



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 09.07.2018
CORAM:

THE HONOURABLE MR. JUSTICE K.RAVICHANDRABAABU
AND
THE HONOURABLE MRS. JUSTICE T.KRISHNAVALLI

W.A.[MD].Nos.110 and 875 of 2018
and
C.M.P. (MD) Nos. 555 & 5495 of 2018

W.A. [MD].No.110 of 2018:

The Tamil Nadu Sports University,
Rep. by its Registrar,
Melakottaiyoor Post,
Vandaloor, Chennai.

.... Appellant/2nd Respondent
Vs.

1.R.Kanagaraaj

.... First Respondent/
Writ Petitioner

2. The National Council for
Teacher Education,
Represented by its Member Secretary,
Hans Bhavan Wing II,
No.1, Bahadur Sha Zafar Marg,
New Delhi - 110 002.

.. Second Respondent/
First Respondent

PRAYER: Appeal is filed under Clause 15 of the Letter Patent Act,
against the order, dated 26.05.2017 made in W.P.(MD)No.9722 of 2017
on the file of this Court.

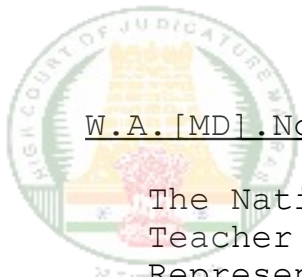
Prayer in WP(MD).No. 9722/ 2017 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a WRIT OF MANDAMUS or any other writ or direction in the nature of writ directing the respondents to permit the petitioner for the commencement of new course in Bachelor of Physical Education B.P.Ed and Master of Physical Education (M.P.Ed) as weekend and vocational courses to the physical education teachers who are in service within time stipulated by this Honble Court.

For Appellant : Mrs.G.Thiagavathy
Senior Counsel for
Mr.R.Gophinath

For R-1 : Mr.Shabu Jose
for M/s.Isaac Chambers

For R-2 : Mr.Su.Srinivasan



W.A.[MD].No.875 of 2018:

The National Council for
Teacher Education,
Represented by its Member Secretary,
Hans Bhavan Wing II,
No.1, Bahadur Sha Zafar Marg,
New Delhi - 110 002.

.....Appellant/First Respondent

Vs.

1.R.Kanagaraj

..... First Respondent/
Writ Petitioner

2.The Tamil Nadu Sports University,
Rep. by its Registrar,
Melakottaiyoor Post,
Vandaloor, Chennai.

.....2nd Respondent/
2nd Respondent

PRAYER: Appeal is filed under Clause 15 of the Letter Patent Act, against the order, dated 26.05.2017 made in W.P.(MD)No.9722 of 2017 on the file of this Court.

Prayer in WP(MD). 9722/ 2017 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a WRIT OF MANDAMUS or any other writ or direction in the nature of writ directing the respondents to permit the petitioner for the commencement of new course in Bachelor of Physical Education B.P.Ed and Master of Physical Education (M.P.Ed) as weekend and vocational courses to the physical education teachers who are in service within time stipulated by this Honble Court.

For Appellant : Mr.Su.Srinivasan

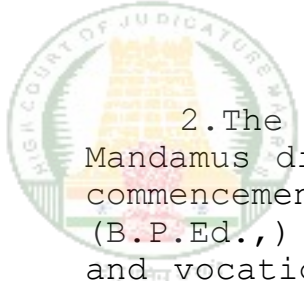
For R-1 : Mr.J.Anandkumar
(in SR stage)

For R-2 : Mrs.G.Thiagavathy
Senior Counsel for
Mr.R.Gophinath

COMMON JUDGEMENT

**[Judgement of the Court was delivered
by K.RAVICHANDRABAABU, J]**

Both these writ appeals are arising out of an order passed in W.P.(MD)No.9722 of 2017, dated 26.05.2017. While Writ Appeal (MD) No.110 of 2018 is filed by the second respondent in the writ petition, the Writ Appeal (MD)No.875 of 2018 is filed by the first respondent in the writ petition.



