

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.03.2019

CORAM:

THE HONOURABLE MR. JUSTICE T.RAJA

W.P.No.7457/2017

and

WMP.Nos.8146, 8147 and 8145 of 2017

A.Meenakshi

... Petitioner

Vs

1. The State of Tamil Nadu
rep. by its Secretary,
Department of School Education,
Fort St. George, Chennai-9.
2. The Director of School Education,
College Road, Chennai.
3. The Joint Director (Personnel),
Directorate of School Education,
College Road, Chennai-6.
4. The Teachers Recruitment Board
rep. by its Member Secretary,
College Road near Sankara Nethralaya,
Nungambakkam, Chennai-6.
5. The Chief Educational Officer,
District Collectorate Campus,
Salem-636 001.
6. The District Educational Officer,
District Library Campus,
Salem-636 007.
7. The Headmaster,
Government Boys Higher Secondary School,
Attaiyampatti,
Salem-636 501.

... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, calling for the records relating to the impugned orders issued by the 6th

respondent DEO in O.Mu.No.4725/A3/2016 dated 26.10.2016 (as signed) and 3rd respondent Joint Director of School Education (Personnel) in Na.Ka.No.80782/C3/E2/16 dated 09.02.2017, quash the same.

For Petitioner : Ms.Abisha Issac
for M/s.P.Godson Swaminath

For Respondents : Mr.K.Karthikeyan,
Govt. Advocate

O R D E R

Mrs.A.Meenakshi, who was appointed as B.T. Assistant 10 years ago after passing the Teachers Recruitment Board Examination held by the State Government has come to this Court challenging the impugned order passed by the District Educational Officer, Salem, the 6th respondent herein in O.Mu.No.4725/A3/2016 dated 26.10.2016 and yet another order passed by the 3rd respondent herein, namely, the Joint Director of School Education (Personnel) in Na.Ka.No.80782/C3/E2/16 dated 09.02.2017, quash the same and to pass appropriate orders.

2. Learned Counsel appearing for the petitioner submitted that the petitioner belongs to Scheduled Caste (Adi Dravidar) Community and her father was initially employed in Syndicate Bank, Sindanoor Branch, Karnataka State. Therefore, the petitioner had her schooling in Karnataka State. Followed by the S.S.L.C., she also did her Pre-University College Course in Karnataka. Thereafter, her father was transferred to Syndicate Bank, Dharmapuri Branch, Dharmapuri District, Tamil Nadu State. Hence, she underwent her Under Graduate and Post Graduate Courses in Tamilnadu, namely, B.Sc. (Maths) in Government Arts College, Dharmapuri in the year 1997-1999. At the time admission to the B.Sc. Course during 1997, an equivalent certificate certifying that the Pre-University Course in Karnataka State is equivalent to the Higher Secondary Course in Tamil Nadu State was issued by the University of Madras. On the basis of the Equivalence Certificate issued by the University of Madras, the petitioner got admission to the said course and her admission was also approved by the University. Thereafter, she also has completed the B.Sc. (Maths) Course in the year 1999 and again she did her B.Ed. Degree Course in Periyar University, Salem in the year 2004 and successfully completed the same in the year 2005 and thereafter, she did her M.Sc. (Maths) in Annamalai University through two years Correspondence Course and completed the same in December 2008. Later on, she did her M.Phil (Maths) in Vinayaga Mission University, Salem through Distance Education and completed the same in December, 2009. With these qualifications, the petitioner also registered her name in the Employment Exchange at Krishnagiri with Registration

No.686/2006 dated 23.3.2010. After completing her B.Ed., she registered the same as well in the Employment Exchange.

