



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 08.01.2020

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THE HONOURABLE MRS.JUSTICE J.NISHA BANU

W.P(MD)No.11802 of 2014

and

M.P(MD)No.1 of 2014

WEB COPY

S.Sivasankar

.. Petitioner

Vs.

1.Member Secretary,
Teachers Recruitment Board,
Chennai - 6.

2.The Director of School Education,
Chennai - 6.

3.The Director of Employment and Training,
Chennai - 5.

.. Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus calling for the records pertaining to the order passed by the 1st respondent in his proceedings Rc.No.6391/TET/LC/2014 dated 27.06.2014 and quash the same and direct the respondents to consider the petitioner for appointment to the post of B.T Assistant (Physics) according to employment exchange seniority under the S.C Category and appoint the petitioner as B.T Assistant (Physics) and confer all the consequential benefits from the date on which his junior was appointed and pass such further or other orders.

For Petitioner : Mr.V.Panneer Selvam
for M/s.C.S.Associates

For Respondents : Mr.VR.Shanmuganathan,
Special Government Pleader.

ORDER

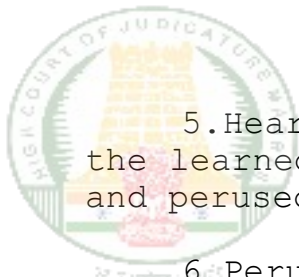
This writ petition has been filed for issuance of a Writ of Certiorarified Mandamus calling for the records pertaining to the order passed by the 1st respondent in his proceedings in Rc.No.6391/TET/LC/2014 dated 27.06.2014 and quash the same and direct the respondents to consider the petitioner for appointment to the post of B.T Assistant (Physics) according to employment exchange seniority under the S.C Category and appoint the petitioner as B.T Assistant (Physics) and confer all the consequential benefits from the date on which, his junior was appointed.



2.The case of the petitioner is that he belongs to Scheduled Caste community. He passed B.Sc. (Physics) in 1998, M.Sc. (Physics) in 2004 and B.Ed. in 2005. He registered his qualification in the Professional and Executive Employment Office, Santhome, Chennai on 10.05.2006 and also registered in the District Employment Office, Trichy on 19.12.2006. The 1st respondent Board, conducted selection for the post of BT Assistant for 2010-11 notifying the vacancies, called for list of candidates from the Employment Exchange and his name was sponsored. Ultimately, they gave appointment for the scheduled caste candidates, who registered in the Employment Exchange upto June, 2006 in September, 2010. Again, in February 2011, they gave appointment to the scheduled caste candidates, who registered upto July, 2006. Since the petitioner could not get appointment, he made a representation dated 10.03.2011. Since there is no response from the 1st respondent, he filed W.P(MD)No.3216 of 2012 before this Court and this Court, vide order, dated 12.02.2014, directed the 1st respondent, to consider his representation and pass appropriate orders on merits and in accordance with law. Thereafter, the 1st respondent passed the impugned order, dated 27.06.2014, rejecting his claim on the ground that his qualification for graduate assistant viz., B.Sc., B.Ed. was registered at Trichy Employment Exchange on 19.12.2006 and he has registered his qualification for Post Graduate Assistant viz., M.Sc., B.Ed., at Chennai Professional and Executive Employment Exchange on 10.05.2006. The cut off dates of Employment seniority for S.C.(G) and S.C. Arunthathiyar (W) were 06.06.2006 and 01.08.2006 respectively. As the petitioner belongs to S.C. Adidravida and he has registered his Graduate Assistant qualification only on 19.12.2006, he could not be considered for selection. Against which, the present writ petition has been filed.

3.The learned counsel for the petitioner submitted that the petitioner registered his M.Sc., B.Ed., qualification in the Professional and Executive Employment Office, Santhome, Chennai on 10.05.2006 prior to the cut off date for the post of B.T. Assistant (Science) under the Scheduled Caste category, i.e., 06.06.2006. The selection was made based on the state wide seniority. Therefore, the impugned is liable to be set aside. He would also rely on the Judgment of this Court in W.P(MD)No.6862 of 2012, dated 23.08.2017.

4.The learned Special Government Pleader appearing for the respondents submitted that the petitioner has registered his B.Sc., B.Ed., qualification at the District Employment Office, Trichy, which is the requisite qualification for the post of Graduate Assistant, which did not fall within the cut off date for selection in SC(G) communal turn and therefore, he is not entitled to appointment.



5. Heard the learned counsel appearing for the petitioner and the learned Special Government Pleader appearing for the respondents and perused the materials available on record.

