

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.03.2021

CORAM

THE HON'BLE MR.JUSTICE R. SURESH KUMAR

Writ Petition No.38213 of 2005

P.Geetha Lakshmi

... Petitioner

-Vs-

1.Government of Tamil Nadu
Teachers Recruitment Board
represented by its Member Secretary
4th Floor, EVK Sampath Buildings
College Road, Chennai 600 006.

2.Joint Director (Higher Secondary)
Directorate of School Education
College Road, Chennai 600 006.

... Respondents

Prayer : Writ Petition under Article 226 of the Constitution of India praying for a Writ of Certiorari to call for the records relating to the impugned Memo No.1848/Aa/1/05 dated 13.10.2005 issued by the 1st respondent herein to quash the same.

For Petitioners : Ms.G.Chamki Raj

For Respondents : Mr.S.Suresh Kumar,
Government Advocate - for R2

Mr.C.Munuswamy
Special Government Pleader - for R1

O R D E R

The prayer sought for herein is for a Writ of Certiorari to call for the records relating to the impugned Memo No.1848/Aa/1/05 dated 13.10.2005 issued by the 1st respondent herein to quash the same.

2. The petitioner is a Post Graduate Degree holder in Telugu language. She passed B.A.(Telugu) degree course in the year 1991 and M.A.(Telugu) degree course in the year 1993 from Sri Venkateswara University, Tirupati. Thereafter, she passed the Pandit's training examination in Telugu language conducted by the Andhra Pradesh Education Department in February 1994.

3. With the aforesaid qualification, the petitioner had registered her name in the Professional and Executive Employment Office at Chennai in the year 1998. Thereafter,

the first respondent issued an advertisement calling for applications for direct recruitment of P.G.Assistant in Government Higher Secondary Schools in Tamilnadu Higher Secondary Educational Service. This advertisement also included one post of PG Assistant in Telugu language. The qualification prescribed for the said post of PG Assistant (Telugu) is Post Graduate degree in the relevant subject with B.Ed degree and the candidates must have studied the same subject in bachelor's degree and master's degree both for academic subjects and languages.

4. Accordingly, the petitioner also applied for the selection and a written examination was conducted by the first respondent Board on 11.11.2001. She passed out the said written examination and thereafter the petitioner was called for interview on 28.12.2001 by the first respondent, where the petitioner was directed to produce all relevant certificates with regard to the educational qualifications, which the petitioner produced, by attending the interview.

5. Thereafter, the petitioner was selected for the post of P.G.Assistant (Telugu) by proceedings of the second respondent dated 27.02.2002, she was appointed to the post of P.G.Assistant (Telugu) and was directed to join in the Government Higher Secondary School, Kelamangalam, Dharmapuri District. Accordingly, the petitioner joined in the said service on 03.06.2002 and she completed the probation for two years and thereafter the permanent absorption proposal was sent by the Headmaster concerned in the year 2005. Thereafter, the petitioner was transferred to Government Girls Higher Secondary School, Hosur on 18.07.2005, where, at the time of filing this writ petition, the petitioner was working and has been continuously working till date. While so, on 13.10.2005, the first respondent issued a show cause notice, wherein it has been stated that, for appointment to the post of P.G.Assistant (Telugu), apart from the Post Graduate degree qualification, one must have a B.Ed degree also. However, the petitioner had acquired the Pandit's training examination and that may not be equivalent to B.Ed degree. Therefore, based on such qualification, since the petitioner was selected and appointed to the post, the said show cause notice was issued as to why the selection and appointment made in favour of the petitioner should not be cancelled and in this regard, a show cause was sought from the petitioner by the said communication of the first respondent dated 13.10.2005. Aggrieved over the same and challenging the said communication, the petitioner has filed this writ petition with the aforesaid prayer.

6. Heard Ms.Chamki Raj, learned counsel for the petitioner, who would submit that, the petitioner was having the qualification of Undergraduate and Postgraduate degree in Telugu, which was one the essential qualification to be considered for selection to the post of P.G.Assistant (Telugu), and she also possessed the certificate in Pandit's

training examination in Telugu, which is equivalent to B.Ed degree. Therefore, considering the said qualification alone, the first respondent, being the centralized recruiting agency of teachers at various levels in the Government schools in the State of Tamilnadu, has selected the petitioner, of course, after written test as well as oral test and accordingly, the petitioner had been working for several years. When that being so, since the show cause notice was issued and when that was challenged in this writ petition, this Court, having considered the prima facie case, found in favour of the petitioner and was pleased to grant order of interim stay of the impugned order and the same was subsequently made absolute also. Therefore, all these years, nearly 20 years, the petitioner had been working as P.G.Assistant (Telugu) and absolutely there is no blemish on the part of the petitioner. Therefore, at this length of time, the petitioner's services may not be disturbed, she contended.