3. The learned Counsel for the petitioner further submitted that in the meanwhile, the Teachers Recruitment Board, vide its Advertisement dated 22.08.2005 called for applications from eligible candidates for appointment to the posts of Junior Grade B.Ed. Teachers (Junior Graduate Assistants) under Department of School Education. The petitioner having qualified, also applied for the same. Finally, she has written the examination conducted by the Teachers Recruitment Board on 06.11.2005 and the results were published later and she secured 76 marks out of 150. Only then, the 4th respondent, the Teachers Recruitment Board vide its communication in 1829/A2/2005 dated 'Nil' called the petitioner for certificate verification on 08.12.2005 at Teachers Recruitment Board, DPI Campus, Chennai. During the Certificate Verification, the petitioner produced all the certificates, namely, SSLC Book/Mark Sheet, Higher Secondary Course/PUC Mark Sheet, UG Certificate, B.Ed. Certificate, Community Certificate, Employment Registration Card, Conduct Certificate, Counter signed teaching experience Certificate, PHO/PHB Certificate, Hall Ticket, Letter for Certificate Verification, Bio-Data and Identity Certificate. The 4th respondent satisfied with the qualification secured by the petitioner also considering the fact that the petitioner has passed SSLC only from the State of Karnataka and also PUC Mark List issued by the Karnataka Educational Authorities, she was issued with an Appointment Order appointing her as Junior Grade B.T. Assistant (Junior Graduate Assistant) in Maths on consolidated pay at Government Boys Higher Secondary School, Attayampatti, Salem District as per the proceedings of the 3rd respondent Joint Director of School Education (Personnel) dated 22.02.2006. Thereafter, the Chief Educational Officer, District Collectorate Campus, Salem, the 5th respondent herein vide his Proceedings in Na.Ka.No.1281/A3/2006 dated 27.02.2006 permitted the petitioner to join duty. Accordingly, she joined duty on 01.03.2006 in the said post.

4. The learned Counsel for the petitioner also submitted that when the petitioner has been serving as B.T. Assistant in Maths for the last 10 years, she was issued with a Show Cause Notice dated 06.12.2016 by the 3rd respondent, namely, the Joint Director (Personnel), Directorate of School Education, Chennai-6 asking the petitioner to show cause why her appointment should not be cancelled on the ground that the petitioner has passed SSLC from the State of Karnataka securing only 33 marks in Science Subject. Immediately, the petitioner gave her explanation on 22.12.2016. In the said reply, the petitioner has also taken various points. One of the points shows that when the petitioner possessed requisite and valid qualification of

B.Sc. Maths for the purpose of appointment to the post of Junior Graduate Teacher and that the 4th respondent Teachers Recruitment Board also found her fully qualified for the post of Junior Graduate Teacher in Maths and subsequently an order of appointment was issued to join at Government Boys Higher Secondary School at Attaiyamapatti, Salem, the 6th respondent, the District Educational Officer, Salem, lacks jurisdiction to decide on the equivalence of the petitioner's SSLC as he was authorised to decide on the equivalence only in relation to degrees obtained in other States, but not SSLC and HSC/PUC. But this has not been considered.

5. Adding further, the learned Counsel for the petitioner submitted that when the petitioner was found eligible to get admission in B.Sc. (Maths) Course in Dharmapuri Government Arts College in 1997 on the basis of the certificate issued by the Madras University certifying that the Pre-University College Course undergone by the petitioner is equivalent to the Higher Secondary Course in Tami Nadu, the petitioner has got admission for B.Sc. Maths in Government Arts College, Dharmapuri in 1997 and completed the same during 1999 and thereafter, she has also acquired B.Ed. in the year 2005, M.Sc. Maths in December, 2008, M.Phil (Maths) in December, 2009, and moreover, she has also proved herself by participating in the examination held by Teachers Recruitment Board by securing 76 marks out of 150 marks and based on the above said qualifications along with the Certificate issued by the TRB, the petitioner was found to be appointed as Junior Graduate Assistant in Maths on consolidated pay by the 3rd respondent by his Proceedings dated 22.02.2006, after allowing the petitioner to join and work for about 10 long years, the respondents cannot issue the show cause notice calling upon the petitioner to show cause as to why he should not be terminated on the ground that she has passed SSLC from the State of Karnataka only securing 33 marks in Science Subject.

