

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date: 26.08.2019

CORAM

THE HON'BLE MR. JUSTICE V.PARTHIBAN

W.P.No.2317 of 2019 and
W.M.P.Nos.2555 & 2556 of 2019

V.Prakash

...Petitioner

Vs.

1.The Director of School Education,
DPI Campus, College Road,
Chennai - 600 006.

2.The Chairman,
Teacher Recruitment Board,
4th Floor, E.V.K.Sampath Maligai,
DPI Campus, College Road,
Chennai - 600 006.

...Respondents

Writ Petition filed under Article 226 of Constitution of India, for issuance of writ of certiorarified mandamus to call for the records relating to the impugned proceedings issued by the second respondent in Rc.No.4013/L2/2014 dated 24.07.2018 and to quash the same and consequently directing the respondents to select and appoint the petitioner to the post of PG Assistant (Tamil) as per the selection conducted in Advertisement/Notification No.02/2013 dated 09.05.2013 based on the marks secured by the petitioner in the examination with due seniority, with all consequential and other attendant benefits, within a time frame to be fixed by this Court.

For Petitioner : Mr.G.Sankaran

For Respondents: Mr.K.Karthikeyan, G.A. (for R.1)
Mr.C.Munuswamy, Spl.G.P. (for R.2)

ORDER

The petitioner belongs to Backward Class community and has completed his SSLC and Higher Secondary examination in March, 2000 and March, 2002 respectively. Thereafter, he completed his B.Lit., degree in Tamil in 2007. Based on the Bachelor Degree, the petitioner joined M.A. Degree through Distance Education mode in Annamalai University in 2007. However, the petitioner

discontinued the course in 2008 and joined B.Ed., degree course in the year 2008 and completed the same during April, 2010. Thereafter, the petitioner appears to have applied for re-admission for completion of his M.A. Degree in 2010 and completed the same in May 2011. The petitioner, on acquiring the qualification, has registered his name in the Employment Exchange.

2.The second respondent Board issued Notification No.02/2013 dated 09.05.2013 for direct recruitment in the post of PG Assistant/ Physical Director Grade - I for the year 2012-13 which included in the post of PG Assistant in Tamil. Totally 605 vacancies were notified by the second respondent. The petitioner, in response to the Notification, applied for the post of PG Assistant (Tamil). The method of selection involved was written examination and awarding of weightage marks for Employment Exchange seniority and experience in teaching.

3.The petitioner in the written examination had secured 103 marks and he was also awarded one mark for Employment Exchange seniority and thereby he had secured 104 marks in total in the selection. However, in the final selection list, the petitioner's name did not find place, whereas persons who have secured lower marks than the petitioner, their names were included in the select list.

4.On verification, the petitioner came to know that the petitioner was not considered for eventual selection in view of the misunderstanding of the Commission that he had completed PG and B.Ed., Courses simultaneously. In the said circumstances, his non-selection was put to challenge by the petitioner in W.P.No.3916 of 2014.

5.After hearing the parties, this Court has passed final orders in W.P.No.3916 of 2014 on 10.09.2014 holding that the petitioner did not do B.Ed., and Post Graduate Courses simultaneously. In fact, the Court has given a factual finding in regard to the qualifications of the petitioner which were obtained consecutively and not simultaneously. This Court, while giving such a finding, has directed the respondent to consider the name of the petitioner for appointment to the post of PG Assistant in Tamil. The operative portion of the direction passed by this Court, in the above said writ petition, is extracted hereunder;

"6.A perusal of the documents filed in the typed set of papers would show that the petitioner has completed the two different courses in the different academic years, viz., B.Ed., in the year 2010 and M.A.Degree in the year 2011. The petitioner has completed the first year M.A.Degree

Course in the year May 2008; thereafter, he discontinued the same and joined B.Ed., Course in the year 2008 and completed the same during the year April 2010. Again he had applied for re-admission for completion of the M.A.Degree Course in the year 2010 and completed the same in the year 2011. Records have been filed before this Court by way of typed set of papers to prove the same. Whereas, in the cases cited by the learned Additional Government Pleader, it is seen that the petitioners therein have completed two different courses in the same year. Therefore, this Court came to the conclusion that those petitioners were not eligible for consideration to the posts of Post Graduate Assistants in English/Tamil.

7.Considering the above said facts and circumstances of the case and also taking into consideration the fact that the petitioner in this case has completed the M.A.Degree and B.Ed., in two different academic years, the same is distinguishable from the facts mentioned in the cases cited by the learned Additional Government Pleader.

8.For all the above stated reasons, this writ petition is allowed with a direction to the respondent to consider the petitioner's name for the post of Post Graduate Assistants in Tamil, in accordance with law and with due seniority. No costs. Consequently, the connected miscellaneous petition is closed."

