

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.10.2019

CORAM:

THE HONOURABLE MR.JUSTICE SUBRAMONIUM PRASAD

W.P.No.49247 of 2006

S.Jayakumar

.. Petitioner

Vs.

The Teachers Recruitment Board,
4th floor, EVK.Sampath Road,
DPI Complex, Chennai-600 006.

.. Respondent

PRAYER: Writ petition filed under Article 226 of the Constitution of India, for a Writ of Certiorarified Mandamus, calling for the records in Na.Ka.No.3450/A1/2006 dated 14.11.2006 on the file of the respondent, quash the same and direct the respondent to appoint the petitioner as Junior Post-Graduate Teacher in Economics in any of the Government Higher Secondary Schools.

For Petitioner : Mr.M.Sudhakar

For Respondent : Mr.K.Karthikeyan, GA.

O R D E R

The instant writ petition is for a Writ of Certiorarified Mandamus, calling for the records in Na.Ka.No.3450/A1/2006 dated 14.11.2006 on the file of the Teachers Recruitment Board and to direct the respondent to appoint the petitioner as Junior Post-Graduate Teacher in Economics in any of the Government Higher Secondary Schools.

2. The petitioner is 100% blind. He has studied upto 10th standard in Government Higher Secondary School, Mallur. Since he could not pass in few subjects, he discontinued his education. He later joined the Open University system and got a degree. He also acquired Postgraduate and B.Ed., degree. The petitioner thereafter applied for appointment of Postgraduate Teacher in the Government Higher Secondary School. He submitted his application. He appeared for written examination dated 17.09.2006, which he cleared. He was called for verification of certificates from the respondent Board on 29.09.2006. He gave his certificates for verification. Since he did not get any reply, he tried to enquire about his application wherein he was informed that his application was rejected by the impugned order on the ground that the

petitioner has not passed the 10th standard, the petitioner therefore filed the instant writ petition against the rejection order.

3. The petitioner states that the qualification which is required for the appointment as a Postgraduate Teacher in the Government Higher Secondary School, is a postgraduate degree in the respective subjects . The petitioner is a postgraduate in Economics. As stated earlier, he has also possess a graduation degree. He states therefore he is eligible for the appointment. This Court on 20.12.2006, issued notice. Counter has not been filed by the petitioner.

4. Heard the counsel for the parties.

5. The petitioner has reiterated his statement / averment in the writ petition. However, the respondent relied on G.O.Ms.No.107, Personnel & Administrative Reforms (M) Department, dated 18.08.2009, and G.O.Ms.242, Higher Education (B1) Department, dated 18.12.2012. G.O.Ms.No.107, Personnel & Administrative Reforms (M) Department, dated 18.08.2009, reads as under:-

"Personnel and Administrative Reforms (M) Department
G.O. (Ms).
No.107

Date : 18.8.2009

Aavani 2,

Thiruvalluvar Aandu 2040

Read :

1. G.O. (Ms). No.180, Personnel and Administrative Reforms . Department dated 22.9.2000.
2. Letter No.R.E.D./301-6/2004, dated 17.7.2004, from Chief General Manager, Tamil Nadu, BSNL Ltd.
3. D.O. letter No.1745/RND-F 1/2007 dated 5.4.2007 from the Secretary, Tamil Nadu Public Service Commission.
4. D.O. Letter No.5280/RND F.1/2007 dated 27.9.2007 from the Joint Secretary, Tamil Nadu Public Service Commission.

ORDER :

In the Government Order, first read above, orders have been issued granting approval for employment in Public Services considering the degrees conferred by Open Universities in Tamil Nadu recognized by the University Grants Commission, in respect of Diploma course, Under-Graduate course and Post-Graduate course as equivalent to that of the Diploma course, Under-Graduate course and Post-Graduate course given by the said universities through Regular stream.

2. The Chief General Manager, BSNL Tamil Nadu Circle,

in the letter second read above, has requested for clarification as to whether the persons who have obtained a degree in B.Sc., B.A., etc., through Open Universities without a pass in higher secondary examination (+2) shall be considered as having passed the higher secondary examination, for the post for which the minimum educational qualification is fixed as a pass in Higher Secondary Education and can be considered for the promotion posts in government departments.

3. The Secretary, Tamil Nadu Public Service Commission was requested to forward the recommendation made by Equivalence Committee on the aforesaid proposal. The Equivalence Committee recommended that the persons who have obtained B.Sc., B.A. degree in Open Universities without having passed the higher secondary school examination, cannot be considered either for employment or promotion in government service by considering them to have passed the +2 examinations of the State Government. Even when the said proposal was sent again for the recommendation of the Equivalence Committee, it insisted on the decision already taken.

