

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 21.09.2017
CORAM:
THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN
W.P.Nos.12297 and 15813 of 2010
and
M.P.Nos.1, 1 and 2 of 2010

R.Nirmaladevi

... Petitioner in
both WPs

Vs

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

2.The Chief Educational Officer,
Vellore.

3.The District Educational Officer,
Tirupattur, Vellore.

4.The Secretary,
Tagore National High School,
Mathanur post,
Vellore-635 804.

... Respondents in
W.P.12297/2010

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

2.The Chief Educational Officer,
Vellore.

3.The District Educational Officer,
Tirupattur, Vellore.

4.The Secretary,
Tagore National High School,
Mathanur post,
Vellore-635 804.

5.The Commissioner,
Labour and Employment Department,
Guindy, Chennai-32.

(5th respondent impleaded as per
W.P.15813/2010

... Respondents in

order dt. 17.9.2010 in M.P.NO.1/2010)

Writ Petition No.12297 of 2010 is filed under Article 226 of the Constitution of India for the issuance of writ of certiorari calling for entire records connected with the impugned order passed by the 3rd respondent in Na.Ka.No.3308/A1/2009 dated 04.8.2009 and quash the same.

Writ Petition No.15813 of 2010 is filed under Article 226 of the Constitution of India for the issuance of writ of certiorari calling for entire records connected with the impugned order passed by the 3rd respondent in Na.Ka.No.3206/P3/2008 dated 14.07.2010 and quash the same.

For Petitioners: Mr.S.N.Ravichandran

For Respondents: Mr.R.Govindasamy (for R1 to R3)
Spl. Government Pleader

No Appearance (for R4)

COMMON ORDER

Challenging the impugned order dated 4.8.2009 issued by the third respondent directing to recover the salary of the petitioner in lump sum and directing her to submit an explanation, the petitioner has filed W.P.No.12297 of 2010. Aggrieved by the impugned order of the third respondent dated 14.7.2010 cancelling the order of approval of the petitioner's appointment, she filed W.P.No.15813 of 2010.

2. Briefly stated, the case of the petitioner is that after passing plus two examination, she had undergone training in Dress Making Course at Bargur Co-operative Industrial Training Institute and after completion of training, she was issued with National Trade Certificate by the Ministry of Labour, National Council for Vocational Training. The petitioner also acquired Technical Examination Higher Grade Certificate (Embroidery) and also acquired Diploma in Sewing and Embroidery from St.Mary's Tailoring Institute. Thus, the petitioner is eligible for appointment to the post of Craft Instructor and she had registered her name in the District Employment Exchange.

3. The Management of the fourth respondent school gave advertisement calling for applications from the suitable candidates for the post of Craft Instructor. Pursuant to the advertisement, the petitioner applied for the said post and the fourth respondent School Committee selected and appointed the petitioner as Craft Teacher on 2.7.2008. Thereafter, the fourth respondent school forwarded the papers for approval to the third respondent. By the proceedings dated 7.10.2008, the

petitioner's appointment as Craft Instructor was approved by the third respondent.

4. While things stood thus, the third respondent stopped salary to the petitioner from May 2009 onwards without assigning any reason. Hence, the fourth respondent school made a request to the third respondent to disbursement of salary. However, by an order dated 4.8.2009, the third respondent informed the school that the Teacher Training Certificate obtained at St. Mary's Tailoring Institute has not been recognised by the Labour and Employment Department and, therefore, they could not evaluate the certificate issued by the said Institute as equivalent to the certificate issued by the Government.

5. On the basis of the order of the third respondent, the 2nd respondent came to the conclusion that the petitioner's appointment was irregular and decided to recover the salary for the entire period in one lump sum and directed the school to submit an explanation. Challenging the same, the petitioner had filed W.P.No.12297 of 2010.

6. It is stated that pending the above said writ petition, an order of interim injunction was passed on 15.6.2010 restraining the respondent authorities from withholding the salary payable to the petitioner. Despite the said order being communicated to the respondent authorities by letter dated 17.6.2010, the third respondent, by proceedings dated 14.7.2010, cancelled the order of approval dated 7.10.2008 and the same is challenged in W.P.No.15813 of 2010.

7. The learned counsel appearing on behalf of the petitioner vehemently contends that cancelling the order of approval of appointment of the petitioner as Craft Instructor without any notice to the petitioner is violative of Articles 14, 16 and 21 of the Constitution of India. He added that in response to the show cause notice dated 4.8.2009 addressed to the fourth respondent, the petitioner had submitted her explanation on 25.1.2010, but the third respondent without considering the same passed the impugned order dated 14.7.2010 cancelling the approval granted to the petitioner's appointment and the same is untenable.

