

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 05.03.2019

CORAM
THE HONOURABLE Mr.JUSTICE D.KRISHNAKUMAR

W.P.No.23974 of 2014

K.Balakrishnan

...Petitioner

Vs.

1.The State of Tamil Nadu,
Rep. by its Secretary,
Labour & Employment Department,
Fort St. George, Chennai - 600 009.

2.Teachers Recruitment Board,
Rep. by its Member Secretary,
College Road, Chennai - 600 006.

3.The District Employment Officer,
District Employment Office,
Mohanur Road, Namakkal,
Namakkal District.

4.The Professional Executive Employment Officer,
(P.G.Employment Office),
Madurai P.G. Employment Office,
Madurai District.

5.The Commissioner of Employment & Training,
Guindy, Chennai - 600 032.

6.The State of Tamil Nadu,
Rep. by its Secretary,
School Education Department,
Chennai - 9.

7.The Director of School Education,
DPI Campus, College Road,
Chennai - 600 006.

... Respondents

(R-6 & R-7 impleaded as per order
dated 09.02.2018 in W.M.P.No.2687 of 2018
in W.P.No.23974 of 2014)

Prayer:- The Writ Petition is filed under Article 226 of the
Constitution of India, seeking for issuance of Writ of
Certiorarified Mandamus to call for the records relating to the

order of the second respondent dated 08.01.2014 in RC.No.7010/LC/2012 and quash the same and consequently direct the respondents to forthwith appoint the petitioner as Post Graduate Assistant on the basis of the Land Acquisition Priority Category in any one of the existing vacancies.

For Petitioner : Mr.K.Selvaraj

For Respondents : Mr.K.Karthikeyan
Addl. Government Pleader (Education)
for R1 to R7

O R D E R

The petitioner has filed this Writ Petition for issuance of Writ of Certiorarified Mandamus to call for the records relating to the order of the second respondent dated 08.01.2014 in RC.No.7010/LC/2012 and quash the same and for consequential direction to the respondents to forthwith appoint the petitioner as Post Graduate Assistant on the basis of the Land Acquisition Priority Category in any one of the existing vacancies.

2. The short background of the case are as follows:-

The petitioner has obtained M.A Degree in Tamil Literature and B.Ed in Education. His grandfather's (Kandasamy Gounder's) land was acquired by the Government of Tamil Nadu for the formation of Lower Bhavani Canal and for the formation of Aadi Dravidar Colony. Therefore, the petitioner is entitled for preferential treatment in the appointment, since his family is affected by the Land Acquisition. On 01.08.2005, the first respondent rejected the request of the petitioner, on the ground that the petitioner is the grandson of the said Kandasamy Gounder through his daughter and hence, he is not entitled for preferential treatment in employment. This issue came up before this Court in W.P.No.27069 of 2005, by an order dated 11.09.2012, in paragraph Nos.5,6,7, held as follows:-

"5. Whether a grand daughter or grand son is entitled for employment on a preferential basis if the land of the grandfather was acquired came into consideration in W.P.(MD).No.5928 of 2009. I had an occasion to consider the same and by judgement dated 02.03.2010, I have held that even the grandson and granddaughter are entitled for preferential treatment in the employment, if the land of the grandfather was acquired for any public purpose. Paragraphs 6 and 7 of the order made thereunder is usefully extracted hereunder:

"6. It is not in dispute that the Government acquired lands from one Ayyanathevar and the petitioner is the grand daughter through his son. The only rejection was that the petitioner is the grand daughter of the deceased Ayyanathevar, whose lands have been acquired by the Government and hence, not entitled to the benefit of the said G.O. The question that arises then for consideration is whether the rejection made by the respondent is in consonance with G.O.Ms.No.188, dated 28.12.1976. Before adverting to the said issue, it would be appropriate to extract the relevant portion in the said G.O, which is as follows:

"(V) Members of the family (including members of Schedule Caste / Schedule Tribe) whose lands have been acquired for Government Purposes as well as for the projects of the Public Sector Undertakings subject to the condition that preference should be given to those who are dependent for their livelihood primarily or wholly on the lands acquired and from among them to members of the Scheduled Castes and Scheduled Tribes who may be eligible for employment."

Thus, the above G.O. makes it clear that members of the family whose lands have been acquired for Government purpose or otherwise preference shall be given to those who are dependent for the livelihood primarily or only on the lands acquired who may be eligible for employment. Thus, the G.O does not contemplate that it is meant for only the son or daughter, but it speaks about the dependents.

