

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.09.2018

CORAM:

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

W.P.No.12863 of 2006
and
WP.MP.No.14459 of 2006

K.S.Muralidhararao

... Petitioner

Vs

1.Teachers Recruitment Board,
rep. by its Chairman,
4th Floor EVK Sampah Maligai,
DPI Campus, Chennai-600 006.

2.The Director of School Education,
Chennai-600 006.

3.The Joint Director of School Education,
(Personnel) Department,
Chennai-600 006.

... Respondents

Petition is filed under Article 226 of the Constitution of India for the issuance of writ of certiorarified mandamus calling for the records on the file of the respondents particularly that of the third respondent in Proceedings No.Na.Ka.No.61195 C8/C34/04, dated 06.08.2004 and quash the same as it is not in accordance with the judgment of the Tamilnadu Administrative Tribunal in O.A.No.3078/2003 dated 13.01.2004 and direct the respondents to appoint the petitioner in the post of Telugu Pandit advertised in the prospectus issued by the Teachers Recruitment Board for direct recruitment to the posts of School Assistant/Language Pandits in the minority languages in Govt. High/Higher Secondary School in Tamilnadu for the year 2003-2004 in the scale of pay of 5000-175-9000 with usual allowances with all service and monetary benefits with effect from 06.08.2004.

For Petitioner
For Respondents

: Mr.S.Selvathirumurugan
: Mr.Sethuraman
Addl. Advocate General
assisted by
Mrs.M.E.Raniselvam
Addl. Government Pleader

O R D E R

This writ petition has been filed by the petitioner seeking a writ of certiorarified mandamus calling for the records of the third respondent in Proceedings No.Na.Ka.No.61195 C8/C34/04, dated 06.08.2004 and quash the same as it is not in accordance with the judgment in O.A.No.3078/2003 dated 13.01.2004 on the file of the Central Administrative Tribunal and to direct the respondents to appoint the petitioner in the post of Telugu Pandit advertised in the prospectus issued by the Teachers Recruitment Board for direct recruitment to the posts of School Assistant/Language Pandits in the minority languages in Government High/Higher Secondary School in Tamil Nadu for the year 2003-2004 in the scale of pay of 5500-175-9000 with usual allowances with all service and monetary benefits with effect from 06.08.2004.

2. The facts in a nutshell are as under: The petitioner pursued M.A. Telugu from Presidency College, Chennai and had passed B.A. Telugu from S.Venkateswara University and had also completed Telugu Pandit training in St. Mary's TPT College, Kakinada, Andhra Pradesh. Except one year Telugu Pandit Training certificate, all certificates were registered with the Employment Exchange before 23.06.2003 and Telugu Pandit Training certificate was registered on 11.08.2003 as the same was received by the petitioner only on 14.07.2003. The petitioner had completed his Ph.D. in Telugu also.

3. According to the petitioner, the Government of Tamil Nadu decided to recruit School Assistants and Language Pandits in minority languages in Government High/Higher Secondary Schools in Tamil Nadu for the year 2003-2004. Accordingly, the first respondent issued a notification inviting applications from eligible candidates for appointment to various posts by direct recruitment. One post of Telugu Pandit was notified and the closing date for receiving application form was 23.06.2003 and the petitioner applied for the same.

4. In the written examination, the petitioner scored 99 marks out of 150 marks, ranking No.1 and the next candidate had scored only 84 marks. During certificate verification, the maximum weightage marks that could be given in all categories was 10 marks. The second candidate, even if at all 10 marks was given, he will secure only 94, whereas the petitioner had scored 99 marks in the examination itself. The petitioner was called for interview and though, he had attended the interview, he was not selected. On an enquiry, the petitioner found that he had not registered the Telugu Pandit training certificate in the Employment Exchange before 23.06.2003.

5. According to the petitioner, he had submitted a representation to the respondent authorities to consider his grievance. Since no action was taken on the representation of the petitioner, he had filed O.A.No.3078/2003 before the Central Administrative Tribunal (hereinafter called as 'Tribunal'). By an order dated 13.01.2004, the Tribunal directed the respondents therein to give the petitioner appointment and postings. Thereafter, by a communication dated 11.03.2004, the first respondent informed that the petitioner had been selected for appointment as Telugu Pandit. Since respondents have failed to issue appointment order, the petitioner filed W.P.No.22331 of 2004 seeking direction to issue the appointment orders. When the writ petition was posted for admission on 08.10.2004, the petitioner was served with appointment order dated 06.08.2004 appointing him with consolidated pay. However, instead granting relief, in the said writ petition, the Court directed the petitioner to challenge the order of appointment dated 06.08.2004, if he is not satisfied.

