



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 05.03.2018

CORAM:

WEB COPY

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P(MD)No.7641 of 2013

&

MP(MD)No.1 of 2013

J.Anto

... Petitioner

Vs.

1. The Commissioner,
Adi Dravidar Welfare Department,
Ezhilagam,
Chennai - 600 005.

2. The Joint Direct of School Education (Vocation),
College Road, Chennai - 600 006.

3. The Head Master,
Government Tribal Residential Higher Secondary School,
Pathukani,
Kanyakumari District - 629 101.

... Respondents

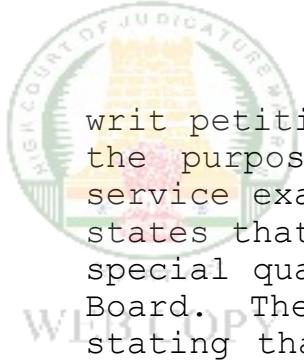
PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorari to call for the records pertaining to the impugned notice issued to the petitioner by the 2nd respondent through his proceedings in Na.Ka.No.1502/V1/E2/2010 dated 10-04-2013 quash the same.

For Petitioner	: Mr.D.Srinivasa Ragavan
For Respondents	: Mr.R.Sethuraman, Special Government Pleader,

ORDER

The show cause notice issued by the 2nd respondent in proceedings dated 10.04.2013 is under challenge in this writ petition.

2. The writ petitioner was appointed as Computer Instructor in Government Tribal Residential Higher Secondary School, Pathukarni and accordingly, the order of appointment was issued by the respondent in proceedings dated 17.11.2008. The writ petitioner was working on contract basis as Computer Instructor. Subsequently, the



writ petitioner was permanently absorbed in the regular vacancy. For the purpose of granting permanent absorption, special qualifying service examination was conducted and the impugned show cause notice states that the writ petitioner had not secured the pass mark in the special qualifying examination conducted by the Teachers Recruitment Board. Therefore, the 2nd respondent issued show cause notice, stating that why the writ petitioner should not be terminated from service.

3.The learned Special Government Pleader states that the writ petitioner had not passed in the special qualifying examination conducted by the Teachers Recruitment Board and hence, he is not entitled for permanent absorption. Thus, the show cause notice was issued to the writ petitioner seeking explanation. As such there is no infirmity.

4.The sole point raised by the writ petitioner is that the 2nd respondent is not the competent authority and the writ petitioner was appointed by the first respondent, who is the Commissioner of Adi Diravidar Welfare. Department. Therefore, the Joint Director of School Education is no way connected with the employment of the writ petitioner in the Department of Adi Diravidar. Thus, the impugned show cause notice is without jurisdiction and accordingly, the same is liable to be set aside. The order of appointment dated 13.11.2008 was issued by the Commissioner of Adi Diravidar Welfare Department . If at all the writ petitioner has not acquired or possessed the requisite educational qualifications, then the authority competent has to initiate action only through competent authority.

5.The appointing authority is competent to initiate appropriate proceedings in accordance with law for the purpose of terminating the service of the writ petitioner. This being the principles to be followed, the impugned notice issued by the 2nd respondent is without jurisdiction. The 2nd respondent ought to have recommended the case of the writ petitioner for initiating appropriate action to the first respondent. Contrarily, the 2nd respondent himself had issued the show cause notice without jurisdiction. Thus, the writ petitioner was constrained to move the present writ petition.

6.In view of the fact that the 2nd respondent has no jurisdiction to initiate action in respect of the appointment of the writ petitioner, this Court is of an opinion that the ground of jurisdiction raised in this writ petition deserves to be considered.

7.Accordingly, the impugned show cause notice issued by the 2nd respondent in proceedings dated 10.04.2013 is quashed. The first respondent is directed to initiate appropriate action in respect of the report submitted by the 2nd respondent in accordance with law by providing opportunity to the writ petitioner.

<https://hcservices.ecourts.gov.in/hcservices/>

8.With the above directions the writ petition stands allowed.



However, there shall be no order as to costs. Consequently, the connected miscellaneous petition is closed.

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Sd/-

Assistant Registrar (CS-III)

/True Copy/

Sub Assistant Registrar

To

1. The Commissioner,
Adi Dravidar Welfare Department,
Ezhilagam,
Chennai - 600 005.
2. The Joint Direct of School Education (Vocation),
College Road, Chennai - 600 006.
3. The Head Master,
Government Tribal Residential Higher Secondary School,
Pathukani,
Kanyakumari District - 629 101.

+ 1 CC TO SPECIAL GOVERNMENT PLEADER IN SR No. 53589

DSK

TE/KKR/SAR-1 : 23/03/2018 : 3P/5C

W.P (MD) No.7641 of 2013 and
MP (MD) No.1 of 2013
05.03.2018