

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.07.2017

CORAM

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

W.P.No.22679 of 2009

S.L.Moorthy

.. Petitioner

vs

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

2.The Joint Director of School Education,
College Road,
Chennai - 600 006.

3.The District Educational Officer,
Pollachi,
Coimbatore District.

.. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India for issuance of a writ of certiorari calling for the records of the third respondent made in O.Mu.No.102288/A4/E1/2008 dated 26.02.2008, quash the proceedings and consequently directing the respondents herein to appoint the petitioner to the post of Junior Assistant.

For Petitioner : Mr.S.Thirumavalavan
for M/s.A.Sivagami

For Respondents : Mr.R.Govindasamy
Spl. Government Pleader

ORDER

This writ petition has been filed by the petitioner seeking to quash the order of the third respondent dated 26.02.2009 and to direct the respondents to appoint the petitioner to the post of Junior Assistant.

2. The case of the petitioner is that he was born in Sri Lanka and his parents are of Indian origin. The petitioner did his school education in Sri Lanka. The petitioner was

repatriated in the year 1979 and most of the repatriates from Sri Lanka were of Tamil origin and also all of them were made to settle in Tamil Nadu. The Government provided them with all assistance and relief.

3. According to the petitioner, he studied up to 10th standard in St. Joseph Maha Vidyalaya at Pandaravilai (Ceylon) and the 10th standards examination is known as Sri Lankan General Certificate of Examinations Ordinary Level and treated as equivalent to pass in SSLC examination.

4. The petitioner registered his school education certificate with the Employment Exchange. The petitioner was appointed as Junior Assistant in Cinchona Plantation in Valparai in November, 1981, after sponsoring by the Employment Exchange. Subsequently, the petitioner was appointed as Junior Assistant in June 1982 in Central Prison, Coimbatore Jail Department and thereafter, in January 1983, he was appointed as Junior Assistant in the office of the Assistant Educational Officer, Valparai and continued to work as Junior Assistant in the said Department.

5. In the year 1990, the respondent authorities directed the petitioner to produce the original certificate. The petitioner had produced the original certificate of Sri Lanka General Certificate of Examination (Original Level), which was sent by his relatives from Sri Lanka. On 19.01.1992, a memo was issued by the third respondent to the petitioner stating that the certificate produced by him was a bogus one and he was called upon to offer an explanation. The petitioner submitted his explanation stating that he has not verified the genuineness or correctness of the certificate received from his relatives who had sent it from Sri Lanka and now only he came to know that the certificate is bogus.

6. On 21.07.1992, the petitioner was issued with a show cause memo as to why action should not be taken against him for producing the bogus certificate and securing employment. The petitioner has submitted explanation to the show cause of notice. Having not satisfied with the explanation offered by the petitioner, the third respondent passed an order dated 30.07.1992 dismissing the petitioner from service. Aggrieved by the same, the petitioner preferred an appeal before the first respondent. Challenging the dismissal order, the petitioner has also filed Original Application before the Tamil Nadu Administrative Tribunal, Chennai in O.A.No.1843 of 1992.

7. By an order dated 12.05.2004, the Tribunal allowed the original application by setting aside the order of dismissal passed by the third respondent. Pursuant to the order of the Tribunal, the petitioner was called upon to produce the mark

statement. The petitioner had produced the duplicate copy of the certificate issued by St. Joseph College, Pandaravilai, Srilanka and the same was sent to the Sri Lanka Government High Commission for verification and the High Commission, Sri Lanka certified that the certificate produced by the petitioner was true.

8. Thereafter, the second respondent directed the third respondent to evaluate the certificate produced and provide appointment to the petitioner proportionate to the qualification. By an order dated 26.07.2006, the third respondent upon evaluating the certificate as the petitioner failed in GGE Ordinary Level Examination and by construing it as fail in 10th standard, appointed the petitioner as Record Clerk.

9. By an order dated 20.12.2007, the third respondent confirmed the petitioner's probation and regularised his appointment with effect from 27.07.2006 onwards.

10. The petitioner passed 10th standard examination as private candidate during July 2007. Since the petitioner passed 10th standard, he made a representation to the third respondent seeking to appoint him to the post of Junior Assistant. By an order dated 24.07.2008, the third respondent stated that in view of the existing procedures and rules, the petitioner's name was included in the seniority list dated 15.03.2009 and the same will be considered as per the seniority.

11. On 15.08.2008, the petitioner made a detailed representation to the second respondent seeking to promote him to the post of Junior Assistant. By a reply dated 26.02.2009, the petitioner was informed that as per the existing rules, a person who was working in the lower post has to complete 7 years for the purpose of getting promotion to the post of Junior Assistant. Challenging the same, the petitioner has filed the present writ petition.

12. The case of the respondents is that the petitioner's service in the post of Record Clerk was regularised with effect from 27.07.2006 F.N. The petitioner had passed SSLC examination during July 2007. As per the rules in existence, a Record Clerk who had passed SSLC examination will be given promotion only if he had completed 7 years of experience as Record Clerk. According to the respondents, a candidate with a pass in the SSLC examination alone was qualified for Junior Assistant. The petitioner, who was repatriated from Sri Lanka has failed in General Certificate of Education/Ordinary Level, which is equivalent to SSLC failed in Tamil Nadu. Therefore, the petitioner was not considered for the post of Junior Assistant.

13. I heard Mr.S.Thirumavalavan for M/s.A.Sivagami, learned counsel for the petitioner and Mr.R.Govindasamy, learned Special Government Pleader appearing for the respondents. Perused the materials on record.

