

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.08.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

W.P.No.7712 of 2007

K.Feroz Khan,
Computer Instructor,
Ilayangudi Higher Secondary School,
Ilayangudi,
Sivagangai District.

.. Petitioner

Vs.

1. State of Tamilnadu Rep. By its
Secretary to Government
School Education Department,
Fort St. George, Chennai 9.
2. The Director of School Education,
College Road,
Chennai 6.
3. The Joint Director of School Education (Higher Secondary)
College Road, Chennai 6.
4. The Chief Educational Officer,
Sivagangai.
5. The District Educational Officer,
Sivagangai.
6. The Correspondent,
Ilayangudi Higher Secondary School,
Ilayangudi, Sivaganga District.
7. Ms.S.Madalaimary,
Vocational Teacher,
Sahayarani Girls Higher Secondary School,
Soosayapparpattinam,
Sivagangai District.

.. Respondents

Prayer:

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 selection list dated 13.02.2007, issued by the 2nd respondent, quash the same in so far as it fails to follow the seniority in regularizing the Vocational Teachers and consequently for a direction, directing the 2nd respondent to regularize the service of the petitioner in accordance with G.O.35 dated 09.02.2007 based on seniority.

For Petitioner : Mr.Dhalapathy Vignesh Kumar

For R1 to R5 : Mr.P.Raja,
Government Advocate

For RR6 & 7 : No appearance

O R D E R

The petitioner is possessing B.A. Degree and Post Graduate Diploma in Computer Application. He was appointed as a Vocational Computer Instructor in the 6th respondent School on 05.06.1999. The petitioner has been handling Computer Science subject for the vocational stream of Higher Secondary course. He has been handling 28 periods per week as prescribed for all category of Teachers. The petitioner was appointed in a sanctioned post permanently and is working without any break in service ever since his initial appointment. The Vocational Teachers were given only consolidated pay and they were brought on time scale of pay in a phased manner as per G.O.680 dated 20.09.1996 (235 teachers) and G.O.74 dated 10.06.2002 (126 teachers).

2.The petitioner further submitted that in so far as the Computer Instructors are concerned, those who are working in a Government Schools are treated as separate category while those working in the aided schools in the sanctioned post has no other avenues, except to get regularized on par with other vocational teachers who are handling vocational subjects like Accountancy, Auditing and Typewriting, etc. By G.O.Ms.No.35, School Education Department dated 09.02.2007, the 1st respondent issued orders for bringing only 201 Vocational Teachers on time scale of pay and petitioner's name was not included in the list dated 13.02.2007. According to the petitioner, many of his juniors were included in the list while his name was not included. The petitioner is working as Vocational Teacher from 05.06.1999 in a sanctioned post permanently and non-inclusion of his name in the impugned list dated 13.02.2007 issued pursuant to G.O.Ms.No.35, School Education Department dated 09.02.2007 is clearly in violation of Article 14 of the Constitution of India and is liable to be quashed. The petitioner fulfilled the eligible criteria on par with other Teachers who were regularized and hence, has come out

with the present Writ Petition seeking regularization.

2(i) Though the petitioner originally filed the present Writ Petition challenging the seniority list dated 13.02.2007, the learned counsel appearing for the petitioner filed reply affidavit stating that the petitioner is not pressing the relief to quash the selection list dated 13.02.2007 and seeks only for a direction to the 1st respondent to regularize the petitioner as per G.O.Ms.No.35, School Education Department dated 09.02.2007.

3.The 5th respondent filed counter affidavit on his behalf and on behalf of the respondents 1 to 4. The respondents have stated that the petitioner's name was not forwarded in the list of part time Vocational Instructor for approval to bring into regular establishment as the petitioner was not possessing the requisite qualification. The petitioner was not appointed in a sanctioned post. He was appointed temporarily on self-finance basis by the 6th respondent. The petitioner obtained requisite qualification only in May 2001. The 2nd respondent in his proceedings dated 03.02.2000 has stated that during 1999-2000 academic year, the Government could not sanction any post for the Computer Instructor for future. This proceeding makes it clear that the Government should not sanction any post to the Computer Instructor for the said academic year 1999-2000 and prayed for dismissal of the Writ Petition.

4.The petitioner filed reply affidavit to the counter affidavit filed by the respondents 1 to 5 and denied various allegations made by the respondents 1 to 5 in the counter affidavit. The petitioner has stated that he has obtained Post Graduate Diploma in Computer Application in July 1998 in a private institution and based on such certificate, the petitioner was appointed by the 6th respondent in a sanctioned post. Subsequently, he obtained Post Graduate Diploma in Computer Application from Madurai Kamarajar University. The petitioner also obtained B.A Degree in Tamil Nadu Open University in the year December 2008. The petitioner was appointed as Computer Instructor on 05.06.1999. On that date he was possessing requisite qualification and was appointed in a sanctioned post. Till date, the petitioner is continuing in the 6th respondent school and stated that the petitioner is not pressing the relief of quashing the 13.02.2007 and prayed for regularizing his service as per G.O.Ms.No.35, School Education Department dated 09.02.2007.

5.Heard the learned counsel appearing for the petitioner as well as the learned Government Advocate appearing for the respondents 1 to 5 and perused the materials available on record.

6.The contention of the learned Government Advocate is that the petitioner was appointed temporarily by the 6th respondent on self-financing basis. As per the proceedings of the 2nd respondent dated 03.02.2000, during the academic year 1999-2000 there was no sanctioned post of Computer Instructor in future. The petitioner is not working in a sanctioned post and he cannot be regularized. These contentions are contrary to the materials on record. The petitioner has produced certificates to show that he was fully qualified to be appointed as Computer Instructor. His specific case is that he was appointed in a sanctioned post. The respondents 1 to 5 in the counter affidavit have stated that the post of Computer Instructor should not be sanctioned in future from the academic year 1999-2000. The respondents have not stated that no post of Computer Instructor was sanctioned to the 6th respondent school.

7.Further, the 5th respondent filed counter affidavit and stated that the post of Vocational Instructor was not sanctioned. In Clause 3 of G.O.Ms.No.35, School Education Department dated 09.02.2007, it is stated that as stated in Clause 2(ii), the persons who were appointed by Parents Teachers Association and paid consolidated salary by them in the post which were not sanctioned, can be brought on second category of teachers and are also eligible for being brought on time scale of pay of Rs.4,500-125-6000 and they can be given permanent post. In view of the same, the respondents are directed to bring the petitioner on time scale of pay as per G.O.Ms.No.35 School Education Department dated 09.02.2007. The selection list containing 201 Vocational Teachers is dated 13.02.2007 and 213 Teachers are not made as parties in the Writ Petition, except the 7th respondent and therefore, the said list is not quashed, except directing the respondents to bring the petitioner into time scale of pay based on G.O.Ms.No.35 School Education Department dated 09.02.2007. The petitioner is entitled to all monetary benefits as per G.O.Ms.No.35 School Education Department dated 09.02.2007.

8.In the result, this Writ Petition is partly allowed. No costs.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

gsa

To

1. The Secretary to Government
State of Tamil Nadu,
School Education Department,
Fort St. George, Chennai 9.
2. The Director of School Education,
College Road,
Chennai 6.
3. The Joint Director of School Education
(Higher Secondary)
College Road, Chennai 6.
4. The Chief Educational Officer,
Sivagangai.
5. The District Educational Officer,
Sivagangai.
6. The Correspondent,
Ilayangudi Higher Secondary School,
Ilayangudi, Sivaganga District.

+1cc to the Government Pleader, S.R.No.67120

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VBA (CO)
CS/24/10/2019



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