

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Orders Reserved on : 27.09.2018

Orders Pronounced on : 05.10.2018

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBBIAH

Review Application No.24 of 2017

in

W.P.No.7680 of 2010

C.Palani .. Review Applicant

Vs.

1. The District Educational Officer,
Thirupattur, Vellore District.

2. The Secretary,
Hindu Girls Higher Secondary School,
Ambur, Vellore District.

3. S.Umadevi .. Respondents

Review Application filed under Order XLVII Rule 2 read with Section 114 CPC to review the order dated 27.09.2016 in W.P.No.7680 of 2010 on the file of this Court.

For Applicant : Mr.S.N.Ravichandran

For respondents : Mr.K.Karthikeyan, Govt. Advocate for R-1

Mr.V.R.Rajasekaran for R-2

Mr.L.Chandrakumar for R-3

ORDER

This Review Application has been filed to review the order dated 27.09.2016 passed in W.P.No.7680 of 2010, in and by which, this Court has rejected the prayer of the review applicant/writ petitioner to quash the orders passed by the first respondent, dated 09.01.2009 and 25.05.2009 and to direct the second respondent to send fresh approval application to the first respondent to approve the petitioner's appointment as BT-Assistant-Tamil in the second respondent-School and consequently direct the first respondent to approve the same.

2. Brief facts of the case are as follows:

(a) The petitioner has studied Tamil Pandit Training Course in Institute of Education, Saidapet, Chennai, during the academic year 1997-98, which is the basic qualification for the post BT Assistant (Tamil). He has also studied B.Lit. (Tamil), MA (Tamil) and M.Phil. (Tamil) through Distance Education System in University of Madras. He has also registered his name in the District Employment Exchange, Vellore.

(b) The second respondent-School is a Government Aided Management School, which is governed by the Tamil Nadu Recognised Private Schools (Regulation) Act. The petitioner was appointed as BT Assistant (Tamil) in the second respondent-School from 2003. A vacancy arose in the post of Tamil Pandit BT Assistant (Tamil) due to promotion of one Ms.K.Jayashree on 01.07.2006 and the second

respondent obtained permission from the first respondent to appoint a BT Assistant-Tamil in the said vacancy, by proceedings, dated 27.08.2007. Thereafter, the second respondent invited applications from the eligible candidates and in the said advertisement, the communal ratio was stated as Scheduled Caste--General. The second respondent also called for the list of eligible candidates from the District Employment Exchange Office, Vellore to fill up the above said post and in the said communal ratio, it is stated as "Scheduled Caste". Since the petitioner was an eligible candidate, he had applied to the second respondent for appointment of the above said post.

(c) On 04.09.2008, the second respondent-School's Committee had conducted an interview to assess the merit and ability, based on which, the petitioner was selected and appointed as BT-Assistant-Tamil on 17.09.2008. Thereafter, the second respondent has entered into an agreement with the petitioner in Form-VII A (Rule 5) with respect to the appointment of permanent Teacher. Since 17.09.2008, the petitioner was working as BT-Assistant-Tamil in the second respondent-School. The second respondent sent an application dated 19.09.2008 to approve the petitioner's appointment as BT-Assistant-Tamil, but the first respondent rejected the said approval, by order dated 09.01.2009 on the ground that communal ratio was not followed in his appointment and the said post ought to have been filled from "Scheduled Caste-Women" and not from "Scheduled Caste-General". The first respondent passed another order in his proceedings dated 25.05.2009 stating that the said post ought to have been filled under the communal ratio of "General Category". In the above said two orders of the first respondent, two different reasons have been stated in refusing to give approval for the petitioner's appointment. Neither the first respondent nor the second respondent informed about the rejection of approval application.

(d) While so, on 25.01.2010 at about 3.30 p.m., when the review applicant/writ petitioner was teaching in a class room, the Secretary informed him that his appointment was not approved by the first respondent and asked him to go out of the School. The grievance expressed by the review applicant is that neither the first respondent nor the second respondent served the petitioner any order or informed him about the rejection of the approval application. Thereafter, the petitioner got the relevant documents from the second respondent only on 05.02.2010. The first and second respondents colluded with mala-fide intention to appoint the third respondent in the above said post. That is why the first respondent had stated two different reasons in his orders in refusing to approve the petitioner's appointment. It is the review applicant/writ petitioner's submission that if the third respondent's appointment is approved, the petitioner cannot get employment and it will cause great hardship and loss to the petitioner. Hence, the review applicant/petitioner filed the Writ Petition.

3. In the said Writ Petition, learned Special Government Pleader appearing for the first respondent submitted that the selection of the petitioner for the post of Tamil Teacher had been done wrongly among graduates, instead of general category of the School Committee and the appointment of the petitioner for the said post was not recognised by the first respondent, and hence, the first respondent is no way liable for any action taken by the School Committee.