14. Earlier when the petitioner was dismissed from service on the ground that by producing a bogus certificate the petitioner had secured the job, the petitioner approached the Tamil Nadu Administrative Tribunal and filed O.A.No.1843 of 1993 seeking to set aside the dismissal order. By an order dated 12.05.2004, the Tribunal held as under:

"14. Therefore under such circumstances the order of dismissal is set aside, respondents are directed to reinstate the applicant but in the reduced rank of Office Assistant or Record Clerk. This reversion is ordered as punishment for the proved charges and the applicant also is denied back wages for the period of unemployment. If the applicant has subsequently passed SSLC examination, it is open to the Government to consider him for appointing him against as Junior Assistant. No recovery shall be made of salary already given to him while he was working as Junior Assistant. The application is allowed to the extent that order of dismissal is set aside and ordered in these terms."

15. In its order, the Tribunal held that "even though it cannot be stated that the applicant has fraudulently secured appointment, he has suppressed the fact that he has not passed the General examination. To this extent, the applicant must be held responsible for production of bogus certificate".

16. The Tribunal, in its order further held that "if the applicant has subsequently passed SSLC examination, it is open to the Government to consider him for appointing him again as Junior Assistant".

17. Subsequent to the order passed by the Tribunal dated 12.05.2004, the petitioner appeared for the SSLC examination in Tamil Nadu in September 2006 as private candidate and passed four subjects out of five and during July 2007, the petitioner had completed the remaining one subject and intimated the department by way of representation dated 05.12.2007, wherein he had stated that as per G.O.Ms.No.996 P & AR Department dated 22.09.1984, his service was regularised and he had also completed the Bhavanisagar Training between 06.02.1990 and 06.04.1990.

18. According to the respondents, as per the existing rules a Record Clerk who has passed SSLC examination will be given promotion only if he has completed 7 years of experience as Record Clerk. The District Educational Officer, Pollachi has stated that the name of the petitioner for promotion to the post of Junior Assistant will be considered as per the seniority. The appeal preferred by the petitioner was rejected by the second respondent holding as under:

"As per the existing rules the person who was working in the lower post has to complete 7 years for the purpose of getting promotion to the post of Junior Assistant. So far as the petitioner's service is concerned, he was regularised with effect from 27.7.2006 and therefore, the petitioner is in back of 7 years experience and as such his name could not be considered for the post of Junior Assistant."

19. At this juncture, it is pertinent to point out that while allowing O.A.No.1843 of 1993 filed by the petitioner, the Tribunal observed that "if the applicant (petitioner herein) has subsequently, passed SSLC examination, it is open to the Government to consider him for appointing him against as Junior Assistant", which shows that subsequent to the order of the Tribunal, if the petitioner completes his SSLC examination, he should be considered for appointment again as Junior Assistant.

20. Admittedly, the Tribunal has not fixed any time period for passing of the SSLC examination. As stated supra, the order of the Tribunal is dated 12.05.2004 and the petitioner has completed his SSLC examination during July 2007. The said factum of appearing and passing of the SSLC examination by the petitioner were not disputed by the respondent authorities.

21. The only contention of the respondents is that as per the existing rules, the petitioner should complete 7 years of service in the lower post for getting promotion to the post of Junior Assistant. Admittedly, the respondent authorities have not specifically stated the provision which mandates that the petitioner should complete 7 years of service for getting promotion to the post of Junior Assistant.

22. As stated supra, the petitioner has not claimed promotion to the post of Junior Assistant. On the other hand, the petitioner claimed that he should be appointed as Junior Assistant after completion of his SSLC examination as per the orders of the Tribunal.

23. It is pertinent to point out that as against the order of the Tribunal in O.A.No.1843 of 1993, the respondent authorities have not filed any writ petition or appeal. Thus, the order of the Tribunal has become final. As stated supra, as per the order of the Tribunal, the petitioner should be considered for appointment again as Junior Assistant. But the respondent authorities have failed to obey the order of the Tribunal, which is a Judicial Tribunal. Further, the respondent authorities have failed to show under what provisions of law/rules, the petitioner should complete 7 years of experience in the lower post for getting promotion to the post of Junior Assistant.

24. As stated supra, in the special circumstances only the Tribunal had issued positive direction to the Government i.e., the respondent authorities in O.A.No.1843 of 1993 to consider the case of the petitioner for appointing him again as Junior Assistant. Therefore, the question of requiring 7 years experience in the lower post does not arise in the special facts and circumstances of the present case.

25. It is pertinent to note that at the time of filing the writ petition, the petitioner was aged 54 years and now he would have been retired from service. Therefore, the respondent authorities are directed to give paper promotion to the petitioner in July 2007 and fix his pay in the cadre of Junior Assistant for purpose of retirement benefits.

26. In the result:

(a) this writ petition is allowed and the order of the third respondent made in O.Mu.No.102288/A4/E1/2008 dated 26.02.2009 is quashed;

(b) the respondent authorities are directed to appoint the petitioner to the post of Junior Assistant in July 2007 and fix the pay for the purpose of retirement benefits, if he is entitled. No costs. Consequently, M.P.No.2 of 2009 is closed.

-s/d-

Assistant Registrar(CS-II)

True Copy

Sub-Assistant Registrar

vs

To

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

2.The Joint Director of School Education,
College Road, Chennai - 600 006.

3.The District Educational Officer,
Pollachi, Coimbatore District.

+1 CC to M/s.A.Sivagami, Advocate sr 52381.

+1 CC to Govt. Pleader sr 52524.

W.P.No.22679 of 2009

SP(08/05/2018)



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