6. Perusal of record shows that the petitioner has possessed M.Sc. B.Ed. qualification and he registered his qualification in the Professional and Executive Employment Office, Santhome, Chennai on 10.05.2006 and also registered in the District Employment Office, Trichy on 19.12.2006. The third respondent also in their counter affidavit stated that the petitioner registered his qualification in the Professional and Executive Employment Office, Santhome, Chennai on 10.05.2006, which falls within the cut off date for the post B.T. Assistant.

7. It is contended on the side of the respondents that the petitioner has registered his M.Sc. qualification in the Professional and Executive Employment Office, Santhome, Chennai on 10.05.2006 and he registered his B.Sc. B.Ed., which is the requisite qualification for Graduate Assistant, in the District Employment Office, Trichy on 19.12.2006 and therefore, he was not selected. In W.P(MD)No.6862 of 2012 [**H.Sivakumar v. The Director, Directorate of Employment and Training, Chennai - 600 032 and Others**], dated 23.08.2017, this Court has held as follows:

"24. The learned Additional Advocate General, at this juncture, referred the counter filed by the first respondent, stating that the registrants have to register their academic and B.Ed., qualifications at the local Employment Exchange and their Post Graduate qualification at Professional Executive Employment Office at Chennai or at Madurai according to their residential jurisdiction. Only for Chennai District registrants UG with B.Ed., qualification is registered at the Professional Executive Employment Office, Chennai. Thus, the said stand of the first respondent is accepted and the question to the first respondent would be that on what basis the registration of B.Ed., degree in respect of the writ petitioner was done on 8.8.1996. When the first respondent has registered B.Ed., degree of the writ petitioner at Professional Executive Employment Office, Chennai on 8.8.1996, now they cannot come and say that only Post Graduate Degree seniority alone to be Statewide Employment Exchange and B.Sc., Degree only in the District Employment Exchange. Therefore, the contention raised in this regard by the learned Additional Advocate General deserves to be rejected.

25. The learned Additional Advocate General urged this Court by stating that it is for the candidates to be vigilant in these matters while participating in the selection process in spite of the instructions issued. In this regard, the writ petitioner has not pursued the matter in accordance with the instructions. This Court is unable



to agree with the contentions raised in this regard, since the writ petitioner having registered all qualifications with the State Employment Exchange prior to the year 1996 and waited for his employment opportunity, now the respondents cannot say that his B.Ed., qualification was registered with the District Employment Training Office only in the year 2006.

26.It is also equally true that all the candidates are informed about the instructions furnished to them along with the Application Form. It is hardly in doubt that all the candidates are bound by the instructions furnished to them and no candidate can be allowed to turn around and point an accusing finger towards one or the other of such instructions. Is every infraction liable to be viewed very seriously is the question which this Court needs to answer.

27.When Articles 14 and 16 of the Constitution of India hold out a great promise in the form of fundamental rights to the citizens of this country, minor and non-substantial infractions indulged in by the candidates should not be considered or treated to have come in the way as an impediment for exercise of such fundamental rights. Insignificant or minor lapses that have occasioned, while filling up the application forms should not result in frustrating the very fundamental right altogether.

28.In this regard, the Hon'ble Supreme Court in the case of Dolly Chhanda vs. Chairman, Jee and Others [(2005) 9 SCC 779], in paragraph-8, held as follows:-

"8.This principle was explained and applied in Charles K. Skaria & Ors. v. Dr. C. Mathew & Ors. 1980 (2) SCC 752. The controversy here related to admission to a post graduate course in medicine. The relevant rule provided for addition of 10% marks if a candidate possessed a diploma in the relevant subject or sub-specialty and this benefit could be given only if the candidate's success in the diploma course was brought to the knowledge of the Selection Committee before completion of selection in an authentic or acceptable manner. The Prospectus provided that the attested copies of statement of marks and other documents should be attached with every application. Three such candidates were given admission who had not attached the certificate of having passed the diploma along with their applications. Their admission to post graduate course was set aside by the High Court on the ground that their applications, wherein they claimed the benefit of diploma, were liable to be rejected as the requisite certificates had not been attached. This Court speaking through Krishna Iyer, J. reversed the judgment of the High Court and held that the admission to the candidates had rightly been given as they had in



fact passed the diploma before the date fixed. The relevant parts of paras 20 and 24 of the judgment, where this principle was highlighted are being reproduced below:

