

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :22.03.2019

CORAM

THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.32296 of 2018
and
W.M.P.Nos.37533 & 37536 of 2018
and
W.M.P.No.7137 of 2019

H.Anandhi

..Petitioner

vs

1. Union of India
Rep.by its Secretary,
Ministry of Culture,
Shastri Bhavan
New Delhi - 110 115.
2. The Chairman
Governing Board
Kalakshetra Foundation
Thiruvannamiyur.
Chennai - 41.
3. The Director,
Kalakshetra Foundation
Thiruvannamiyur,
Chennai - 41
4. The Kalakshetra Foundation
Rukmani Devi College of Fine Arts
Thiruvannamiyur,
Chennai - 41.

..Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, after calling for the records of the 3rd respondent proceedings in F.No.A-48-44/2018 dated 20.11.2018 and quash the same and consequently direct the 3rd respondent to continue the service of the petitioner as Costume Assistant Grade II in the 4th respondent Rukmini Devi College of Fine Arts, kalakshetra Foundation.

For Petitioner : Mr.N.G.R.Prasad
for Mr.V.Stalin

For Respondents : Mr.K.S.Jayaganesh
Special Panel Counsel for R1

Mr.Karthick
for M/s.Menon Karthik Mukundan
for R2 to R4

O R D E R

The order dated 20.11.2018, relieving the writ petitioner from duties from services of the 4th respondent / Kalakshetra Foundation with effect from the afternoon of 20.11.2018 is under challenge in the present writ petition.

2.The writ petitioner was appointed as a Costume Assistant Grade II in a permanent post by the 3rd respondent / Kalakshetra Foundation on 08.06.2010. Initially, the appointment of the writ petitioner was on Probation for a period of two years and the writ petitioner was discharging her duties effectively and sincerely. The writ petitioner states that she acquired the qualification of B.A., degree, after entering into the services of the 4th respondent and also possessing a certificate in Cosmetic course. Pursuant to the advertisement issued by the 3rd respondent, the writ petitioner was recruited. Thus, there was no irregularity in respect of the appointment of the writ petitioner. The writ petitioner states that she is doing all the ground work for an artist to get ready for the performance on the stage. The services of the writ petitioner was found satisfactory and she was performing the duties and responsibilities assigned to her by her superiors.

3.There was no adverse remark against the writ petitioner so far. At this point of time, the 4th respondent issued the impugned order in proceedings dated 20.11.2018, dispensing with the services of the writ petitioner without any notice and relieved from service of the Foundation with effect from 20.11.2018.

4.The learned counsel for the writ petitioner states that no show cause notice or opportunities were provided to the writ petitioner and the due process of law has not been followed. Thus, the impugned order of relieving the services of the writ petitioner is in violation of the principles of natural justice.

5.As of now, the writ petitioner is possessing the requisite qualification and therefore, the initial defect of not possessing the required qualification is to be relaxed in favour of the writ petitioner as the writ petitioner has already completed the satisfactory services of more than eight years.

6.The learned counsel for the petitioner admits the fact that at the time of appointment, the writ petitioner was over-aged as well as not possessing the requisite qualification of degree. However, she acquired the qualification of degree of B.A., (History) subsequently and became qualified. Thus, the mitigating circumstances aroused, must be considered and necessary relaxations are to be granted, enabling the writ petitioner to continue in services, and to secure confirmation of service.

7.The learned counsel for the writ petitioner mainly contended that the writ petitioner was served with the impugned order of relieving from service without any show cause notice. Thus, the impugned order of relieving is contrary to the established principles and in violation of the principles of natural justice.

8.In this regard, the learned counsel for the writ petitioner cited the judgment of the Hon'ble Supreme Court of India in the case of Ratnesh Kumar Choudhary Vs. Indira Gandhi Institute of Medical Sciences, Patna, Bihar and others, reported in (2015) 15 SCC 151.

9.The learned counsel for the writ petitioner solicited the attention of this Court in respect of the observations made by the Hon'ble Supreme Court of India in Paragraph 2(cited supra), stating that "he had been selected for appointment to the sanctioned Post of Chest Therapist and would be put on Probation for a period of two years, which could be extended at the discretion of the Director of the Institute."

