

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.08.2017

CORAM:

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

W.P.No.22725 of 2013

B.Niksan Paulraj

.. Petitioner

Vs.

1. The Chief Educational Officer
Nagapattinam.
2. The District Educational Officer
Mayiladuthurai
Nagapattinam District.
3. The Secretary
Muthusamy Viswanathan High School
Madhiri Velur - 609 102
Sirgazhi Taluk
Nagapattinam District.

.. Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India for the issuance of ~~issuance~~ of a writ of Certiorarified Mandamus to call for the records pertaining to the order passed by the third respondent in his proceedings Na.Ka.No.Nil. MuViuoo/2012, dated 30.7.2012 insofar as modifying the appointment order of the petitioner dated 15.4.2008 is concerned and the consequential order of approval passed by the second respondent in his proceedings Mu.Mu.No.4895/Aa2/2012, dated 13.8.2012 insofar as approving the appointment of the petitioner from 30.7.2012 with condition to pass the Teachers Eligibility Test within five years are concerned, and quash the same and to direct the respondents to approve the appointment of the petitioner as B.T. Assistant (Science) from the date of appointment, viz., 15.4.2008, and confer all the consequential benefits.

For Petitioner : Mr.T.Sellapandian
for M/s.C.S.Associates

For Respondents: Mr.R.Govindasamy
Spl. Government Pleader
for respondents 1 and 2

Mr.S.Srinivasan
for 3rd respondent

ORDER

The petitioner has filed this writ petition seeking issuance of a writ of Certiorarified Mandamus to call for the records pertaining to the order passed by the third respondent in his proceedings Na.Ka.No.Nil. MuViuoo/2012, dated 30.7.2012 insofar as modifying the appointment order of the petitioner dated 15.4.2008 is concerned and the consequential order of approval passed by the second respondent in his proceedings Mu.Mu.No.4895/Aa2/2012, dated 13.8.2012 insofar as approving the appointment of the petitioner from 30.7.2012 with condition to pass the Teachers Eligibility Test within five years are concerned, and quash the same and to direct the respondents to approve the appointment of the petitioner as B.T. Assistant (Science) from the date of appointment, viz., 15.4.2008, and confer all the consequential benefits.

2. According to the petitioner, his name was sponsored by employment exchange and pursuant to the interview conducted by the third respondent management, he was selected and appointed as B.T. Assistant (Science) on 15.4.2008. Challenging the said appointment one P.Balakrishnan, who was working in the third respondent school, filed W.P.No.9251 of 2008 on the ground that he is entitled to promotion under Rule 15(4) of the Tamil Nadu Recognised Private Schools (Regulation) Rules. The said writ petition was disposed of by this Court and consequent to the same, P.Balakrishnan was given promotion from 21.11.2011 and the same was also approved by the department.

3. It is stated that pursuant to the same the third respondent passed order on 30.7.2012 modifying the appointment order of the petitioner, as if the petitioner was appointed on 30.7.2012 and the said proposal was approved by order dated 13.8.2012 on condition that the petitioner should pass the Teachers' Eligibility Test within five years.

4. Assailing the said orders, the petitioner has filed the present writ petition.

5. The learned counsel appearing on behalf of the petitioner vehemently contended that while the petitioner was appointed on 15.4.2008 and was in continuous employment since then, based on the promotion granted to one P.Balakrishnan during November, 2011 based on the order passed in the writ petition filed by the said individual, the appointment order of the petitioner cannot be modified to the year 2012 and the same is illegal and arbitrary.

6. The learned counsel appearing on behalf of the third respondent management seriously disputed the contention of the petitioner that he was in continuous employment since the date of initial appointment. He added that there was break in service prior to his appointment in the year 2012 and therefore the claim of the petitioner for salary for the said period is untenable.

7. The learned Special Government Pleader appearing on behalf of respondents 1 and 2 contended that the appointment of the petitioner on 15.4.2008 was not valid, such appointment being not in compliance of the procedure contemplated under law and, therefore, the same was rejected, returned and not approved by the first respondent.

8. Heard the learned counsel on either side and perused the documents available on record.

9. The fact that the petitioner was appointed on 30.7.2012 and the said proposal was approved by order dated 13.8.2012 on condition that the petitioner should pass the Teachers' Eligibility Test within five years is not disputed.

10. A Division Bench of this Court in an order dated 24.01.2017 passed in W.A.No.1126 of 2015, batch cases, (State of Tamil Nadu v. Arivazhagan and others), to which I was a party, held as follows:

42. Accordingly, to meet the ends of justice, the writ appeals and the writ petitions are disposed with the following directions:

(i) The Teachers herein, who have been appointed subsequent to the issuance of the Government Order, are granted one opportunity to appear for the Teacher Eligibility Test to be conducted by the Teachers Recruitment Board and in the event of

their passing in the Teacher Eligibility Test, their appointments shall be approved else, they have no other opinion but to quit the service/ousted from service;

(ii) Till the results are published, the Government shall pay the salary to the Teachers, who are in service of the aided institutions, for the services rendered by them and in the cases where salary was not paid the same shall be paid along with arrears, if any, forthwith;

(iii) Learned Advocate General submitted that salary has been paid to most of the Teachers and only a few were not paid, for want of particulars. In such a case, the Teachers whose salary have not been paid for want of particulars, they shall furnish the requisite particulars immediately, so to enable the Government pay the salary immediately;

(iv) Insofar as W.P.No.7593 of 2015 is concerned, though the writ petitioner has qualified with a pass in Teacher Eligibility Test during 2013, she has not been paid the difference of salary from the date of appointment, till the date of passing of the Teacher Eligibility Test. In view of the discussions aforesaid, the Government is directed to pay the difference of salary within a period of four weeks from the date of receipt of a copy of this order; and

(v) The Teachers Recruitment Board is directed to take note of the above observations and to issue notification for conducting Teacher Eligibility Test on or before the end of February 2017, indicating the date of exam to be either in the last week of March 2017 or in the first week of April 2017."

11. The learned counsel for the writ petitioner as well as learned counsel appearing on behalf of the respondents brought to the notice of this Court that the Government had passed orders extending time to possess the requisite qualification of pass in Teachers' Eligibility Test. Accordingly, every Teacher appointed has to pass the Teachers' Eligibility Test before 31.03.2019.

12. Therefore, it is made clear that the petitioner should possess the qualification of Teachers' Eligibility Test before the cut off date fixed by the Government. If the petitioner is not in a position to pass the test, then the respondents are at liberty to take all further action after the expiry of the time limit, fixed by the Government for passing the Teachers Eligibility Test.

13. In the result, the writ petition is allowed to the extent that the petitioner is granted time till 31.3.2019 for getting qualified in the Teachers' Eligibility Test. The respondent authorities are directed to permit the petitioner to appear in the Teachers' Eligibility Test to be conducted by the Teachers Recruitment Board. No costs. Consequently, M.P.No.1 of 2015 and 2 of 2013 are closed.

Sd/-

Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

vs

To

1. The Chief Educational Officer,
Nagapattinam.
2. The District Educational Officer,
Mayiladuthurai,
Nagapattinam District.

+1cc to Mr.S.Srinivasan, Advocate Sr.57398
+1cc to M/S.C.S. Associates, Advocate Sr.57699
+1cc to the Government Pleader Sr.57898

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srg 9/10/2018