



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.07.2021

CORAM:

THE HON'BLE MR.JUSTICE M.GOVINDARAJ

WP NO.15776 OF 2004

Y.Wisey Jothi Packiam

... Petitioner

Vs.

1. The Secretary to Government,
Education Department,
Fort St. George,
Chennai - 9.

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

3. The Director of Rehabilitation and Disabled,
Chennai.

4. The Correspondent
C.S.I. High School for the Deaf,
Kottaram,
Kanyakumari District.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Mandamus, to direct the respondents to absorb the petitioner as Secondary Grade Teacher (for Deaf) ignoring the additional qualification of pass in Secondary Grade Teachers Course now prescribed.

For Petitioner	:	Mr.T.K.S.Gandhi
For Respondents	:	Mr.C.Selvaraj
1 to 3	:	Government Advocate
For Respondent-4	:	Ms.P.Mahalakshmi

O R D E R

This Writ Petition is filed for a mandamus directing the respondents to absorb the petitioner as Secondary Grade Teacher (for Deaf) ignoring the new qualification prescribed.



2.The petitioner has secured an Associate Degree in Science in Special Education. According to the Rehabilitation Council of India, the Associate Degree in Science is a recognised course for the purpose of teaching the disabled children at Primary School level. However, the educational qualification prescribed by the Government of Tamil Nadu is that a pass in HSC (+2) and a Certificate Course in Teacher Training in Special Education. Bharathidasan University has conducted a Course for Associate Degree in Science in Special Education in the year 1997. On 09.10.2001, the Rehabilitation Council of India has recognised that the Two Years Associate Degree (ASED) Course conducted by Holy Cross College, Trichy, under affiliation of Bharathidasan University are eligible to be appointed as Special Educators / Primary Level Resource Teacher in the field of Hearing Impaired and Visually Impaired. Hence, the petitioner sent a request to the first respondent to recognise the ASED Trained persons for appointment in Special School / Institution in the field of Deaf and Blind.

3.On 26.08.1992, the petitioner was appointed as Secondary Grade Teacher and thereafter, she secured Associate Degree in Science in Special Education from Bharathidasan University. However, the proposal sent by the fourth respondent / school for approval of her appointment was returned with an endorsement that the candidate for the Secondary Grade Teacher should have undergone training for Secondary Grade Teacher, should have secured a Certificate Course for teaching the Deaf issued by the Directorate of Examinations, Government of Tamil Nadu and therefore, the candidate, who has secured an Associate Degree in Science in Special Education cannot be approved. After receipt of the return of the proposal, the fourth respondent / school has issued a publication in Tamil Daily viz., "Dinamalar" on 19.05.2004 calling for applications for the post of Secondary Grade Teachers prescribing that the candidates should have undergone Secondary Grade Teacher Training and Junior Level Certificate Course in Teaching the Deaf awarded by the Directorate of Examinations, Government of Tamil Nadu.

4.Immediately, the petitioner has preferred the above writ petition seeking for a direction to absorb her as Secondary Grade Teacher without insisting on the new qualification of pass in Secondary Grade Teacher Training Course.

5.This Court, in similar circumstance, in W.P.No.15550 of 2004 by its order dated 08.06.2004 granted interim injunction restraining the fourth respondent from making appointment and directed the respondents that the petitioner should be allowed to continue until further orders. By virtue of that interim



order passed by this Court, the petitioner is continuing in service as Secondary Grade Teacher.

6.The learned counsel appearing for the petitioner would contend that when Rehabilitation Council of India has recognised the Associate Degree conducted by Holy Cross College, Trichy, under affiliation of Bharathidasan University, the respondents are bound to accept the same and recognise the petitioner as Secondary Grade Teacher in Special Education and permit her to continue as such.

7.The learned counsel appearing for the fourth respondent would submit that they have sent a proposal for approval of the petitioner to the post of Secondary Grade Teacher (Special Education). But the Approving Authority has returned the papers stating that the candidate shall possess qualification of Teacher Training and also the Certificate issued by the Directorate of Examinations, Government of Tamil Nadu for Deaf and he has refused to accept the ASED Degree secured by the petitioner. Thereafter, the fourth respondent / School has not taken any action against the return of the proposal made by the Competent Authority, but proceeded with issuance of notification calling for applications for the post of Secondary Grade Teacher, as per the qualification prescribed for the posts mentioned in Annexure - V, Clause II of the Tamil Nadu Recognised Private Schools (Regulation) Rules, 1974. Therefore, it is the contention of the fourth respondent that unless the Rules are amended, they are not in a position to absorb the Teachers without the prescribed qualification and getting approval from the Authorities of the Education Department.

