

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.03.2019

CORAM:

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

W.P.No. 6531 of 2019
and
W.M.P.Nos.7343 & 7344 of 2019

M.Sakthivel

.. Petitioner

Vs.

1. State of Tamil Nadu
Representated by its Secretary to Government
Department of Law,
Secretariat, St.George Fort,
Chennai - 600 009.
2. Director of Legal Studies
Government of Tamil Nadu
Kilpauk, Chennai - 600 010.
3. The Chairman
Teachers Recruitment Board
DPI Campus
College Road
Chennai - 600 006.
4. The Registrar
University of Madras
Chepauk
Chennai - 600 005.

.. Respondents

PRAYER: This Writ Petition is filed under Article 226 of the Constitution of India, praying for the issue of a Writ of Mandamus, directing the 3rd respondent to consider the petitioner for appointment as " Assistant Professor Labour Law " based on his qualification and merit, pursuant to the Notification dated 18.07.2018 bearing No.2 of 2018, issued by the 3rd respondent and pass such and further orders which deem fit and proper the facts and circumstances.

For Petitioner : Mr.R.Saravanakumar

For Respondents : Mr.V.Kathirvelu
Special Government Pleader
for R1 & R2

Mr.C.Munusamy
Special Government Pleader
for R3

O R D E R

The relief sought for in the present writ petition is for a direction to direct the 3rd respondent to consider the petitioner for appointment as Assistant Professor, Labour Law, based on his qualification and merit, pursuant to the Notification dated 18.07.2018 bearing No.2 of 2018, issued by the 3rd respondent.

2. The learned counsel for the writ petitioner states that the petitioner studied 10th Standard in the year 1991 and passed the exam with 80% of marks. Further, he completed M.A., M.Phil., directly through Distance Education in Annamalai University. As the petitioner had a flair for the legal profession, he pursued five years L.L.B degree from 2010-2015 in R.K.M. College, Chittoor, which is affiliated to Sri Venkateswara University, Tirupati, obtaining 53.39% marks. Thereafter, the petitioner enrolled himself as an advocate on 26.02.2016 with the Tamil Nadu Bar Council and he is practicing in Madras High Court and Sub-ordinate Courts in Chennai. The petitioner joined M.L., Degree in Labour and Administrative Law, conducted by the Department of Legal Studies, University of Madras, under Private study, in 2015-2017 securing 58.33% of marks. The petitioner also appeared for the State Eligibility Test (SET) and successfully qualified himself in September 2017.

3. Pursuant to the Recruitment Notification No.2 of 2018 dated 18.07.2018, the writ petitioner submitted his application for selection to the post of Assistant Professors/Assistant Professor (Pre - Law) in Government Law College 2017-18 for filling up of 186 vacancies, including 14 backlog vacancies.

4. As per the notification, the qualifications prescribed for the post of Assistant Professor in Law is

" (i) Master's Degree in Law in the relevant subject for which application is made of any recognised University with not less than 55 percent marks and a good academic record;

" (As per the Order dated 23.12.2010 of the

Hon'ble High Court, Madras in Writ Petition No.10930 of 2010)."

Provided that candidates belonging to Scheduled Castes and Scheduled Tribes shall possess not less than 50 percent marks in the relevant subjects.

Provided further that holders of Ph.D in Law, who have passed their Master's degree in Law prior to the 19th September 1991, shall possess not less than 50 percent marks in the Master's degree in Law.

AND

(ii) Must have qualified in the national Eligibility Test (NET) or an accredited Test. Provided however, that candidates, who are or have been awarded a Ph.D. Degree in accordance with the University Grants Commission (Minimum Standards and Procedure for Award of Ph.D. Degree) Regulations, 2009, as amended 2016 (3rd Amendment) shall be exempted from the requirement of the minimum eligibility condition of NET of an accredited Test.

AND

(iii) Must have enrolled as an advocate in the Bar council, provided that other things being equal, preference shall be given to persons who have actual experience at the Bar or teaching experience. "

सत्यमेव जयते

5. The learned counsel for the writ petitioner states that the petitioner is fully qualified for appointment to the post of Assistant Professor/Assistant Professor (Pre - Law). The writ petitioner participated in the process of selection. However, he was not permitted to attend the interview on the ground that the petitioner acquired the qualification in Law Degree through private study, which is inappropriate and not valid for the purpose of granting appointment to the post of Assistant Professor in Law.

6. The learned special Government Pleader appearing on behalf of the respondents states that the writ petitioner

studied SSLC and thereafter, completed Diploma Course and after Diploma Course, he studied M.A., M.Phil., and thereafter, secured admission to the five years Law Degree Course and subsequently, acquired M.L. Degree through private study. As per the Notification, only the candidates, who have done their degree course through regular college are eligible for appointment to the post of Assistant Professor in Law. The writ petitioner acquired degree through private study and is not eligible for appointment to the post Assistant Professor/Assistant Professor in Law. Thus, the writ petition is liable to be rejected.

