

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.04.2019

CORAM

THE HONOURABLE Mr.JUSTICE D.KRISHNAKUMAR

W.P.No.27838 of 2014

M.Sivaraj

... Petitioner

Vs.

1.The Joint Director of School Education,
College Road,
Chennai - 600 006.

2.The Chief Educational Officer,
Udagamandalam,
Nilgiri District.

3.The District Educational Officer,
Kunnur-2, Nilgiri District.

4.The Headmaster,
Government Higher Secondary School
Serambadi, Nilgiri District.

... Respondents

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 of the second respondent dated 18.09.2014 in Na.Ka.No.0232/A3/2014 and quash the same and direct the second respondent to reinstate the petitioner in service with continuity of service and all the attendant benefits.

For Petitioner : Mr.V.Raghupathi

For Respondents : Mr.K.Karthikeyan
Government Advocate (Education)

O R D E R

The Writ Petition has been filed for issuance of Writ of Certiorarified Mandamus, to quash the order of the second respondent dated 18.09.2014 and for direction to the second

respondent to reinstate the petitioner in service with continuity of service with all the attendant benefits.

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

The petitioner has completed S.S.L.C. and P.U.C. in Karnataka State and also completed training in Physical Education in Karnataka. The first respondent / Joint Director of School Education, vide order dated 01.04.2004, certified that the Physical Education Certificate issued by the Karnataka State is equivalent to the Tamil Nadu Physical Education Certificate and by an order dated 28.06.2004, the third respondent also certified that S.S.L.C. and P.U.C. certificates are equivalent to Tamil Nadu S.S.L.C. and P.U.C. Certificates. It is further stated that the second respondent, by an order dated 06.12.2010, appointed the petitioner as Physical Education Teacher in the fourth respondent-School. While being so, the second respondent issued a show notice dated 12.08.2014, by asking the petitioner why his services shall not be terminated on the ground that he has secured only 30 marks in English Language in S.S.L.C. Exam conducted in the Karnataka State. Thereafter, the petitioner sent explanation, however, the same was rejected and the second respondent, by an order dated 20.09.2014, terminated the petitioner from service. Hence, the present Writ Petition.

3. According to the learned counsel for the petitioner, an identical issue was considered by this Court in the case of S. John Richard Vijayan vs. The Director of School Education [W.A.No.1292 of 2012, dated 21.11.2014], wherein, this Court accepted the contentions raised by the petitioner therein and set-aside the impugned proceedings. The operative portion of the order reads as follows:-

"6. The prescribed qualification for the said post is pass Higher Secondary or Pre University Course and Government Teacher's Certificate of Higher Grade in Physical Education. Admittedly, the appellant is having Pre University Pass Certificate issued by the Karnataka State. The said certificate was also evaluated and found to be equivalent by the University of Madras in its order dated 04.05.2007, which reads as follows:-

"I am to inform you that the Pre-University Examination conducted by the Board of Pre-University Education, Karnataka is treated as equivalent to the Tamil Nadu Higher Secondary Examination for purpose of Higher Studies/Appointment".

Admittedly, the appellant's B.A. and B.P.Ed. certificates are already declared as equivalent by the Chief Educational Officer. In the light of the said undisputed facts and having regard to the fact that the SSLC is not the prescribed qualification for the post as per the Special Rules stated supra and the PUC certificate obtained by the appellant having been found equivalent as well as B.A. and B.P.Ed. degree certificates, the appellant's selection as Physical Education Teacher cannot be found fault with. Securing 30 marks in English in the SSLC has no bearing as the appellant was eligible to be admitted to PUC course and after obtaining the said PUC pass certificate, the Madras University found that it is equivalent for appointment also. Nowhere in the Rules, it is stated that a candidate must possess 35% marks in each subject in SSLC examination. Further, there is 5 years delay in passing the order and the appellant also served for over 5 years without any blemish.

7. In such circumstances, the order of the department dated 29.12.2011, which was upheld by the learned Single Judge, by order dated 05.06.2012, is not correct and the said orders are liable to be set aside."

The learned counsel for the petitioner would further submit that challenging the aforesaid judgment, the Government preferred S.L.P and the S.L.P. was also dismissed by the Hon'ble Supreme Court. It is further stated that the Government have not only implemented the above said judgment but also implemented various similar orders passed by this Court. Therefore, in the present case also, there is no impediment for the respondents to follow the same analogy.

4. According to the learned Government Advocate, the Government passed an order fixing 35% of mark as the eligibility criteria in each subject for considering the selection to the post of Physical Education Teacher. However, pursuant to the orders passed by this Court in S.John Richard Vijayan vs. The Director of School Education [W.A.No.1292 of 2012, dated 21.11.2014], the respondents are implementing the said order, as the Hon'ble Supreme Court also confirmed the order passed by the Division Bench of Court.

5. Considering the above facts and also in the light of the order passed by the Division Bench of this Court in W.A.No.1292 of 2012, dated 21.11.2014, which was also confirmed by the Hon'ble Supreme Court, the impugned order passed by the second respondent is liable to be quashed and accordingly, quashed.

The respondents are directed to reinstate the petitioner in service within a period of six weeks from the date of receipt of a copy of this order. It is made clear that respondents shall consider notional regularization of the service of the petitioner during the breakup period without any monetary benefits.

6. Accordingly, the Writ Petition is allowed. There is no order as to costs.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

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To

- 1.The Joint Director of School Education,
College Road,
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- 3.The District Educational Officer,
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- 4.The Headmaster,
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Serambadi, Nilgiri District.

+2 cc's to Mr.V.Raghupathi, Advocate Sr.No.34454
+1 cc to The Government Pleader, Sr.No.35316

W.P.No.27838 of 2014 &
M.P.Nos.1 and 2 of 2014

pm(co)
CSL/22.04.2019

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