

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.10.2017

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THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.7377 of 2014

and

MP.Nos.1 & 2 of 2014

M.Sivasankar

..Petitioner

Vs

1.The Additional Chief Secretary,
Department of School Education,
Fort St.George,
Chennai - 600 009.

2.The Principal Secretary of Tamil Nadu,
Differently Abled Welfare Department,
Fort St.George,
Chennai - 600 009.

3.The Principal Secretary,
State Commissioner for Differently abled,
Jawarlal Nehru Inner Ring Road,
K.K.Nagar,
Chennai - 600 078.

4.The Director of School Education,
DPI College Road,
Chennai - 600 006.

..Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, to call for the records of letter sent by the 2nd respondent vide letter No.4999/DAW/1/2013-2, dated 3.10.2013 and quash the same and consequently direct the 2nd respondent consider the representation of the petitioner dated 23.1.2013 to give appointment as a Secondary Grade Teacher in the vacancies of graduate teacher pursuant to the G.O.Ms.No.3 dated 09.01.2012.

For Petitioner : Ms.C.Uma

For Respondents : Mr.K.Thangapandi
Government Advocate

O R D E R

The writ petition is filed to call for the records in relation to the proceedings of the second respondent, vide letter No.4999/DAW/1/2013-2, dated 3.10.2013 and quash the same and consequently direct the second respondent to consider the representation of the petitioner dated 23.1.2013 to give appointment as Secondary Grade Teacher in the vacancy of graduate teacher.

2.The writ petitioner has passed DTED (Diploma in Teacher Education) and is a differently abled candidate in respect of visual disability due to Retina disease. The disability was assessed 75%. Under these circumstances, the writ petitioner claims that the relevant service Rules be relaxed in his favour and he should be appointed as Secondary Grade Teacher.

3.The learned counsel appearing for the writ petitioner made a submission that the recruitment Rules were relaxed by the respondents in respect of some other candidates who are also differently disabled. Relying on the earlier precedents, the learned counsel states that the writ petitioner is also entitled for relaxation of Rules on par with those candidates in which the State has granted relaxation.

4.This Court is of the opinion that relaxation of the relevant service Rules cannot be claimed as a matter of right. The Rule of relaxation has to be exercised judiciously by the competent authorities by considering the genuinity of the cases and by considering the circumstances warranting such relaxation of Rules. Invoking the power of relaxation will certainly cause discrimination amongst the employees and further, it results in depriving the opportunity to other candidates working in the Departments, who are all qualified and waiting for their appointment for promotions.

5. Thus, this Court is of unambiguous opinion that relaxation is an exception and can never be followed as a Rule or as a precedent. Relaxation of rules cannot be cited as a precedent, in respect of all other candidates, who are not qualified in accordance with the service Rules. In recent days, the Rule of relaxation is used as a tool to show favouritism to some candidates and the attitude of the competent authority in this regard is to be deprecated. All cases of relaxation to be checked and counterchecked by the competent officials and Appellate Authorities respectively and the genuinity of the same are also to be assessed periodically. Equal opportunity for appointment and promotions are the constitutional perspectives and the same cannot be denied to all the eligible employees. Equality clause enshrined in the Constitution of India cannot be violated by the State/Union of India by mechanically granting the benefit of relaxation under the Rules.

6. For better appreciation of the principles, it is relevant to consider Rule 48 of the Tamil Nadu State and Subordinate Service Rules and the same is extracted hereunder:

"48. (1) A member of a service or class of service may be required to serve in any post borne on the cadre of such service or class for which he is qualified. (2) All postings and transfers shall be made by the appointing authority: Provided that where the appointing authority is not the Government, any authority to whom the appointing authority is administratively subordinate shall, in respect of any post within the jurisdiction of the appointing authority also be competent to effect postings and transfers to a post within their jurisdiction aforesaid: Provided further that where leave not involving extra cost to the Government is granted to an officer by virtue of the delegation under Fundamental Rule 66, the Head of Department or the subordinate authority concerned may re-post the officer on return from leave granted by it to the same place. (3) Notwithstanding anything contained in this Act or in any special rules or adhoc rules, the Government may transfer any Government servant from one revenue district to another revenue district within the State, on administrative grounds.

7. The Rule itself stipulates that the power to relax the service rules can be extended, where it is just and equitable and it cannot be exercised in a routine manner in order to favour the employees in the particular circumstances.

8. The test of reasonableness and the principles of equity have to be scrutinized while granting the relaxation under the relevant Rules. This apart, the competent authorities and the appellate authorities are to oversee the orders of relaxation in respect of negative impacts and favouritism. It is found that if any relaxation is granted in favour of individuals in order to show favouritism or nepotism, then it is the duty of the appropriate authority to call for records under the appellate powers and cancel the same in accordance with Rules.

9. Thus, this Court is of the opinion that the State Government has to exercise the powers of relaxation cautiously and it is to be exercised sparingly and only on exceptional circumstances and it cannot be exercised in a routine manner. So also, the Rule of relaxation cannot be claimed by way of precedent and by citing one relaxation, another relaxation cannot be granted. The Rule of relaxation cannot be a precedent for other cases. This being the legal principles considered in the matter of relaxation of service rules, the prayer as such sought for in the writ petition, cannot be considered, in view of the fact that the writ petitioner is not qualified in accordance with the service Rules. In this regard, no

further adjudication on the grounds raised in the writ petition needs to be undertaken.

10. Accordingly, this Writ Petition stands dismissed. Consequently connected miscellaneous petitions are closed. However, there shall be no order as to costs.

-sd/-

Assistant Registrar

/ TRUE COPY /

Sub-Assistant Registrar

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To

1. The Additional Chief Secretary,
Department of School Education,
Fort St. George, Chennai - 600 009.

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4. The Director of School Education,
DPI College Road, Chennai - 600 006.

5. The Chief Secretary to Government
Fort St. George, Chennai - 600 009

[for issuing appropriate circular to all the departments.]

+1 cc to MR.C.UMA ADVocate SR.NO. 72970

+1 CC TO Government Pleader SR.NO. 73402

W.P.No.7377 of 2014

kji[co]

RD 10/11/2017

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