2.The writ petitioner approached the writ Court and sought for Mandamus directing the respondents to permit the petitioner for the commencement of new course in Bachelor of Physical Education (B.P.Ed.,) and Master of Physical Education (M.P.Ed.,), as weekend and vocational courses to the physical education teachers, who are in service. The writ Court allowed the writ petition at the admission stage itself and issued a positive direction to the first respondent to take necessary further action for consideration of the Committee constituted for norms and standards and accord permission to the petitioner to start the new course and on such permission is accorded by the first respondent to the petitioner, the second respondent is also directed to grant necessary permission to the petitioner in the light of the permission of the first respondent, forthwith.

3.The grievance of the appellants before us is that the said order of the writ Court issuing a positive Mandamus, that too, at the admission stage itself without giving opportunity of filing a counter and hearing these appellants, is erroneous, more particularly, when there is no application, as required under the relevant provision of the regulations, filed by the writ petitioner, pending with the respondents. Therefore, it is contended that the order of the writ Court in issuing the positive Mandamus has caused great prejudice to the interest of these appellants.

4.The learned counsels appearing for the appellants submitted that the writ Court ought not to have issued a positive Mandamus, that too, at the admission stage, without giving due opportunity of hearing to these appellants.

5.Mr.Su.Srinivasan, learned counsel appearing for the appellant in Writ Appeal (MD)No.875 of 2018 specifically pointed out that the representation filed by the writ petitioner on 20.04.2012, was not meeting the requirement of an application, as contemplated under the National Council for Teacher Education Act, 1993, and unless an appropriate application is filed with necessary documents, consideration of the said representation also does not arise. In other words, it is his contention that very consideration of the said representation will not fetch any result, since such representation is not meeting the requirements of an application to be filed, as per the above statutory provisions.

6.The learned Senior Counsel appearing for the appellant in W.A. (MD)No.110 of 2018 also reiterated the above said contentions.

7.The learned counsel for the respondent/writ petitioner though initially contended that at least the representations sent by the writ petitioner may be directed to be considered, however subsequently, fairly submitted that an opportunity may be given to the writ petitioner to file a fresh application, as required under the relevant statute with necessary documents and if any such application is filed, the same may be directed to be considered by the appellants herein.



8. We heard both sides and perused the materials placed before us.

9. Admittedly, the Writ Court has allowed the writ petition and issued positive direction without giving due opportunity of filing a counter by the respondents, who are the appellants before us. Perusal of the representation filed by the respondent/writ petitioner, dated 20.04.2012 would also indicate, as rightly pointed out by the learned counsel Mr. Su. Srinivasan appearing for the appellant in W.A. (MD) No. 875 of 2018, that neither the same, nor the subsequent representations sent on 18.03.2017 and 28.02.2017, do not meet the statutory requirement of an application to be presented for seeking permission under the relevant statute viz., National Council for Teacher Education Act, 1993. In the absence of any such application required to be made in accordance with the provisions made under the relevant Act, even the question of directing the appellants herein, to consider those representations of the respondent/writ petitioner, does not arise.

10. While that being the factual position, we find that the writ Court has not considered this aspect and allowed the writ petition and issued the positive Mandamus, which cannot be sustained in the eye of Law. Accordingly, both the Writ Appeals are allowed and the impugned order passed by the learned single Judge is set aside. However, liberty is given to the respondent/writ petitioner to make fresh application, as required under the relevant statute with relevant documents in support of his claim. If any such application is filed, it is for the appellants to consider the same on its own merits and pass orders in accordance with law. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (CO)

/True Copy/

Sub Assistant Registrar

+1CC to Mr. R. GOPHINATH, Advocate, SR.No. 71829
+1CC to Mr. SU. SRINIVASAN, Advocate, SR.No. 72034
+1CC to M/S. ISAAC CHAMBERS, Advocate, SR.No. 72068

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