

IN THE HIGH COURT OF JUDICATURE AT MADRAS

19.07.2019

CORAM

THE HON'BLE MR.JUSTICE V.PARTHIBAN

W.P.NO.3991 OF 2019

AND

W.M.P.NO.4446 OF 2019

P.Manikandan

... Petitioner

Vs.

1. The Director of Elementary Education,
College Road,
Chennai-6
2. The District Educational Officer/
East College Road,
Chennai.
3. The Block Educational Officer,
Royapuram Union,
No.11, Davidson Street,
Chennai-1.
4. The Secretary,
B.Subbrayan Middle School,
Moolakothalam Basin Bridge,
Chennai-21

.... Respondents

Petition filed under Article 226 of the Constitution of India praying to issue a writ of certiorarified mandamus calling for the entire records connected with the impugned proceedings of the 2nd respondent in Na.Ka.No.3585/A3/2018, dated 06.08.2018 and quash the same and consequently direct the respondents to approve the appointment of the petitioner as Secondary Grade Teacher in the 4th respondent school w.e.f. 12.12.2008, with all consequential monetary benefits.

For Petitioner .. Mr.S.N.Ravichandran

For Respondents .. Mr.K.Karthikeyan,G.A.,
for R1 to R3
M/S.P.Mahalakshmi for R4

ORDER

The writ petition has been filed seeking for issuance of certiorarified mandamus calling for the entire records connected with the impugned proceedings of the 2nd respondent in Na.Ka.No.3585/A3/2018, dated 06.08.2018, and quash the same and consequently direct the respondents to approve the appointment of the petitioner as Secondary Grade Teacher, in the 4th respondent school, w.e.f. 12.12.2008, with all consequential monetary benefits.

2.The facts and circumstances, which necessitated the filing of the present writ petition are briefly set out hereunder:

(a) In the 4th respondent school, two vacancies arose in the cadre of Secondary Grade Teacher, on retirement of one Tmt.Kousalya and Thiru.Boopathi, on 31.05.2006 and 30.11.2008, respectively. In view of student strength, the 4th respondent School, by letter dated 26.03.2009, sought permission to fill up the vacant posts. Since permission was not forthcoming immediately, in order to uphold the interest of the students studying in the school and also in anticipation of permission from the 3rd respondent, the 4th respondent school called for list of eligible candidates from the District Employment Exchange. Simultaneously, a paper advertisement was issued by the school Management.

(b) The petitioner herein has applied for the post of Secondary Grade Teacher under M.B.C. category. The school committee conducted interview on 12.12.2008 and selected and appointed the petitioner as Secondary Grade Teacher on 12.12.2008. Thereafter, the 4th respondent school submitted a proposal for approval of the petitioner's appointment as Secondary Grade Teacher with effect from 12.12.2008 and requested for order of approval and ratification. However, the 3rd respondent, vide proceedings dated 04.04.2009 rejected the request of the Management stating that prior permission was not obtained before the appointment was made. Aggrieved by the same, the 4th respondent school filed W.P.No.26684 of 2010. By an order dated 06.09.2011, this Court was pleased to set aside the rejection order and issued direction as under:

"7.In the representation dated 26.03.2009, the petitioner stated that Mrs.Gowsalya, retired as a Secondary Grade Teacher on 31.05.2006 and Mr.T.Boopathi, retired on 30.11.2008 and two vacancies arose and they are required to be filled up. Therefore, the petitioner sought permission. Considering the circumstances that

hit would take some time for getting prior permission, by direct recruitment, the petitioner appointed two teachers in the interest of students and has been paying salary to them. Till the permission is obtained from the first respondent, the said teachers cannot receive salary from the Government and only the management is required to pay salary. This Court cannot ignore the interest of the students and it was rightly taken care of by the petitioner management by making direct appointments.

8. The first respondent is directed to grant prior permission for appointment of two secondary grade teachers in the petitioner's school within four weeks from the date of the receipt of a copy of this order. It is made clear that the services of the already appointed teachers would commence only from the date of grant of permission from the first respondent and not before that."

(c) Pursuant to the above direction from this Court, the second respondent issued proceedings granting permission for appointment of the petitioner, on 27.10.2011. The 4th respondent school, thereafter issued another appointment letter to the petitioner on 01.12.2011 and submitted a proposal to the authorities concerned. Once again, vide proceedings dated 26.11.2012, the 2nd respondent rejected the proposal sent by the 4th respondent school on the ground that the petitioner was not qualified in Teachers Eligibility Test (TET). Aggrieved once again, the petitioner himself has approached this Court in W.P.No.6821 of 2013. This Court vide order dated 24.04.2017 partly allowed the writ petition and issued direction as under:

"4. In the result, the writ petition is partly allowed and the impugned proceedings of the 2nd respondent dated 26.11.2012 is hereby set aside and the 4th respondent school is directed to re-submit the proposal to the 2nd respondent within a period of two weeks from the date of receipt of a copy of this order and the 2nd respondent, upon receipt of the same, is directed to consider the said proposal on merits and in accordance with law, if the papers are otherwise in order and pass appropriate orders within a period of six weeks from the date of receipt of such proposal and communicate the decision taken to the petitioner as well as to the 4th respondent/School. No costs. Consequently, the

connected miscellaneous petition is also closed."

