

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23-08-2017

CORAM:

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

W.P.No.6862 of 2015

And

M.P.No.1 of 2015

H.Sivakumar

.. Petitioner

vs.

1.The Director,
Directorate of Employment and Training,
Thiru Vi Ka Industrial Estate,
Guindy,
Chennai-600 032.

2.The Assistant Director,
Department of Employment and Training,
Professional and Executive Employment
Branch Office,
Government I.T.I. Campus,
K.Pudur,
Madurai-625 007.

3.The Assistant Director,
District Employment and Training Office,
Uthagamandalam.

4.The Member Secretary,
Teachers Recruitment Board,
College Road,
Chennai-6.

.. Respondents

This Writ Petition is filed under Article 226 of the Constitution of India, praying for the issue of a Writ of Mandamus, directing the fourth respondent to take the petitioner's employment seniority as 8.8.1996 the date on which it is registered with the second respondent instead of

20.12.2006 for direct recruitment to the post of Computer Instructors as per the Notification No.7/2014 published on 13.10.2014.

For Petitioner : Ms.R.Gouri
 For Respondents : Mr.K.Venkataramani,
 Additional Advocate General-VII
 Assisted by Mr.K.Dhananjayan,
 Special Government Pleader.

ORDER

The relief sought for in this writ petition is for a direction to direct the fourth respondent to take the petitioner's employment seniority as 8.8.1996, the date on which it is registered with the second respondent, instead of 20.12.2006 for direct recruitment to the post of Computer Instructors as per the Notification No.7/2014 published on 13.10.2014.

2. The learned counsel, appearing on behalf of the writ petitioner, states that the writ petitioner has completed B.Sc., in Computer Science and M.Sc., in Computer Science along with B.Ed., in Computer Science. Further, the writ petitioner has completed M.Phil in the very same subject of Computer Science.

3. Accordingly, the writ petitioner is eligible for appointment to the post of Computer Teacher in the Tamil Nadu Higher Secondary Education Service. The writ petitioner has registered his B.Sc., degree

qualification with the District Employment and Training Office on 11.1.1995 and registered M.Sc., qualification before the Professional and Executive Employment Office under the Department of Employment and Training at Chennai on 11.9.1995. The writ petitioner had completed his B.Ed., Course in April 1996. The writ petitioner registered the B.Ed., qualification in the Professional and Executive Employment Office under the Department of Employment and Training at Chennai, on 8.8.1996. Accordingly, the registration of the writ petitioner in respect of his qualification of M.Sc., Computer Science and B.Ed., Computer Science are done with the Professional and Executive Employment Office under the Department of Directorate of Employment and Training at Chennai.

4. The Government issued a notification for recruitment to the post of Computer Instructors in Notification No.7/2014 on 13.10.2014. As per the Notification, totally 652 posts of Computer Instructors were notified and paragraph-9 speaks about the mode of selection as follows:-

"9. Mode of Selection: Selection will be made based on State Level Employment Registration seniority as recommended by the Directorate of Employment and Training followed by communal reservation."

5. Paragraph-10 of the said Notification speaks about general instructions as follows:-

"10. General Instructions: The list of candidates in the ratio 1:5 sponsored by Employment Department for above mentioned post will be published by the Employment Department. It is the responsibility of the candidate to verify the seniority cutoff date and their eligibility for the post with Directorate of Employment and Training."

6. The learned counsel appearing for the writ petitioner contends that the name of the writ petitioner was sponsored and he was directed to appear for interview and certificate verification. The writ petitioner appeared for certificate verification and all his original certificates were verified. However, the writ petitioner was not selected on the ground that B.Ed., qualification was registered with the District Employment Exchange only on 20.12.2006. Thus, the respondents have not considered the name of the writ petitioner for appointment to the post of Computer Instructor as per the recruitment notification.

7. The learned counsel for the writ petitioner states that the initial registration of B.Ed., degree was registered with the Professional and Executive Employment Office under the Department of Employment and Training at Chennai was done by the writ petitioner in 8.8.1996 itself and for recruitment to the post of Computer Instructors, the respondents have sponsored the name based on the Statewide Employment Exchange

registration and therefore, the respondents ought not to have considered the subsequent registration made by the writ petitioner in the District Employment and Training Office, Uthagamandalam.

8. In order to get opportunity, if any appointment is made within the District, the very object of registering the qualification both before the State Employment Exchange and the District Employment Exchange, is that certain posts are notified for Statewide selection and some other posts are notified for District-wide selection.