7. She would also submit that, during the pendency of the writ petition, the petitioner also joined B.Ed degree course in Indira Gandhi National Open University and has successfully completed the degree and such degree was also awarded in December 2011 final examination conducted in this regard and therefore, even the said infirmity, according to the respondents, for issuing the show cause notice against the petitioner, which is impugned herein, since has been fulfilled, there can be no further impediment for the respondents to permit the petitioner to continue in the said post till her superannuation.

8. Learned counsel for the petitioner also has relied upon the recent Division Bench judgment of this Court dated 18.12.2018, where a similar issue had been considered and decided in favour of the petitioner therein and thereby relying upon the said judgment, learned counsel would contend that, the petitioner's continuance in the P.G.Assistant (Telugu) post need not be disturbed in view of the fact that, the petitioner is having the qualification at least as of now ie., from 2011, where she also acquired B.Ed qualification. That apart, the earlier qualification of Pandit's training certificate obtained in Telugu also can be construed as equivalent qualification of B.Ed and based on such certificate and qualification only, the petitioner participated in the written examination, has become successful and her candidature was considered for selection and appointment. Therefore, she contended that, the impugned order is liable to be quashed.

9. Per contra, Mr.S.Suresh Kumar, learned Government Advocate appearing for the second respondent, by relying upon the averments made in the counter affidavit filed on behalf of the respondents would contend that, the advertisement given by the first respondent, calling for applications from eligible candidates itself prescribed the eligibility as U.G and P.G. Degree qualification in the same subject as well as B.Ed

degree as the essential qualification for applying to the post of P.G.Assistant and when that being so, assuming that the petitioner has made an application with the qualification of U.G. and P.G degree in Telugu with certificate obtained in Pandit's training examination in Telugu and the same having been considered, pursuant to which she was selected and appointed mistakenly, that cannot confer any right on the petitioner, he contended.

10. In this context, the learned Government Advocate would further contend that, Courts have taken the view that, when during the initial entry of any government service, if the prescribed educational qualification has not been fulfilled by the entrant and mistakenly such entrant has been selected and appointed, whatever length of service he / she is permitted to continue in that post with the lesser qualification or different qualification, that would not confer any right on the employee / incumbent that because of the long years he/she having been permitted to continue, he / she shall be permitted to continue till his / her superannuation.

11. Learned Government Advocate would further submit that, in case of lack in experience, and for want of experience any employer wants to remove the employee and in that kind of cases, subsequently action can be taken by the employer. Therefore, such kind of appointment without proper or inadequate experience can only be treated as irregular appointment and that can be rectified at a later point of time. However, when an appointment is made even without or inadequate educational qualification which is essential for entry into the service, such kind of appointment can only be construed as illegal appointment, which cannot be rectified at any point of time unmindful of the length of service having been rendered by such entrant.

12. By making the aforesaid submissions, the learned Government Advocate for the respondents would submit that, though belatedly it was found that the petitioner, without requisite qualification or inadequate qualification in this regard, since has been selected and appointed, the first respondent has issued the impugned order, in this case rightly, just to give an opportunity to the petitioner to offer her remarks and since admittedly the petitioner did not have the required B.Ed degree at the time of entry into service, certainly her selection and appointment is illegal. Therefore, at any point of time, once it is found out, the employer has every right to terminate the employee and therefore the impugned notice needs no interference, he contended.

13. I have considered the rival submissions made by the learned counsel for the petitioner as well as the learned Government Advocate appearing for the respondents, and have

perused the materials placed on record.

14. No doubt, when applications were called for by the first respondent inviting applications from eligible candidates for selection and appointment to the post of P.G.Assistant and in this context, for the post of P.G.Assistant in Telugu, the petitioner had made an application.

15. Admittedly, the petitioner was having the qualification of U.G.degree and P.G.degree in Telugu and also Pandit's training examination in Telugu language conducted by the Andhra Pradesh Education Department in February 1994.

16. Based on the said qualification, the candidature of the petitioner was accepted for writing the written examination, where she has become successful. Thereafter, she was called for oral test, where also she has become successful and after having verified the educational qualifications, through the certificates produced by the petitioner, the first respondent has selected the petitioner and accordingly she was appointed on 27.02.2002, joined the service on 03.06.2002 and from that date, she has been continuously working.

17. While that being so, in the year 2005 ie., on 13.10.2005, the impugned show cause notice was issued, seeking show cause from the petitioner as to why her services could not be terminated for want of requisite qualification viz., B.Ed degree.