In paragraph 3 of the judgment (cited supra), the Apex Court observed as follows:-

"3. When the appellant was continuing on the post of Chest Therapist, a complaint was received by the Vigilance Department, Government of Bihar on 3-11-2004 relating to the illegal appointment of the appellant on the post of Chest Therapist. The complaint contained that the advertisement for Physiotherapist and Chest Therapist were different because streams are different and the appointment of the appellant was absolutely illegal. In pursuance of the said complaint an enquiry was conducted by the Deputy Superintendent of Police,

who submitted a report on 3-11-2004 to the Deputy Inspector General of Police, Bihar, Patna. The reports reflected on various aspects and pointed out that the appointment was illegal. On the basis of the said report the Joint Secretary in the Department of Health, vide order dated 9-3-2005 requested the Director, IGIMS to initiate a proceeding for termination of the services of the appellant by giving a show-cause notice. On the basis of the said communication the appellant was asked by the Director of IGIMS to show cause within three days as to why on account of illegal appointment his services should not be terminated. The petitioner sent his reply on 20-3-2005 and asked for the copy of the complaint as well as the entire report submitted by the Vigilance Department."

Paragraph 27 of the judgment is also relevant, which is also extracted hereunder:-

"27. In the case at hand, it is clear as crystal that on the basis of a complaint made by a Member of the Legislative Assembly, an enquiry was directed to be held. It has been innocuously stated that the complaint was relating to illegal selection on the ground that the appellant did not possess the requisite qualification and was appointed to the post of Chest Therapist. The report that was submitted by the Cabinet (Vigilance) Department eloquently states about the conduct and character of the appellant. The stand taken in the counter-affidavit indicates about the behaviour of the appellant. It is also noticeable that the authorities after issuing the notice to show cause and obtaining a reply from the delinquent employee did not supply the documents. Be that as it may, no regular enquiry was held and he was visited with the punishment of dismissal. It is well settled in law, if an ex parte enquiry is held behind the back of the delinquent employee and there are stigmatic remarks that would constitute foundation and not the motive. Therefore, when the enquiry commenced and thereafter without framing of charges or without holding an enquiry the delinquent employee was dismissed, definitely, there is clear violation of principles of natural justice. It cannot be equated with a situation of dropping of the disciplinary proceedings and passing an order of termination simpliciter. In that event it would have been motive and could not have travelled to the realm of the foundation. We may hasten to add that had the appellant would have been visited with minor punishment, the matter possibly would have been

totally different. That is not the case. It is also not the case that he was terminated solely on the ground of earlier punishment. In fact, he continued in service thereafter. As the report would reflect that there are many an allegation subsequent to the imposition of punishment relating to his conduct, misbehaviour and disobedience. The Vigilance Department, in fact, had conducted an enquiry behind the back of the appellant. The stigma has been cast in view of the report received by the Central Vigilance Commission which was ex parte and when that was put to the delinquent employee, holding of a regular enquiry was imperative. It was not an enquiry only to find out that he did not possess the requisite qualification. Had that been so, the matter would have been altogether different. The allegations in the report of the Vigilance Department pertain to his misbehaviour, conduct and his dealing with the officers and the same also gets accentuated by the stand taken in the counter-affidavit. Thus, by no stretch of imagination can it be accepted that it is termination simpliciter. The Division Bench has expressed the view that no departmental enquiry was required to be held as it was only an enquiry to find out the necessary qualification for the post of Chest Therapist. Had the factual score been so, the said analysis would have been treated as correct, but unfortunately the exposition of factual matrix is absolutely different. Under such circumstances, it is extremely difficult to concur with the view expressed by the Division Bench."

10. In the case of Dipti Prakash Banerjee Vs. Satyendra Nath Bose National Centre for Basic Sciences, Calcutta and others, reported in (1999) 3 SCC 60, the Hon'ble Supreme Court of India observed as follows:-

"The Court considered the following points: (1) In what circumstances, termination of a probationer's services can be said to be founded on misconduct and in what circumstances could it be said that allegations were only a motive; (2) When can an order of termination of a probationer be said to contain an express stigma; (3) Can stigma be gathered by referring back to proceedings referred to in termination order, and (4) Whether the appellant was entitled to any relief. On point (3), the Court further considered whether stigma could be inferred from three letters referred to in the impugned termination order though this order itself did not contain anything offensive."

