



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 16.12.2020

CORAM:

THE HONOURABLE **MR.JUSTICE S.M.SUBRAMANIAM**

W.P. (MD)No.22990 of 2015

and

M.P (MD) .No.3 of 2015

E.Sinthu

... Petitioner

Vs.

1.The Chairman

Teachers Recruitment Board,
4th Floor, E.V.K.Sampath Maligai,
College Road,
Chennai-600 006.

2.The Joint Director of School Education,
(Employees Constituency)
Chennai-600 006.

3.The Chief Educational Officer,
Virudhunagar District,
Virudhunagar.

4.The Headmaster,
Government Higher Secondary School,
Chinnakamanpatti,
Virudhunagar District.

5.The District Employment Officer,
Kanyakumari District,
Nagercoil.

... Respondents

PRAYER: Writ Petition under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records of the order by the 3rd respondent vide Na.Ka.No.9083/A3/2013, dated 18.03.2015, quash the same and consequently, directing the respondents to reinstate the petitioner in the 4th respondent School as Music Teacher.

For Petitioner	: Mr.C.T.Perumal
For R2 to R5	: Mr.J.Gunaseelan Muthiah
For R1	: Mr.VR.Shanmuganathan



ORDER

The case of the writ petitioner is that she has completed her SSLC in April 1992 and in the year 1997 she has completed Higher Secondary Course. In April 2002, the petitioner has completed her BPA degree with Local Music and Violin as Optional Subject. The petitioner registered her qualification in the District Employment Office at Kanyakumari District. The name of the writ petitioner was sponsored for selection to the post of Special Music Teacher. The petitioner participated the certificate verification. She attended the interview and thereafter, she was provisionally selected for the post of Music Teacher in order dated 18.10.2012.

2. In view of the fact that the petitioner joined on 26.11.2012, her employment registration was cancelled. Subsequently, after appointment, the petitioner pursued her course of Diploma in Music Teacher Training and completed in May 2014 in the Tamil University Thanjavur. The respondents sent a show cause notice, on 13.02.2015 seeking her explanation why she should not be removed from service for not possessing the required qualification for appointment to the post of Music Teacher, as per G.O.Ms.No.753, dated 16.07.1985. The petitioner has given a reply stating that she had completed Diploma in Music Teacher Training in the year 2015. In spite of the explanation being submitted, the impugned order of termination was issued.

3. The learned Additional Government Pleader appearing on behalf of the respondents opposed the contention by stating that the petitioner was not qualified for the post of Special Music Teacher at the time of appointment. The qualification prescribed for the post of Special Music Teacher in the Tamil Nadu School Educational Subordinate Service Special Rules, as under:

"4. The rules as in Annexure-I class VI of the Tamil Nadu School Educational Subordinate Service Special Rules issued as per G.O(MS)No.753 School Education Department, dated 16.07.85 there are 4 categories of qualifications prescribed. They are as follows:

(1) Degree with Music under Part III or S.S.L.C completed and Sangeetha Bhushana of Annamalai University; or Sangeetha Vidwan title in Music awarded by the Director of Government Examinations, Chennai;

or Sangeetha Sironmani of the Madras University or Diploma in Music of the Madras University or Madurai University; and Technical Teacher's Certificate or (2) S.S.L.C. Completed;

and Government Technical Examination Certificate (Higher Grade) in Music and Technical Teacher's Certificate;



or(3)S.S.L.C completed with forty per cent in Music (Theory and Practical) separately under the diversified courses; and Technical Teacher's Certificate;

of Diploma in Music Teaching awarded by the Director of Government Examinations.

(4)Teacher's certificate in 'Indian Music' issued by the Director of Government Examination.

According to the above qualifications, the petitioner was not fully qualified to hold the post of music teacher in as much as she did not possess T.T.C or Teachers certificate in Indian Music. Any how, she managed to get appointment as music teacher and joined duty as music teacher by an order dated 26.11.2012."

4.Though the petitioner was not qualified at the time of appointment, she can able to get appointment in an irregular manner. Thus, a show cause notice was issued and on receipt of explanation from the writ petitioner, the authorities competent found that she was not possessing requisite qualification at the time of appointment and therefore, the impugned order of removal from service was issued.

5.This Court is of the considered opinion that the irregularities or illegalities occurred in the appointment cannot be rectified. Educational qualification is the prime factor to be considered for appointment of a person in a particular post or cadre. When a person is not possessing the requisite qualification, then the said defect cannot be rectified. Thus, in case of mistaken appointment, the option would be to remove the employee, who was appointed in violation of the service rules in force. Contrarily, the teacher cannot be allowed to continue in service with the irregularities or illegalities in the matter of appointment.

6.The learned counsel for the petitioner states that subsequently, the petitioner had acquired the qualification and hence, she will be eligible to get fresh appointment after possessing the requisite qualification. Contrarily, the earlier appointment made illegality cannot be sustained, in view of the fact that the petitioner is not having the required qualification for appointment to the post of Special Music Teacher.

7.This being the factum, the petitioner is at liberty to approach the District Employment Office for the purpose of his Registration, in view of removal order and in such event, the fifth respondent is bound to consider the case for restoration of her registration by following the procedures contemplated. Further, the petitioner states that now she is eligible for appointment to the post of Music Teacher and hence, she is at liberty to participate in



the process of selection, if any notified by the respondents for appointment to the post of Special Music Teacher.

8.With these liberties, this Writ Petition Stands disposed of. No costs. Consequently, connected miscellaneous petition is closed.

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Sd/-

Assistant Registrar (AE)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

Ns

To

1.The Joint Director of School Education,
(Employees Constituency)
Chennai-600 006.

2.The Chief Educational Officer,
Virudhunagar District,
Virudhunagar.

3.The Headmaster,
Government Higher Secondary School,
Chinnakamanpatti,
Virudhunagar District.

4.The District Employment Officer,
Kanyakumari District,
Nagercoil.

+1cc to Mr.C.T.Perumal, Advocate Sr.No.25696

+1cc to Special Government Pleader Sr.No.26004

W.P. (MD)No.22990 of 2015

and

M.P (MD) .No.3 of 2015

16.12.2020

CK (CO)

NR (08/01/2020) 4P : 7C