Thereafter, there was no action forthcoming from the 2nd respondent and therefore, the petitioner was constrained to file Contempt Petition No.681 of 2018.

(d)When the Contempt Petition was pending, the 2nd respondent, by his proceedings dated 06.08.2018, once again rejected the request of the petitioner on the ground that the petitioner was not qualified in Teachers' Eligibility Test. In view of the rejection order passed by the 2nd respondent, the Contempt Petition came to be closed. The present writ petition is challenging the order passed by the 2nd respondent dated 06.08.2018.

3.Mr.S.N.Ravichandran, the learned counsel appearing for the petitioner would submit that the petitioner was originally appointed on 12.12.2008 and immediately, the proposal was submitted by the school Management for his approval. However, the same was rejected on the ground that no prior permission was obtained and in the said circumstances, this Court was approached on the earlier round of litigation in W.P.No.26684 of 2010 and this Court has directed the authorities to consider and grant permission, by its order dated 06.09.2011 and thereafter permission was granted vide proceedings dated 27.10.2011.

4.According to the learned counsel for the petitioner, at that time, the requirement of Teachers' Eligibility Test was not in vogue and therefore, the appointment of the petitioner was as per Rules and was perfectly in order. The petitioner did not suffer any other disqualification except the ground on which the approval was rejected by the 2nd respondent, viz., not qualified in TET. The learned counsel therefore would submit that originally the petitioner was appointed way back in the year 2008 and permission was also granted as early as on 27.10.2011. According to the learned counsel, first time the Teachers' Eligibility Test was conducted only on 12.07.2012 and the requirement was also made mandatory only with effect from 15.11.2011. Since the permission was granted as early as on 27.10.2011, any post-facto approval must relate back to the date of permission i.e. 27.10.2011, in which event, the petitioner, at the particular point of time, was not required to qualify in Teachers' Eligibility Test. Therefore, the rejection, in the present proceedings, which is the subject matter of writ petition, on the stated grounds, cannot be countenanced both on facts and in law. Hence, the learned counsel would implore this Court to set aside the impugned proceedings and direct the 2nd respondent to grant necessary approval without insisting on qualifying in Teachers' Eligibility Test.

5.Per contra, the learned Government Advocate would vehemently oppose the claim of the petitioner stating that the TET is mandatory for grant of approval to Secondary Grade Teachers, after coming into force of Right to Education Act 2009. Since the petitioner admittedly did not qualify in TET, he is not entitled to get approval from the Educational Department. The learned Government Advocate would contest the claim of the petitioner by drawing the attention of this Court to the observation of the learned Single Judge in W.P.No.6821 of 2013, dated 24.04.2017, wherein, the present petitioner was the petitioner therein.

"3.The learned counsel for the petitioner would submit that the matter in issue is squarely covered by the judgment of a Division Bench of this Court, dated 24.01.2017 made in W.A.No.1126 of 2015 etc., batch, wherein the Division Bench has disposed of the writ appeals and the writ petitions and issued the following directions:

(1)The teachers herein, who have been appointed subsequent to the issuance of the Government Order, are granted one opportunity to appear for the Teachers' Eligibility Test, to be conducted by the Teachers Recruitment Board and in the event of their passing in the Teachers Eligibility Test, their appointments shall be approved else they have no other option but to quit the service ousted/ousted from service."

6.According to the learned Government Advocate, the same petitioner had prayed that he should be given one more opportunity in line with the Division Bench order, which observation has been incorporated in the order of the learned single Judge, as indicated above. Having taken such a stand, it does not lie in the mouth of the petitioner to disown such submission and ask for approval, without qualifying in the TET examination. In the said circumstances, the authority has rightly rejected the request for grant of approval, vide proceedings dated 06.08.2018.

7.Heard the rival submissions of the learned counsels appearing for the petitioner as well as the official respondents and also heard the learned counsel appearing for the 4th respondent school.

8.As far as the 4th respondent school is concerned, the learned counsel supported the contentions as raised by the petitioner in the affidavit filed in support of the petition as

well as the submissions made orally before this Court on behalf of the petitioner.

9.The point in issue to be considered by this Court is as to whether the petitioner is entitled to be granted approval without he being qualified in TET, in view of his appointment which took place prior to the requirement of passing of TET i.e. 15.11.11.

