

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 13..12..2018

CORAM

THE HON'BLE MR.JUSTICE V.BHARATHIDASAN

Writ Petition No.33285 of 2014

and

M.P.No.1 of 2014

Tmt.S.Rita Mary

... Petitioner

-Versus-

1.The State of Tamil Nadu,
Rep. by the Principal Secretary to Government,
Education Department,
Secretariat, Chennai-9.

2.The Director of Elementary Education,
College Road, Chennai 600006.

3.The Director of Teacher Education Research and
Training,
College Road, Chennai 600006.

4.The Chief Educational Officer,
Coimbatore.

5.The District Elementary Educational Officer,
Coimbatore.

... Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus calling for the entire records connected with the order dated 19.11.2014 passed by the 1st respondent in letter No.37770/Tho.Ka.1(2)/2014-1 and to quash the same and for a consequential direction to the respondents to evaluate the Teacher Training Certificate of the petitioner and declare her probation with all consequential monetary benefits in the light of the order passed in W.A.No.1744 of 2005 dated 25.04.2007

For Petitioner

: Mr.S.N.Ravichandran

For Respondent(s)

: Mr.K.Karthikeyan,
Government Advocate
for R1 to R5

ORDER

Challenging the validity of the order dated 19.11.2014 passed by the 1st respondent in letter No.37770/Tho.Ka.1(2)/2014-1 refusing to evaluate the petitioner's qualification in Teacher Training obtained in Kerala State, she is before this court with the instant writ petition.

2. The case of the petitioner, in brief, is as follows: The petitioner hails from Palakat District in the State of Kerala. She had completed SSLC in Tamil Medium in the Government High School, MoOzhiparai in Kerala State. Thereafter, according to her, she had undergone two years Teacher Training Course at Government Teacher Training Institute, Chittur, Palakat. She had pursued the aforesaid course in Tamil Medium and she had completed the course in 1991. Thereafter, she moved to Tamil Nadu and settled down at Coimbatore. Earlier she was appointed to the post of Secondary Grade Teacher by the 5th respondent by order dated 26.07.1995 and she was posted at Panchayat Union Elementary School at Thevarsolai in The Nilgiris District. Thereafter, she was transferred and now she is working in Panchayat Union Middle School, Pachapalayam, Thondamathur Union in Coimbatore District. Earlier, the 3rd respondent had passed an order refusing to evaluate the petitioner's certificate in Teacher Training on the ground that as per the prescribed qualification, the petitioner should have been obtained 50% of marks in all the subjects in Diploma in Teacher Education and whereas the petitioner did not obtain 50% of marks in Tamil paper, therefore, her certificate cannot be evaluated. Challenging the above said order, the petitioner had filed an application in O.A.No.796 of 1998 before the Tamil Nadu State Administrative Tribunal, Chennai, challenging the order of the 3rd respondent dated Nil, May, 1996. On abolition of the Tribunal, the original application was transferred to this court and renumbered as W.P.No.33110 of 2006 and the same was pending. Pending writ petition, on request, the State of Kerala had granted her permission to take up improvement examination so as to safeguard her interest by considering her representation sympathetically. Thereafter, she made a representation on 23.09.2009 to the 1st respondent requesting to pass an order exempting or granting time till the academic year 2009-2010 for acquiring 50% mark in Tamil by taking up improvement examination. In the mean time, this court, by order dated 29.09.2009, disposed the writ petition without going into the merits of the claim of the petitioner and directed the 1st respondent to pass appropriate order on the representation of the petitioner dated 23.09.2009 and in the event she obtained 50% of marks in the improvement examination which was scheduled to be conducted in December, 2009 by the State of Kerala, the

same can also be taken as relevant factor while considering the request of the petitioner for evaluation.

3. It is the further case of the petitioner that thereafter she had written the examination and obtained 50% of mark and now, she has satisfied the requisite qualification. Afterwards, according to her, when she once again approached the 1st respondent to evaluate the certificate, the 1st respondent by way of impugned order rejected the request of the petitioner for evaluation on a different ground that the basic qualification for appointment as Secondary Grade Teacher is a pass in Higher Secondary Examinations and also Teacher Training and whereas the petitioner had only completed SSLC and she has not completed Higher Secondary Examinations and as such his certificate in Teacher Training cannot be evaluated. It is this order which is now under challenge in the instant writ petition.