6. The case of the petitioner is that he had filed W.P.No.8052 of 2006 seeking direction on the respondents to implement the order passed in O.A.No.3078/2003, dated 13.01.2004 and also to direct the respondents 2 and 3 therein to delete the conditions imposed in the appointment order as the same are meant only for contract employees and direct the respondents to appoint the petitioner in Telugu Pandit post. By an order dated 22.03.2006, the said writ petition came to be dismissed holding that the petitioner had approached and sought similar relief without questioning the appointment order dated 6.8.2004. Now the petitioner has filed the writ petition challenging the appointment order dated 06.08.2004.

7. Resisting the writ petition, the third respondent filed counter stating that the appointment order of the third respondent was valid one and in accordance with the Government Orders in force at that time. It is stated that though it was mentioned in the prospectus issued by the Teachers Recruitment Board (hereinafter referred to as 'TRB') for direct recruitment to the post of School Assistants/Language Pandits for the year 2003-04 that the scale of pay of the said post was 5000-175-9000, the Government subsequently took a policy decision to appoint Junior B.T. Assistants on contract basis under consolidated pay vide G.O.Ms.No.100, dated 27.06.2003 in the posts which had fallen vacant due to retirement, resignation and death etc. by downgrading the Secondary Grade B.T. Assistant and P.G. Assistant posts as Secondary Grade (Junior), B.T. Assistant (Junior) and P.G. Assistant (Junior) and the aforesaid posts shall be filled up only consolidated emoluments of Rs.3000/-, Rs.4000/- and Rs.4500/- respectively. Hence the appointment

order issued by the third respondent to the B.T. Assistant (Junior) post dated 6.8.2004 on contract basis under consolidated pay was in consonance with G.O.Ms.No.100 and the same was also the policy decision of the Government.

8. It is stated that after issuance of G.O.Ms.No.100, dated 27.06.2003, no one was appointed on regular time scale of pay after downgrading SGT/BT/PG Teachers post as Junior Grade posts. All category of teachers (SGT/BT/PG) appointed on contract basis under consolidated pay were brought into regular time scale of pay with effect from 01.06.2006 as per G.O.Ms.No.99, dated 27.06.2006. It is also stated that having accepted the conditions in the appointment order dated 06.08.2004, the petitioner has no right to claim regular time scale appointment and prayed for dismissal of the writ petition.

9. I heard Mr.S.Selvathirumurugan, learned counsel for the petitioner and Mr.Sethuraman, learned Additional Advocate General appearing for the respondents assisted by Mrs.M.E.Rani Selvam, learned Additional Government Pleader and also perused the materials available on record.

10. The learned counsel for the petitioner submitted that the Tribunal directed the respondents to appoint the petitioner on regular basis, whereas the respondents issued the impugned appointment order under consolidated pay and the course adopted by the respondents in this case is nothing but a grave contempt and gross disobedience of the orders of the Tribunal/Court. Though the appointment order states as if it was being issued pursuant to the orders of the Tribunal dated 13.01.2004, it was actually issued in violation of the orders of the Central Administrative Tribunal.

11. Per contra, the learned Additional Advocate General submitted that though in the prospectus issued by the TRB for direct recruitment to the post of School Assistants/Language Pandits for the year 2003-2004, it has been stated that the scale of pay for the said post was Rs.5500-175-9000, the Government, subsequently took a policy decision to appoint Junior B.T. Assistants on contract basis under consolidated pay vide G.O.Ms.No.100, School Education Department, dated 27.06.2003. He would submit that after issuance of G.O.Ms.No.100, no teacher was appointed under regular time scale of pay and prayed for dismissal of the writ petition.

12. The TRB has called for application for direct recruitment to the post of School Assistants/Language Pandits in minority languages in Government High/Higher Secondary Schools in Tamil Nadu, 2003-2004. In the prospectus, the TRB has notified the vacancy position as well as scale of pay for the

post as Rs.5500-175-9000 plus allowances. The petitioner, who participated in the written examination conducted by the TRB, had secured 99 marks and he was called for certificate verification for the post of Telugu Pandit. Though the petitioner attended the certificate verification, he was not selected on the ground that the petitioner has failed to fulfil the eligible criteria by not producing a valid Employment Exchange Registration.

