



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 22.09.2020

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**THE HON'BLE MR.JUSTICE M.SATHYANARAYANAN
AND
THE HON'BLE MR.JUSTICE P.RAJAMANICKAM**

**W.A. (MD)No.842 of 2020
and C.M.P. (MD)No.4647 of 2020
(Through Video Conferencing)**

- 1.The Joint Director of Kallar Reclamation
Madurai.
- 2.The District Revenue Officer
Kallar Reforms, Madurai District.
- 3.The Headmistress
Government Kallar Higher Secondary School
Melakkal, Madurai. ... Appellants

-Vs-

P.Tamilselvi ...Respondent

Prayer: Writ Appeal filed under Clause 15 of Letters Patent praying to set aside the order dated 10.02.2020 passed in W.P.(MD)No.10909 of 2014.

Prayer in WP(MD). 10909 of 2014 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a writ of Certiorarified Mandamus calling for the records pertaining to the impugned proceedings of the 1st respondent made in Na.Ka.N H8/52531/2009 dated 1.7.2014 and quash the same and consequently directing the respondents to reinstate the petitioner and pay salary from the date of dismissal till the date of her reinstatement and also other montetary benefits.

For Appellants : Mrs.S.Srimathy
Spl. Government Pleader

For Respondent : Mr.Veerakathiravan,
Senior Counsel for
M/s.Veera Associates



JUDGMENT

[Judgment of the Court was delivered by **M.SATHYANARAYANAN, J.**]

The Official respondents, in W.P.(MD)No.10909 of 2014, are the appellants.

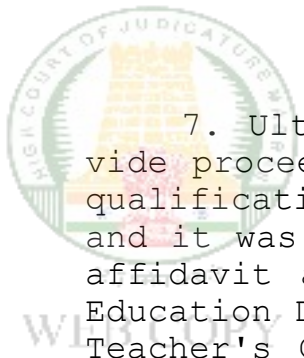
2. The respondent/writ petitioner made a challenge to the impugned proceedings of the first appellant dated 01.07.2014, in and by which, she has been dismissed from service, primarily on the ground for want of Technical Teacher's Certificate.

3. The respondent/writ petitioner had possessed the qualification of B.A. History and Higher Grade in Free Hand Outline in Model Drawing, which was duly recognized by the Department of Technical Education. The respondent/writ petitioner, got her name registered with the jurisdictional Employment Exchange, at Madurai and her name was sponsored to the Kallar Reclamation Department for the post of Drawing Instructor/Master and following the special Rules for Tamil Nadu Backward Classes and Most Backward Classes Welfare Service Rules, 1978, she was appointed to the said post at Government Kallar Higher Secondary School, Melakkal, Madurai, vide proceedings dated 16.09.2008.

4. It is the case of the respondent/writ petitioner that she had rendered hard, sincere and unblemished service and to her shock and surprise, the second appellant, vide proceedings dated 01.10.2009, had dismissed her from service, without conducting any enquiry and she made a challenge to the same, by filing W.P.(MD) No.10142 of 2009 and this Court, vide order dated 03.11.2009, had set aside the order of dismissal and directed to re-instate her into service and also granted liberty to the Department to proceed in accordance with law.

5. The respondent/writ petitioner, after joining, made a request for regularization of her services from the date of her appointment, till the date of her reinstatement and since it was given disposal, she filed W.P.(MD)No.14456 of 2012 and this Court has passed orders to consider her representation and pass appropriate orders within the stipulated time frame and however, the said request was rejected, vide proceedings dated 17.10.2013, and she was also asked to show cause, as to why she should not be dismissed from service for not possessing the required qualifications.

6. The petitioner, once again, made a challenge by filing W.P. (MD)No.18226 of 2013 and pendency of the same, she was issued with yet another communication dated 23.06.2014, stating that her services would be terminated for not fulfilling the required qualification for the post of Drawing Instructor/Master.



7. Ultimately, the writ petitioner was dismissed from service, vide proceedings dated 01.07.2014, for not possessing the requisite qualification and made a challenge to file the present writ petition and it was entertained. The first appellant has filed the counter affidavit and took a stand that in terms of G.O.Ms.No.125, School Education Department, dated 12.11.2003, she should possess Technical Teacher's Certificate and admittedly, she did not possess the said certificate and that apart, she came to be appointed on Women Non-Priority Quota, without obtaining No Objection certificate from the Employment Exchange Department in the category of Women Priority Quota and taking into consideration all the relevant facts and circumstances, she was dismissed from service rightly and prays for dismissal of the writ petition.

8. The learned Judge, after taking note of the rival submissions and the materials placed on record, found that G.O.Ms.No.125, School Education Department, dated 12.11.2003, has no application to the case on hand and the impugned order of dismissal came to be passed by means of cryptic order, without taking any considerable explanation submitted by the respondent/writ petitioner and therefore, allowed the writ petition, vide impugned order dated 10.02.2020, with the positive directions and aggrieved by the same, the Official respondents have preferred this writ appeal.

9. The learned Special Government Pleader appearing for the Official respondents/appellants has drawn the attention of this Court to G.O.Ms.No.1251, Education (M1) Department dated, 14.12.1992 and G.O.Ms.No.447, Education, Science and Technology Department, dated 16.07.1995 as well as G.O.Ms.No.125, School Education (X2) Department, 12.11.2003 and would submit that in the light of the stipulates contained in the said Government Orders, the respondent/writ petitioner has to possess Technical Teacher's Certificate and admittedly, she did not possess the same and after giving her reasonable opportunity, she was dismissed from service rightly and the learned Judge had failed to take note of the factual aspects and rule position and therefore, prays for interference.