"20. There is nothing unreasonable or arbitrary in adding 10 marks for holders of a diploma. But to earn these extra 10 marks, the diploma must be obtained at least on or before the last date for application, not later. Proof of having obtained a diploma is different from the factum of having got it. Has the candidate, in fact, secured a diploma before the final date of application for admission to the degree course? That is the primary question. It is prudent to produce evidence of the diploma along with the application, but that is secondary. Relaxation of the date on the first is illegal, not so on the second. Academic excellence, through a diploma for which extra mark is granted, cannot be denuded because proof is produced only later, yet before the date of actual selection. The emphasis is on the diploma; the proof thereof subserves the factum of possession of the diploma and is not an independent factor..... Mode of proof is geared to the goal of the qualification in question. It is subversive of sound interpretation and realistic decoding of the prescription to telescope the two and make both mandatory in point of time. What is essential is the possession of a diploma before the given date; what is ancillary is the safe mode of proof of the qualification. To confuse between a fact and its proof is blurred perspicacity. To make mandatory the date of acquiring the additional qualification before the last date for application makes sense. But if it is unshakeably shown that the qualification has been acquired before the relevant date, as is the case here, to invalidate this merit factor because proof, though indubitable, was adduced a few days later but before the selection or in a manner not mentioned in the prospectus, but still above-board, is to make procedure not the handmaid but the mistress and form not as subservient to substance but as superior to the essence.

24. It is notorious that this formalistic, ritualistic, approach is unrealistic and is unwittingly traumatic, unjust and subversive of the purpose of the exercise. This way of viewing problems dehumanizes the administrative, judicial and even legislative processes in the wider

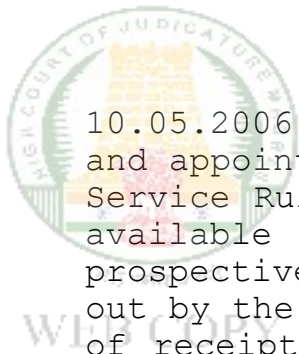


perspective of law for man and not man for law. Much of hardship and harassment in administration flows from over-emphasis on the external rather than the essential. We think the government and the selection committee rightly treated as directory (not mandatory) the mode of proving the holding of diplomas and as mandatory the actual possession of the diploma. In actual life, we know how exasperatingly dilatory it is to get copies of degrees, decrees and deeds, not to speak of other authenticated documents like mark-lists from universities, why, even bail orders from courts and government orders from public offices." (emphasis in original).

29. In the case on hand, the facts are not in dispute in relation to the registration of the qualifications by the writ petitioner with the State Level Employment Exchange. Further, it is unambiguously stated in the original Notification/Advertisement dated 13.10.2014 that the selection will be made based on the State Level Employment Registration Seniority. Thus, it is for the respondents to follow the State Level Seniority alone and even if it is the mistake committed by the respondents 1 to 3 and the same should not be held against the writ petitioner. In other words, for the mistake committed by the respondents in not considering the Statewide Registration Seniority of the writ petitioner, the opportunity of the writ petitioner cannot be curtailed nor the writ petitioner can be penalised in this regard. The writ petitioner is already aged and the opportunity at this chance will be vital and the probability of getting further opportunity is least.

30. In result, the respondents are directed to consider the Statewide seniority of the writ petitioner as 8.8.1996 in respect of his B.Ed., qualification and accordingly select and appoint the writ petitioner, if he is otherwise qualified in accord with the Service Rules. The writ petitioner shall be appointed to any one of the available vacant post or in the next arising vacancy with prospective service benefits and, the said exercise shall be carried out by the respondents, within a period of eight weeks from the date of receipt of a copy of this order".

In view of the ratio laid down by this Court in the above Judgment, the contention raised on the side of the respondents has no legs to stand. The above Judgment is also squarely applicable to the present facts and circumstances of the case and the petitioner also stands in the same footing to that of the petitioner in the above case. Following the same, the impugned order dated 27.06.2014 passed by the 1st respondent is quashed and the respondents are directed to consider the statewide seniority of the petitioner as



10.05.2006 in respect of his qualification and accordingly select and appoint him, if he is otherwise qualified in accordance with the Service Rules. The petitioner shall be appointed to any one of the available vacant post or in the next arising vacancy with prospective service benefits and the said exercise shall be carried out by the respondents, within a period of eight weeks from the date of receipt of a copy of this order. The writ petition is allowed accordingly. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar ()

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

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To

- 1.The Member Secretary,
Teachers Recruitment Board,
Chennai - 6.
- 2.The Director of School Education,
Chennai - 6.
- 3.The Director of Employment and Training,
Chennai - 5.

+1 CC to Mr.V.PANNEERSELVAM, Advocate (SR-847[F] dated 08/01/2020)

ORDER MADE IN
W.P (MD) No.11802 of 2014
08.01.2020

VB(24.01.2020) 7P 5C