

HON'BLE SRI JUSTICE ABHINAND KUMAR SHAVILI

W.P.No.18194 OF 2011

ORDER

This writ petition is filed seeking for the following relief:

“...to issue a Writ, Order or Direction (s) more particularly, one in the nature of Writ of Mandamus:

(a) directing the respondents to regularize the services of the petitioners taking into account from the date on which they are actually appointed by holding the action of the respondents in not doing so and relying upon the G.O.Ms.No.151 General Administration (Ser.G) Department, dated 22.06.2004, which is inapplicable to the Board, as bad, illegal, and unconstitutional and to set aside such decision of the Government/Board to regularize the service of the compassionate appointees only the date on which they acquire qualifications as illegal, bad and unconstitutional;

(b) to release all Annual Grade Increments treating the appointment of the petitioners on compassionate grounds as Junior Assistants as regular appointments with effect from the date of their appointments with arrears and fixation of pay etc;

(c) direct the respondents to fix the seniority of the petitioners in the seniority list of Junior Assistants taking into account their date of appointments as such and to promote the petitioners as Senior Assistants based on such seniority list of Junior Assistants with effect from the date on which their immediate junior was promoted or to be promoted with all consequential benefits;

(d) and to pass any such other Order or Orders as this Hon'ble Court may deem fit and proper on the facts and in the circumstances of the case.”

Heard Sri J.Sudheer, learned counsel appearing for the petitioners, Sri D.L.Pandu, learned Standing Counsel appearing for Telangana State Board of Intermediate Education, Smt M.Siva Jyothi, learned Standing Counsel appearing for the A.P. State Board of Intermediate Education and learned Government Pleader for Higher Education.

It is the case of the petitioners that they were appointed as Junior Assistants in the Board of Intermediate Education, on compassionate grounds, during 2004 to 2007, subject to condition that they should acquire the qualification of Diploma in two year Computer Science within five years from the date of their appointment. It is the specific case of the petitioners that two year Diploma in Computer Science is a non-existent course and no recognized institutions are offering the said course. Since two year Diploma in Computer Science, which is a non-existent course, the petitioners have not acquired the said qualification. After realizing the same, the respondents have passed a resolution on 24.10.2009 by deleting the condition of acquiring the qualification of two year Diploma in Computer Science. The Government has acted upon the said resolution and amended the Rule by issuing proceedings dated 14.02.2011 and introduced courses such as Office Automation, PC Maintenance and Trouble

Shooting, and Web Designing. In pursuance of the same, the petitioners have acquired the alternative qualification of Office Automation during February 2010 and their services were regularized. But the respondent-Board is not including the petitioners in the seniority list of Junior Assistants. Hence, the writ petition.

Learned counsel appearing for the petitioners is that the petitioners were appointed subject to condition of acquiring qualification in two year Diploma in Computer Science, which is non-existent course; that subsequently, in view of amendment of Rule, they have completed the course in Office Automation as prescribed by the State Board of Technical Education; that their cases may be considered for promotion to the post of Senior Assistant; and that the respondent-Board cannot deny their promotion in view of their acquisition of qualification at a later point of time because the very condition of acquiring qualification in two year Diploma in Computer Science itself is a non-existent course. In support of this contention, he placed reliance on the judgment of the Apex Court in *Mohd Ayub vs State of Uttar Pradesh*¹, wherein it was held as under:

“The learned Judges in Chaganti² accepted the interpretation of Section 10 in *N.Sureya Reddy v. State*

¹ (2009) 17 SCC 70

² (1986) 3 SCC 141

*of Orissa*³ and held that the principle enunciated in Section 10 of the General Clauses Act should be invoked on consideration of justice and expediency. Rather recently in *HUDA v. Dr.Babeswar Kanhar*⁴, this Court held that there is a general principle that a party, prevented from doing an act for more reasons beyond his control, can do so at the first subsequent opportunity. The learned Judges further elaborated by saying that the underlying object of Section 10 is to enable a person to do what he should have done in a holiday, on the next working day. The learned Judges held that the said principle is based on the doctrine that law does not compel the performance of an impossibility. In saying so, the learned Judges relied on an old decision of the Calcutta High Court in *Hossein Ally v. Donzelle*⁵. This Court is in respectful agreement with the aforesaid principles.”

Learned Standing Counsel appearing for the respondent-Board contends that there is no two year Diploma course in Computer Science in the State. He produced the written instructions dated 12.09.2018, which clearly show that there is no two year Diploma Course in Computer Science and no recognized institutions are offering the same and accordingly, the Board has passed resolution on 24.10.2009 substituting the condition to acquire the alternative qualification such as Office Automation, PC Maintenance & Trouble Shooting, Web Designing.

³ 1985 Cri LJ 939(ori)

⁴ (2005)1SCC 191

⁵ ILR (1880) 5 Cal 906

Admittedly there is no two year Diploma Course in Computer Science in the State of A.P.

Having considered the rival submissions made by the learned counsel on either side, this Court is of the considered view that insisting to acquire a qualification, which is not in existence, amounts to impossible compliance and the regularization of the petitioners was delayed on account of the said condition. Therefore, the petitioners are entitled to regularize their services from the date of their initial appointment with all consequential benefits.

Accordingly, the Writ Petition is allowed and the respondents are directed to regularize the services of the petitioners from the date of their initial appointment with all consequential benefits. No costs.

Miscellaneous petitions, if any, pending shall stand closed.

JUSTICE ABHINAND KUMAR SHAVILI

27th September, 2018

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