6.The direction passed by this Court as above was not complied with by the second respondent Board and therefore, the petitioner was constrained to file Contempt Petition in C.P.No.633 of 2016. While so, the petitioner came to know that the respondents have filed a writ appeal against the order passed by the learned Single Judge in W.A.No.1035 of 2017. By referring to the pendency of the writ appeal, the Contempt Petition was closed by this Court, as per order dated 24.10.2017.

7.Subsequently, the writ appeal filed by the respondent Board came up for hearing on 24.11.2017 and the learned Division Bench of this Court has confirmed the factual finding of the learned Single Judge holding that the petitioner studied and obtained both degrees B.Ed., as well as M.A. separately and not simultaneously. The Division Bench referred to the facts of study undertaken by the petitioner and clearly confirmed the finding of the learned Single Judge. While the matter stood thus, the respondent Board issued Notification in respect of another selection in the year 2017, which was challenged by the

petitioner in W.P.No.13391 of 2017 where this Court has initially granted interim order of stay. Subsequently, the interim order was modified based on the submission made by the respondent Board by directing the Board to keep one post vacant for the petitioner until further orders, by order dated 14.06.2017.

8.Since the order passed in W.P.No.3916 of 2014 dated 10.09.2014, which was confirmed in the appeal in W.A.No.1035 of 2017 was not implemented, the petitioner was once again sought permission of this Court to restore his original Contempt Petition in C.P.No.633 of 2016 and when the Contempt petition was pending, the respondent passed an order on 24.07.2018 and rejected the claim of the petitioner stating that the entire selection process was completed on 03.01.2014 itself and therefore, the Board was unable to consider the request for recruitment of the petitioner as Post Graduate Assistant in Tamil due to non-availability of vacancies. By referring to the final order passed by the second respondent Board, the Contempt Petition came to be closed on 11.08.2018. The present writ petition is filed challenging the order dated 24.07.2018 rejecting the claim of the petitioner on the stated ground.

9.Shri G.Sankaran, learned counsel appearing for the petitioner would submit that this Court, by its order dated 10.09.2014 in W.P.No.3916 of 2014 has given a factual finding in regard to the degrees obtained by the petitioner holding that the same have been done in different periods and the finding of the learned Single Judge was also affirmed by the Division Bench in W.A.No.1035 of 2017. Once both the Single Judge as well as the Division Bench have confirmed that the petitioner has earned his B.Ed., and M.A., degrees separately and not simultaneously, the non inclusion of the petitioner's name in the original selection for the year 2012-13 became untenable.

10.Shri G.Sankaran, learned counsel would submit that in similar circumstances, another candidate has approached this Court in W.P.No.27600 of 2014 and the learned Judge of this Court vide order dated 26.09.2016 allowed the writ petition by referring to the order passed by this Court in respect of the petitioner herein in W.P.No.3916 of 2014 dated 10.09.2014. When the Board has not implemented the direction in that case, a Contempt Petition was filed in C.P.No.1134 of 2017 and when the matter was taken up for hearing on 28.06.2019 i.e., very recently, it was reported to this Court that the order was implemented in respect of the petitioner, by proceedings dated 26.06.2019 and on such submission, the Contempt Petition was closed.

11.The learned counsel would therefore submit that when an identically placed person has been appointed as P.G. Assistant, after the order was passed by learned Single Judge of this Court, which referred to the order passed in the petitioner's case, it is all the more reason that the petitioner ought to have been granted appointment. The reason set forth in the impugned communication that the selection was completed on 03.01.2014 itself cannot be countenanced either in law or on facts, since for no fault of the petitioner, he was denied appointment as P.G. Assistant (Tamil) and the petitioner having been wronged unjustly and illegally, he cannot be denied the relief.

12.In fact, in this regard, the leaned counsel would rely on a decision of the Division Bench of this Court in W.A.No.866 of 2015 dated 27.01.2017. He would refer to paragraph 26 of the order, which is extracted hereunder:

"26.Though the legal principle clearly disclosed that the selected candidates has no right to seek appointment against the available vacancies, but however, whether the selection of the candidate have been improperly denied for no fault attributable to him, the relief must be granted to the writ petitioner. We therefore, direct the State Government to take into consideration the case of the writ petitioner for appointment as Post Graduate Assistant (English) immediately. At best, he will be entitled to all benefits from the date of such appointment and may not be entitled to all benefits from the date of such appointment and may not be justifiably entitled for the benefits from the date on which the next most meritorious candidate than him came to be so appointed pursuant to the Notification for recruitment in the academic year 2011-12."

He would therefore submit that once the candidate has been improperly denied selection, the relief must be granted to the writ petitioner.

