

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.11.2018

CORAM:

THE HONOURABLE MRS.JUSTICE V. BHAVANI SUBBAROYAN

W.P.No.10781 of 2009

S.Anandan
Petitioner

..

..Vs..

- 1.The Government of Tamil Nadu,
Rep. by the Director for Rehabilitation
of the Disabled, Chepauk,
Chennai-5,
Tamil Nadu.
- 2.The Principal Secretary/
State Commissioner for the Disabled,
15/1 Model School Road,
Thousand Lights,
Chennai 600 006,
Tamil Nadu.
- 3.The C.S.I. Balar Gnana Illam,
Special Education School and Vocational
Rehabilitation Centre for Mentally Challenged,
Rep. by the Bishop,
Hobart Campus, Hasthampatty,
Salem-636 007,
Tamil Nadu.
- 4.The District Rehabilitation Officer,
Office of the District
Rehabilitation of Handicapped,
Salem,
Tamil Nadu.

5.S.Yoburaj
Respondents

..

(fifth respondent is impleaded as per the
order of this Court dated 17.08.2012 made
in M.P.No.1 of 2012 in W.P.No.10781 of 2009)

Prayer:- Writ Petition has been filed under Article 226 of
Constitution of India, praying to issue a Writ of Declaration,
to declare the decision of respondents 1,2 and 3 that the

petitioner cannot be appointed as Secondary Grade Teacher (Special Educator) in the 3rd respondent School, as communicated in the letter No.1519/SS2/2009 dated 24.02.2009 issued by the 2nd respondent, as illegal and unconstitutional and direct the respondents to grant approval of appointment of the petitioner as Secondary Grade Teacher (Special Educator) in the 3rd respondent School in the existing Government sanctioned post which fell vacant from 01.06.2008 and in which the petitioner was already appointed by the 2nd respondent School with effect from 04.06.2008 will all attendant benefits.

For Petitioner : M/S.S.Meenakshi

For Respondents : Mr.S.V.Duraisolaimalai for R1 &
R2
Additional Government
Pleader

: Mr.A.Immanuel for R3
: No appearance for R4
: Mr.Rajendiran for R5

ORDER

The petitioner prayed for a writ of Writ of Declaration, to declare the decision of respondents 1,2 and 3 that the petitioner cannot be appointed as Secondary Grade Teacher (Special Educator) in the 3rd respondent School, as communicated in the letter No.1519/SS2/2009 dated 24.02.2009 issued by the 2nd respondent, as illegal and unconstitutional and direct the respondents to grant approval of appointment of the petitioner as Secondary Grade Teacher (Special Educator) in the 3rd respondent School in the existing Government sanctioned post which fell vacant from 01.06.2008 and in which the petitioner was already appointed by the 2nd respondent School with effect from 04.06.2008 will all attendant benefits.

2. The case of the petitioner is that he was appointed by the 3rd respondent School as a Special Educator on 02.08.1991 and he joined the 3rd respondent school on 02.08.1991, while working in the school, with the permission of the School Management, he joined BA History course in Annamalai Open University and completed BA degree in March 1997. Thereafter, in April 1999, he passed Teacher's Training course in special education in the National Institute for the Mentally Handicapped, Secunderabad, Andhra Pradesh, an institute run by the Ministry of Social Justice and Empowerment, Government of India and thereafter passed the examination of Diploma in Special Education for Mental Retardation with distinction.

3. The petitioner claims that after passing the Teacher's Training course, he was appointed by the 3rd respondent School as Special Educator under the management of permanent basis. He also registered the said Diploma certificate in the Rehabilitation Council of India under the Rehabilitation Council of India Act, 1992 on 13.09.2000. In addition to the above said qualification, the petitioner completed B.Ed. in Special Education in the Madhya Pradesh Bhoj (Open) University, Bhopal in January 2006. He also registered his name in the Employment Exchange, Salem, Tamil Nadu. Therefore, the 3rd respondent School is a Government Recognized Special School for handicapped, by which, the 1st respondent / the Director for Rehabilitation of the Disabled by his proceedings dated 15.03.1993 sanctioned one teaching staff to the 3rd respondent School in the scale of pay of Rs.1200-30-1560-40-2040. As per condition 2(f) of the said proceedings, the appointment made against this sanctioned post should be approved by the District Social Welfare Officer/Regional Rehabilitation Officer before drawal of salary.