10. Mr.Veerakathiravan, learned Senior Counsel for M/s.Veera Associates, has invited the attention of this Court to Special Rules for Tamil Nadu Backward Classes and Most Backward Classes Welfare Service Rules, 1978 and would submit that the post of Drawing Instructors/Masters comes under Clause IV and the required qualification is "*a pass in the Government Technical Examination in drawing by the Higher Grade*" and ultimately, the respondent/writ petitioner did possess the said qualification and further points out that the Government Orders referred to by the learned Special Government Pleader came to be issued on a different context and not with regard to the rule position and further points out that the said Government Orders have no application at all, if the schools especially, Kallar Schools run by the concerned Department. He



would also add that the learned Single Judge, on a thorough appreciation and consideration of the materials, has rightly reached the conclusion to issue a positive order and prays for dismissal of this Writ appeal.

11. This Court has carefully considered the rival submissions and also perused the materials placed on record.

12. There are Special Rules in place for the Tamil Nadu Backward Classes and Most Backward Classes Welfare Service Rules, 1978 and the post of Drawing Instructors/Masters comes under Clause IV and the qualification prescribed is **"a pass in the Government Technical Examination in drawing by the Higher Grade"**. Admittedly, the respondent/writ petitioner possessed the said qualification. The learned Special Government Pleader has placed heavy reliance upon G.O.Ms.No.1251, Education (M1) Department dated, 14.12.1992 and G.O.Ms.No.447, Education, Science and Technology Department, dated 16.07.1995 as well as G.O.Ms.No.125, School Education (X2) Department, 12.11.2003. G.O.Ms.No.1251, Education (M1) Department dated, 14.12.1992, speaks about the Revised Procedure for appointment to the post of Secondary Grade Teacher-Specialist Teacher in similar grade and scales of pay in Government/Municipal and Panchayat Union Schools and the G.O.Ms.No.447, Education, Science and Technology Department, dated 16.07.1995, speaks about the priority, while calling for the candidates from the Employment Exchange. G.O.Ms.No.125, School Education (X2) Department, 12.11.2003, speaks about the Creation of Junior Grade Teachers Posts from the academic year 2003-2004 and amendment to Tamil Nadu Recognized Private Schools (Regulation) Rules, 1974.

13. In the considered opinion of this Court, none of the above cited Government Orders did not deal with the Special Rules for Tamil Nadu Backward Classes and Most Backward Classes Welfare Service Rules, 1978. It is a well settled position of law that if at all any amendment to be brought forth by the Special Rules, it can be done by invoking Article 309 of the Constitution of India and a perusal of the above cited Government Orders do not disclose the said fact. The above cited G.O.Ms.No.1251, Education (M1) Department dated, 14.12.1992, have application to Government, Municipal and Panchayat Union Schools and a perusal of the above said Government Order would disclose that it did not specifically amend the Special Rules for Tamil Nadu Backward Classes and Most Backward Classes Welfare Service Rules, 1978 and it appears to be only on administrative instructions. G.O.Ms.No.447, Education, Science and Technology Department, dated 16.07.1995, speaks about only the priority accorded, while calling for candidates from the Employment Exchange. Insofar as G.O.Ms.No.125, School Education (X2) Department, 12.11.2003, is concerned, it pertains to schools come within the ambit of Tamil Nadu Recognized Private Schools (Regulation) Rules 1974 and the said Rules would not apply to the



schools run by the Tamil Nadu Backward Classes and Most Backward Classes Welfare Service Rules, 1978.

14. In the absence of any specific amendment to the qualification prescribed for Drawing Instructors/Masters in the Special Rules by adding the Technical Teacher's Certificate, the said requirement cannot be insisted for the respondent/writ petitioner.

15. In the light of the same, this Court is of the view that, the impugned order passed in W.P.(MD)No.10909 of 2014, does not warrant interference. In the result, this Writ Appeal is dismissed confirming the order dated 10.02.2020, passed in W.P.(MD)No.10909 of 2014. However, in the facts and circumstances of the case, there shall be no order as to costs. The appellants/official respondents are directed to comply with the order dated 10.02.2020 passed in W.P.(MD)No.10909 of 2014, as confirmed in this Writ Appeal, within a period of ten (10) weeks from the date of receipt of a copy of this order and communicate the decision taken to the respondent/writ petitioner. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CO)

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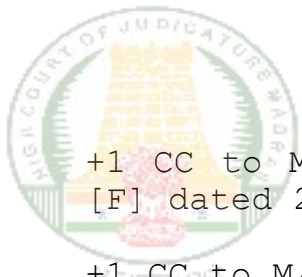
Sub Assistant Registrar(CS)

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Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

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- 2.The District Revenue Officer
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- 3.The Headmistress
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+1 CC to M/s.VEERA ASSOCIATES, Advocate (SR-18012
[F] dated 24/09/2020)

+1 CC to M/s.GP (SR-17960[F] dated 24/09/2020)

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W.A. (MD) No. 842 of 2020
and C.M.P. (MD) No. 4647 of 2020
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