13.Per contra, Mr.K.Karthikeyan, learned Government Advocate appearing for the 1st respondent would submit that there are no vacancies to accommodate the petitioner and the interim order obtained by him in the subsequent writ petition was passed in 2017, whereas the vacancies were filled up long ago on 03.01.2014 itself. In view of the non availability of vacancies, the petitioner cannot be granted the relief. A detailed counter affidavit has also been filed in the matter. In the counter affidavit, certain facts have been mentioned as to the manner in

which the degrees have been obtained by the petitioner questioning the correctness of the finding rendered by the learned Single Judge of this Court and the Division Bench of this Court in the aforementioned writ petition and writ appeal involving the petitioner herein.

14.This Court is unable to see as to how the learned Special Government Pleader could seek to reopen what has been settled by the learned Single Judge of this Court and also the Division Bench in support of the petitioner herein as to the factual finding of the degrees obtained by the petitioner.

15.Once this Court has given clear finding that the degrees obtained by the petitioner viz., B.Ed., and M.A. Degrees separately in different academic years and not simultaneously and such finding was also affirmed in the writ appeal by detailed order of the learned Division Bench, it is no more open to the respondent to once again question the manner in which the degrees were obtained by the petitioner.

16.The reason for not considering the claim of the petitioner that the vacancies had been already filled up in 2014 itself cannot be accepted for the simple reason that the petitioner herein has been unduly and unjustly denied selection for no fault of his. Once this Court finds that the petitioner has been wronged by construing the degrees obtained by him by the second respondent Board, the second respondent Board, in all fairness, ought to have rectified its own mistake which was committed by it due to its misunderstanding and misreading of the degrees obtained by the petitioner separately and it ought to have initiated steps to rectify the erroneous appreciation of the factual position. Instead of that, the respondent Board has come up with a strange objection stating that the vacancies had already been filled up and therefore it is not possible to accommodate the petitioner.

17.This Court is unable to appreciate as to how such stand could be countenanced by this Court. First of all, when the petitioner was unjustly denied his due selection due to the wrong understanding of the second respondent Board, the second respondent Board on its own should have corrected the situation by extending the benefit of appointment to the petitioner with all attendant benefits. Unfortunately, without taking any corrective measure, the second respondent Board is attempting to take a refuge under the plea that the vacancies were already filled up. In fact, in paragraph 14 of the affidavit filed in support of the writ petition, the petitioner herein has identified the vacancies available in the post of P.G. Assistant (Tamil). The vacancies which are identified by the petitioner are extracted hereunder:

"(1)Government Higher Secondary School, Samigoundanpalayam.
(2)Government Boys Higher Secondary School, Palladam.
(3)Government Girls Higher Secondary school, Palladam.
(4)Government Higher Secondary School, Iduvampalayam (2 posts).
(5)Government Boys Higher Secondary School, Avinasi (2 posts)."

This statement of above fact is not denied by the respondents in their counter affidavits.

18.Be that as it may, that once the petitioner has established his right to be included for selection, no matter that the vacancies are filled up or not, his entitlement to be considered for appointment shall not stand negated due to passage of time because of pendency of litigation before this Court. The right which has been denied to the petitioner for inclusion in the selection for the year 2012-13 has to be restored status quo ante, if the right is found to be established in petitioner's favour, by orders of this Court. Such right cannot suffer diminution or extinguishment by mere passage of time. In the said circumstances, this Court is of the considered view that the petitioner is entitled to the grant of relief, notwithstanding the so-called objections of the second respondent Board as conveyed through the impugned communication dated 24.07.2018.

19.In view of the above, the impugned proceedings of the second respondent in Rc.No.4013/L2/2014 dated 24.07.2018 is hereby set aside and the respondents are directed to select and appoint the petitioner as P.G. Assistant (Tamil) as per the selection conducted in pursuance of the Notification No.02/2013 dated 09.05.2013 based on the marks secured by the petitioner in the written examination with due seniority and other attendant benefits.

20.It is made clear that except the wages for the period in question, the petitioner is entitled to other attendant benefits. The respondents are directed to pass appropriate orders in this regard and appoint the petitioner in any one of the existing vacancies in his category, in case, no vacancies are available to accommodate him in any immediately arising future vacancy. The respondents herein are directed to pass necessary and appropriate orders within a period of four weeks from the date of receipt of copy of this order.

21.In the result, the Writ Petition is allowed. No costs.
Consequently, the connected miscellaneous petitions are closed.

s/d-
Assistant Registrar(CO)

True Copy

Sub-Assistant Registrar

To

1.The Director of School Education,
DPI Campus, College Road,
Chennai - 600 006.

2.The Chairman,
Teacher Recruitment Board,
4th Floor, E.V.K.Sampath Maligai,
DPI Campus, College Road,
Chennai - 600 006.

3.The Government Advocate,
High Court, Madras.

+1 CC to Govt. Pleader sr 73414

+1 CC to Mr.G.Sankaran, Advocate sr 72962.

W.P.No.2317 of 2019

CA(CO)
SP(17/09/2019)

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