7. In view of the above stated position, I am inclined to set aside the impugned order, dated 31.10.2008 and the matter is remitted to the second respondent and he is directed to pass orders considering G.O referred to above. The said exercise has to be carried out within a period of four weeks from the date of receipt of a copy of this order. No costs. The writ petition is disposed of."

6. It is stated by the learned counsel appearing for the petitioner that in pursuant to the order made thereunder, the petitioner

therein was given employment on preferential basis, which fact was not disputed by the learned Additional Government Pleader appearing for the respondents.

7. In view of the above stated position, I am inclined to set aside the order of the first respondent dated 01.08.2005 and the writ petition stands allowed. Further, the second respondent is directed to pass orders afresh considering the G.O referred to above. The said exercise has to be carried out within a period of six weeks from the date of receipt of a copy of this order. No costs."

Though the above order passed by the first respondent dated 01.08.2005 has been set aside by this Court on 11.09.2012 in W.P.No.27069 of 2005, the respondents have now rejected the request of the petitioner on the ground that there is a change of policy that all recruitments for Graduate/Post Graduate Teachers from the year 2011-2012 onwards had to be conducted through written examination only. Hence, the petitioner is before this Court.

3. The petitioner appeared for selection to the post of B.T. Assistant under priority category as per the Government Order in G.O.Ms.No.188, Personnel and Administrative Reforms Department, dated 28.12.1976. Since the respondents have not considered the petitioner under priority category, he approached this Court by filing Writ Petition in W.P.No.27069 of 2005, and this Court, by an order dated 11.09.2012, set aside the order of the first respondent and directed the respondents to pass orders afresh by considering said G.O.Ms.No.188. However, the second respondent, by referring G.O.Ms.No.107, School Education (Q) Department, dated 24.07.2003, rejected the claim of the petitioner stating that due to change of policy, all recruitments for Graduates / Post Graduate Teachers from the year 2010 have to be conducted through written examination only. Therefore, he contended that such reason assigned by the respondents is not legally sustainable, for, when the petitioner requested for appointment under priority category for recruitment to the post of P.G. teacher for the said year, there was no Government Order to the said effect.

4. However, the learned Additional Government Pleader appearing for the respondents would submit that in the light of the Right to Education Act, 2010, the candidates, who pass the Teachers Eligibility Test [TET], will be eligible for the recruitment for the post of B.T. Assistants or Secondary Grade Teachers, for maintaining the standard of the education.

5. At this juncture, the learned counsel for the petitioner would submit that in the event the petitioner is selected and he may be appointed under priority category, subject to pass in Teachers Eligibility Test Examination conducted by the Teachers Recruitment Board.

6. It is not in dispute that this Court has already set aside the rejection order and to consider under the priority category in W.P.No.27069 of 2005 and the above said order has become final. Therefore, the impugned order passed by the second respondent, rejecting the claim of the petitioner vide G.O.Ms.No.107, School Education (Q) Department, dated 24.07.2003, stipulating a condition that due to change of policy all the recruitments for Graduate / Post Graduate Teachers from the year 2003-2004 have to be conducted through written examination only, is not legally sustainable.

7. In view of the fact that the second respondent has passed the present impugned order contrary to the order passed by this Court W.P.No.27069 of 2005, dated 11.09.2012, the impugned order of the second respondent dated 08.01.2014 is quashed, on this sole ground. Consequently, the second respondent-Board is directed to pass orders afresh, in the light of the order passed by this Court in W.P.No.27069 of 2005, dated 11.09.2012, within a period of twelve weeks from the date of receipt of a copy of this order. Needless to mention that if any appointment, will be subject to pass in the Teachers Eligibility Test Examination.

8. With the above observations, this Writ Petition is allowed. There is no order as to costs.

Sd/-

Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

r n s

To

1.The Secretary,
Government of Tamil Nadu,
Labour & Employment Department,
Fort St. George,
Chennai - 600 009.

2.The Member Secretary,
Teachers Recruitment Board,
College Road, Chennai - 600 006.

3.The District Employment Officer,
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(P.G.Employment Office),
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Madurai District.

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6.The Secretary,
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School Education Department,
Chennai - 9.

7.The Director of School Education,
DPI Campus, College Road,
Chennai - 600 006.

+2ccs to Mr.K.Selvaraj, Advocate, S.R.No.20246
+1cc to the Government Pleader, S.R.No.20975

W.P.No.23974 of 2014

GJ II(CO)

RRS (29/05/2019)