11. As far as the 1st judgment cited by the learned counsel for the writ petitioner is concerned, when the appellant before

the Hon'ble Supreme Court of India, was continuing on the post of Chest Therapist, a complaint was received by the Vigilance Department, Government of Bihar on 3-11-2004 relating to the illegal appointment of the appellant in the post of Chest Therapist. It was held that the complaint contained that the advertisement for Physiotherapist and Chest Therapist were different because streams are different and the appointment of the appellant was absolutely illegal. In paragraph 27 of the judgment, the Hon'ble Supreme Court of India clearly made a finding that "when the enquiry commenced and thereafter without framing of charges or without holding an enquiry the delinquent employee was dismissed, definitely, there is clear violation of principles of natural justice. It cannot be equated with a situation of dropping of the disciplinary proceedings and passing an order of termination simpliciter". It is further observed in the very same paragraph that "It was not an enquiry only to find out that he did not possess the requisite qualification. Had that been so, the matter would have been altogether different. The allegations in the report of the Vigilance Department pertain to his misbehaviour, conduct and his dealing with the officers and the same also gets accentuated by the stand taken in the counter-affidavit. Thus, by no stretch of imagination can it be accepted that it is termination simpliciter."

12.The Hon'ble Supreme Court of India in the case cited supra, held that the case before the Hon'ble Supreme was not the case of termination simpliciter. It was a punitive termination. Thus, the report received from the Vigilance Department must be enquired into by providing an opportunity to the appellant before the Hon'ble Supreme Court of India. In the absence of conducting any enquiry in respect of allegations and issue an order of termination simpliciter is impermissible. Thus, the fact before the Hon'ble Supreme Court was that the order of termination simpliciter cannot be issued in a case, where allegations of serious nature was received from the Department of Vigilance. Thus, the Hon'ble Supreme Court of India held that such a termination order is punitive and therefore, the order of termination simpliciter is bad in law.

13.However, in the present case, the facts are entirely different. In the present writ petition, there is no allegations against the writ petitioner. Only, the validity of the appointment alone has been scrutinized by the respondent Foundation. When the respondent found that the writ petitioner was not qualified and did not possess the requisite qualifications as contemplated under the Rules, they have not extended the Probation and relieved her from the services of the

Foundation. Thus, the very reliance placed by the learned counsel for the writ petitioner is untenable.

14. In respect of the judgment in the case of Dipti Prakash Banerjee (cited supra), the Hon'ble Supreme Court of India ruled that Termination of probationer's services can be said to be founded on misconduct and in what circumstances could it be said that allegations were only a motive. When there is a Stigma or allegation, then the employer is bound to conduct an enquiry by following the procedures as contemplated. Therefore, the cases cited by the learned counsel for the writ petitioner is of no avail. As far as the facts and circumstances of the present case on hand is concerned as the writ petitioner in the present case was relieved of her from duties only by invoking the terms and conditions of appointment made, the judgments cited are not applicable.

15. The learned counsel appearing on behalf of the respondents disputed the entire contentions of the writ petitioner by stating that Kalakshetra Foundation issued an advertisement in Hindu Newspaper on 28.02.2010 for 21 posts in different designations. One of the post advertised was Costume Assistant Grade-II. As per the Recruitment Rules, the qualifications prescribed for the Post of Costume Assistant Gr.II are as under:-

Name of Post	Pay scale of the post	Qualifications:	Age limit
Costume Assistant Grade-II	Rs.3050-75-3950-80-4590 (V Pay Commission Scale - Central Govt.Scale) Pay Level-2 of VII Pay Commission Pay Matrix	Essential: (i) Degree of a recognised University or equivalent (ii) Capacity to assess the costume requirements of a new production (iii) Experience of stitching(Tailoring) crafts, knowledge of crafts. (iv) Able to maintain proper inventory of stage property, jewellery &Costumes. Desirable: (i) Knowledge of Music or dance. (ii) Knowledge of Hindi or other South Indian languages.	30 years.

16.As a result of recruitment process, the petitioner was appointed as Costume Assistant Gr II(Group C) in Kalakshetra Foundation vide order dated 08.06.2010. Subsequently, a writ petition No.8282 of 2011 was filed by one Shri.C.S.Thomas before this Hon'ble Court relating to appointments made on the basis of recruitment notification dated 28.2.2010. In the writ petition, it was alleged that the appointments were not made in accordance with the rules. The matter is pending.

