

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 07.09.2017

DELIVERED ON : 27.11.2017

CORAM:

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

Writ Petition No.34004 of 2012

H.S.Suresh Kumar

.. Petitioner

Vs.

1.State of Tamil Nadu represented
by its Secretary to Government,
School Education Department,
Secretariat, Chennai - 600 009.

2.The Director of School Education,
DPI Complex,
College Road, Chennai - 600 009.

3.The Joint Director of School Education,
(Vocational), DPI Complex,
College Road, Chennai - 600 009.

4.The Correspondent,
Scott Christian Higher Secondary School,
Joshuva Street, Nagercoil,
Kanyakumari.

.. Respondents

(R4-Impleaded as per order
dated 15/6/17 by this Court in
WMP.18919/2016 in WP.34004/2012)

PRAYER: Petition under Article 226 of the Constitution of India to issue a writ of certiorarified mandamus calling for the records relating to Na.Ka. No.1994/B3/E3/2009, dated 02.12.2009 and quash the same and consequently direct the respondents to regularize the services of the petitioner in the post of Vocational Instructor (Computer Science) on par with his juniors as per G.O.Ms.No.35, School Education Department, dated 09.02.2007 with consequential attendant benefits with the time frame to be fixed by this Honourable Court.

For Petitioner : Mr.G.Sankaran

For Respondents : Mr.R.Govindasamy (for R1 to R3)
Special Government Pleader
Mr.P.Godson Swaminath (for R4)

ORDER

The petitioner has filed this writ petition seeking issuance of a writ of certiorarified mandamus to call for the records relating to Na.Ka.No.1994/B3/E3/2009, dated 02.12.2009, to quash the same and to consequently direct the respondents to regularize the services of the petitioner in the post of Vocational Instructor (Computer Science) on a par with his juniors as per G.O.Ms.No.35, School Education Department, dated 09.02.2007, with consequential attendant benefits within a stipulated time.

2. Succinctly put, the facts of the case are as under: The petitioner claims to be fully qualified for appointment to the post of Vocational Instructor Grade-I and he was accordingly, appointed in the fourth respondent school vide order of appointment dated 02.06.1999, of course, with effect from 01.07.1998.

3. It is case of the petitioner that in the fourth respondent school, vocational group in the subject of Computer Science was sanctioned as per the order of the Chief Educational Officer, Kanniyakumari, dated 18.01.1986, on condition that no post would be sanctioned and accordingly, group approval was sanctioned without sanctioning the post.

4. It is stated that in respect of Government Schools, Part-time Vocational Instructors have been appointed for taking classes for Vocational Groups in Higher Secondary Sections and based on the orders passed by the Tamil Nadu Administrative Tribunal, the Government issued orders in G.O.Ms.No.834, School Education Department, dated 23.09.1994, for regularization of services of both single and double Part-time Vocational Instructors working in Government Schools. However, in respect of Government Aided Schools, for conducting vocational courses, group approval order has been issued by the department on condition that no post would be sanctioned. As a sequence, it is stated that all private aided schools sanctioned with group approval for vocational courses like Computer Science, Electrical Machine Appliances and General Mechanism, etc., on condition that no post of Vocational post would be sanctioned, have appointed Vocational Instructors through Parents Teachers Association/Management Fund.

5. It is averred that, accordingly, in Government aided schools, the qualified Vocational Instructors were appointed in the approved groups without sanctioning of post, through Parents Teachers Association and they continued to work for several years. In the said circumstances, it is stated that the Government issued G.O.Ms.No.35, School Education Department,

dated 09.02.2007, by which the Vocational Instructors working in various schools without sanctioned post were directed to be brought into regular establishment with time scale of pay by accommodating them in the posts sanctioned from the common pool. It is stated that by virtue of the said Government Order, 201 temporary Vocational Instructors working in various schools have been brought into regular establishment based on seniority.

6. It is claimed that one Sundar, who is similarly placed Vocational Instructor of course in Typewriting, was regularized as per G.O.Ms.No.35, dated 09.02.2007, whereas the name of the petitioner was not considered for regularization as the same was not forwarded to the Chief Educational Officer by the fourth respondent on the misconception as to whether Computer Course is a vocational component or not. In support of his plea that Computer Science is declared as vocational component, he placed reliance on a decision of the Division Bench of this Court in Higher Secondary School Computer Teachers Association, rep. by its President v. Tamil Nadu Computer Science B. Ed. Graduate Teachers Welfare Society, rep. by its Treasurer, 2009 WLR 127.

7. In such circumstances, the petitioner made a representation seeking to regularize his services on a par with his juniors, whose services have been regularized as per G.O.Ms.No.35, dated 09.02.2007. However, it is alleged that the second respondent, by proceedings dated 02.12.2009, rejected the representation of the petitioner on the ground that the fourth respondent school was granted approval for vocational course in Computer Science only on condition that no post would be sanctioned and, therefore, the question of regularization of petitioner in the post of Vocational Instructor does not arise.

8. Assailing the said order, the present writ petition is filed for the relief stated *supra*.

9. It is the contention of the learned counsel for the petitioner that the ground for rejection of the representation of the petitioner on the ground that no post of Vocational Instructor would be sanctioned is not sustainable, as G.O.Ms.No.35, dated 09.02.2007, was specifically issued only to give solace to Vocational Instructors appointed without sanction of post in Private Aided Schools having group approval.

10. It is further contended that the services of similarly placed person, viz., S.Rajagopal, were regularized as Vocational Instructor in Computer Science in Anjugam Higher Secondary School, Chennai pursuant to G.O.Ms.No.35, dated 09.02.2007, even though in the group approval order of Anjugam Higher Secondary School, Chennai, also it was specifically stated that no new post would be sanctioned. Drawing analogy to the said

appointment, it is contended that the Vocational Instructors appointed through Parents Teachers Association in the groups approved by the department without sanction of the post were brought into regular establishment by dint of G.O.Ms.No.35, dated 09.02.2017 and therefore, the reason assigned in the proceedings impugned is unsustainable.