7. This Court is of the opinion that profession of teaching is a noble one. There cannot be any compromise in respect of educational qualifications to be prescribed for appointment to the teaching faculty. The faculty of law is directly connected with the Judiciary. Thus, the persons who all are possessing the requisite qualification in its letter and spirit must alone be considered for appointment to the post of Assistant professor in Law. An inference is to be drawn in respect of various methods of studies prescribed by various Universities across the country. Universities, on few occasions, are violating from the concept and method of education prescribed by UGC under its regulations. Certain regulations are misconstrued and Courses are conducted by various Universities across the country for the purpose of education. The Government, after independence, granted permission to the open University Degrees to conduct Open University degrees directly to the candidates, who had not even possessed the basic qualification 12th and Degree Course. In other words, direct M.A. Degrees were granted by Annamalai University. The Honourable Supreme Court of India declared by stating that those degrees acquired through Open Universities, without basic qualifications are invalid for the purpose of providing public employment.

8. But certain Universities are introducing various Courses through various other modes. However, none of these methods are equal to regular course, which all are regularly conducted by Universities and colleges. The very object of undergoing the regular courses by the students are to ensure that those students attend the classes regularly and understand the scope of teaching, enabling them to get appointment to the post of teaching faculty.

9. This Court is aware of the fact, that even persons who have not undergone the regular classes through regular Course may be talented persons. However, in order to maintain the equality, in the matter of providing public employment, a particular scheme of education is approved for the purpose of providing employment to the law faculty. It is pertinent to note

that all the teaching posts are filled up only by the persons who had undergone the regular Courses by attending the regular classes. Persons who have studied through private study or any other method contrary to the scheme of regular classes cannot be considered for the purpose of providing appointment, to the teaching posts.

10. The teachers who have studied in regular classes alone are competent to take classes, as they are aware of the methodology of teaching profession and the class room atmosphere. This apart, the scheme in this regard is clear that in the event of admitting candidates who have completed degree through private studies, then, the method of appointment of teaching faculty becomes violated. Thus, an unity in the matter of providing appointment to the teaching faculty is to be followed by the competent authorities. In this regard, Courts have also repeatedly held that candidates who have studied regular course only be considered to the teaching faculty. However, those candidates who studied in correspondence course may also appear for selection for other non-teaching posts and administrative posts. As far as the teaching posts are concerned, there cannot be any compromise in considering the educational qualifications undergone by the students, more specifically by attending the regular classes.

11. This being the concept to be followed by the authorities, this court is of the undoubted opinion that the respondents cannot consider any other Degree Course granted through any other method or scheme than the regular schemes wherein the students have studied in the regular courses by attending the classes in the college.

12. The learned Special Government Pleader states that even in the notification, it is stated that the candidates who have obtained their study of law through correspondence Courses are not eligible to apply to the post of Assistant Professor/Assistant Professor (Pre - Law) in view of the orders dated 23.02.2012 and 21.02.2012 passed by the Honourable Supreme Court in W.P.No.19396 of 2011 and W.P.No.5014 of 2012.

13. This Court is of the opinion that even other courses like private study and any other method of study is contrary to the scheme of education and those candidates must be made ineligible for appointment to the post of teaching faculties in law Colleges and Universities. Thus, it is made clear that candidates who had undergone the regular Courses of Law, both in Bachelor Degree and Master Degree level and attended colleges or Universities, alone are eligible for appointment to the post of law teachers and all other degrees, granted through other schemes either correspondence or private, or any other method,

which is not in consonance with the regular scheme, cannot be considered for appointment to the post of law teachers. In view of the fact that the writ petitioner had undergone the M.L. Course through private study and even though the learned counsel for the petitioner has made a distinction between private study and correspondence course, admittedly, the petitioner has done his basic degrees through Open University and he has not attended regular college, as mandated in the notification. Considering the facts and circumstances, the relief as such sought for in the present writ petition cannot be granted.

14. Accordingly, the present writ petition stands dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Deputy Registrar (CS)

//True copy//

Sub Assistant Registrar

Kmm

To

1. The Secretary to Government
State of Tamil Nadu
Department of Law,
Secretariat, St.George Fort,
Chennai - 600 009.
2. The Director of Legal Studies
Government of Tamil Nadu
Kilpauk, Chennai - 600 010.
3. The Chairman
Teachers Recruitment Board
DPI Campus
College Road, Chennai - 600 006.
4. The Registrar
University of Madras
Chepauk, Chennai - 600 005.

+1cc to Mr.R.Saravankumar, Advocate SR.No.22132

+1cc to Government Pleader, High Court, Madras SR.No.21479

W.P.No.6531 of 2019

MP (CO)

GMV (23/04/2019)