4. The learned counsel would further submit that one Ms.A.Crana Parimalabai was appointed in the said sanctioned post and thereafter she got superannuated on 31.05.2008 and the next Senior Special Educator Mrs.A.Lilly Santhamani, who attained the age of superannuation earlier and Mrs.S.Usha Kalavathi, who has not yet completed B.Ed degree and the petitioner claims that he is the next senior person possessing the required qualification and hence he should be appointed in the said post. Thereafter, the petitioner made representation to the 1st respondent, which was forwarded by the 3rd respondent infavour of the petitioner to the 1st respondent.

5. The petitioner would further claim that, he is the senior most qualified and eligible candidate and the 3rd respondent appointed him as a Special Educator, by its order dated 04.06.2008, in the Secondary Grade Teacher Post sanctioned by the Government. Thereafter, the 3rd respondent in compliance with condition 2(f) of the proceedings, has sent a letter dated 24.06.2008, through the 4th respondent seeking approval of the petitioner's appointment. However, there was no response from the 1st and 2nd respondent, hence the petitioner has to seek the help of the All India Confederation of Organizations for Persons with Mental disability, who in turn wrote to the respondents on 30.01.2009 enquiring as to why the petitioner's appointment has not been approved, to which the 2nd respondent by its letter dated 24.02.2009 replied to the Confederation that the approval cannot be granted for the reason that the petitioner do not possess the required qualifications prescribed by the State Government, which is impugned in the present writ petition.

6. The 2nd respondent has filed a counter stating that

the petitioner did not possess Senior Diploma Course for teaching the mentally retarded persons, the course which was conducted by the Government of Tamil Nadu. Moreover, the petitioner studied the the Teacher Training course in Special Education in the National Institute for the Mentally Handicapped, Secunderabad, Andhara Pradesh which is not an institution approved by the Government of Tamil Nadu.

7. Apart from that, the 2nd respondent in his counter has also stated that B.A., degree and B.Ed., degree obtained by the petitioner from Annamalai University and the Diploma course in the Special Education obtained from the Bhoj University, all through open university and the petitioner has not completed the same in the regular course or even through distance education which is not eligible criteria under the Service Rules of Government of Tamil Nadu and therefore they sought seek for dismissal of the writ petition.

8. The 3rd respondent has filed a counter affidavit stating that, G.O.(Ms).No.216 P & AR (R) Department dated 26.08.1997 clarified Graduate Degree as well as Post Graduate Degree obtained from open university of Annamalai University shall be treated as equal to regular degree and seeks direction to the 1st and 2nd respondent to approve the appointment.

9. Heard, the learned counsel for the petitioner and the learned counsel for the respondents and perused the materials available on record.

10. The learned counsel appearing for the petitioner would content that, the petitioner having fulfilled the requirements for the said post, he ought to have been appointed as teaching staff as approved by the 1st respondent. In fact, the petitioner's counsel would vehemently content that the petitioner was appointed as Special Educator in Secondary Grade Teacher on 04.06.2008 itself, which the appointment ought to have been approved by the 2nd respondent and would vehemently rely on G.O.(Ms).No.216 P & AR (R) Department dated 26.08.1997 passed by the Government of Tamil Nadu equating the regular degree with the decree obtained from the open university.

11. On perusal of the entire records, it could be seen that the basic qualification required for the Post of Teacher in Special School for the Mentally Retarded as prescribed by the 2nd respondent, is as follows:-

High School	i) B.A. or BSC Arts equivalent ii) Trained Teachers Certificate of Collegiate Grade. iii) Senior Diploma in teaching the mentally retarded.
Primary and Middle Schools	i) Trained Teachers certificate of Secondary grade and ii) Junior Diploma in Teaching the mentally retarded.

