

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.11.2017

CORAM

THE HON'BLE MR.JUSTICE HULUVADI G.RAMESH
AND
THE HON'BLE MR.JUSTICE RMT.TEEKAA RAMAN

W.A.Nos.1522 and 1523 of 2016
and
C.M.P.Nos.18941 to 18943 of 2016

W.A.No.1522 of 2016:

1. State of Tamil Nadu, rep.by its
Secretary to Government,
School Education Department,
Secretariat, Chennai-600 009.
2. The Director of Elementary Education,
College Road, Chennai-600 006.
3. The Director,
State Council for Education, Research and
Training, College Road,
Chennai-600 006.
4. The District Elementary Educational Officer,
Coonoor, The Nilgiris District.
5. The Assistant Elementary Educational Officer,
Kothagiri, The Nilgiris District.

... Appellants/Respondents

सत्यमेव जयते
-vs-

R.Veeramuthu

... Respondent/Petitioner

W.A.No.1523 of 2016:

1. State of Tamil Nadu, rep.by its
Secretary to Government,
School Education Department,
Secretariat, Chennai-600 009.
2. The Director of Elementary Education,
College Road, Chennai-600 006.

3. The Director,
State Council for Education, Research and
Training, College Road,
Chennai-600 006.
 4. The District Elementary Educational Officer,
Coonoor, Coimbatore District.
 5. The Assistant Elementary Educational Officer,
Kinathukadavu, Coimbatore District.
 6. Assistant Elementary Educational Officer, ''
Krishnagiri, Nilgiris District
- ... Appellants/Respondents

-vs-

A. Peter ... Respondent/Petitioner

Prayer in W.A.No.1522 & 1523 of 2016:-

W.A. filed under Clause 15 of the Letters Patent, to set aside the order passed by this Court in W.P.No.21630 of 2014 dated 16.04.2015.

W.A. filed under Clause 15 of the Letters Patent, to set aside the order passed by this Court in W.P.No.21631 of 2014 dated 16.04.2015.

Common Prayer in W.P.Nos.21630 & 21631 of 2014:-

Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified mandamus Calling for the records pertaining to the order passed by the 3rd respondent in his proceedings Na.Ka.No.5567/A3/2011 dated 23.07.2014 and quash the same and direct the respondents to evaluate the petitioner Teacher Training Course Certificate and confer all the consequential benefits

For Appellants :: Mr.K.Venkataramani, Addl. Advocate General
in both appeals assisted by
Mr.P.S.Sivashanmugasundaram, Spl.GP

For Respondent :: Mr.R.Singaravelan, Sr.Counsel for
in both appeals Mr.S.N.Ravichandran

COMMON JUDGMENT

(Judgment of the Court was delivered by
HULUVADI G.RAMESH, J.)

These writ appeals have been filed against the common order passed by a learned single Judge of this Court in W.P.Nos.21630 and 21631 of 2014 dated 16.04.2015.

2.The facts of the case would run thus:

The respondents herein have passed 10th standard in Kerala State during the year 1991 and 1998 respectively. The respondent in W.A.No.1522 of 2016-Veeramuthu, joined Teacher Training Course in 1992 in Kerala State and completed the Course in 1994 and the respondent in W.A.No.1523 of 2016-Peter, joined Teacher Training Course in 1989 in Kerala State and completed the Course in 1991. Thereafter, they were appointed as Secondary Grade Teachers in the year 1995 in The Nilgiris and Coimbatore Districts in Tamil Nadu, respectively. The services of Mr.Veeramuthu was terminated on 31.08.1998 and he challenged the order of termination by filing Original Application before the Tamil Nadu Administrative Tribunal in O.A.No.7484 of 1998 and the Tribunal granted an interim order staying the order of termination. The reason for termination was on the ground that he has not obtained 50% marks in the Teacher Training Course undergone by him in Kerala State. During the pendency of the said Original Application before the Tribunal, he appeared for improvement examination and secured more than 50% marks. Thereafter, O.A.No.7484 of 1998 was transferred to this Court and renumbered as W.P.No.35206 of 2006. During the pendency of the said writ petition, the Mr.Veeramuthu had passed Plus Two examination. The said writ petition was dismissed by this Court, by order dated 08.01.2010 pointing out that G.O.Ms.No.1236, Education Department, dated 17.9.1984 has been subsequently clarified in G.O.(1D) No.26, School Education Department, dated 21.02.2003 and by virtue of Clause 3 and 4 in paragraph 4 of the said G.O., his case could not be considered. In the light of the said finding, it was held that the validity of G.O.Ms.No.1236, Education Department, dated 17.9.1984 need not be gone into and accordingly, the writ petition was dismissed leaving it open to Mr.Veeramuthu to work out his rights in accordance with G.O.(1D) No.26, School Education Department, dated 21.02.2003, if already such benefit has not been extended.

