

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.10.2019

CORAM:

THE HON'BLE MR.JUSTICE S.MANIKUMAR
AND
THE HON'BLE MR.JUSTICE D. KRISHNAKUMAR

W.A.No.3389 of 2019 and
C.M.P. No.21764 of 2019

- 1.The Government of Tamil Nadu,
Rep. by its Secretary to Government
School Education Department
Fort St.George, Chennai 600 009.
2. The Director of Elementary Education
College Road, Chennai 600 006.
3. The District Elementary Educational Officer,
Villupuram District, Villupuram
4. The Additional Assistant Elementary
Educational Officer,
Mylam Panchayat Union,
Kooteripattu,
Villupuram District. Appellants/Respondents

Vs.

H.Gokularaman

.... Respondent/Petitioner

Writ Appeal filed under clause 15 of the Letters Patent against the Order dated 28.06.2018 made in W.P.No.29682 of 2014.

Prayer in WP No.29682 of 2014 : Writ Petition filed under Article 226 of the Constitution of India praying to issue a writ of certiorarified mandamus calling for the records relating to the order of 2nd respondent made in Na.Ka.No. 039391 / E1 / 2013 dated 05.02.2014 and the consequential orders of the 3rd respondent in his proceedings made in Na.Ka.No.6553/A3/2005 and Na.Ka. No. 6553 / A1 / 2005 dated 06.06.2014 and 15.10.2014 respectively and the order of the 4th respondent made in hsi proceedings in Na.Ka.No.796/A1/2013 dated 01.09.2014 and quash the same and direct the respondents to regularise the petitioners service from the date of his appointment ie. on 21.01.2000 with consequential and monetary benefits

For Appellants : Mr.P.S.Sivashanmuga Sundaram
Special Government Pleader

For Respondent : Mr.A.S.Kaizer

J U D G E M E N T

(Order of the Court was delivered by S.MANIKUMAR, J)

Challenge in this appeal is to the order of the writ court dated 28.6.2018 made in W.P. No.29682 of 2014, by which the writ court, quashed the impugned proceedings and directed the appellants herein/respondents, to initiate action for regularising the service of the respondent as Secondary Grade Assistant Teacher from the date on which initially the respondent was appointed i.e. on 21.1.2000, with all attendant and consequential benefits. Appellants were further directed to pass order for regularising the service of the respondent within a period of eight weeks from the date of receipt of a copy of writ court order. Order made in W.P.No.29682 of 2014, dated 28.06.2018, reads thus:-

"8. This Court is unable to appreciate the stand taken by the respondents in the teeth of the fact that at the time the petitioner was appointed as Secondary Grade Assistant Teacher on 21.01.2000, admittedly, the petitioner was fully qualified. That being the case, this Court does not see under what circumstances the respondents are insisting upon the qualification which was not acquired by the petitioner at the time of making his application seeking compassionate appointment.

9. As rightly contended by the learned counsel for the petitioner that nowhere in the said G.O.Ms.No.560, dated 03.08.1977, it is stated that the qualification ought to be obtained at the time of application seeking compassionate appointment. In fact, the G.O., mainly states that there should not be any relaxation of conditions, particularly, in regard to possession of prescribed qualification.

10. In such view of the matter, this Court does not see any iota of justification for not regularizing the service of the petitioner. In the said circumstances, the impugned order of the 2nd respondent made in proceedings in Na.Ka.No.039391/E1/2013, dated 05.02.2014 and the consequential orders of the 3rd respondent in his proceedings made in Na.Ka.No.6553/A3/2005 and Na.Ka.No.6553/A1/2005 dated 06.06.2014 and 15.10.2014 respectively and the order of the 4th respondent made in his proceedings in Na.Ka.No.796/A1/2013 dated 01.09.2014, refusing to regularize the service of the petitioner as Secondary Grade Assistant Teacher, cannot be sustained both in law and on facts and the same are hereby set aside. The respondents are directed to

initiate action for regularizing the service of the petitioner as Secondary Grade Assistant Teacher from the date on which initially the petitioner was appointed i.e., on 21.01.2000, with all attendant and consequential benefits. The respondents are directed to pass orders for regularizing the service of the petitioner as indicated above, within a period of eight weeks from the date of receipt of a copy of this order.