12. It is not in dispute that the petitioner has completed X standard in 1984 and completed his B.A., degree in 1997 in Annamalai University under open university category and thereafter, had passed the Teacher Training course in Special Education in the National Institute for the Mentally Handicapped, Secunderabad, Andhara Pradesh through open university. In addition to that he had also completed B.Ed., degree in Special Education from Madhya Pradesh Bhoj University, which is also through open university. No doubt the 3rd respondent institution which is an aided school, was sanctioned with one Secondary Grade Teacher post by proceedings dated 15.03.1993 by the 2nd respondent under the scale of pay of Rs.1200-30-1560-40-2040.

13. It could be seen from the records that initially one Ms.A.Crana Parimalabai was appointed in the said post on 07.08.1993 and thereafter when the said person retired on 31.05.2008, the petitioner was appointed by the 3rd respondent on 04.06.2008 as there being no qualified person in the institution and thereafter, sought for an approval of the appointment made by the 3rd respondent. It could be seen that the petitioner has relied upon G.O.Ms.No.216 dated 26.08.1997 wherein which the Government of Tamil Nadu has equated the degree obtained from open university to that of a degree obtained through regular scheme, which came to be questioned by various persons before this Court and various previous litigations were going on and finally the Hon'ble Supreme Court in the cases reported in Annamalai University Versus Secretary to Government, Information and Tourism Department and others reported in (2009) 4 Supreme Court Cases 590 has settled down the issue and held that a person holding open university degree is equivalent to that of a person holding degree in regular course and is eligible for the Government post.

14. On perusal of the impugned order, it could be seen that the minimum requirement for the Secondary Grade Special Educator, as prescribed by the 2nd respondent is Secondary Grade Teacher Training, B.Ed., post and Junior Diploma/Senior Diploma for teaching the Mentally Retarded through the recognized institution viz., Bala Vihar, Chennai. It is seen from the qualification of the petitioner as admitted by him in his affidavit is that he obtained B.Ed., in Special Education from open university viz., Bhoj University, Bhopal, Madhya Pradesh and he passed the Diploma from an institute i.e., National Institute for Mentally Handicapped in Andhra Pradesh. However the qualification which the petitioner possess especially the B.Ed., degree in open university cannot be considered as a degree equivalent to B.Ed., from the regular university. As such, the petitioner has not even completed 10+2, as required under the Tamil Nadu Subordinate Service Rules which mandates any subordinate service under the State Government to possess the minimum general educational qualification. Even though, the petitioner herein has occurred X Standard/SSLC he has secured degree only from open university which cannot be considered as equivalent degree as required by the State Government for the Post of Special Educator, which is the Secondary Grade Post under the State Government and he is not completed his +2. The 1st respondent while sanctioning one teaching staff under the cadre of Secondary Grade Teacher to the 3rd respondent institution, instructed that being an aided school under the Government, it necessarily need to appoint only the persons who are qualified and fit as per the qualifications prescribed, which are the basic requirements as contemplated under the said Rules. No open university degree can be used to equate the requirements prescribed by the State Government.

15. As rightly pointed out by the learned counsel for the 1st and 2nd respondents, the petitioner has not undergone Senior Diploma course training to qualify himself as Special Teacher as prescribed by the State Government for the Post, and the Diploma obtained by the petitioner is not recognized by the State Government, and thus, the petitioner's appointment cannot be approved by the 1st and 2nd respondents, since, the petitioner did not possess the qualification prescribed for the recruitment of special Educator (Secondary Grade Teacher) in the 3rd respondent School vacant post. When there are specific qualifications prescribed and the petitioner do not fit in to the said category, this Court finds no infirmity in the order passed by the 2nd respondent. There is no valid reason for this Court to interfere with the order passed by the 2nd respondent.

16. Accordingly this Writ petition is dismissed. No costs.

s/d-
Assistant Registrar(CO)

True Copy

Sub-Assistant Registrar

vji/nsd

To

1.The Government of Tamil Nadu,
The Director for Rehabilitation
of the Disabled, Chepauk,
Chennai-5,
Tamil Nadu.

2.The Principal Secretary/
State Commissioner for the Disabled,
15/1 Model School Road,
Thousand Lights,
Chennai 600 006,
Tamil Nadu.

+1 CC to Govt. Pleader sr 76451 , 76749.

W.P.No.10781 of 2009

SSV(CO)
SP(04/03/2019)