17.The petitioner is one of the appointees as a result of the advertisement issued on 28.02.2010. As against the qualifications prescribed in the recruitment regulations it was found subsequently that she did not meet the following conditions:-

As per Recruitment Regulations	Qualifications possessed by her on the closing date of receipt of applications viz., as on 10.03.2010
Degree of a recognized University or equivalent	She had completed only 12 th Std., and was not a graduate on the closing date for receipt applications
Age limit:30 years	She was 36 years and 11 months old as on closing date of receipt of applications.

18.The writ petitioner as accordingly both overaged and also did not possess the educational qualification at the time of appointment. As per the appointment order issued, she was placed under probation for a period of two years. However, in view of the allegations made in the above referred writ petition relating the appointments made in the year 2010, probation of none of the officers was declared. The issue relating to appointments made in the year 2010 was deliberated by the Governing Board which is the supreme authority of the Foundation in the 46th, 48th and lastly on the 53rd meeting held on 11.10.2018 as under:-

Governing Board meeting	Extract of minutes of the meeting
46th GB meeting held on 15.7.2015 Under Any other item: (iii) Recruitments to various posts made in 2010 and the Writ of Mandamus case in HC of Madras No.8282.	"Chairman said that a case by case examination would be undertaken to find out if there was any mitigating circumstance in any of those eight cases and a report would be placed before the next meeting of the Board for a final decision."
48th GB meeting held on 22.8.2016 Item No.17- To consider the case to case report no Recruitments to various posts made in 2010 and the Writ of Mandamus case in HC of Madras No.8282.	"2.2. As regards the case of Sl.No.3, Costume Assistant (Gr.II) and Sl.No.5 PGT (Commerce), BASS (Smt.H.Anandhi and Smt.Uma Sekar) who failed to fulfill both educational qualification and age criteria, their services will have to be terminated"
53rd GB Meeting held on 11.10.2018 Item No.13: To consider release of increments in respect of persons appointed in the year 2010- subject matter of Writ of Mandamus No.8282.	"After discussions, and keeping in view the decision of the GB taken in its 48th meeting held on 22.8.2016, GB approved the following:- (i) One appointee who fulfilled both age and educational qualifications as per the recruitment rules be regularised and considered for declaration of probation. (ii) Services of two appointees viz.PGT (commerce) and Costume Assistant be terminated as they did not possess required educational qualification. (iii) Pending decision by the Ministry, increment and other benefits be released to the remaining eight appointees. At the same time, it is made clear, that the decision to release the benefits is in no way be construed as regularizing their appointment which will be subjected to directions by the Ministry or any direction that may be issued by the High Court of Madras in the pending Writ of Mandamus."

19. In view of the foregoing, it may be noted that the decision not to declare the probation of appointees of 2010 was a conscious one keeping in view the controversies surrounding them. As per the Kalakshetra Foundation Act, Governing Board is the Supreme Authority of the Foundation and in exercise of powers vested in it, took decisions in its meeting held on 11.10.2018. In terms of the decisions of the Governing Board, the services of the petitioner and another similarly placed officer were terminated. The termination order was in terms of clause 2 of the appointment order dated 8.6.2010 which provide for termination of probation at any time without notice and without any reasons being assigned.

20. It may also be added that agenda of all the Governing Board meetings and minutes of all the meetings are uploaded in the website of the Foundation and hence nothing was done behind the back of the petitioner. The minutes of GB meeting held on 11.10.2018 were similarly uploaded in the website of the Foundation and hence transparency was maintained in the decision making process. Termination of the services of the petitioner was on the grounds that the appointment of the petitioner was in violation of recruitment regulations. As per the petitioner did not have the required educational qualifications her appointment was patently wrong and such appointment could not be continued.

21. The learned counsel appearing on behalf of the respondents emphatically stating that the writ petitioner herself admitted that she was overaged and not possessing the prescribed qualifications of degree at the time of her appointment. Therefore, these admission make her appointment illegal and this apart, her Probation has not been declared and her services are not even confirmed as per the Clause 3 of terms of appointment. Thus, her appointment could be terminated at any time as per Clause 2 of her terms of appointment.