4. The 3rd respondent has filed a detailed counter affidavit wherein, he inter alia contended that the Government of Tamil Nadu had prescribed certain norms in respect of evaluation of Secondary Grade Teacher Training Certificate from the other States in G.O.Ms.No.1236, School Education Department, dated 17.09.1984. As per the aforesaid GO, Teacher Training Certificate holders of other States should have passed their SSLC in Tamil Medium or should have taken Tamil as 1st Language, if they had studied in English medium, whereas the petitioner had not obtained 50% of marks in all subjects in the Teacher Training Course. After the introduction of Higher Secondary Education in Tamil Nadu, the Government have fixed the minimum Educational Qualification for admission in Diploma in Teacher Education Course as a pass in Higher Secondary Examination (+2) and the above requirement of a pass in +2 was made mandatory for other State candidates by order dated 22.12.1987 while evaluating the certificates obtained in Diploma in Teacher Education from other States. Since the petitioner had only passed SSLC in March, 1988 and joint Diploma in Teacher Education in the Academic year 1989-1991 and completed the course successfully in March, 1991, however, she did not obtain 50% of marks in all subjects. Subsequently, she had written improvement examination in December, 2009. After completing the Teacher Training Course in the Kerala State, the petitioner had passed +2 in March, 2010. Hence, the Kerala State Teacher Training Course Certificate of the petitioner could not be evaluated on par with that of the certificate obtained in Diploma in Teacher Education from Tamil Nadu.

5. The learned counsel appearing for the petitioner submitted that, earlier the respondents had taken a stand that the petitioner did not obtain 50% of marks in one subject and this court, earlier, by order 29.09.2009 in W.P.No.33110 of

2006 directed the respondents to taking into consideration the marks obtained by the petitioner in the improvement examination. Now, admittedly, the petitioner had obtained 50% of marks in the improvement examination. Now, the respondent has come out with a new ground that the petitioner had not completed +2 course. Even as per the qualification prescribed by the respondents, the minimum requisite qualification is only a pass in SSLC and there is no requirement for the petitioner to complete the Higher Secondary Examinations. Apart from that, the petitioner has completed +2 in March, 2010 and she was appointed as Secondary Grade Teacher in 1995. Now, at this stage, the respondent cannot refuse to evaluate the certificate. The learned counsel in support of his contention place reliance heavily upon the judgement of this in W.P.Nos.21630 and 21631 of 2014 (R.Veeramuthu v. State of Tamil Nadu dated 16.04.2015) which was affirmed by a Division Bench in W.A.Nos.1522 and 1523 of 2016 by judgement dated 07.11.2017. Further, according to the learned counsel, in a similar circumstances, yet another single judge of this court in W.P.No.9661 and 26390 of 2005 dated 04.08.2009 has held that after several years, the authorities cannot impose a new condition.

6. Per contra, the learned Government Advocate contended that as per the qualification prescribed by the Government of Tamil Nadu, the petitioner for appointment to the post of Secondary Grade Teacher, the petitioner should have completed +2, but, whereas, at the time of appointment, she did not possess +2 qualification and therefore, the respondents are right in rejecting the claim of the petitioner and the certificate of the petitioner cannot be evaluated on par with that of the certificate of Diploma in Teacher Education from Tamil Nadu.

7. I have considered the rival submissions carefully.

8. Admittedly, the petitioner was appointed as Secondary Grade Teacher in the year 1995 and she has been continuing in the post till today. While so, earlier the 2nd respondent raised an objection that the petitioner did not secure 50% of marks in one of the subject and hence, her certificate cannot be evaluated. When that order was challenged before this court by way of Writ Petition in W.P.No.33110 of 2006, a learned single Judge of this court by order dated 29.09.2009, directed as follows:

"6. Therefore, without going into the merits of the present claim made by the petitioner, the first respondent is directed to pass appropriate orders on the representation of the petitioner dated 23.09.2009 within two months from the date of receipt of a copy of this order and

communicate the result to the petitioner. Pending the decision taken by the State, status quo as on date shall continue.