11. With the above direction, this Writ Petition stands allowed. No costs. Consequently, connected miscellaneous petitions are closed."

2. The order of the writ court is impugned on the following grounds:

i) Writ court failed to consider that the authorities have every right to pass orders on the application in the grounds of the relevant rules and existing Government orders in force.

ii) Writ court failed to consider the fact that the appellants have passed orders based on the orders contemplated in G.O. Ms. No.560 Labour and Employment Department dated 3.8.1997.

iii) Writ court failed to appreciate that the orders passed by the appellants in accordance with the orders and instructions issued by the government.

iv) Writ court failed to consider the fact that on the date of submission of application for appointment under compassionate grounds the respondent was not fully qualified to hold the post of Secondary Grade Teacher and after a lapse of two years only, the respondent had acquired Diploma in Teacher Education and fully qualified to hold the post of Secondary Grade Teacher.

v) Writ court ought to have appreciated that G.O. Ms. No.560 Labour and Employment Department dated 3.8.1997, wherein it has been specifically ordered that at the time of submitting application for appointment under compassionate grounds, the candidate should have acquired the requisite qualification to hold the post for which he had applied for.

vi) Writ court failed to consider the fact that if there is any Rule or Government orders to sustain the claim of the respondent before passing orders on the writ petition.

vii) Writ court failed to appreciate the fact that the appellants have taken proper action in regularising the services of the respondent.

viii) Writ court failed to consider the fact that public money is involved in allowing

the writ petition would put the pressure on public exchequer.

ix) Writ court failed to appreciate the fact that the existing government orders are not in favour of the respondent for regularising his services from the date of his initial appointment of the respondent.

x) Writ court failed to appreciate the fact that there are no provisions in the Government orders stated supra, for regularisation of the services of the respondent, from the date of his initial appointment.

3. It is the contention of the learned Special Government Pleader (Education) that if the order passed by the learned Judge is implemented it will set a bad precedent and will open floodgate of litigation all over the State.

4. Per contra, it is the contention of the learned counsel for the respondent that the writ court has passed a reasoned order and it does not suffer from any illegality and thus prayed for dismissal of the writ appeal.

5. Heard the learned counsel for the parties and perused the materials available on record.

6. Though Mr.P.S.Sivashanmuga Sundaram, learned Special Government Pleader (Education) made submission on the grounds of challenge that the case of the respondent that appointment on compassionate ground as secondary grade teacher cannot be regularised for the reason that on the date of submission of application seeking employment, he was not qualified. Perusal of records shows that though the respondent has made application for employment assistance, when he was not qualified. Subsequently he had acquired qualification for the post of secondary grade teacher in 1997 and only on satisfying the same, he was appointed as secondary grade teacher in Panchayat Union Elementary School, Thazhuthali, Mylam Panchayat Union, Villupuram District from 20.01.2000.

7. In such circumstances the appellant cannot be found fault with. As such, the respondent is eligible for regularisation. Writ Court has duly considered G.O.Ms. No.560 Labour and employment Department dated 03.08.1977 and the rival submission. We do not find any error in the order made by the writ Court for reversal. Accordingly, instant writ appeal is dismissed. However, there shall be no order as to cost. Consequently, the Connected civil miscellaneous petition is closed.

Sd/-

Assistant Registrar(Insp.cell)

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Sub Assistant Registrar

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To

1. The Secretary to Government
The Government of Tamil Nadu,
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2. The Director of Elementary Education
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3. The District Elementary Educational Officer,
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W.A.No.3389 of 2019 and
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PA (CO)
GMY (15/11/2019)



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