9. The candidates aspiring for employment may get opportunity both at State level and at District level. Such being the facility provided by the State for the candidates aspiring for employment, the same cannot be denied and further the writ petitioner had registered his B.Ed., qualification initially before the Professional and Executive Employment Office under the Department of Employment and Training at Chennai on 8.8.1996 and subsequently registered before the District Employment and Training Office, Uthagamandalam on 20.12.2006.

10. Such being the fact of the case and the name of the writ petitioner was already sponsored by the Employment Exchange and he being participated in the certificate verification process, the Employment Exchange Registration actually done before the Professional and Executive

Employment Office under the Department of Employment and Training at Chennai on 8.8.1996 alone was to be considered for the purpose of ascertaining the seniority and for appointment. This being the factum of the case, the respondents have erroneously rejected the candidature of the writ petitioner on the ground that the registration of B.Ed., degree was done with the District Employment Training Office, Uthagamandalam only on 20.12.2006.

11. The learned Additional Advocate General Mr.K.Venkataramani, appearing on behalf of the respondents, opposed the contentions of the learned counsel appearing for the petitioner, by stating that the Minutes of the Board Meeting held on 27.11.2014 at 11.30 a.m., under the Chairmanship of Shri Vibhu Nayar, IAS, at Teachers Recruitment Board, passed certain Resolutions as under:-

"Discussions were held in the meeting regarding the publishing of Employment Seniority List sponsored by the Director of Employment and Training for Computer Instructors Recruitment. The following are the decisions taken in the meeting -

1. The entire list sponsored to TRB by the Employment and Training will be published by the Director of Employment and Training in their website on 29.11.2014. Candidates will be given time upto 12th December 2014 for any corrections in the data.

2. It was agreed along with the Director of Employment and Training to exclude the Visually Impaired (Blind) and Hearing Impaired (Deaf and Dump) candidates from the list and provide a fresh list by 29.11.2014.

3. Tamil Medium candidates will be included in the list, if possible before publishing the list in their website by DET. Anyway Tamil Medium candidates will be invited to apply to make corrections in the data base between 1st to 12th December 2014.

4. Fresh list after corrections/inclusions will be handed over to TRB by the Employment Directorate on or before 17.12.2014.

5. The first phase of CV is scheduled from 24th to 27th December 2014. The second phase of CV is scheduled from 29th to 31st December 2014. Sufficient staff from Employment and Training Directorate will be deputed to the CV Centres for answering/rectifying any queries raised by candidates/CV Board Members."

12. This apart, the Teachers Recruitment Board has circulated an information to the candidates sponsored by District Employment Exchange and as per the instructions, the candidates are advised to check their details given therein. Any sponsored candidates who need corrections, including date of registration etc., in the details published by the Employment Department, are instructed to approach the Director of

Employment Exchange, Chennai-32 on or before 12.12.2014 for making necessary corrections.

13. Thus it is the responsibility of the writ petitioner to verify the employment registration details with the authorities concerned and make necessary corrections, if required. But the writ petitioner has not taken any such efforts. Thus the prayer sought for in this writ petition, cannot be considered.

14. Further, the learned Additional Advocate General emphasised that the Teachers Recruitment Board cannot be held responsible in view of the fact that they have received the list of names from the State Employment Exchange and accordingly, they have proceeded with the process of selection. Thus, the fourth respondent cannot be held responsible for not selecting the writ petitioner in the post of Computer Instructor.

15. Controverting the contentions raised in this regard, the learned counsel for the writ petitioner stated that the writ petitioner made repeated representations on 23.12.2014, 2.3.2015 and on 2.3.2015 respectively. The representations were submitted to the first respondent as well as to the fourth respondent. Thus, the writ petitioner was very much vigilant with regard to his employment seniority and repeated

representations were sent to the authorities concerned. However, those representations were not considered in time and ultimately, his candidature was rejected on the ground that the registration of B.Ed., degree employment seniority in the District Employment Exchange as it was done only of the year 2006. Thus, no order has been passed to that effect. The learned counsel for the petitioner submits that the appointments are made based on the list sponsored by the State Employment Exchange.

16. Considering the rival contentions raised both by the learned counsel for the petitioner as well as the learned Additional Advocate General, appearing on behalf of the respondents, this Court is of the view that the admitted facts are that the writ petitioner has completed M.Sc., B.Ed., in Computer Science and fully qualified for appointment to the post of Computer Instructor.

17. It is further admitted that B.Sc., degree was registered with the State Employment Exchange Office on 11.1.1995 and M.Sc., qualification was registered on 11.9.1995. Further, the B.Ed., qualification was registered on 8.8.1996. All these three registrations are done with the Professional and Executive Employment Office under the Department of Employment and Training at Chennai, by the writ petitioner. In addition, the writ petitioner has further registered his qualification of

B.Ed., with the District Employment and Training Office on 20.12.2006. Thus, these facts relating to the registration are not disputed by either of the parties.