4. It is the contention of the second respondent in the Writ Petition that all selection and appointments are made by the Management of Private Aided Schools, subject to the approval of the competent authority, but for the revision of roster with effect from 15.09.2009, the selection and appointment of the petitioner as Tamil Pandit, had not been approved i.e. due to the revised roster introduced by the Government.

5. Considering the above submissions of the learned counsel appearing for the parties, this Court has passed the following order dated 27.09.2016 in the Writ Petition in W.P.No.7680 of 2010:

"8. This Court has considered the rival submissions and also perused the entire materials available on record.

9. A perusal of the materials would disclose that the petitioner's appointment itself is subject to the approval of the first respondent and only on the said condition, he was appointed. While that being so, the petitioner cannot contend that without serving the order of rejection of approval or without informing him either by the first respondent or the second respondent, the petitioner was asked to

go out of the school and in his place, the third respondent was appointed on 22.10.2009. It is pertinent to note that the petitioner has filed this Writ Petition only on 29.03.2010 and further he has not challenged the appointment of the third respondent. Considering all these aspects, I am of the opinion that the impugned order does not warrant interference.

10. In the result, this Writ Petition is dismissed. No costs."

As against the above order passed by this Court in the Writ Petition, the present Review Application has been filed by the writ petitioner.

6. Learned counsel for the review applicant/writ petitioner submitted that this Court has dismissed the Writ Petition on two scores. Firstly, the review applicant's appointment is subject to the approval of the first respondent and only on the said condition, he was appointed. Hence, the petitioner cannot contend that he was asked to go out of the School without serving on him the rejection order either by the first respondent or by the second respondent. Secondly, the review applicant/writ petitioner has approached this Court belatedly and has not challenged the appointment of the third respondent. In this regard, learned counsel for the review applicant submitted that the reason for rejection of the approval of the appointment of the review applicant is erroneous, because, at the time when the vacancy arose, the Chief Educational Officer upgraded the Second Grade Teacher post to BT Assistant, and only "100 point roster" was in force. Learned counsel further contended that the second respondent-Management rightly appointed the petitioner to the post of Tamil Pandit/BT Assistant--Tamil.

7. Learned counsel for the review applicant further contended that the first reason for rejection by the first respondent is that as per "100 Point Roster", a SC-Women candidate should be filled. In the consequent rejection order, dated 25.05.2009, the first respondent invented a new plea to deny the rightful claim of the petitioner for approval of his appointment. The second respondent-Management, instead of appealing against the impugned rejection order, which it ought to have done, simply proceeded with another recruitment under "General Category" and the entire process was done so secretly that even the petitioner was not made aware of such re-recruitment. Had the petitioner been put on notice, he would have definitely participated in the interview, as the vacancy is called for under "General Category". The second respondent-Management cannot unceremoniously send him out of employment without serving show cause notice and without calling for any explanation. Hence, learned counsel for the review applicant/petitioner submitted that the petitioner is entitled for approval of his appointment and prayed for allowing the Review Application, as there is error apparent on the face of record.

8. Countering the above submissions, learned counsel for the second respondent submitted that as there was a need for a Teacher qualified in Tamil-BT-Assistant in the second respondent-School, the vacancy in BT-Assistant-- English was converted to BT-Assistant--Tamil, vide order dated 30.08.2008 of the Chief Educational Officer, Vellore. The vacancy in BT-Assistant--Tamil is sanctioned only with effect from 30.08.2008 and hence the above said post of BT-Assistant--Tamil shall be filled up by following the rule of reservation prevailing as on 30.08.2008 and the said date shall be taken as the date of vacancy for the post in question for the purpose of recruitment. While so, the Government had introduced a revised roster, vide G.O.Ms.No.241, Personnel and Administrative Reforms (K) Department, dated 29.10.2007 for making appointments in public services including the posts available in Aided Private Schools. All appointments made on or after 15.09.2007, shall be in accordance with the revised "200 point roster" notified by the Government in the said G.O. The revised roster for the post of Tamil Pandit starts from General Turn. Accordingly, the above said vacancy in BT-Assistant--Tamil, which was sanctioned by the CEO on 30.08.2008 subsequent to 15.09.2007, shall be filled up by notifying the said vacancy as General Turn following the "200 point roster" introduced by the Government with effect from 15.09.2007. By oversight, without noticing the "200 point roster" introduced by the Government, the second respondent has notified the said vacancy on 05.09.2008 as SC (General) by following "100 point roster" instead of Open Competition (General Turn) as per "200 point roster". Hence, by mistake, the petitioner was selected for the post

of Tamil Pandit under Scheduled Caste turn in pursuance of the Resolution, dated 16.09.2008 of the School Committee, without following the revised roster point starting from General Turn.