22. Let us now look into the order of appointment issued to the writ petitioner in proceedings dated 08.06.2010.

23. The order of appointment is enclosed in page No.2 of the typed set of papers filed along with the writ petition. The first term stated in the order of appointment states that "the appointment is under the Kalakshetra Foundation, which is an autonomous body." Clause 2 of the Appointment order, which reads as under:-

"2. The Post is temporary but likely to continue.
Her claim for permanent absorption will be considered in

accordance with the rules in force. She will be on probation for a period of two years from the date of joining duty, which may be extended or curtailed at the discretion of the competent authority. During the period of probation extended or otherwise, the appointment may be terminated at any time without notice and without any reasons being assigned."

24. Clause 2 of the Appointment order states that the Post is temporary, but likely to continue and the claim of the writ petitioner for permanent absorption will be considered in accordance with the rules in force. She will be on probation for a period of two years from the date of joining the duty, which may be extended or curtailed at the discretion of the competent authority.

25. It is further stated that during the period of probation extended or otherwise, the appointment may be terminated at any time without notice and without any reasons being assigned.

26. The terms and conditions of the appointment are unambiguous that the writ petitioner was appointed in a temporary post and her permanent absorption will be considered in accordance with the rules in force. Admittedly, the services of the writ petitioner has not been confirmed so far nor the Probation has been declared. The condition further stipulates that the Probation period may be extended or curtailed at the discretion of the competent authority. During the period of Probation, appointment of the writ petitioner may be terminated at any time without notice and without any reason being assigned. Thus, this Court has to examine, whether the relieving order impugned is a termination simpliciter or punitive in nature.

27. The learned counsel for the respondents cited the judgment of the Hon'ble Supreme Court of India in the case of Ashok Kumar Sonkar Vs. Union of India and others, reported in (2007) 4 SCC 54, held as follows:-

"20. Possession of requisite educational qualification is mandatory. The same should not be uncertain. If an uncertainty is allowed to prevail, the employer would be flooded with applications of ineligible candidates. A cut-off date for the purpose of determining the eligibility of the candidates concerned must, therefore, be fixed. In absence of any rule or any specific date having been fixed in the

advertisement, the law, therefore, as held by this Court would be the last date for filing the application.

26. This brings us to the question as to whether the principles of natural justice were required to be complied with. There cannot be any doubt whatsoever that the audi alteram partem is one of the basic pillars of natural justice which means no one should be condemned unheard. However, whenever possible the principle of natural justice should be followed. Ordinarily in a case of this nature the same should be complied with. Visitor may in a given situation issue notice to the employee who would be effected by the ultimate order that may be passed. He may not be given an oral hearing, but may be allowed to make a representation in writing.

27. It is also, however, well settled that it cannot put any straitjacket formula. It may not be applied in a given case unless a prejudice is shown. It is not necessary where it would be a futile exercise.

28. A court of law does not insist on compliance with useless formality. It will not issue any such direction where the result would remain the same, in view of the fact situation prevailing or in terms of the legal consequences. Furthermore in this case, the selection of the appellant was illegal. He was not qualified on the cut-off date. Being ineligible to be considered for appointment, it would have been a futile exercise to give him an opportunity of being heard.

32.....The principles of equity in a case of this nature, in our opinion, will have no role to play. Sympathy, as is well known, should not be misplaced."

28. The Hon'ble Supreme Court of India, in the case of Satya Narayan Athya Vs. High Court of M.P. And another, reported in (1996) 1 SCC 560, held as follows:-

"5. Under these circumstances, the High Court was justified in discharging the petitioner from service during the period of his probation. It is not necessary that there should be a charge and an enquiry on his conduct since the petitioner is only on probation and during the period of probation, it would be open to the High Court to consider whether he is suitable for confirmation or should be discharged from service."

29. In the case of Kamal Nayan Mishra Vs. State of Madhya Pradesh and others, reported in (2010) 2 SCC 169, the Hon'ble Supreme Court of India, held as follows:-

"14. Therefore, the ratio decidendi of Ram Ratan Yadav [(2003) 3 SCC 437 : 2003 SCC (L&S) 306] is, where an employee (probationer) is required to give his personal data in an attestation form in connection with his appointment (either at the time of or thereafter), if it is found that the employee had suppressed or given false information in regard to matters which had a bearing on his fitness or suitability to the post, he could be terminated from service during the period of probation without holding any inquiry. The decision dealt with a probationer and not a holder of a civil post, and nowhere laid down a proposition that a confirmed employee holding a civil post under the State, could be terminated from service for furnishing false information in an attestation form, without giving an opportunity to meet the charges against him.