4. The Government carefully examined this recommendation and having decided to accept the recommendation of the Equivalence Committee issues an order recognizing the degrees in Diploma/Degree/Post-Graduate degree obtained through Open Universities only after having passed secondary school examination (10th Std.) and higher secondary school examination (+2) alone for appointment/promotion in Public Services.

// By Order of the Governor//

K.N.Venkataraman

Secretary to Government"

6. Similarly, G.O.Ms.242, Higher Education (B1) Department, dated 18.12.2012, prescribes that a person has to pass the 10th standard board examination before his eligibility can be considered for public employment. G.O.Ms.No.107, has been upheld by the Division Bench of this Court in its order dated 10.02.2011 in WP.No.18729 of 2010 in the case of T.L.Muthukumar Vs. The Registrar General, High Court, Madras and another. A similar issue has come up for hearing before another Division Bench of this Court W.A.No.805 of 2014 dated 06.08.2014, while this Court has held that even if a candidate clears his 10th and 12th standard examination after obtaining the graduate and postgraduate degrees, the degree so obtained without passing +2 examination is not a valid one and such of candidate cannot be considered for the post of Postgraduate Assistant Teacher. This

Court after extracting G.O.Ms.No.107 dated 18.08.2009, observed as under:-

"5.2. Coming to the first issue, we would like to extract the relevant passage of the Government Order passed in G.O.(Ms).No.107 Personnel & Administrative Reforms (M) Department, dated 18.8.2009, which reads as under: "The above recommendations were carefully examined by the Government and accordingly Government accepted the recommendations of Equivalence Committee and issue orders, that the Diplomas/Degrees/ Post Graduation after possession of Xth Std., Higher Secondary (+2) obtained through Open Universities alone considered for appointment/ promotion in Public Services.'" On a reading of the above said paragraph, it is clear that a diploma/ degree/post graduation can only be considered for appointment in public services after a candidate possesses Xth Standard as well as Higher Secondary (+ 2). This Government Order passed has been upheld by the Division Bench of this Court in W.P.No.18729 of 2010 dated 10.2.2011.

5.3. Even otherwise, the binding nature of the said Government Order is not in dispute. The respondent has not challenged the said Government Order. As the appellants are the competent authorities to fix the qualification, that too, pertaining to the teachers of Higher Secondary schools, there is no difficulty in coming to the conclusion that the conditions prescribed are mandatory. In other words, unless and until a candidate satisfy the requirement as envisaged in G.O.(Ms).No.107 Personnel & Administrative Reforms (M) Department, dated 18.8.2009, he or she cannot be considered for the post.

5.4. In the case on hand, admittedly, at the time of completing the degree, the respondent did not complete the plus 2 course. That is exactly the reason why she thereafter completed the plus 2 course. This fact has also been observed by the learned single Judge. While it is absolutely open to the respondent to do the same, the question for consideration is, as to whether the said action would cure the defect. In our respectful submission, the said attempt cannot be substitute to the Government Order passed in G.O.(Ms).No.107 Personnel & Administrative Reforms (M) Department, dated 18.8.2009. Any other interpretation would amount to re-writing the provisions of the said Government Order, which is impermissible in law, without there being a challenge.

5.5. Now, coming to the Regulations of the Unvieristy Grants Commission with reference to admission of a student to a Degree, the said issue is irrelevant insofar as the insistence on the part

of the appellants to comply with the Government Order passed in G.O.(Ms).No.107 Personnel & Administrative Reforms (M) Department, dated 18.8.2009. The appointment is to the post of Post Graduate Assistant Teacher in the Higher Secondary School. When the appellants thought it fit to make sure that only those who have completed plus 2 course and thereafter the degree course be eligible to be considered for a particular post of a teacher, then the wisdom and rationale behind the same cannot be questioned. As discussed above, the rationale has not been questioned before us and in any case, we do not find any arbitrariness in the Government Order, which has already been upheld."

7. In view of the above, the issue raised in the writ petition stands covered. Writ petition is dismissed. No Costs.

Sd/-

Assistant Registrar (CCC)

//True Copy//

Sub Assistant Registrar

Pkn.

To

The Teachers Recruitment Board,
4th floor, EVK.Sampath Road,
DPI Complex, Chennai-600 006.

सत्यमेव जयते

W.P.No.49247 of 2006

GP (CO)
GN(25/11/2019)

WEB COPY