3.Thereafter, the respondent in W.A.No.1522 of 2016 sought for evaluation of his Teacher Training Certificate issued by the Kerala State. This was rejected by the 3rd appellant by order dated 23.07.2014 and the said order was impugned in W.P.No.21630 of 2014. Though, initially the Mr.Veeramuthu's services was

terminated on the ground that he had not secured 50% marks, subsequently, he had appeared for improvement examination and had secured more than 50% marks. However, the order impugned in the writ petition does not reject his case or place him in a disadvantageous position on the ground that he has not secured 50% marks, but a new ground was mentioned, stating that he has not passed Plus Two examination and owing to such reason, his request for evaluation of his Teacher Training Certificate has been rejected. At the first instance, his request for evaluation was rejected in 1996 for the reason that he has not secured 50% marks in the Teacher Training Course, however in the proceedings impugned in the writ petition, a new reason has been assigned, stating that he has not passed Plus Two examination.

4. So far as the respondent in W.A.No.1523 of 2016 (A.Peter) is concerned, his services were terminated during May, 1996 as he did not secure 50% marks in Teacher Training Course in Kerala State. Aggrieved over the same, he moved this Court by filing W.P.No.16063 of 1996 and this Court while entertaining the writ petition granted an order of interim stay. Subsequently, he appeared for improvement examination and secured 50% marks. The said writ petition was disposed of by this Court by order dated 26.12.2002 directing the respondents therein to evaluate his certificate. Pursuant to the order passed by this Court, the order impugned in W.P.No.21631 of 2014 has been passed citing the very same reason that he did not pass Plus Two examination.

5. It was argued on behalf of the respondents herein before the writ Court that the reason assigned in the orders impugned in the writ petitions is wholly untenable and that the rejection of their request for evaluation could not have been done on the ground stated in the impugned orders. After hearing the learned counsel for the parties and on perusing the materials placed on record, the learned single Judge relied upon the decision of a Division Bench of this Court in W.A.No.1744 of 2005, decided on 25.04.2007 (O.M.Jessymol v. The Director of Teacher's Training Research Education and another) and allowed the writ petitions, holding that at that distant point of time, a new ground cannot be put against them to non-suit them and deny them their right to continue in employment and if the same is permitted, it would tantamount to be an unreasonable exercise on the part of the appellants. The learned single Judge also directed the third appellant to evaluate the respondents' Teacher Training Course certificates and pass orders on merits and in accordance with law within a period of two months from the date of receipt of a copy of the order and on receipt of such order from the 3rd appellant, the appellants 2, 4 and 5 in these writ appeals were directed to pass appropriate orders within a period of two months thereafter.

6. Challenging the order passed in the writ petitions, the

present appeals have been filed by the State.

7.The learned Additional Advocate General has submitted that the respondent in W.A.No.1522 of 2016 passed the S.S.L.C. examination in March 1991 and joined in the Diploma in Teacher Education in the academic year 1992-1993 and passed the Teacher Training Course in March 1994 and he has not acquired 50% of marks in all subjects and subsequently he improved the marks in the improvement examination in June 2002. After completing the Teacher Training Course in Kerala State, he has passed the Plus-Two examination in March 2003 and September 2009. Similarly the respondent in W.A.No.1523 of 2016 passed the S.S.L.C. examination in March 1988 and joined in the Diploma in Teacher Education in the academic year 1989-1991 and passed the Teacher Training Course in March 1992 and he has not acquired 50% of marks in all subjects and subsequently he improved the marks in the improvement examination in June 2002. After completing the Teacher Training Course in Kerala State, he has passed the Plus-Two examination in March 1994 and March 1995. They were admitted in the Teacher Training Course with 10th Standard qualification whereas a pass in Plus-Two is mandatory in Tamil Nadu for getting admission to Teacher Training Course and hence the Kerala State Teacher Training Course Certificate of the respondents could not be evaluated on par with that of Tamil Nadu State Diploma in Teacher Education Course. He further submitted that any appointment which is illegal or irregular in the first instance cannot be set right merely on the ground of their continuance in service. Stating so, he prayed for quashing the order passed by the learned single Judge.