18. Now the question to be considered is that whether the respondents have followed the Statewide seniority list or District-wide seniority list, for the purpose of sponsoring the candidates.

19. In this regard, it is relevant to note the Notification issued by the fourth respondent on 13.10.2014 which states that "selection will be based on State Level Employment Registration seniority as recommended by the Directorate of Employment and Training followed by communal reservation".

20. It is made clear that the selection and appointment to the post of Computer Instructor will be made only based on the State Level Employment Registration seniority as recommended by the Directorate of Employment and Training followed by communal reservation. This fact is also not disputed by the learned Additional Advocate General and this apart, the respondents are bound by their Notifications and the conditions stipulated in the Notification and published to the candidates.

21. The counter filed by the fourth respondent also

enumerates that "The District Employment Exchanges sponsored the names of eligible candidates on the basis of Employment Registration Seniority to the Directorate of Employment and Training, Chennai-32, i.e., the first respondent herein who in turn arrived at the State Level Employment Registration Seniority of the candidates and then sponsored the list of the candidates to the fourth respondent-Board. Therefore, the fourth respondent has taken a stand that the fourth respondent is not responsible for the rejection of the writ petitioner and they have acted upon the list sponsored by the first respondent. Accordingly, the name of the writ petitioner was considered and the fourth respondent has not committed any irregularity.

22. The first respondent also filed a counter on 3.11.2015 and it is stated by the first respondent that the petitioner has registered his B.Ed., certificate at Professional Executive Employment Office, Chennai on 8.8.1996 and thereafter transferred to Professional Executive Employment Office at Madurai on opening an Office for Professional Degree Holders at Madurai. But the writ petitioner has registered his B.Ed., certificate at District Employment Office at Uthagamandalam on 20.12.2006.

23. The first respondent had proceeded under the pretext that the B.Ed., qualification was registered only on 20.12.2006. However, in paragraph-5, it is admitted in the counter that the qualification of B.Ed.,

by the writ petitioner was initially registered before the Professional Executive Employment Office at Chennai on 8.8.1996 and subsequently transferred on opening of a new Professional State Level Employment Exchange at Madurai. Thus, the registration of the writ petitioner in respect of B.Ed., degree has not been disputed by the first respondent.

24. The learned Additional Advocate General, at this juncture, referred the counter filed by the first respondent, stating that the registrants have to register their academic and B.Ed., qualifications at the local Employment Exchange and their Post Graduate qualification at Professional Executive Employment Office at Chennai or at Madurai according to their residential jurisdiction. Only for Chennai District registrants UG with B.Ed., qualification is registered at the Professional Executive Employment Office, Chennai. Thus, the said stand of the first respondent is accepted and the question to the first respondent would be that on what basis the registration of B.Ed., degree in respect of the writ petitioner was done on 8.8.1996. When the first respondent has registered B.Ed., degree of the writ petitioner at Professional Executive Employment Office, Chennai on 8.8.1996, now they cannot come and say that only Post Graduate Degree seniority alone to be Statewide Employment Exchange and B.Sc., Degree only in the District Employment Exchange. Therefore, the contention raised in this regard by the learned Additional Advocate General deserves to be rejected.

25. The learned Additional Advocate General urged this Court by stating that it is for the candidates to be vigilant in these matters while participating in the selection process in spite of the instructions issued. In this regard, the writ petitioner has not pursued the matter in accordance with the instructions. This Court is unable to agree with the contentions raised in this regard, since the writ petitioner having registered all qualifications with the State Employment Exchange prior to the year 1996 and waited for his employment opportunity, now the respondents cannot say that his B.Ed., qualification was registered with the District Employment Training Office only in the year 2006.

26. It is also equally true that all the candidates are informed about the instructions furnished to them along with the Application Form. It is hardly in doubt that all the candidates are bound by the instructions furnished to them and no candidate can be allowed to turn around and point an accusing finger towards one or the other of such instructions. Is every infraction liable to be viewed very seriously is the question which this Court needs to answer.

27. When Articles 14 and 16 of the Constitution of India hold out a great promise in the form of fundamental rights to the citizens of this country, minor and non-substantial infractions indulged in by the candidates should not be considered or treated to have come in the way

as an impediment for exercise of such fundamental rights. Insignificant or minor lapses that have occasioned, while filling up the application forms should not result in frustrating the very fundamental right altogether.