6. The learned Counsel for the petitioner also submitted that in a similar circumstance, when an identical issue was taken up before a Division Bench of this Court in W.A.No.1292 of 2012 dated 21.11.2014 (S.John Richard Vijayan vs. The Director of School Education, College Road, Chennai-6 and 3 others), it has been held that 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. It is also held that there is 5 years delay in passing the order and the appellant also served for over 5 years without any blemish. Applying the said ratio in the present case, the case of the petitioner is considered, since the petitioner has secured 33

marks in Science in SSLC from a School in State of Karnataka and subsequently, she also passed the PUC Examination that has been considered as equivalent to getting admission in B.Sc. Maths and the University of Madras also has passed an order that PUC in the State of Karnataka is equivalent to Higher Secondary Course in Tamil Nadu State that is the basic qualification for acquiring admission in any of the Under Graduate Courses, namely, B.A., B.Sc., B.Com., in the State of the Tamil Nadu, the petitioner was also granted admission in the Government Arts College, Dharmapuri in the year 1997 that was also affiliated to the Madras University and passing the B.Sc. Maths, the petitioner has also acquired better qualifications, namely, B.Ed. Degree Course in Periyar University in the year 2004 and thereafter also completed M.Sc. from Annamalai University in the year 2008. That apart, she also obtained M.Phil. Degree in Maths through Distance Education in the year 2009 and top of all, she also applied for the Teachers Recruitment Board Examination sending an application for appointment to the post of Junior Graduate Assistant under Department of School Education and also secured 76 marks out of 150 marks. Based on her higher qualification and her securing pass in the TRB Examination, the respondents have appointed her as Junior Graduate Assistant in Maths on consolidated pay by order dated 22.02.2006. After allowing the petitioner to work for more than 10 years, the respondents cannot come and question her eligibility which has already been accepted by the University of Madras. Therefore, the present Writ Petition has to be allowed, it is pleaded.

7. A detailed counter affidavit has been filed by the 5th respondent, namely, the Chief Educational Officer, Salem.

8. Mr.K.Karthikeyan, learned Government Advocate appearing for the respondents submitted that the petitioner having secured only 33 marks in science while perusing her SSLC Certificate in the State of Karnataka, she has also obtained PUC in the same State of Karnataka. Only thereafter, she came to Dharmapuri and pursued her B.Sc. Course in the Government Arts College in Dharmapuri. Subsequently, she has also passed other courses. But at the time of passing the SSLC in a school in the State of Karnataka, she has secured only 33 marks in Science whereas 35 is the minimum marks for passing the subject in SSLC in the State of Tamilnadu. Therefore, the 7th respondent, namely, the Headmaster, Government Boys Higher Secondary School, Attaiyampatti, Salem, has rightly issued the show cause notice stating that the petitioner was basically ineligible to become a teacher. Secondly, the support taken by the petitioner from the decision of the Division Bench of this Court in W.A.No.1292 of 2012 dated 21.11.2014 cannot be pressed into service and the same is unapplicable to the facts of the present case. In

paragraph 6 of the said decision, the Division Bench has considered that issue with regard to the policy of Physical Education Teacher alone. But in the present case, we are dealing with Junior Graduate Assistant which is called as B.T. Assistant after 2006. But the ratio laid down by the Division Bench clearly deals with Physical Education Teacher alone and finally allowed the writ appeal. It is relevant to extract paragraph 6 of the said decision here under :

'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 the 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 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.'

9. This has been once again revisited in Review Application No.101/2017 dated 18.8.2017 filed by the Director of School Education, Chennai and 3 others against the order made in W.A.No.1292 of 2012. It is relevant to extract paragraphs 4 to 6 hereunder:

'4. The stand taken by the Government is that the writ petitioner secured only 30 marks in English, in SSLC whereas '35' is the marks prescribed for passing a subject in SSLC in Tamil Nadu and hence, the qualification of SSLC obtained by the writ petitioner in Karnataka State could not be equated to the requisite qualification of SSLC to get appointment in Tamil Nadu.