10.In this case, the facts as narrated above are not disputed at all. It is an unfortunate case that a teacher, who was appointed way back on 12.12.2008, was forced to repeatedly litigate before this Court in order to vindicate his right to have his appointment approved. Initially the petitioner had approached this Court when his appointment was rejected on the ground that no prior permission was obtained. Such rejection was repulsed and discountenanced by this Court, vide its order dated 06.09.2011 in W.P.No.26684 of 2010 and a direction was issued by this Court to give permission. Thereafter, by proceedings of the 2nd respondent dated 27.10.2011, permission was granted for appointment of the petitioner. Having given permission by proceedings dated 27.10.2011, whether it is open to the authority to turn around and insist the qualification of passing of TET, for grant of approval, subsequent to the grant of permission, is the moot point in this writ petition.

11.The petitioner, though granted permission for his appointment, had to once again approach this Court, since the permission was not followed by approval. This Court, by order dated 24.04.2017 partly allowed the Writ Petition No.6821 of 2013 of the petitioner herein and a direction was issued to consider the case for grant of approval, in case everything was in order. While disposing of the writ petition, it appears that the learned Single Judge of this Court has incorporated certain observations of the Division Bench of this Court made in W.A.No.1126 of 2015, dated 24.01.2017, in regard to the grant of one more opportunity to the petitioner to pass Teachers' Eligibility Test, as extracted above.

12.According to the learned learned Government Advocate, once the petitioner himself has accepted to avail the opportunity to qualify in Teachers' Eligibility Test, he cannot straight away ask for approval without such qualification.

13.This Court is unable to appreciate the argument of the learned Government Advocate for the reason that the consent given on behalf of the petitioner by the counsel on the basis of understanding of the then situation cannot result in negation of the right of the petitioner herein to have his appointment approved, without having TET qualification. In this case,

admittedly the petitioner was appointed as early as on 12.12.2008 and subsequently another appointment order was issued after being successful in the first round of litigation in W.P.No.26684 of 2010, on 01.12.2011, in pursuance of the grant of permission dated 27.10.2011. In fact, in the opinion of this Court, the 4th respondent school need not have issued another appointment order on 01.12.2011 and it ought to have merely submitted a proposal on the basis of original appointment order dated 12.12.2008. In any event, even if the appointment is to be considered, any consideration by the Educational authorities must relate back to the date of permission i.e. 27.10.2011 and in this case, the "doctrine of relation back" must be applied in favour of the petitioner, particularly so when the petitioner was originally appointed on 12.12.2008 and had been continued in service as Secondary Grade Teacher in the 4th respondent school. Unfortunately, the second respondent, who was directed to consider the case of the petitioner, has misdirected himself and misread the situation and rejected the proposal sent by the 4th respondent school once again to the detriment of the petitioner's interest.

14.From the above narrative, it could be seen that the petitioner, who was originally appointed in 2008, has been continued for more than 11 years and his original appointment was made in students' interest and his appointment is also followed by due permission granted by the authorities concerned, that too, after a direction issued by this Court in the first round of litigation. At every stage, the petitioner was forced to litigate before this Court to enforce his right and unfortunately, the authority, without basic understanding of the claim of the petitioner, has been repeatedly rejecting the proposal under the pretext of not qualifying in TET examination. Such reasoning by the authority suffers from non-application of mind and therefore, the impugned order passed by the 2nd respondent cannot be countenanced both on facts and in law. Once the petitioner's appointment gets the seal of approval, in the form of permission being granted, any formal approval therein must relate back to the date of original appointment or at least from the date of permission granted i.e. 27.10.2011 and in which event, the petitioner was not required to qualify in TET examination, as per the Government instructions.

15.In view of the above, this Court is of the view that the petitioner has made out a case for grant of relief. In the said circumstances, the impugned order passed by the 2nd respondent in Na.Ka.No.3585/A3/2018, dated 06.08.2018, is quashed and there shall be a consequential direction to the respondents 1 and 2 to grant approval to the appointment of the petitioner as Secondary Grade Teacher, without insisting on TET

qualification, with effect from 27.10.2011, the date of grant of permission to the appointment of the petitioner by the 2nd respondent, with monetary and other benefits. There shall be a further direction to the respondents 1 and 2 to count the service of the petitioner for all other service benefits from 12.12.2008, i.e. the date of the petitioner's original appointment. The first and second respondents are directed to pass appropriate orders in complying with the directions of this Court within a period of four weeks from the date of receipt of copy of this order.

In the result, the writ petition stands allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

msk

To

1. The Director of Elementary Education,
College Road,
Chennai-6
2. The District Educational Officer/
East College Road,
Chennai.
3. The Block Educational Officer,
Royapuram Union,
No.11, Davidson Street,
Chennai-1.

+lcc to Mr.S.N.Ravichandran, Advocate, S.R.No.61988

+lcc to M/S.P.Mahalakshmi, Advocate, S.R.No.61634

+lcc to the Government Pleader, S.R.No.62394

W.P.No.3991 of 2019

NRJK(CO)
CS/17/09/2019