



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.09.2021

CORAM

THE HONOURABLE DR. JUSTICE ANITA SUMANTH

W.P. No.27997 of 2007

D.Kalaimani

...Petitioner

Vs.

1.Union of India rep. by  
Government of Puducherry rep. by  
Chief Secretary to Government,  
Chief Secretariat, Puducherry.

2.The Secretary to Government for Education,  
Chief Secretariat, Puducherry.

3.The Director of Higher Education,  
Education Department, Puducherry.

4.The Director of School Education,  
School Education Department, Puducherry.

...Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue Writ of Certiorarified Mandamus to call for the records of the 2<sup>nd</sup> respondent with G.O.Ms.No.71 dated 14.06.2005 and to quash the same and consequently to direct the respondents to fill up the post of School Assistant as per the notified Recruitment Rules by following the notified selection procedure.

For Petitioner : No Appearance

For Respondents: Mr.R.Syed Mustafa,  
Special Government Pleader  
(Puducherry)

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O R D E R

The petitioner challenges the method of appointment under G.O.Ms.No.71 issued by the Chief Secretariat Education, Union Territory, Pondicherry dated 14.06.2005 ( in short 'G.O.').



2. It is the petitioner's case that the educational system in the Union Territory of Pondicherry is bifurcated into Primary school, Secondary school, High school, Higher Secondary school and thereafter, Colleges. Teachers in the Primary, Secondary and High School sections are referred to as School Assistants and those teaching in the Higher Secondary sections, as Lecturers. Vacancies in the post of lecturers are to be filled up by recruitment through Union Public Service Commission (UPSC). Vacancies in the other categories are filled in by direct recruitment by the Government.

3. The Recruitment Rules (Rules) in Pondicherry govern the appointment of School Assistants. As per the schedule to the Rules, the mandatory condition for consideration to recruitment to the post of School Assistant calls for a Bachelors Degree in Arts/Science of any recognized University or equivalent qualification, along with a B.T. or B.Ed., from a recognized University or equivalent qualification or C.A.P., coupled with the candidate satisfying the subject and language requirement.

4. In the present case, for the periods 1992 to 2003, no appointments were made, to the post of Lecturers through UPSC and the Government of Pondicherry had been appointing Lecturers on adhoc, per diem basis. In 2006, the services of some adhoc Lecturers came to be regularised and they were absorbed as School Assistants.

5. Thus, and in violation of the Recruitment Rules that provides for a mandatory B.Ed., the impugned G.O has come to be issued which permits filling up of 20% of the 50% direct recruitment quota by the Lecturers who had been appointed on ad hoc basis even in the absence of B.Ed. a qualification by them. The only condition imposed was that once appointed, the Lecturers should acquire B.Ed., qualification within a period of two years from date of appointment.

6. The G.O is contested on the ground that the appointment of the School Assistants cannot be made except in accordance with the Recruitment Rules, as a B.Ed., qualification was mandatory. Any appointment of a candidate sans such qualification would be contrary to the Rules. The quota available should be filled in by qualified candidates who could have otherwise been recruited through direct recruitment. The impugned method of appointment thus constitutes a back door entry for unqualified persons.

7. The impugned G.O. is extracted herein for clarity.

Chief Secretariate (Education) -Recruitment of dis-engaged Hourly Basis paid Lecturers of Government



Colleges in the Union Territory- 50% of Direct Recruitment quota in the Group-C post or School Assistant Gr.II-Relaxation of provision of Recruitment Rules-Orders-Issued.

CHIEF SECRETARIAT (EDUCATION)

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G.O.Ms.No. 71

Pondicherry dt. 14 Jun 2005

READ: ID.Note. No. 52004/DS/Estt.III/A/2004  
(RR) dt. 20.01.2005

From the Director of School Education.

ORDER:

WHEREAS the Directorate of Collegiate and Technical Education, Pondicherry, have dis-engaged Lecturers who were engaged on Hourly Basis in the Colleges run by the Government of Pondicherry since the month of October, 1992 to April 2003 consequent to the recruitment of Lecturers through U.P.S.C.

AND WHEREAS these dis-engaged Hourly Basis Lecturers, represented to the Government of Pondicherry to accommodate them in the Group-C cadre post of School Assistant Grade II available in the Directorate of School Education, Pondicherry

AND WHEREAS the Government of Pondicherry carefully examined the request of the dis-engaged hourly basis College Lecturers. The Recruitment Rules for the post of School Assistant Grade II in the Directorate of School Education provides for filling up of 20% of vacancies by Direct Recruitment and 80% by promotion failing which again by direct recruitment. The educational qualification prescribed for the post is Bachelor's Degree in the concerned subject with B.Ed. Degree.

