

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.12.2020

CORAM

THE HONOURABLE MR. JUSTICE M.DHANDAPANI

W.P.No.27440 of 2014
and
MP Nos.1 and 2 of 2014

T.Vijaya

... Petitioner

Vs.

1. Government of Tamilnadu
Represented by Secretary to Government
School Education Department
Chennai - 600 009.

2. The Director of Elementary School Education
DIP Compound
College Road,
Chennai - 600 006.

3. The District Elementary Educational Officer,
Krishnagiri
Krishnagiri District.

4. The Assistant Elementary Educational Officer,
Bargur,
Krishnagiri District.

सत्यमेव जयते ... Respondents

Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus calling for the records relating to the 3rd respondent Proceedings in Na.Ka.No.810/A4/2014, dated 24.09.2014 to quash the same and issue consequential directions to the first respondent to grant relaxation of relevant rule with regard to age qualification, in favour of the petitioner for appointment as Secondary Grade Teacher and to disburse the Pay and Allowances from the date of appointment of the petitioner's as such till her retirement and to fix her pensionary benefits.

For petitioner : Mr.A.R.Suresh
for Mr.V.Thirupathi
For respondents : Mr.S.Suresh Kumar
Government Advocate

ORDER

Petitioner has come up with this Writ Petition seeking to quash the order dated 24.09.2014 passed by the 3rd respondent in Pro.Na.Ka.No.810/A4/2014, and for a consequential direction to the 1st respondent to grant relaxation of petitioner's age for appointment as Secondary Grade Teacher and to disburse the Pay and Allowances from the date of appointment of the petitioner, as such till her retirement and also for pensionary benefits due to her.

2. The case of the petitioner is that she completed Diploma in Teacher Training in Karnataka State and was appointed as Secondary Grade Teacher in the Panchayat Union Elementary School, Padai, Seemanur Bargur Union on 02.03.1998, while she was aged 36 years. Subsequently, she applied for evaluation certificate and her qualification has been evaluated as equivalent to the Diploma Certificate issued by the Government of Tamil Nadu. Whiles, the 2nd respondent forwarded proposals to the 1st respondent for granting relaxation of age of the petitioner on par with similarly placed persons, since she was over aged on the date of appointment by 3 months and 26 days. It is the case of the petitioner that no order was passed for a period of 16 years and out of the blue, after a period of 16 years, the order of rejection was passed stating that the rule of communal rotation has not been followed as per G.O. Ms.No.159. However, it is the claim of the petitioner that similarly placed persons, in all four, were granted the relaxation of age. Challenging the said order, she filed writ petition viz., W.P. No.23682 of 2014 before this Court. Pending writ petition, the 3rd respondent herein, who is one of the respondent therein, has issued the impugned notice in Pro.Na.Ka.No.810/A4/2014, dated 24.09.2014 directing the petitioner to show cause as to why her services should not be terminated based on the order of the 1st respondent supra. It is the submission of the petitioner, that the impugned notice, which is a cyclo-styled reproduction of the earlier notice, in which this court has already passed an order, cannot form the basis for the second show cause notice, which is unsustainable. Aggrieved over the said impugned notice, dated 24.09.2014 issued by the 3rd respondent, this writ petition has been filed.

3. Learned counsel for the petitioner submits that the

present notice, which is a verbatim reproduction of the earlier notice, is a cyclo-styled copy of the earlier notice on which deliberation has already been made by this Court in the earlier round of litigation in W.P. No.23682/14 and, therefore, it is not open to the respondents to give the notice once over calling upon the petitioner to show cause. It is the further submission of the learned counsel for the petitioner that though relaxation has been sought for by the 2nd respondent, however, for reasons best known, the 1st respondent had slept over the matter for more than 16 years, for which there is no explanation forthcoming. It is the further submission of the learned counsel for the petitioner, that persons identically placed like the petitioner having been granted relaxation, rejecting the case of the petitioner is wholly unsustainable and is gross inequality and against the spirit of Article 14 of the Constitution. It is the submission of the learned counsel for the petitioner that the relaxation sought for is only for a period of 3 months and 26 days, as otherwise the petitioner is fully qualified to hold the said post and, therefore, the petitioner should also be treated on par with persons, who have been granted relaxation. Accordingly, he prays for allowing the writ petition.