13. The petitioner, earlier, approached the Tribunal by filing O.A.No.3078 of 2003 seeking direction on the respondents to give him appointment to the post of Telugu Pandit. By an order dated 13.1.2004, the Tribunal directed the respondents therein to give appointment to him. The operative portion of the order reads thus:

"6. Similarly in this case also, the applicant has been fully qualified by the time he appeared for the interview. Acquisition of training qualification also has been by the time registered by him in the employment exchange. He was called for written examination and he has written the examination and has come as top ranker securing 99 marks out of 150 and the next candidate has only secured 84 out of 150. Therefore, the respondents ought to have selected him and given postings to him.

7. Therefore, a direction is given to the respondents to give him appointment and postings to the applicant and this is only in substantial agreement with the conditions imposed in the prospectus."

14. In the counter filed in O.A.No.3078 of 2003, it has been stated that it was found that for the Pandit training qualification, registration in the Employment Exchange was made only on 11.08.2003 much later than the stipulated date 23.06.2003, fixed by the TRB and the petitioner who had not fulfilled the vital pro-requisite as given in the advertisement for selection, could not be considered for the final section. Not accepting the plea of the TRB, the Tribunal allowed the O.A. filed by the petitioner and directed the respondents to give appointment as aforesaid.

15. It is pertinent to point out that as against the order passed in O.A.No.3078 of 2003, the respondents have not filed any writ petition and/or appeal. Thus, the order passed in the said O.A. has become final. Since the respondents have failed to obey the order of the Tribunal, the petitioner issued a contempt notice through his lawyer. While so, on 11.03.2004, the TRB sent a letter to the petitioner stating that the

petitioner was selected to the post of Telugu Pandit in Government High/Higher Secondary Schools under the control of Directorate of School Education and necessary posting order will be issued by the Directorate of School Education.

16. On 06.08.2004 the Directorate of School Education issued an appointment order appointing the petitioner temporarily as Junior School Assistant and posted at Government High School, Nediya, Tiruvallur District with certain terms and conditions. One of the conditions stipulated in the appointment order is that the petitioner will be paid consolidated pay of Rs.4000/- per month for a period of five years. This has been objected to by the petitioner by contending that the very appointment order dated 06.08.2004 itself is against the direction issued by the Tribunal in O.A.No.3078 of 2003.

17. On a perusal of the typed set of papers, I find that the petitioner had earlier filed writ petition being W.P.No.22331 of 2004 before this Court seeking a writ of mandamus directing the Director of School Education to implement the order passed in O.A.No.3078 of 2003, dated 13.01.2004 of the Tribunal, forthwith and thereby issue appointment order to him as Telugu Pandit in any one of the Government High/Higher Secondary Schools in the State of Tamilnadu pursuant to the prospectus issued by the first respondent for direct recruitment to the post of School Assistants/Language Pandits in minority languages in Government High or Higher Secondary Schools in Tamilnadu for the year 2003-2004 in pursuance of the selection made by the first respondent in Na.Ka.No.809/Aa 2/03, dated 11.03.2004.

18. By an order dated 08.12.2005, W.P.No.22331 of 2004 has been disposed of by observing as under:

"3.Heard the arguments of the learned counsel on either side. After filing the writ petition, the petitioner was appointed as Telugu Pandit by order dated 6.8.2004, hence, this Court is of the view that instead of granting remedy sought for in this Writ Petition, it is appropriate to give liberty to the Petitioner to challenge the order of appointment dated 6.8.2004, if he is not satisfied. Accordingly, liberty is given to the Petitioner to challenge the order of appointment dated 6.8.2004 in the appropriate forum."

19. It is also seen that the petitioner had filed another writ petition being W.P.No.8052 of 2006 seeking similar prayer as prayed in W.P.No.22331 of 2004. By an order dated 23.03.2006, W.P.No.8052 of 2006 came to be dismissed by this Court and the operative portion of the order reads as under:

"3.By that order the petitioner was given liberty

to challenge the order of appointment dated 6.8.2004 if he is not satisfied. Without questioning the said order of appointment, the petitioner has again approached this Court for the same relief. In my opinion, the Writ Petition cannot be entertained, as the petitioner has already approached this Court for the same relief and this Court did not order the Writ Petition except giving liberty to the petitioner to question the order of appointment. Hence, I do not find any merit in this Writ Petition. Accordingly, the Writ Petition is dismissed. No costs."