Re: Question (ii)

15. A confirmed government servant is the holder of a civil post entitled to the benefits of the safeguards provided by Article 311 of the Constitution. On the other hand, a probationer does not have any substantive right to hold the post, and is not entitled to the protection under Article 311. A probationer's services can be dispensed with during the period of probation, or at the end of the probation period, if his service is found to be unsatisfactory or if he is found to be unfit for appointment."

30. In the case of State of Orissa and another Vs. Mamata Mohanty, reported in (2011) 3 SCC 436, the Hon'ble Supreme Court of India, held as follows:-

"Order bad in inception

37. It is a settled legal proposition that if an order is bad in its inception, it does not get sanctified at a later stage. A subsequent action/development cannot validate an action which was not lawful at its inception, for the reason that the illegality strikes at the root of the order. It would be beyond the competence of any authority to validate such an order. It would be ironic to permit a person to rely upon a law, in violation of which he has obtained the benefits. If an order at the initial stage is bad in law, then all further proceedings consequent thereto

will be non est and have to be necessarily set aside. A right in law exists only and only when it has a lawful origin. (Vide Upen Chandra Gogoi v. State of Assam [(1998) 3 SCC 381 : 1998 SCC (L&S) 872 : AIR 1998 SC 1289] , Mangal Prasad Tamoli v. Narvadeshwar Mishra [(2005) 3 SCC 422 : AIR 2005 SC 1964] and Ritesh Tewari v. State of U.P. [(2010) 10 SCC 677 : (2010) 4 SCC (Civ) 315 : AIR 2010 SC 3823])

Eligibility lacking

39. In Prit Singh (Dr.) v. S.K. Mangal [1993 Supp (1) SCC 714 : 1993 SCC (L&S) 246 : (1993) 23 ATC 783] this Court examined the case of a person who did not possess the requisite percentage of marks as per the statutory requirement and held that he cannot hold the post observing: (SCC pp. 718-19, paras 12-13)

"12. ... It need not be pointed out that the sole object of prescribing qualification that the candidate must have a consistently good academic record with first or high second class Master's degree for appointment to the post of a Principal, is to select a most suitable person in order to maintain excellence and standard of teaching in the institution apart from administration. ... The appellant had not secured even second class marks in his Master of Arts Examination whereas the requirement was first or high second class (55%). The irresistible conclusion is that on the relevant date the appellant did not possess the requisite qualifications.

13. ... on the date of the appointment the appellant did not possess the requisite qualifications and as such his appointment had to be quashed."

(emphasis added)

40. In Pramod Kumar v. U.P. Secondary Education Services Commission [(2008) 7 SCC 153 : (2008) 2 SCC (L&S) 244 : AIR 2008 SC 1817] this Court examined the issue as to whether a person lacking eligibility can be appointed and if so, whether such irregularity/illegality can be cured/condoned. After considering the provisions of the U.P. Secondary Education Services Commission Rules, 1983 and the U.P. Intermediate Education Act, 1921, this Court came to a conclusion that lacking eligibility as per the rules/advertisement cannot be cured at any stage and making appointment of such a person tantamounts to an illegality and not an irregularity, and thus cannot be cured. A person lacking the eligibility cannot approach

the court for the reason that he does not have a right which can be enforced through court.

41. This Court in Pramod Kumar [(2008) 7 SCC 153 : (2008) 2 SCC (L&S) 244 : AIR 2008 SC 1817] further held as under: (SCC p. 160, para 18)

"18. If the essential educational qualification for recruitment to a post is not satisfied, ordinarily the same cannot be condoned. Such an act cannot be ratified. An appointment which is contrary to the statute/statutory rules would be void in law. An illegality cannot be regularised, particularly, when the statute in no unmistakable term says so. Only an irregularity can be. [See State of Karnataka v. Umadevi (3) [(2006) 4 SCC 1 : 2006 SCC (L&S) 753] , National Fertilizers Ltd. v. Somvir Singh [(2006) 5 SCC 493 : 2006 SCC (L&S) 1152 : AIR 2006 SC 2319] and Post Master General v. Tutu Das (Dutta) [(2007) 5 SCC 317 : (2007) 2 SCC (L&S) 179] .]"