8.The learned Government Advocate (Civil Side) appearing for the respondents 1 to 3 would submit that a Candidate, who possess Associate Degree in Science (Special Education) recognised by Rehabilitation Council of India is eligible for Rehabilitation Counsellor or any other Supervisory post in Special Schools and it is not meant for Special Educators, because, Rehabilitation Council of India is imparting Two Years Regular Associate Degree in Science for teaching different categories of persons with disabilities. The candidates who are qualified in Diploma in Special Education D.Ed., (SE) Course alone will be eligible for Special Educator. Therefore, the petitioner is not eligible to be appointed as Secondary Grade Teacher.

9.Heard the submissions made on either side and perused the materials available on record.



10. At the outset, the writ petition has been filed for absorbing / continuing the petitioner in the post of Secondary Grade Teacher by ignoring the new qualification prescribed by the Government. It is well settled that it is for the employer to fix the qualification for any post under its service. When there is a specific statute prescribing certain qualifications, as such, the candidates who are aspiring for the post shall possess those qualifications. In the instant case, the petitioner does not possess the Teacher Training Certificate (TTC) and the prescribed Certificate Course in Training for Deaf issued by the Directorate of Examinations, Government of Tamil Nadu.

11. It is no doubt true that the Associate Degree in Science in Special Education obtained by the petitioner from the Recognised University is higher than the Diploma or Certificate Course prescribed in Annexure V, Clause II of the Tamil Nadu Recognised Private Schools (Regulation) Rules, 1974. But, that was neither recognised by the Government of Tamil Nadu nor incorporated in the Rules. It is also submitted that ASED Course was discontinued by the University from 2001 onwards. The Diploma in Education (D.Ed.,) (Special Education) and Bachelor of Education (B.Ed.,) (Special Education) are introduced at a later point of time.

12. Be that as it may, the prayer as such is to absorb the petitioner as Secondary Grade Teacher. When a special statute was enacted and specifically prescribe certain qualifications, the petitioner, who is aspiring the post shall possess those qualifications. Otherwise, the Government should issue orders recognising such qualifications or declaring that those qualifications are equivalent to the prescribed qualification. The petitioner has not taken any steps for relaxation of qualification or classification as to eligibility to teach. Rehabilitation Council is conducting different types of courses. One appears to be for treatment and training of differently abled persons and other for educating the Primary School children. Without clarifications as to the qualification as to teaching of Primary School children, the Diploma course cannot automatically be applied. More particularly, a training for Secondary Grade Teachers is specifically mentioned, without acquiring such qualification, one cannot seek appointment without relaxation or approval by the Education Department. done anything in this direction. She has never approached this Court for amendment of Rules nor challenged the rejection of approval of her Course, but sought for continuation of her appointment ignoring the Rules.



13. Such a prayer sought for in this writ petition cannot be granted. When a statute prescribes for certain qualifications, unless there are irrelevant, arbitrary and illegal, they cannot be overlooked. Secondly, only when the vires of the statute is put under challenge, the Court can exercise its judicial review to find as to whether the qualifications prescribed are correct or not and also the vires of the statute. In the absence of challenge to that, the Court cannot delve into those matters.

14. The learned counsel for the petitioner would submit that the prayer in the writ petition implies to the challenge to the Rules only.

15. There cannot be any implied prayers. The prayer sought for in the writ petition should be direct and against the Specific Rules or specific orders passed by the Government. The writ petition has been preferred with a prayer only for a Mandamus and not challenging any particular order rejecting the request of the petitioner. As such, the petitioner, without having the prescribed qualifications, has no locus to seek for absorption to the post of Secondary Grade Teacher. Further, appointment was made by the fourth respondent considering the qualification of the Associate Degree in Science issued by the Recognised University and by virtue of the interim order the petitioner is continuing as Secondary Grade Teacher till date.

16. It is also submitted by the learned counsel for the petitioner that the Management has already passed a resolution to absorb the petitioner. Therefore, it is always open to the fourth respondent to continue the petitioner as long as she is paying salary from the funds of the Management, as per the Tamil Nadu Recognised Private Schools (Regulation) Rules, 1974. After the retirement of the petitioner, it is open to the fourth respondent / Management to issue notification to fill up the vacant post.

17. The writ petition is disposed of with the above observation and direction. No costs.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

TK



To

1. The Secretary to Government,
Education Department,
Fort St. George, Chennai - 9.
2. The Director of School Education,
Chennai - 6.
3. The Director of Rehabilitation and Disabled,
Chennai.
4. The Correspondent,
C.S.I. High School for the Deaf,
Kottaram,
Kanyakumari District.

+ 1 cc to Government Pleader SR.No.32010

WP NO.15776 OF 2004

LN (CO)
TE (16/08/2021)