11. He further contended that non inclusion of the name of the petitioner in the list of Vocational Instructors enclosed in G.O.Ms.No.35, dated 09.02.2007 cannot be the reason to reject the claim of the petitioner as the non forwarding of his name was due to misconception in the mind of the fourth respondent as to whether Computer Course has a vocational component or not and the said factor cannot be put against the petitioner, who is otherwise qualified and eligible for regularization and had been in continuous service from 01.07.1998.

12. Per contra, the learned Special Government Pleader appearing on behalf of respondents 1 to 3 submitted that the petitioner's name does not find place in the list furnished by the Director of School Education and, therefore, his case was not considered and in any event, the fourth respondent school was not sanctioned with the post of Vocational Instructor in Computer Science and certain posts sanctioned were subject to the condition that there would be no allocation for the post of Computer Science and the petitioner was thus appointed in an unsanctioned post contrary to the orders in force and, therefore, the petitioner is not entitled to the benefit of G.O.Ms.No.35, dated 09.02.2007.

13. The learned counsel appearing on behalf of the fourth respondent school, without disputing the facts as pleaded by the petitioner, submits that the petitioner's name was not furnished to the Chief Educational Officer at the relevant time due to prevalent confusion as to whether Computer Instruction is a vocational component or not and by the time the said issue was settled by a decision of the Division Bench of this Court in Higher Secondary School Computer Teachers Association, supra, G.O.Ms.No.35, dated 09.02.2007 came to be passed. It is further submitted that the petitioner is entitled to get his appointment approved and salary released on a par with Vocational Instructors in G.O.Ms.No.35, dated 09.02.2007.

14. It is further contended that no sanction is requested but regularization of appointment is sought as has been done in the case of many other schools and it is pleaded that the petitioner should not be discriminated.

15. I heard Mr.G.Sankaran, learned counsel appearing for the petitioner, Mr.R.Govindasamy, learned Special Government

Pleader appearing for the respondents 1 to 3 and Mr.P.Godson Swaminath, learned counsel appearing for the 4th respondent and perused the documents on record.

16. It is not in dispute that the petitioner is fully qualified for appointment to the post of Vocational Instructor. It is also not disputed that the petitioner has been in continuous employment with the fourth respondent school from 01.07.1998.

17. It is also borne out by records that with regard to the regularization of a Vocational Instructor in Typewriting employed in the fourth respondent school, a proposal was sent by the fourth respondent and such appointment was regularized vide G.O.Ms.No.35, dated 09.02.2007.

18. Even at the time when such proposal for regularization of a Vocational Instructor in Typewriting was sent, the petitioner was in employment, however, his case was not forwarded for being considered for regularization as there was a misconception as to the vocational component in Computer Science. The said misconception was clarified vide the decision of a Division Bench of this Court in Higher Secondary School Computer Teachers Association, supra, wherein Division Bench of this Court upheld the policy of the Government to regularise the service of those Computer instructors as against the claim made by the computer science teachers, while observing that "The subject 'computer science' is a Vocational Component".

19. In the light of the law enunciated by a Division Bench of this Court in the decision cited supra, it is amply clear that the subject Computer Science is a Vocational Component and the said subject is also to be considered on a par with all other vocational subjects.

20. Coming to the plea of the petitioner that the services of one S.Rajagopal, Vocational Instructor in Computer Science in Anjugam Higher Secondary School, Chennai, have been regularized based on G.O.Ms.No.35, dated 09.02.2007, it would be appropriate to refer to the proceedings of the Chief Educational Officer, Education Department, Chennai, dated 28.09.2004 granting group approval in respect of Computer Science to the said school. Thereafter, the services of the said S.Rajagopal as Vocational Instructor in Computer Science were regularized in terms of G.O.Ms.No.35, dated 09.02.2007.

21. There is no whisper in the counter affidavit as to why regularization was granted in respect of S.Rajagopal and not in respect of the writ petitioner. The said factor shows that the impugned proceedings of the second respondent reeks of

arbitrariness and is discriminatory.

22. The petitioner has been in continuous employment from 01.07.1998 and a person who was working along with him was extended the benefit, of course in a different faculty, and another person working in another school in the same capacity was extended the benefits of G.O.Ms.No.35, dated 09.02.2007. Under such circumstances, this Court finds no justification in rejecting the request of the petitioner.

23. For the foregoing reasons, the writ petition is allowed and the impugned proceedings dated 02.12.2009 is set aside. The respondents 1 to 3 are directed to regularize the service of the petitioner in the post of Vocational Instructor (Computer Science) on a par with his juniors in terms of G.O.Ms.No.35, School Education Department, dated 09.02.2007, with all consequential attendant benefits. The said exercise shall be completed within a period of eight weeks from the date of receipt of a copy of this order. No costs.

Sd/-
Assistant Registrar (CS II)

//True copy//

Sub Assistant Registrar

vs

To

- 1.The Secretary,
Government of Tamilnadu,
School Education Department,
Secretariat, Chennai - 600 009.
- 2.The Director of School Education,
DPI Complex, College Road, Chennai - 600 009.
- 3.The Joint Director of School Education,
(Vocational), DPI Complex,
College Road, Chennai - 600 009.

+1cc to Mr.G.P.Godson Swaminath, Advocate SR.No.84114
+1cc to Mr.G.Sankaran, Advocate SR.No.84721
+1cc to Government Pleader SR.No.84733

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GN(17/01/2018)