4. Per contra, learned Government Advocate appearing for the respondents submits that the upper age limit has been fixed by the Government, which is a policy decision, which cannot be interfered with by this Court in exercise of its inherent jurisdiction unless it is shown that such a decision is not in consonance with the legal requirements. It is the further submission of the learned Government Advocate that the 1st respondent after considering all the parameters has rejected the case of the petitioner, as petitioner's appointment was only on provisional basis and, therefore, it is not open to the petitioner to claim relaxation as a matter of right, more so, when communal rotation has not been followed. Therefore, there is nothing wrong with the order passed by the respondents and, accordingly, prays for dismissal of this writ petition.

5. This Court bestowed its best attention to the contentions advanced by the learned counsel on either side and perused the materials available on record.

6. The facts in issue are not in dispute. The qualification of the petitioner, which is equivalent to the qualification codified by the Government of Tamil Nadu is not in dispute. The only ground on which the candidature of the petitioner is rejected is that the age limit of the petitioner is overshoot by 3 months and 26 days. It is the stand of the petitioner that persons similarly placed have been granted the benefit of relaxation and, therefore, the petitioner is also entitled to the same.

7. It is to be pointed out at this juncture that fixation of age limit is within the domain of the appointing authority and the Court, in exercise of its inherent jurisdiction, cannot enter into the same and question the basis on which such an age limit is fixed. The petitioner is over aged on the date when the proposal was sent for approval of the petitioner's name. Though it is well open to the competent authority to relax the age, however, in the case on hand, the age limit prescribed not having been fulfilled, the competent authority is well within its right to reject the proposal for relaxation. The policy decision as to fixation of upper age limit as also the non-grant of relaxation cannot be put in issue before this Court.

8. However, in the present case, it is to be pointed out, that persons, who were similarly placed like the petitioner, were granted relaxation in age and their approval was granted in respect of the proposal sent. However, the case of the petitioner has been rejected merely citing that she has not fulfilled the age criteria, as she is over aged. The notice issued by the respondents speaks volumes about the way in which the case of the petitioner has been dealt with. When persons, who are identically placed having been granted relaxation, it is incumbent on the part of the competent authority to give reasons for rejecting the relaxation request insofar as the petitioner is concerned. Without there being an explanation, which is valid and justified, mere rejection of the proposal of the petitioner when persons, who were identically placed having been granted relaxation, is nothing but a clear infraction of Article 14 of the Constitution and the equality clause between two identically placed persons gets defeated and in such circumstances, this Court is fully clothed with powers to entertain the writ petition in exercise of its inherent powers and grant relief to the parties.

9. Further, it is also borne out by record that though the proposal for approval has been sent to the 1st respondent by the 2nd respondent, however, the 1st respondent has sat over the file for almost a decade and a half and after lapse of 16 years, has woken from slumber and passed the order of rejection, more so when persons identically placed like the petitioner have been conferred with the benefit. There is no explanation whatsoever and the notice is a mere reproduction of the earlier notice issued to the petitioner. Such being the status of the act of the respondent, this Court is of the view that the act of the respondents is wholly against the principles of natural justice and is in gross violation of the constitutional guarantees and, therefore, the same requires to be interfered with. The matter deserves to be remitted back to the respondents for fresh consideration in accordance with law.

10. Accordingly, for the aforesaid reasons, the impugned

notice vide Proceedings in Na.Ka.No.810/A4/2014, dated 24.09.2014 is hereby set aside and the writ petition is allowed and the matter is remanded back to the 3rd respondent for fresh consideration on the on the ground of discrimination. The respondents shall consider the claim of the petitioner with regard to the relaxation of upper age limit, in terms with the identically placed persons and also taking into consideration her qualification and also the fact that the relaxation sought for is only for a period of 3 months and 26 days as expeditiously as possible. There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

vsi2

To

1. The Secretary to Government
Government of Tamilnadu
School Education Department
Chennai - 600 009.

2. The Director of Elementary School Education
DIP Compound
College Road,
Chennai - 600 006.

3. The District Elementary Educational Officer,
Krishnagiri
Krishnagiri District. सत्यमेव जयते

4. The Assistant Elementary Educational Officer,
Bargur,
Krishnagiri District.

+1 cc to The Government Pleader, Advocate Sr.No. 42636
+1 cc to M/s. V.Thiruppathi, Advocate Sr.No. 42414

W.P.No.27440 of 2014

PPA (CO)
RMP (18/02/2021)