Thereafter, the petitioner had filed the present writ petition challenging the impugned appointment order dated 6.8.2004 and had also sought consequential reliefs.

20. The main grievance of the petitioner is that the appointment order dated 06.08.2004 is not in accordance with the direction of the Tribunal in O.A.No.3078 of 2003. It is seen from order of the Tribunal in O.A.No.3078 of 2003, I find that the Tribunal had only directed the respondents to give an appointment to the petitioner. Pursuant to the said direction, the petitioner was issued the appointment order dated 06.08.2004 appointing him temporarily on consolidated pay, subject to certain terms and conditions.

21. The learned Additional Advocate General brought to the notice of this Court that though the prospectus issued by the TRB in the instant recruitment contains scale of pay to the post as 5500-175-9000, after issuing advertisement, the Government took a policy decision to appoint Junior B.T. Assistants on contract basis under the consolidated pay vide G.O.Ms.No.100, School Education Department, dated 27.06.2003 and the same was very well known by the candidates. Therefore, the petitioner cannot question the impugned appointment order.

22. Though it was stated in the prospectus issued by the TRB that for direct recruitment to the post of School Assistants/Language Pandits for the year 2003-2004 the scale of pay was Rs.5500-175-9000, the Government subsequently took a policy decision to appoint School Assistants/Language Pandits on contract basis under consolidated pay and to that effect the Government had issued G.O.Ms.No.100, School Education, dated 27.06.2003.

23. It is the say of the respondents that after issuance of G.O.Ms.No.100, dated 27.06.2003, no one is appointed on regular time scale of pay for the post in question. It is also the say of the respondents that all category of teachers (SGT/BT/PG) appointed on contract basis under consolidated pay and were

brought into regular time scale of pay with effect from 01.06.2006 as per G.O.Ms.No.99, School Education Department, dated 27.06.2006. Nothing has been produced by the petitioner to show that for direct recruitment to the post of School Assistants/Language Pandits for the year 2003-2004, time scale of pay was fixed.

24. On a perusal of the impugned appointment order, it is seen that the second respondent while issuing the appointment order itself, cited G.O.Ms.No.100, dated 27.06.2003 as reference No.1, which would clearly establish that by application of mind, the third respondent issued the appointment order dated 06.08.2004.

25. It is to be noted that the Government has taken a policy decision to appoint teachers on contract basis under consolidated pay. When policy decision has been taken by the Government under the right conferred under the constitutional provisions, the Court has no jurisdiction to interfere with it, unless and otherwise any violation is shown. It is settled that Courts should not interfere in matters of policy or in the day-to-day functioning of any departments or Government or statutory bodies. Further, as stated earlier, the stand of the respondent authorities is that no teacher can be appointed under regular time scale of pay after issuance of G.O.Ms.No.100, School Education Department, dated 27.06.2003.

26. It is to be noted that the Government had issued G.O.Ms.No.125 Education Department, dated 12.11.2003, where it has been stated that from the academic year 2003-2004, all the vacancies in various categories of teacher posts in all kinds of Schools had become Junior Grade Teacher posts on consolidated pay. But, at the same time, it should be seen that the said G.O. though referred to G.O.Ms.No.100, dated 27.06.2003, has not totally superseded the said G.O. On the other hand, it has to be only construed that the same has been made to clarify G.O.Ms.No.100. G.O.Ms.No.100, dated 27.06.2003 provides time scale of pay has to be paid if an appointment is made on promotion.

27. Having accepted the conditions laid down in the appointment order dated 06.08.2004 on contract basis under consolidated pay, the petitioner has no right to claim regular time scale and the claim of the petitioner is against the policy decision taken by the Government. Thus, the impugned order of appointment dated 06.08.2004 issued in favour of the petitioner is in consonance with G.O.Ms.No.100, School Education Department, dated 27.06.2003 and therefore, the writ petition is liable to be dismissed.

28. In the result, the writ petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Deputy Registrar

//True Copy//

Sub Assistant Registrar

To

- 1.The Chairman,
Teachers Recruitment Board,
4th Floor EVK Sampah Maligai,
DPI Campus, Chennai-600 006.
- 2.The Director of School Education,
Chennai-600 006.
- 3.The Joint Director of School Education,
(Personnel) Department,
Chennai-600 006.

+1cc to Mr.S.Selvathirumurugan, Advocate, S.R.No.61852

W.P.No.12863 of 2006
and
WP.MP.No.14459 of 2006

GSP (14/09/2018)

सत्यमेव जयते
WEB COPY