. We are of the view that the second respondent is to reconsider the matter in the light of para 4 of G.O. Ms. No. 107 P&AR Department dated 18.08.2009. While so reconsidering the matter, the second respondent shall take into account that the appellant has been working from 2006, much prior to the judgment of the Honourable Supreme Court in Annamalai University v. Secretary to Government, Information and Tourism Department, Chennai (MANU/SC/0283/2009 : (2009) 4 SCC 590) and he has completed his higher secondary examination in June, 2010."

10. Thus, it is crystal clear that as per the law laid down by the Division Bench in J. Joseph Irudayaraj's case (cited supra), the requirements of G.O. Ms. No. 107, dated 18.08.2009 shall stand satisfied if the candidate has studied 12th Standard (+2) after completing B.A. degree course. In other words, because courses are done in reverse order, it is no matter at all.

11. The learned counsel has relied on yet another judgment of a learned Single Judge in S. Ashalatha v. The Director of School Education, Chennai in



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W.P. No. 6870 of 2013 dated 25.03.2013, wherein, in paragraph 4, more or less in similar circumstances, this Court has held as follows:

"4. But, by virtue of G.O. Ms. No. 361, Education, dated 31.12.1999, persons who had secured a Post Graduate Degree in a different subject than the subject in which Under Graduate Degree course was undergone, were made ineligible for appointment to the post of P.G. Assistants. Therefore, the petitioner went back to an Under Graduate course, as it has not become routine for people to do courses in all orders, not necessarily in the chronological sequence, but in the reverse or even in perverse sequence. Anyway, the petitioner completed three year B.Litt. from Madras University. Therefore, on the date on which she applied for appointment, the petitioner had an Under Graduate Degree as well as a Post Graduate Degree in the same subject, undergone in the regular stream, from the University of Madras. In such circumstances, the rejection of her candidature on the ground that it was obtained in a reverse order is not correct. Hence, this writ petition is allowed and the respondents are directed to pass orders, appointing the petitioner, within a period of four weeks, if all other certificates are in order. There shall be no order as to costs. Consequently, M.P. Nos. 1 and 2 of 2013 are closed."

12. The Annamalai University's case (Annamalai University v. Secretary to Government reported in MANU/SC/0283/2009 : (2009) 4 SCC 590) has been referred to by the two Division Benches in their respective judgment. That was a case where, a Post Graduate degree obtained directly under the Open University system without doing Under Graduate degree was valid or not came up for consideration. In that case, the Hon'ble Supreme Court has held that before obtaining M.A. degree, as per UGC regulations, a candidate should have completed +2, followed by Under Graduate degree course. The Post Graduate degree obtained through Open University scheme directly without having obtained a Under Graduate degree cannot be considered for the purpose of appointment as a Principal in a College. In that judgment, the Hon'ble Supreme Court had no



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occasion to consider as to whether if a candidate completes a Under Graduate degree course after having obtained his Post Graduate degree under the Open University system will be eligible. This question was virtually examined by the Division Bench in J. Joseph Irudayaraj's case (cited supra). As a matter of fact, the Division Bench in J. Joseph Irudayaraj's case (cited supra) has extensively considered the judgment of the Hon'ble Supreme Court in Annamalai University's case (cited supra)."

11. In the judgment cited above, this Court after having elaborately considered the issue involved in identical circumstances has held that a candidate need not study these courses in order. It is suffice if all the three courses have been studied at a different point of time and not simultaneously. In this case, admittedly, the petitioner had studied these courses, but not in order. In my considered opinion, in view of the above said judgment, the order passed by the respondent authorities cancelling the promotion of the petitioner is liable to be set aside.

12. For the foregoing reasons, the following order is passed:

- (i) the writ petition is allowed by setting aside the order in proceedings dated 12.04.2012 passed by the second respondent;
- (ii) the respondents are directed to promote the petitioner to the post of Tamil Pandit with due regard to his seniority and pay all service and monetary benefits to him; and
- (iii) the above exercise shall be done by the respondent authorities within a period of eight weeks from the date of receipt of a copy of this order. No costs.

Sd/-

Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

vs



To

1. The Director of School Education,
DPI Complex, College Road,
Chennai - 6.

2. The Joint Director of School Education (Personal),
DPI Complex, College Road,
Chennai - 600 006.

+1cc to Mr.K.H.RAVIKUMAR, Advocate, S.R.No. 87934

Pre-Delivery order made in
W.P. No.11517 of 2012

NM(CO)
TR(09/04/2018)