7. It is also stated that the petitioner is now going to write improvement examination, which is scheduled to take place in December, 2009. In case, she get 50% of marks in the improvement examination, those marks can also be taken as a relevant factor for considering the representation sent by the petitioner."

Thereafter the petitioner appeared in the improvement examination and had obtained 50% of marks. Subsequently, in the year 2015, the impugned order has been passed holding as if the petitioner did not possess higher secondary qualification. In similar circumstances, this court in yet another matter in W.P.Nos.9661 and 26390 of 2005 has held that after a long lapse of time, the authorities cannot raise a new ground that the individual does not possess the requisite qualification, i.e., a pass in higher secondary examinations. The relevant portion of the order of this court reads as follows:-

"10. Apart from the above, one another aspect, which is to be taken note of is that the petitioners were appointed in 1995 and have been working all along and receiving salary. The only impediment, which was pointed out earlier is that the petitioners have not secured 50% marks in the Teacher Training Course, which the petitioners have subsequently achieved by writing improvement examination and therefore, the said impediment no longer survives. After a long lapse of time a new ground is raised stating that the petitioners have not passed Plus Two examination before joining Teachers Training Course in Kerala State. At this distance of time, the said new ground cannot put against the petitioners 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 respondents. In the light of the above reasons, the petitioners are entitled to succeed.

11. Accordingly, the writ petitions are allowed and the impugned order is set aside and the 3rd respondent shall evaluate the petitioners 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 respondent, the respondents 2, 4 and 5 shall pass appropriate orders within a period of two months thereafter."

9. When the aforesaid order was taken up on appeal by the State in W.A.No.1522 & 1523 of 2016, a Division Bench of this court by judgement dated 17.11.2017 dismissed the writ appeal thereby affirming the order of the learned single Judge in the writ petitions whereby the Division Bench has held that since the aggrieved individual did obtain the requisite qualification in the improvement examination, the consequential benefits would flow only from the date of acquisition of 50% of marks in the Teacher Training Course. The relevant portion of the order of the Division Bench of this court reads as follows:-

"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."

10. The petitioner, in the instant case, is also placed in the similar footing. As the petitioner has been serving in the post from 1995 onwards continuously. Earlier, the respondent had taken a stand that the petitioner was not qualified as she had not secured 50% of marks, now that was rectified and after nearly 20 years the respondent cannot impose a new condition that the petitioner should have had a pass in higher secondary examinations at the time of appointment. Admittedly, in the instant case, subsequent to the joining of service, the

petitioner had completed higher secondary examinations also. In the above said circumstances, the impugned order is liable to be set aside. However, as per the order of the Division Bench of this court, referred to above, the petitioner is entitled to get her appointment considered from the date of appointment for pension and terminal benefits only and she is entitled for the consequential benefits only from the date of acquisition of 50% of marks in the Teacher Training Course.

11. In the result, the writ petition is allowed and the impugned order is set aside with the above directions. The 2nd respondent is directed to evaluate the certificate of the petitioner within a period of twelve weeks from the date of receipt of a copy of this order. No costs. Consequently, connected MP is closed.

Sd/-
Assistant Registrar(CCC)

//True copy//

Sub Assistant Registrar

kmk

To

- 1.The Principal Secretary to Government, Education Department, Secretariat, Chennai-9.
- 2.The Director of Elementary Education, College Road,Chennai-6.
- 3.The Director of Teacher Education Research and Training, College Road, Chennai 600006.
- 4.The Chief Educational Officer, Coimbatore.
- 5.The District Elementary Educational Officer, Coimbatore.

+1cc to Mr.S.N.Ravichandran, Advocate SR.No.86569

+1cc to Government Pleader SR.No.87480

Writ Petition No.33285 of 2014

NMI (CO)
GMY (13/03/2019)