8. He further contended that the petitioner is having the necessary qualification to hold the post and once a person is having the required qualification, then other qualifications have to be simply ignored and inasmuch as the appointment of the petitioner has been approved by the respondent authorities on the basis of required qualification, in the absence of any government order or rule or regulation to the effect that the petitioner's certificate qua additional qualification are from

institutions which are not recognized, the order passed by the respondent authorities are non est in law.

9. The learned Additional Government Pleader appearing on behalf of the respondent authorities submitted that inasmuch as the petitioner is not having the requisite qualification to hold the post of Craft teacher (Tailoring), the order passed by the respondent authorities is justified and the same warrants no interference.

10. I heard Mr.S.N.Ravichandran, learned counsel for the petitioners and Mr.R.Govindasamy, learned Special Government Pleader for the respondents 1 to 3 and perused the documents available on record.

11. At the outset, it is apposite to refer to a specific averment in the counter affidavit filed in M.P.No.1 of 2010 in W.P.No.12297 of 2010, where the qualification of the petitioner is stated as under:

"1. HSC March 1997

2. National Council for Training (1 Year course)
The Indian Government Labour Department issued Certificate, July 1998, 1 Year Course.

3. St. Mary Tailing institute TTC Registered No.1167/77

Tailoring Certificate No.000383, dated 16.8.1999
(not eligible for appointment as a Tailoring Teacher vide No.42906/Ki.Pa.1/08, dated 21.10.2008 of Commissioner Employment and Training Department, Guindy 32, Chennai."

12. It is beyond any cavil that based on the aforesaid qualification of the petitioner, the petitioner's appointment had been approved by the respondent authority.

13. At this juncture, it is apposite to refer to the Government Letter No.Ms.(D) 707, dated 4.12.1990 from the Secretary to Government, Labour and Employment Department addressed to All Heads of Departments, the relevant portion of which reads as under:

"I am directed to enclose a copy of the letter cited with its enclosure, wherein a list of existing Engineering and non-engineering group of designated trades with periods of training under the Craftsmen Training Scheme for which National Trade Certificate are being awarded under the aegis of National Council for Vocational Training, Directorate General of Employment and Training, Ministry of Labour is given National Trade

Certificates are recognised by Government of India for the purpose of recruitment to subordinate posts and services under the Central Government.

2. If any one has obtained National Trade Certificate in any of the trades through Industrial Training Institutes, he is eligible for appointment in subordinate posts and services under the Central Government and also in State Government. I am, therefore to request you to keep in mind the trades when making appointment in various subordinate services to various subordinate posts under the State Government."

14. By virtue of the above said government letter, the person who obtained National Trade Certificate in any of the trades through Industrial Training Institutes is eligible to appointment in State Government also. Therefore, it does not lie in the mouth of the respondent authorities to state that the petitioner is not qualified. However, the respondent authorities did not have the benefit of the above said government letter while passing the impugned orders.

15. That apart, in the case on hand, before passing the impugned order of recovery or before cancelling the approval of appointment of the petitioner, no opportunity was given to the petitioner. The explanation submitted by the petitioner was also not considered by the respondent authorities. There is no reference whatsoever to the explanation given by the petitioner in response to the notice issued to the respondent school.

16. It is trite that an order prejudicial to the interest of the party could be passed only after putting the person concerned on notice in compliance of principles of natural justice. In this case, the petitioner has specifically raised the ground that no notice was given to him before passing the impugned orders and no opportunity to show cause was given by the respondents before cancelling approval of his appointment and ordering recovery. When the petitioner had raised such specific ground, it is for the respondents to refute the same and justify that notice has been given to the petitioner. But, nothing so has been done by the respondents. Therefore, this Court has no hesitation to hold that there is a clear violation of principles of natural justice in this case.

17. In the result:

(a) both the writ petitions are allowed;

(b) the impugned orders in Na.Ka.No.3308/A1/2009 dated 04.08.2009 passed by the 3rd respondent and in Na.Ka.No.3206/P3/2008 dated 14.07.2010 passed by the 3rd respondent are quashed. No costs. Consequently, connected miscellaneous petitions are closed.

vs

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

To

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

2.The Chief Educational Officer,
Vellore.

3.The District Educational Officer,
Tirupattur, Vellore.

4.The Commissioner,
Labour and Employment Department,
Guindy, Chennai-32.

+1cc to Mr.S.N.Ravichandran, Advocate SR.NO.70062

sm:8.10.2018

W.P.Nos.12297 and 15813 of 2010 and
M.P.Nos.1, 1 and 2 of 2010

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