5. On verification of the materials available on record, we find from page 25 of the typed set of papers that the writ petitioner has secured 41.27% in SSLC and passed through the SSLC examination conducted by the Karnataka Secondary Education Examination Board and subsequently, he had obtained higher qualifications, viz., PUC and B.A., Bachelor of Physical Education and Master of Physical Education. Further, from page 36 of the typed set of papers, it appears that the University of Madras has conveyed the petitioner, by its letter dated 4.5.2007 that the Pre-University Examination conducted by the Board of Pre-University Examination, Karnataka is treated as equivalent to the Tamil Nadu Higher Secondary Examination for purpose of Higher Studies/Appointment.

6. Therefore, we are unable to endorse the interpretation given by the authorities that the qualification of SSLC obtained by the writ petitioner in Karnataka State could not be equated with the qualification of SSLC in Tamil Nadu only on the ground of his securing 30 marks in English though it is declared as pass in Karnataka State. We do not find any error apparent in the judgment delivered in the writ appeal and accordingly, we find no scope to review the judgment. Therefore, the review application stands dismissed. The authorities are directed to give effect to the judgment delivered in the writ appeal forthwith, within a period of two months from the date of receipt of a copy of this order. No costs.'

10. Therefore, in the present case, the petitioner has passed S.S.L.C. in a school from the State of Karnataka scoring 33 marks in Science, subsequently, she also joined for PUC in the same State after completing her PUC since her father who was serving as an employee in Syndicate Bank, Sindanoor Branch, Karnataka State has been transferred to Syndicate Bank Dharmapuri Branch, therefore, she also came to Dharmapuri and underwent her Under Graduate and Post Graduate courses in Tamil Nadu and thereafter as already mentioned above, she also applied for the post of appointment to the post of Junior Graduate Teacher (Junior Graduate Assistant) under Department of School

Education, subsequently, she also passed the examination conducted by the Teachers Recruitment Board securing 76 marks out of 150. Resultantly, the petitioner was considered as eligible candidate for the post of Junior Grade Teacher and subsequently, the 3rd respondent by his Proceedings dated 22.02.2006 issued an appointment order appointing the petitioner as Junior Graduate Assistant in Government Boys Higher Secondary School, Attaiyampatti, Salem on a consolidated pay. Therefore, when the petitioner was found eligible for getting admission in Under Graduate course and she was also found eligible to write the Teachers Recruitment Board conducted on 06.11.2005 and again when she was also found eligible to be appointed as Junior Graduate Teacher. When she was found to be eligible, she was appointed as a Junior Graduate Teacher in the Government Boys Higher Secondary School, Attaiyampatti, Salem, after allowing the petitioner to serve for more than 10 years, it is not justified on the part of the respondents to issue the impugned termination order.

11. In a similar circumstances, when a candidate secured only 30 marks in English Subject in S.S.L.C. conducted by the Karnataka Board of Education, which is not equivalent to the required SSLC marks for passing English Subject in the State of Tamil Nadu, taking note of the fact that the said candidate has also passed PUC from a college in the State of Karnataka and subsequently, he had also obtained B.A. and B.P.Ed. Degrees and registered his name in the Employment Exchange, when he was sponsored by the District Employment Exchange on the ground that he was possessing the required qualification as per the Tamil Nadu Elementary Educational Subordinate Service Rules viz., pass in Higher Secondary or Pre University Course and Government Teacher's Certificate of Higher Grade in Physical Education, the Division Bench of this Court by order dated 21.11.2014 passed in W.A.No.1292/2012 has held that securing 30 marks in English in the SSLC has no bearing as the said person became eligible to be admitted to PUC course and after obtaining the said PUC Pass Certificate, the University of Madras also found that it is equivalent for appointment also.