9. Learned counsel for the second respondent further submitted that the Secretary of the School Committee has issued order on 17.09.2008 appointing the petitioner as Tamil Pandit with effect from 17.09.2008, subject to the approval of the District Educational Officer, Tirupattur. A proposal was sent to the first respondent seeking approval of appointment of the petitioner as BT-Assistant--Tamil with effect from 17.09.2008. On 09.01.2009, the first respondent has returned the proposal on the ground that the vacancy in question has to be filled up by a candidate from SC (Women) instead of SC (General) and directed the School to make fresh recruitment and submit revised proposal for approval. On 25.05.2009, the first respondent has clarified that the first vacancy arising in each category of post on or after 15.09.2007, shall be filled up starting from General Turn as per the revised "200 point roster". Hence, the recruitment proceedings initiated in pursuance of the advertisement dated 05.09.2008, notifying the vacancy under SC and the consequent provisional selection of the petitioner who belongs to SC category, was dropped, as the same was contrary to the revised order. Thus, the second respondent prayed for dismissal of the Review Application, as there is no error apparent on the face of the record.

10. Heard the learned Government Advocate appearing for the first respondent and also the learned counsel appearing for the third respondent, on the above aspects.

11. Learned counsel for the review applicant/writ petitioner submitted that the vacancy arose when "200 point roster" was not there and "100 point roster" was there and therefore, there is no substance in the submissions made by the learned counsel for the second respondent-School. In this regard, learned counsel for the review applicant invited the attention of this Court to the decision of a Division Bench of this Court reported in 2015 (4) MLJ 281 (N.Santhosh Kumar and others Vs. Tamil Nadu Public Service Commission and others), wherein this Court observed as follows:
"72. This can be well understood only when we know the exact manner in which a select list is prepared by the Public Service Commission, whenever a direct recruitment takes place. The Public Service Commission or for that matter, any other Appointing Authority (including this Court when direct recruitment of District Judges-Entry Level is made), follows different steps, for preparing a list of candidates selected eventually for appointment. These steps are:--

... ..

(ii) Then the Commission takes up the roster points in respect of which the recruitment had taken place. As we have pointed out earlier, the Explanation under Rule 22(c) mandated that all selections for appointment shall start afresh from serial number 1 in Schedule-III, if the vacancies sought to be filled up had arisen on and from 29.4.2009. This is due to the fact that the 200 point roster was introduced only with effect from the said date.

.. ... "

By relying on the above said decision of this Court, learned counsel for the review applicant submitted that the actual amendment introduced by "200 point roster" was made in G.O.Ms.No.55, Personnel and Administrative Reforms (S), dated 08.04.2010. Hence, learned counsel for the review applicant submitted that the petitioner's appointment was made much prior to 29.04.2009 and only "100 point roster" would apply and hence, the petitioner's appointment by the second respondent is just and proper, and therefore, learned counsel for the review applicant/writ petitioner submitted that the order dated 27.09.2016 passed by this Court in W.P.No.7680 of 2010 needs to be reviewed.

12. In the above context, it is to be noted that the scope of review is very limited. In the Writ Petition, this Court has passed order based on the materials available on record and also taking into account the submissions made in the Writ Petition. Further, it is well settled legal position that a Review Application cannot be entertained to re-argue the grounds which were already agitated. A review is permissible only if it is shown that there is an error apparent on the face of the record or certain vital points which were agitated, have not been considered in the order which is sought to be

reviewed. In the present case, the Review Applicant/writ petitioner has not satisfied the above said two aspects. In this connection, it is useful to refer a decision of the Supreme Court in the case of Kamlesh Verma Vs. Mayawati and others, reported in 2013 (8) SCC 320, wherein the Supreme Court, after examining various judgments, has laid down the circumstances as to when the Court can review its own judgment. The relevant portion of the judgment of the Supreme Court is extracted as under:

"12. This Court has repeatedly held in various Judgments that the jurisdiction and scope of review is not that of an appeal and it can be entertained only if there is an error apparent on the face of record. A mere repetition through different counsel, of old and overruled arguments, a second trip over ineffectually covered grounds or minor mistakes of inconsequential import are obviously insufficient."

... ..

"19. Review proceedings are not by way of an appeal and have to be strictly confined to the scope and ambit of Order XLVII Rule 1 of CPC. In review jurisdiction, mere disagreement with the view of the Judgment cannot be the ground for invoking the same. As long as the point is already dealt with and answered, the parties are not entitled to challenge the impugned Judgment in the guise that an alternative view is possible under the review jurisdiction."

13. In the light of the above decision of the Supreme Court, I am of the view that the grounds raised by the Review Applicant in this Review Application cannot be entertained and the Review Application is not maintainable. Accordingly, the Review Application is dismissed. No costs.

05.10.2018

Index: Yes/no

Speaking Order: Yes/no

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R.SUBBIAH, J

CS

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