



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 27.06.2018

CORAM:

THE HONOURABLE MR.JUSTICE M.DURAI SWAMY
and
THE HONOURABLE DR.JUSTICE ANITA SUMANTH

W.A(MD)No.1201 of 2017
and
C.M.P(MD)No.8415 of 2017

- 01.The State of Tamil Nadu,
Represented by its Secretary,
Department of School Education,
Fort st. George, Chennai - 600 009.
- 02.The Director of School Education,
College Road, Chennai - 600 006.
- 03.The Joint Director of School Education,
(Secondary Education),
College Road, Chennai - 600 006.
- 04.The Chief Educational Officer,
Tirunelveli, Tirunelveli District.
- 05.The District Educational Officer,
Tirunelveli,
Tirunelveli District. Appellants/Respondents
- Vs.
- The Secretary,
Maipparai High School,
Maipparai Post,
Tiruvengadam Taluk - 627 713,
Tirunelveli District. Respondent / Petitioner

PRAYER: Writ Appeal filed under Clause 15 of the Letter Patent, to set aside the order dated 20.07.2017 passed in W.P(MD)No.12639 of 2016.

Prayer in WP(MD) . 12639/ 2016 :

Writ Petition is filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, calling for the records relating to the impugned proceedings issued by the 5th respondent DEO in O.MU.No. 4434/A2/2015 dated 14.01.2016 and the consequential proceedings issued by the 3rd respondent Joint Director of School Education (Secondary Education) in Na.Ka.No. 001740/ D2/E3/2016 dated 29.04.2016 and, quash the same,



and further Direct the respondents herein to approve forthwith the appointment of Tmt. P.Meena as B.T. Assistant (English) in the petitioner school, namely Maipparai High School, Maipparai, Tirunelveli District with effect from the date of her initial appointment i.e 08.03.2010 with all attendant benefits including arrears of salary.

For Appellants : Mr.A.K.Baskarapandian,
Special Government Pleader

For Respondent : Mr.Isaac Mohanlal,
Senior Counsel for
M/s.Isaac Chambers

JUDGMENT

(Judgment of the Court was made by DR.ANITA SUMANTH,J.)

This writ appeal is filed by the State of Tamil Nadu and four others, challenging an order passed by the learned single Judge dated 20.07.2017, directing the Chief Educational Officer (in short 'CEO') and the District Educational Officer (in short 'DEO'), Tirunelveli, to approve the appointment of Mrs.Meena as B.T.Assistant (English) with effect from the date of her appointment ie., on 08.03.2010.

2. Heard Mr.Baskarapandian, learned Special Government Pleader for all appellants/respondents and Mr.Isaac Mohanlal, learned senior counsel for Isaac Chambers, for the respondent/writ petitioner.

3. The respondent is a Government aided private school. Upon the retirement of the then serving English teacher, a post of Secondary Grade Teacher fell vacant from 01.07.2009. Prior permission was sought for filling the aforesaid vacancy up with a B.T.Assistant (English) that was granted by the DEO on 16.09.2009.

4. Applications were called for from the District Employment Exchange and since the process did not yield a suitable candidate, a fresh notification was issued on 04.02.2010. Mrs.P.Meena was found suitable and was appointed on 08.03.2010. Mrs.Meena has been employed in the school ever since.

5. A proposal was submitted to the DEO on 09.03.2010 seeking approval of the appointment of Mrs.Meena with effect from 08.03.2010. In the meantime, the school committee became embroiled in litigation inter se and O.S.No.64 of 2010 came to be filed before the Additional District Munsif Court, Sankarankovil in this regard. The proposal for the approval of Mrs.Meena was returned by the DEO citing pendency of the aforesaid suit. This continued for a while thereafter with the school submitting a proposal for approval of the appointment of the candidate periodically and the DEO returning the same citing pendency of the suit.



6. A Writ Petition in W.P(MD)No.5325 of 2014 was filed by Mrs.Meena seeking a direction to the DEO to approve her appointment with effect from 08.03.2010. The Writ Petition was withdrawn, according to the learned senior counsel, on the basis of the assurance extended by the DEO that her appointment would, in fact, be approved.

7. O.S.No.64 of 2010 came to be dismissed by judgment and decree dated 12.08.2015 and the school thereafter re-submitted the proposal for approval of Mrs.Meena's appointment on 30.09.2015. The DEO rejected the proposal vide proceedings dated 14.01.2016 on the ground that Mrs.Meena had completed the B.A(English) course in a single year obtaining a double degree and her appointment was not liable to be approved applying the rationale of the order of this Court in the case of R.Thirunavukkarasu v. The State of Tamil Nadu and others (2012 (5) CTC 129).