44. In P.K. Ramachandra Iyer v. Union of India [(1984) 2 SCC 141 : 1984 SCC (L&S) 214 : AIR 1984 SC 541] this Court while dealing with the same issue, held that once it is established that there is no power to relax the essential qualifications, the entire process of selection of the candidate was in contravention of the established norms prescribed by advertisement. The power to relax must be clearly spelt out and cannot otherwise be exercised."

31. Relying on the above said judgment, the learned counsel for the respondents states that the termination simpliciter is issued in the present writ petition against the writ petitioner by invoking Clause 2 of the terms and conditions of the appointment and there is no infirmity as such in respect of the order of relieving now, which is under challenge. Thus, the writ petition itself is liable to be rejected.

32. Relying on the very same judgment cited by the respondents in the case of State of Orissa and another Vs. Mamata Mohanty, reported in (2011) 3 SCC 436, the learned counsel for the writ petitioner solicited the attention of this Court in Paragraph 33 of the Judgment, wherein it is observed that "Therefore, it is necessary to maintain a high academic standard and academic discipline along with academic rigour for the progress of the nation. Democracy depends for its own survival on a high standard of vocational and professional education. Paucity of funds cannot be a ground for the State not to provide quality education to its future citizens."

33.The learned counsel for the writ petitioner states that the case cited by the respondents in relation to the appointment to the Post of a Professor, wherein high standard of qualification is prescribed and there cannot be any compromise. The Hon'ble Supreme Court of India itself observed that maintain a high academic standard as far as for appointment to the Post of Professor are concerned is of paramount importance and therefore, the said judgment cannot be relief upon for the purpose of deciding the case of the writ petitioner herein.

34.The learned counsel for the writ petitioner, at the outset, is of the opinion that the facts and circumstances of the case before the Hon'ble Supreme Court of India was entirely different and in relation to the appointment to the Post of College Teachers, which cannot be compared with the Post of Cosmetic Assistant Grade-II, which is of lower cadre and no such high skills or academic qualifications are required. Under these circumstances, the case of the writ petitioner is to be considered for grant of relaxation.

35.This Court is of an opinion that relaxation of relevant rules cannot be granted by the Courts nor the Courts can issue direction to the employers to grant relaxation of rules. Rules are meant for implementation. Prescription of qualifications prescribed in the recruitment rules can never be compromised. Relaxation is only an exception. Thus, the Rule of Relaxation or the power of relaxation can never be exercised in a routine manner even by the employer. In the event of allowing the employer to grant relaxation, then the same will set a wrong precedent and every such unqualified person, who was appointed will claim relaxation in one way or other in respect of the rules, which all are to be enforced. Thus, the very contention raised by the writ petitioner that the writ petitioner is to be granted with the benefit of relaxation deserves no merit consideration. The Apex Court reiterated that power of relaxation cannot be exercised, so as to dilute or in violation of the recruitment rules in force. Once, it is found that the appointment is illegal, then the person, who is holding the post is not entitled to continue in the post.

36.This being the legal principles settled by the Hon'ble Supreme Court of India, this Court is of the considered opinion that the writ petitioner herself admitted that she was overaged at the time of appointment and not possessing the requisite qualification of degree at the time of appointment. However, a submission is made that the petitioner acquired the degree

qualification subsequently, but the same will not save the appointment, which was otherwise illegal. Even otherwise, at the time of appointment, the writ petitioner was overaged and was not possessing the requisite qualification.

37. As whether to understand the impugned order is punitive or termination simpliciter, this Court is of an opinion that the writ petitioner was relieved of her duties from the services of the Foundation merely on the ground that her appointment was contrary to the rules and by invoking Clause 2 of the terms and conditions of the appointment order, the writ petitioner was relieved. Thus, there is no element of punitiveness or an allegation is set out against the writ petitioner. The respondent has passed the impugned order by stating that they have invoked Clause 2 of the terms and conditions of the appointment order and accordingly, relieved the writ petitioner of her duties. Clause 2 is unambiguous that the writ petitioner was in Probation and her Probation was not declared nor her services are confirmed.

38. Under those circumstances, the employer is empowered to terminate the services of the writ petitioner without notice and without assigning any reason.