12. In the present case also, as I mentioned above, the University of Madras has found the petitioner herein eligible and at the time of admission to the B.Sc. Course during 1997, an equivalent certificate certifying that the Pre-University Course in Karnataka State is equivalent to the Higher Secondary Course in Tamil Nadu State was issued by the University of Madras. On the basis of the Equivalence Certificate issued by the University of Madras, the petitioner got admission to the said course and her admission was also approved by the University. In addition thereto, the petitioner has acquired B.Sc. (Maths) Course in the year 1999 and again she did her B.Ed. Degree

Course in Periyar University, Salem in the year 2004 and successfully completed the same in the year 2005 and thereafter, she did her M.Sc. (Maths) in Annamalai University through two years Correspondence Course and completed the same in December 2008. Later on, she did her M.Phil (Maths) in Vinayaga Mission University, Salem through Distance Education and completed the same in December, 2009. Therefore, it is only unjustified to question her eligibility, that too, after 10 years from the date of her appointment to the post of Junior Graduate Teacher. Therefore, I find no merit in the impugned orders. Hence, the impugned orders are liable to be set aside.

13. In the result, the impugned orders passed by the District Educational Officer, Salem, the 6th respondent herein in O.Mu.No.4725/A3/2016 dated 26.10.2016 and yet another order passed by the 3rd respondent herein, namely, the Joint Director of School Education (Personnel) in Na.Ka.No.80782/C3/E2/16 dated 09.02.2017 are set aside. The Writ Petition stands allowed. It is needless to mention that the respondents shall permit the petitioner to work and release her salary including the arrears forthwith. No costs. Consequently, connected Miscellaneous Petitions are closed.

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Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

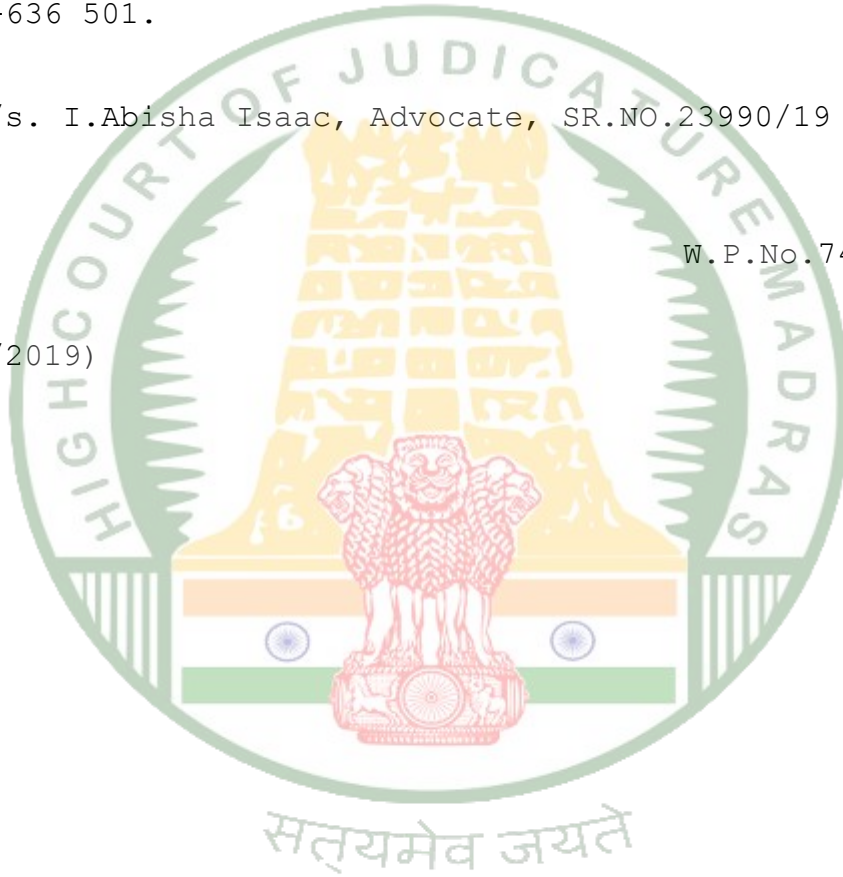
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+1CC TO M/s. I.Abisha Isaac, Advocate, SR.NO.23990/19

W.P.No.7457 of 2017

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