8. An appeal was preferred against the order of rejection to the Joint Director of School Education (in short 'JDSE') and a report was sought for by the JDSE from the DEO. Pertinently the DEO recommends the grant of approval to Mrs.Meena vide his communication dated 12.03.2016 as does the CEO vide his communication dated 08.03.2016. The JDSE however proceeds to reject the appeal vide order dated 29.04.2016 that was the subject of challenge in W.P(MD) No.12639 of 2016 that came to be allowed on 20.07.2017.

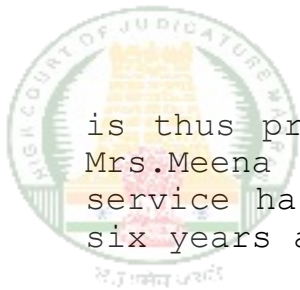
9. The learned single Judge, in allowing the writ petition filed by Mypparai High School, proceeds on the basis that the rationale of the judgment in Thirunavukkarasu's case would not be applicable in the matter of appointments made prior thereto.

10. In the present case, Mrs.Meena was appointed on 08.03.2010 and her eligibility is not in question as on the date of her appointment. The learned Judge also notes that she has been in service for more than six years and as such, applies equitable principles in confirming her appointment with effect from 08.03.2010.

11. We have heard the learned senior counsel and counsel appearing for the parties and of the view that this writ appeal deserves to be dismissed.

12. Undoubtedly, the legal position pursuant to the decision of this Court in Thirunavukkarasu's case (supra) is that a dual degree obtained by a candidate, upon undergoing a course of the duration of one year cannot be equated to a degree obtained after undergoing a course of the duration of three years.

13. Having said so, the decision in Thirunavukkarasu's case has been rendered on 14.08.2012 and would apply only in respect of appointments made thereafter. The application of the ratio thereof



is thus prospective. It certainly cannot affect the appointment of Mrs.Meena made as early as on 08.03.2010, particularly since her service has been utilised for more than eight years as on date and six years as at the time of disposal of the writ petition.

14. A Division Bench of this Court in the case of Sakthi Rani v. Secretary, Bar Council of Tamil Nadu and others (2010 (4) MLJ 849) considered a challenge to the orders of the State Bar Council to the effect that persons with Post Graduate qualifications from open universities would not be entitled to enrolment in the State Roll.

15. While upholding the constitutionality of the Rule, the Division Bench made it clear that the Rules could only be applied prospectively and not in respect of those that had completed the law course at the time when the Rule came into force.

16. Equally so, in the present case. The pronouncement of this Court in Thirunavukkarasu's clarifying the position relating to the entitlement of persons to be appointed as B.T Assistant on 14.08.2012 cannot be read retrospectively to affect the employment of those already in service.

17. It is also pertinent to note that reliance upon the ratio laid down in Thirunavukkarasu's case was made for the first time in 2016 and all prior rejections by the DEO were solely on the ground of pendency of the suit inter se the school management. Then again, had the appointment of Mrs.Meena been considered favourably pursuant to the schools' proposals dated 09.03.2010 or 22.06.2011, the ratio of the decision in Thirunavukkarasu's case would have been unavailable to the appellants.

18. The appellants do not dispute the qualifications or the eligibility of Mrs.Meena for the post of BT Assistant. Neither they do dispute the position that she has been in service for eight long years.

19. It is a settled position that the qualification to be reckoned in deciding eligibility or otherwise of a candidate in appointment/recruitment is the qualification at the time of recruitment itself and not in terms of any requirements that may have been introduced at a latter point in time (see Madan Mohan Sharma and Another v. State of Rajasthan and Others ((2008) 3 Supreme Court Cases 724) and Gopal Krushna Rath v. M.A.A.BaIG(Dead) by LRS.and others (1999 1 SCC 544)).

20. In the aforesaid circumstances and particularly in the light of the fact that the sole reason for rejection of the proposal for appointment of Mrs.Meena is that she holds a dual degree, which fact would not have stood in the way of approval of her appointment as the law then stood, we see no reason to entertain the present appeals and dismiss the same.



21. The appointment of Mrs.Meena as B.T.Assistant (English) in Maipparai High School, Maipparai, Tirunelveli District is confirmed. All attendant benefits and arrears of salary will be paid to her within a period of four weeks from the date of this decision. No Costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(P&A)

/True copy/

Sub Assistant Registrar

To

- 1.The Secretary,
Department of School Education,
State of Tamil Nadu,
Fort st. George, Chennai - 600 009.
 - 2.The Director of School Education,
College Road, Chennai - 600 006.
 - 3.The Joint Director of School Education,
(Secondary Education),
College Road, Chennai - 600 006.
 - 4.The Chief Educational Officer,
Tirunelveli, Tirunelveli District.
 - 5.The District Educational Officer,
Tiruneveli,
Tirunelveli District.
- +1cc to M/s.Isaac Chambers, Advocate, SR.No.70257.

W.A(MD)No.1201 of 2017
and
C.M.P(MD)No.8415 of 2017
27.06.2018

pm

RAM/PN/SAR 4/09.07.2018/5P/7C