39. This being the Clause accepted and admitted by the writ petitioner at the time of accepting the order of appointment, now the writ petitioner cannot say that show cause notice must be issued to her. Under these circumstances, the issuance of show cause notice to the writ petitioner will become an empty formality and no purpose would be served. The writ petitioner admitted the fact that she was over aged and was not possessing the educational qualification at the time of appointment. The writ petitioner further admitted that Clause 2 of the appointment order dated 8th June 2010, narrates that she will be on Probation for a period of two years and the Probation may be extended and even of extension period, the appointment may be terminated at any time without any notice or without any reason being assigned. When the writ petitioner herself admitted the facts and accepted the terms and conditions of appointment, now, she cannot turn around and say that she is entitled for notice and even if a notice is issued, an explanation is submitted, no purpose would be served and the same will become an empty formality and the Hon'ble Supreme Court of India also states that the non issuance of the show cause notice, if not caused any prejudice to the employee concerned, then, the mechanical way of directing the authorities to issue a show cause notice would not arise at all.

40.This being the legal principles, the writ petitioner has not made out any acceptable legal ground for the purpose of considering the relief as such sought for in the present writ petition.

41.Accordingly, the writ petition stands dismissed. However, there shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

kak

To

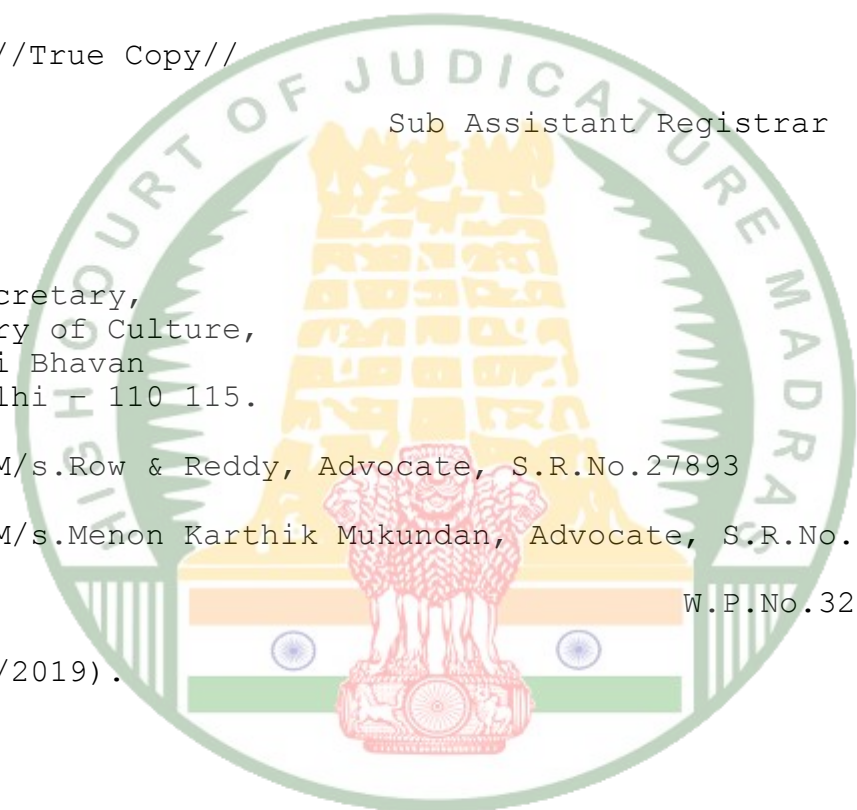
1. The Secretary,
Ministry of Culture,
Shastri Bhavan
New Delhi - 110 115.

+1 cc to M/s.Row & Reddy, Advocate, S.R.No.27893

+1 cc to M/s.Menon Karthik Mukundan, Advocate, S.R.No.27771

W.P.No.32296 of 2018

GJ(CO)
SSM(23/04/2019).

The seal of the High Court of Madras is a circular emblem. It features a central golden temple gopuram (tower) with a red lion capital of Ashoka at its base. The gopuram is flanked by two green trees. The words "HIGH COURT OF JUDICATURE MADRAS" are inscribed in a green border around the central image. Below the seal, the Sanskrit motto "सत्यमेव जयते" (Satyameva Jayate) is written in Devanagari script.

WEB COPY