28. In this regard, the Hon'ble Supreme Court in the case of **Dolly Chhanda vs. Chairman, Jee and Others [(2005) 9 SCC 779]**, in paragraph-8, held as follows:-

"8. This principle was explained and applied in Charles K. Skaria & Ors. v. Dr. C. Mathew & Ors. 1980 (2) SCC 752. The controversy here related to admission to a post graduate course in medicine. The relevant rule provided for addition of 10% marks if a candidate possessed a diploma in the relevant subject or sub-specialty and this benefit could be given only if the candidate's success in the diploma course was brought to the knowledge of the Selection Committee before completion of selection in an authentic or acceptable manner. The Prospectus provided that the attested copies of statement of marks and other documents should be attached with every application. Three such candidates were given admission who had not attached the certificate of having passed the diploma along with their applications. Their admission to post graduate course was set aside by the High Court on the ground that their applications, wherein they

claimed the benefit of diploma, were liable to be rejected as the requisite certificates had not been attached. This Court speaking through Krishna Iyer, J. reversed the judgment of the High Court and held that the admission to the candidates had rightly been given as they had in fact passed the diploma before the date fixed. The relevant parts of paras 20 and 24 of the judgment, where this principle was highlighted are being reproduced below :

"20. There is nothing unreasonable or arbitrary in adding 10 marks for holders of a diploma. But to earn these extra 10 marks, the diploma must be obtained at least on or before the last date for application, not later. Proof of having obtained a diploma is different from the factum of having got it. Has the candidate, in fact, secured a diploma before the final date of application for admission to the degree course ? That is the primary question. It is prudent to produce evidence of the diploma along with the application, but that is secondary. Relaxation of the date on the first is illegal, not so on the second. Academic excellence, through a diploma for which extra mark is granted, cannot be denuded because proof is produced only later, yet before the date of actual selection. The emphasis is on the diploma; the proof thereof subserves the factum of possession of the diploma and is not an independent factor.....Mode of proof is

geared to the goal of the qualification in question. It is subversive of sound interpretation and realistic decoding of the prescription to telescope the two and make both mandatory in point of time. What is essential is the possession of a diploma before the given date; what is ancillary is the safe mode of proof of the qualification. To confuse between a fact and its proof is blurred perspicacity. To make mandatory the date of acquiring the additional qualification before the last date for application makes sense. But if it is unshakeably shown that the qualification has been acquired before the relevant date, as is the case here, to invalidate this merit factor because proof, though indubitable, was adduced a few days later but before the selection or in a manner not mentioned in the prospectus, but still above-board, is to make procedure not the handmaid but the mistress and form not as subservient to substance but as superior to the essence.

24. It is notorious that this formalistic, ritualistic, approach is unrealistic and is unwittingly traumatic, unjust and subversive of the purpose of the exercise. This way of viewing problems dehumanizes the administrative, judicial and even legislative processes in the wider perspective of law for man and not man for law. Much of hardship and harassment in administration flows from

over-emphasis on the external rather than the essential. We think the government and the selection committee rightly treated as directory (not mandatory) the mode of proving the holding of diplomas and as mandatory the actual possession of the diploma. In actual life, we know how exasperatingly dilatory it is to get copies of degrees, decrees and deeds, not to speak of other authenticated documents like mark-lists from universities, why, even bail orders from courts and government orders from public offices." (emphasis in original)".

29. In the case on hand, the facts are not in dispute in relation to the registration of the qualifications by the writ petitioner with the State Level Employment Exchange. Further, it is unambiguously stated in the original Notification/Advertisement dated 13.10.2014 that the selection will be made based on the State Level Employment Registration Seniority. Thus, it is for the respondents to follow the State Level Seniority alone and even if it is the mistake committed by the respondents 1 to 3 and the same should not be held against the writ petitioner. In other words, for the mistake committed by the respondents in not considering the Statewide Registration Seniority of the writ petitioner, the opportunity of the writ petitioner cannot be curtailed nor the writ petitioner can be penalised in this regard. The writ petitioner is already aged and the opportunity at this chance will be vital and the

probability of getting further opportunity is least.

30. In result, the respondents are directed to consider the Statewide seniority of the writ petitioner as 8.8.1996 in respect of his B.Ed., qualification and accordingly select and appoint the writ petitioner, if he is otherwise qualified in accord with the Service Rules. The writ petitioner shall be appointed to any one of the available vacant post or in the next arising vacancy with prospective service benefits and, the said exercise shall be carried out by the respondents, within a period of eight weeks from the date of receipt of a copy of this order.

31. The writ petition stands allowed. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

23-08-2017

Speaking Order/Non-Speaking Order.
Index : Yes/No.
Internet : Yes/No.
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To

1.The Director,
Directorate of Employment and Training,
Thiru Vi Ka Industrial Estate,
Guindy,
Chennai-600 032.

2.The Assistant Director,
Department of Employment and Training,
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