AND WHEREAS Government of Pondicherry has decided to fill 50% of the direct recruitment quota of 20% of vacancies arising in future in the post of School Assistant Gr II by the dis-engaged hourly paid Lecturers who served for a minimum of three academic years in the colleges run by the Government of Pondicherry as hourly paid Lecturers with a minimum of 180 working days per year on humanitarian and sympathetic grounds and as a one time measure with a condition that those hourly paid Lecturers who do not possess B.Ed.



qualification should acquire the same within a period of two years.

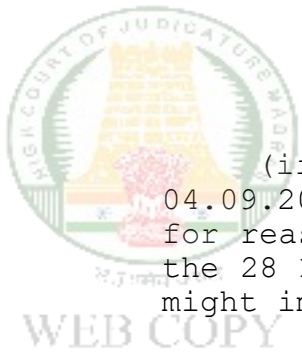
NOW THEREFORE the Lieutenant Governor, Pondicherry in exercise of his powers conferred under Schedule 5 of the Government of Pondicherry, Education Department, Group-C posts of Senior Assistant Grade II Recruitment Rules, 1998 notified by G.O.Ms.No.35 dt. 15.5.1998 of Chief Secretariat (Education) relaxes the provisions of the said rules with respect to the above category of disengaged hourly basis College Lecturers to the extent that 50% of Direct Recruitment vacancies arising in future shall be filled by the disengaged hourly-paid Lecturers who served for a minimum of three academic years in the college run by Government of Pondicherry, as hourly paid Lecturers, with a minimum of 180 working days per year with a condition that those hourly paid Lecturer who do not possess B.Ed. qualification should acquire the same within a period of two years.

//BY ORDERO F THE LIEUTENANT GOVERNOR//

B.V.SELVARAJ LA.S.  
DEVELOPMENT COMMISSIONER-CUM-  
SECRETARY (EDUCATION) '

8. The basis of the relaxation under the G.O is stated to be 'humanitarian and sympathetic ground'. In my considered view, the field of education is best served by those who are qualified to teach the students under their care. While sympathy and humanitarian grounds cannot be eschewed, basic qualifications as prescribed must be complied with. If the candidate seeking recruitment as a Lecturer does not possess the mandatory qualifications, it would be a disservice to the system as well as the student population. In any event and having said so, I do not propose to intervene in the matter for the following reasons.

(i) The G.O has worked itself out by efflux of time as the impugned G.O was only a one-time recruitment measure and the relaxation provided under the impugned G.O has not been repeated thereafter. All appointments thereafter have been in accordance with Recruitment Rules. Thus nothing would be served by adjudicating upon the legality or otherwise of the impugned G.O at this distance in time.



(ii) 28 Lecturers were appointed under the impugned G.O. on 04.09.2006, prior to the filing of this writ petition. However for reasons best known, the petitioner has not chosen to implead the 28 Lecturers. I am thus, not inclined to pass any order that might impact their rights, as they are not parties before me.

(iii) The petitioner is really not prejudiced by the impugned G.O. for the reason that only 10% out of 20% of the 50% seats earmarked for direct recruitment has been filled by way of recruitment under the impugned G.O. Thus the balance of the 10% of the seats was still available in which the petitioner might have been considered. No recruitment had taken place thereafter till 2009, when, in line with G.O.Ms.No.109 dated 09.01.2009 recruitment for the post of School Assistant Grade II had been taken up on open competition basis. Admittedly, the petitioner had applied, but had been unsuccessful. Thus, even on merits, the petitioner has failed in being recruited and thus the operation of the impugned G.O. has not really stood in his way.

9. For the aforesaid reasons, this Writ Petition is dismissed. No costs.

Sd/-  
Assistant Registrar(CS-V)

//True Copy//

Sub Assistant Registrar

rkp

To

- 1.Union of India rep. by  
Government of Puducherry rep. by  
Chief Secretary to Government,  
Chief Secretariat, Puducherry.
- 2.The Secretary to Government for Education,  
Chief Secretariat, Puducherry.
- 3.The Director of Higher Education,  
Education Department, Puducherry.
- 4.The Director of School Education,  
School Education Department, Puducherry.

+1cc to the Government Pleader, Puducherry,S.R.No.45604

W.P. No.27997 of 2007

PCH(CO)  
CB(22/10/2021)