8.The learned senior counsel appearing on behalf of the respondents has submitted that the learned single Judge has passed the order impugned in these appeals, after taking into consideration the relevant aspects and the factual matrix of the case and it is a well considered order and the same does not require any interference by this Court.

9.We have heard the learned Additional Advocate General appearing for the appellants and also the learned senior counsel for the respondents and perused the materials available on record carefully.

10.It is seen that the respondents were appointed in the year 1995 and have been working all along and receiving salary. The important ground which is raised is that the respondents have not secured 50% marks in the Teacher Training Course, which they have subsequently passed by writing improvement examination. With regard to the ground raised that they have not passed plus-two examination before joining Teachers Training Course in Kerala State, the same was rightly rejected by the

learned single Judge on the ground that a new ground cannot be put against them to non-suit them and deny them their right to continue in employment and if the same is permitted, it would tantamount to be an unreasonable exercise on the part of the Government. The said decision has been taken by the learned single Judge by relying upon the Division Bench judgment of this Court in W.A.No.1744 of 2005, which was decided on 25.04.2007 (O.M.Jessymol v. The Director of Teacher's Training Research Education and another), wherein the certificate of the appellant therein was not evaluated for the reason that he has not secured the minimum marks in the Teacher Training Course and not passed the Plus-Two examination.

11. In support of the contentions raised by the learned Additional Advocate General, he has referred to the Government Order passed in G.O.Ms.No.1236, Education (U) Department, dated 17.09.1984, wherein it is stated that (i) Teachers Training Certificate holders of Karnataka State should have passed their S.S.L.C. Examination in Tamil Medium with Tamil as first language or should have taken Tamil as first language in S.S.L.C., if they have studied in English Medium; (ii) Further, they should have obtained 50% of marks in aggregate in their S.S.L.C. as in the case of Teachers Training Certificate holders of Tamil Nadu; (iii) They should have obtained 50% of marks in each subject in their Teacher Training Certificate as in the case of Teacher Training Certificate holders of Tamil Nadu; (iv) If they had studied other than Tamil Medium in their S.S.L.C. as well as Teacher Training Certificate and satisfy the conditions (ii) and (iii), their certificates may be evaluated with a condition that they are eligible for appointment as Secondary Grade Teachers in Tamil Nadu only in schools where medium of instruction is other than Tamil.

12. Relying on the above G.O., the learned Additional Advocate General has contended that the benefits could not be extended to the respondents from the date of initial appointment, but only subsequent to their improvement being made, after passing the above G.O.

13. Having heard the submissions made on either side, this Court is of the considered view that even though the respondents passed the Teacher Training Course in March 1994 and March 1992 respectively, they have not acquired 50% marks as prescribed and only subsequently they improved the marks in the improvement examination in June 2002. They have been appointed as Secondary Grade Teachers in the year 1995. We have already held in the earlier paragraph that the respondents' right to continue in employment cannot be denied. In the stated circumstances, we are of the considered view that their appointment has to be considered right from the date of their joining to the said post

of Secondary Grade Teachers in the year 1995 for calculating pension and terminal benefits, but the consequential benefits will flow only from the date of acquisition of 50% marks in the Teacher Training Course.

14.The writ appeals are disposed of accordingly. Consequently the connected miscellaneous petitions are closed. No costs.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

KM

To

1. The Secretary to Government,
Government of Tamil Nadu,
School Education Department,
Secretariat, Chennai-600 009.
2. The Director of Elementary Education,
College Road, Chennai-600 006.
3. The Director,
State Council for Education, Research and
Training, College Road,
Chennai-600 006.
4. The District Elementary Educational Officer,
Coonoor, The Nilgiris District.
5. The Assistant Elementary Educational Officer,
Kothagiri, The Nilgiris District.
6. The Assistant Elementary Educational Officer,
Kinathukadavu, Coimbatore District.

+2ccs to Mr.S.N.Ravichandran, Advocate, S.R.No.78804
+1cc to the Special Government Pleader, S.R.No.79340

W.A.Nos.1522 and 1523 of 2016
and
C.M.P.Nos.18941 to 18943 of 2016

MR(CO)
CS/29/11/17