

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.09.2019

CORAM:

THE HONOURABLE MR.JUSTICE SUBRAMONIUM PRASAD

W.P.No.7559 of 2010

MP.No.1 of 2010

O.Punithavathy

.. Petitioner

Vs.

1. Teachers Recruitment Board,
rep. by its Chairman,
Chennai - 6.

2. Director of School Education,
Chennai -6.

3. Chief Educational Officer,
Coimbatore.

.. Respondents

PRAYER: Writ petition filed under Article 226 of the Constitution of India, for a Writ of Certiorari, calling for the records pertaining to the order passed by the 1st respondent in his proceedings Na.Ka.no.2197/A3/AA2/2009 dated 02.02.2010 and quash the same.

For Petitioner : Mr.P.Ganesan
for M/s.C.S. Associates

For Respondent : Mr.C.Munuswamy, Spl.GP for R1
Mr.P.Raja, GA for R2 & R3

O R D E R

This writ petition is filed for a Writ of Certiorari calling for the records pertaining to the order passed by the Chairman, Teachers Recruitment Board, Chennai, in his proceedings Na.Ka.no.2197/A3/AA2/2009 dated 02.02.2010.

2. Undisputed facts are :-

a) The petitioner did her B.Sc., (Biochemistry) and registered her name in the employment exchange. The first respondent Board called for applications for appointment to the post of B.T.Assistant.

b) The Board notified vacancies for subjects like Botany, Zoology, Chemistry, Physics, History, Geography, Maths etc.,

c) Written examination was conducted on 05.11.2006. Results were declared and on verification of certificate which was held on 26.12.2006, the petitioner was selected as B.T.Assistant (Chemistry) on 12.01.2007.

d) She was given appointment on 04.03.2007. She was working in the Government High School, Malaireddiyur, Vellore District from 15.03.2007.

e) The probation of the petitioner was declared successful and on successful completion of proceedings of probation, the petitioner was regularized with effect from 11.06.2009.

f) The petitioner got a show-cause notice on 02.02.2010, calling upon him to submit his explanation as to why his selection should not be cancelled on the ground that B.Sc., (Biochemistry) is not equivalent to B.Sc., (Chemistry).

g) The respondent relied upon the Government letter dated 16.11.2009. The show-cause notice also relied on G.O.Ms.No.254 , personnel and Administrative Reforms Department, dated 22.10.1998, wherein it is ordered that B.Sc (Bio-Chemistry) is not equal to B.Sc., (Chemistry).

h) In accordance with the Government order, the petitioner services were terminated.

3. Challenging this termination, the petitioner has filed the instant writ petition.

4. The learned counsel for the petitioner states that this issue is no longer res integra and is covered by a Division Bench judgment of this Court in Writ Appeal (MD) No.343 and 344 of 2017. This Court in the said order has held that when a person is appointed on the basis of certificates, he cannot be removed by virtue of another Government order which does not have retrospective effect. The relevant portion of the judgment of this Court order dated 13.04.2017, reads as under:-

"2. These writ appeals are filed against the orders dated 02.12.2016 passed in W.P.(MD).No.17248 and 17249 of 2016 respectively. The respondents/Writ Petitioners challenged the orders passed by the second respondent dated 08.09.2016, by which their services were terminated on the ground that the basic degree possessed by the Writ Petitioners namely B.Sc, Bio Chemistry is not equivalent to B.Sc., Chemistry and the Government has declared in G.O.Ms.No.254 dated 22.05.1998 that B.Sc., Bio Chemistry awarded by Bharathiyar University alone is equivalent to B.Sc., Chemistry for appointment of any public service and the Equivalence Committee constituted by the Government did not recommend the qualification of B.Sc., Bio Chemistry to that of B.Sc., Chemistry in any other University and this recommendation was accepted and G.O.Ms.No.72 Higher Education Department dated 30.04.2013 was issued

and therefore, the writ petitioners do not possess the requisite qualification.

3. What is important to note is that G.O.Ms.No.72 dated 30.04.2013 has not been specifically stated to have retrospective effect. Admittedly, the names of the writ petitioners were sponsored by the Employment Exchange during the year 2009 & 2010. After certificate verification, they were considered and appointed to the post, which they are functioning at present. Probation has been declared and it is stated that the writ petitioners were adjudged as best Teachers and awards were given to them. In this factual scenario, the learned Single Judge held that G.O.Ms.No.72, dated 30.04.2013 cannot be made retrospective operation to not suit the writ petitioners.

4. One more factor to be taken note is that both the writ petitioners acquired B.Ed., degree in Chemistry from the Bharathiyar University. At the time when they are admitted to the said course, the Bharathiyar University was satisfied that they possessed requisite qualification. In other words, Bharathiyar University admitted them to the course considering the B.Sc., Bio Chemistry to be equivalent to that of B.Sc., Chemistry. If the interpretation given by the appellants are to be accepted at this juncture, then, there may not be a situation, where it has to be held that B.Ed in Chemistry obtained by the writ petitioners from the Bharathiyar University itself could not be valid. Furthermore, there would be several such cases in the State of Tamil Nadu, where such appointments have been made prior to G.O.Ms.No.72 dated 30.04.2013. Therefore, the appellants cannot embark upon an exercise of review of such appointments before the said date.

5. We may also observe that it is the University which has to approach the Government seeking for orders on equivalence. The individual candidates cannot approach the Government and request them to declare as to whether or not two courses are equivalent. Therefore, if the University, in which the writ petitioners obtained the degree qualification viz., Madurai Kamarajar University do not approach the Government/Equivalence Committee for declaring the courses as equivalent, persons, who have undergone the course cannot be put to prejudice. When the writ petitioners having been given public employment and

having functioned for six years, at this juncture cannot be sent out of service. Thus, in our considered view that the learned Single Judge was perfectly justified in allowing the writ petitions. Hence, no grounds are made out for entertaining these appeals. Accordingly, the writ appeals are dismissed. No costs. Consequently, connected miscellaneous petitions are also dismissed."

5. The same issue has been considered and accepted by another judgment dated 09.02.2010 passed by this Court in WP.No.784 of 2010. In view of the judgment of the Court that once a candidate has appeared in the written examination and has been selected and has got his job after certificate verification, subsequent Government orders cannot be used to remove the candidate from the services, especially when the Government orders do not have any retrospective effect. There cannot be a removal of a person from the service without following rules framed under Article 309 of the Constitution of India. Impugned order is therefore contrary to the law and more so in view of the settled principles of this court in Writ Appeal (MD) No.343 and 344 of 2017.

6. Writ petition is allowed. No Costs. Consequently, the connected miscellaneous petition is closed.

-s/d-

Assistant Registrar (CS-IV)

True Copy

Sub-Assistant Registrar

Pkn

To

1. The Chairman,
Teachers Recruitment Board,
Chennai - 6.

2. The Director of School Education,
Chennai - 6.

3. The Chief Educational Officer,
Coimbatore.

+1 CC to M/s.C.S. Associates sr 81702

+1 CC to Govt. Pleader sr 82275.

W.P.No.7559 of 2010

MR (CO)

SP(05/12/2019)