

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.01.2020

CORAM

THE HON'BLE Mr. JUSTICE M.GOVINDARAJ

W.P.No.16007 of 2012

R.Balasubramanian

...Petitioner

Vs.

1.The Joint Director of School Education
(Higher Secondary),
College Road,
Chennai 600 006.

2.The Chariman,
Teachers Recruitment Board,
College Road,
Chennai 600 006.

3.The Chief Educational Officer,
Erode District.

....Respondents

Prayer : Petition filed under Article 226 of the Constitution of India praying to issue a writ of certiorarified Mandamus to call for the records relating to the impugned order passed by the first respondent herein in his proceedings Na.Ka.No.51336/W3/E1/10 dated 13.03.2012 and quash the same and consequently direct the respondents herein to reinstate the petitioner into service together with all consequential service and monetary benefits to the petitioner.

For Petitioner : Mr.G.Bala

For Respondents : Mr.C.Munusamy

Senior Counsel for R2

P.Raja, Government Advocate

for R1 & R2

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O R D E R

The petitioner is a post graduate in English with a basic undergraduate degree in Economics. He registered himself with the employment exchange on 04.03.1997. Later in the year 2008 acquired B.A.degree in English. Pursuant to the sponsor made by employment exchange, he was called for selection vide Memo No.2554/Aa1/2009 dated 03.03.2010 for the Post Graduate

Assistant in English by the Second respondent. The educational qualification for the Post of Post Graduate Assistant is M.A. degree in English with the basic degree in the same subject. He was selected to post by proceedings Na.Ka.No.51336/W3/E1/2020 dated 31.08.2010 and he joined services on 02.09.2010. While so, by proceedings Na.Ka.No.51336/W3/E1/2010 dated 13.03.2012 of the first respondent, he was terminated from service for want of requisite educational qualifications. Aggrieved over the order of termination the petitioner made a representations to the first respondent and preferred the above writ petition.

2. The learned Special Government Pleader for the official respondent would vehemently contend that the petitioner was found unqualified to the post of P.G.Assistant. For the said post, a candidate shall posses U.G. & P.G degree in the same subject. Since the petitioner was possessing only B.A.degree in economics at the time of registering himself, he was found ineligible. He was called for selection on the basis of his seniority in employment exchange and hence he was issued a show cause notice and since he did not submit his explanation, he was terminated from service. The conditions of appointment given to the petitioner clearly specified that if he is found ineligible, the selection would be clearly specified that if he is found ineligible, the selection would be cancelled. The petitioner knowingly had taken up the appointment, therefore he has no right to challenge the same and the termination order issued by the respondents need not be interfered with.

3. The contention of the learned Special Government Pleader that the selection is liable for cancellation as per terms of appointment, is not sustainable. All that specified in the condition is that the selection will be cancelled if any defect is found in the X standard, XII standard or degree obtained from other states. In the instant case, it is admitted that the degree obtained by the petitioner is genuine. There is no other condition that the candidate should have been fully qualified on the date of registration with employment exchange. On the date of selection he was fully qualified and made after certificate verification. Even assuming that it is liable for cancellation it should have been done within a reasonable time, but certainly not after regularising the services of the petitioner, that too, without giving opportunity to the petitioner.

4. I have given my anxious consideration to the issue on hand. It is true to state that the petitioner was not qualified on the date of the registration of his name with the employment exchange. But it is also an admitted case that on the date of selection he was fully qualified, having acquired basic degree in English. He was selected after certificate verification. It is very important to note that the petitioner was called for

selection on being sponsored by employment exchange on the request of the second respondent, selection board. He did not apply for that post or made any misrepresentation to serve the post by suppressing any fact. On the date selection he was fully qualified. In fact he was regularised in service by the first respondent in proceedings Na.Ka.No.59215/W2/E-1/2009 dated 23.09.2011. Thereafter on 13.03.2012 he was terminated from service for not possessing requisite educational qualifications, but not on the grounds of inefficiency or misconduct.

5. However, it is well settled that any order which causes civil consequences should be passed in conformity with the principles of natural justice. If it is seen from that angle, the termination will cause severe consequences, for, his name would be permanently removed from the registers of the employment exchange. He would not get any future employment from being sponsored by employment exchange. Further he had given up his selection to the post of BRTE by the very same first respondent in his proceedings dated 15.10.2010. Therefore, it is no doubt that the termination will cause severe consequences in his life and career and should have been overruled for selection for future appointments. Yet another point is that as observed above, he was regularised in service. Therefore, it is all the more necessary that due enquiry should have been conducted. The respondents claim that the petitioner was served with show cause notice before passing the order termination, which is shortly denied by the petitioner. The respondents would submit that the show cause notice was sent by registered post with acknowledgement due. In spite of taking opportunity, the respondents could not produce proof of service of notice on the petitioner. Hence, this Court directed the respondents to produce the original dispatch register. A perusal of the same reveals that the show cause notice was not sent through registered post but by ordinary post. The serial number 111432 mentioned in the show cause notice does not reflect in the dispatch register. In the absence of any proof that the show cause notice was served on the petitioner through registered post or in person through the Head of the institution, the contention that it was served, but the petitioner failed to submit his explanation cannot be accepted.

6. Even it is accepted, mere service of a show cause notice would not suffice the mandatory requirement of conducting enquiry before terminating the regular employee. The condition specified two years before the termination order cannot be applied simpliciter and an opportunity should have been given to him to save his employment, more so, it was not secured by misrepresentation or on suppression of facts. Therefore, I am of the firm view that the impugned order came to be passed in violation of principles of natural justice.

7. In similar circumstances, a Hon'ble Division Bench of this Court, in W.A.Nos.3066 & 3235 of 2019 dated 23.09.2019 has held that if there is no fraud, misrepresentation or suppression in securing appointment and the performance of the teacher is good, he cannot be imposed with punishment. The delay in verification of certificates was also found against the respondents and the petitioner therein was ordered to be reinstated. In the instant case also, there is no fraud or misrepresentation or suppression of facts on the part of the petitioner. There are no allegations of misconduct or inefficiency. In such circumstances, the order of termination after regulation of services does not augur well and the action taken by the respondents at this distance of time is bad.

8. Therefore, the impugned order passed by the respondents in mechanical and ritualistic manner without enquiry and without application of mind to escape from their own fault is illegal arbitrary and violative of principle of natural justice. Hence, the same is liable to be set aside and accordingly set aside.

The writ petition stands allowed. The respondents are directed to reinstate the petitioner within a period of twelve weeks from the date of receipt of a copy of this order and grant him all monetary and attendant benefits thereof.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1.The Joint Director of School Education
(Higher Secondary),
College Road,
Chennai 600 006.

2.The Chariman,
Teachers Recruitment Board,
College Road,
Chennai 600 006.

3.The Chief Educational Officer,
Erode District.

+lcc to the Government Pleader, S.R.No.5291
+lcc to Mr.G.Bala & Daisy, Advocate, S.R.No.5115

W.P.No.16007 of 2012

SKS (CO)
KKV/24/08/2020



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