18. No doubt, B.Ed is one of the essential qualification for selection and appointment to the post of P.G Assistant (Telugu), for which advertisement was released. Here in the case in hand, for the post for which the petitioner was appointed ie., P.G.Assistant (Telugu), one of the essential qualification is that, the candidate must possess U.G and P.G degree in Telugu language, which the petitioner has fulfilled. Insofar as B.Ed degree is concerned, it is the case of the petitioner that, the Pandit's training examination conducted by the Andhra Pradesh Education Department in Telugu language, which the petitioner has successfully completed and passed out, is equivalent to the qualification of B.Ed Degree.

19. In this context, whether the process of equivalence of the said qualification acquired by the petitioner compared to the B.Ed Degree conferred by the Universities in Tamil Nadu or any other State equivalent to the Tamil Nadu State Universities, was undergone or not is not known. What is the syllabus prescribed for the said Pandit's training examination and whether that would be equivalent to B.Ed degree in Telugu language to be conferred by the Universities or not, has not been concluded. In the absence of such details, this Court cannot come to the conclusion that the qualification prescribed ie., B.Ed degree and the qualification acquired by

the petitioner i.e., Pandit's training examination are equivalent or not.

20. That apart, the petitioner since had been selected and appointed in the year 2002, she was continuously working upto the issuance of the impugned order in the year 2005 and when the impugned order was under challenge in this writ petition, at the initial stage itself, interim order was granted by this Court, which was subsequently made absolute and all along the interim order since has been made absolute, of course by virtue of that, the petitioner also has been continuing in the post.

21. There is yet another development, where, during the pendency of the writ petition, the petitioner, in order to fulfill the requirement of having the B.Ed degree also, has joined in Indira Gandhi National Open University and has successfully completed the final examination conducted in December 2011 and a degree has also been awarded by the said University to the petitioner to that effect.

22. In this context, even though Courts have taken the view as has been pointed out by the learned Government Advocate for the respondents that, when the initial appointment is illegal, the same cannot be rectified at any later point of time, but in case of irregular appointment, the same can be rectified at any later point of time.

23. Here in the case in hand, it is not the case that the petitioner did not have any qualification which has been prescribed by the respondents. At the time of entry into service, she was having the qualification of U.G., and P.G., degree in Telugu language and was also having the qualification of Pandit's training examination conducted by the Andhra Pradesh Education Department in Telugu language.

24. In this regard, whether the said qualification of Pandit's training examination, which is obtained by the petitioner before she entered into service, is equivalent to the qualification of B.Ed degree, which is the requirement of the respondent, has not been gone into so far.

25. Therefore, at this point of time, this Court cannot come to the conclusive decision that, the petitioner did not possess the required essential or basic minimum qualification at the entry level for becoming a P.G. Assistant Teacher. The P.G. Assistant teacher post in Telugu, where the petitioner was selected, should be for teaching Telugu language to the students, where the petitioner is having U.G. and P.G. Degree in Telugu language and also has got Pandit's training examination certificate conducted by the Andhra Pradesh Government (or) its Education Department. Therefore, it is for the academic experts to say that, the said qualifications obtained by the petitioner is not equivalent to the B.Ed

degree as expected by the respondent department.

26. Unless such a conclusive decision has come from the side of the Equivalence Committee or a Committee of Academicians, it cannot be construed by this Court that, the said qualification which the petitioner was holding at the time of entry into service, was an inadequate qualification.

27. Therefore, in the given circumstances, this Court feels that, the initial entry of the petitioner in the year 2002 can, if at all, only be construed as an irregular entry and it cannot, at any stretch of imagination be construed as an illegal entry.

28. When that being so, subsequently in the year 2011, the petitioner acquired B.Ed qualification also in December 2011 and in this regard, Indira Gandhi National Open University has awarded the degree of B.Ed to the petitioner in February 2012.

29. Looking from other angle that, the petitioner has not suppressed any of her qualifications and she applied for the said post on the bonafide impression that, she was having all the necessary qualification and it is not merely based on the qualification or certification undergone the selection was made, but in fact the petitioner was subjected to written examination, which she successfully completed. Thereafter, oral interview was also conducted. Both in written as well as oral tests, since the petitioner has become successful, she was selected and appointed.

30. In this context, the judgment cited by the learned counsel for the petitioner in the matter of "Union of India rep.by the Superintendent and another -Vs- The Central Administrative Tribunal rep.by its Registrar and another" dated 18.12.2018 made in W.P.No.32187 of 2018 can be usefully pressed into service, where also the employee therein was given promotion, for which the minimum marks required was 10, however he obtained only 9 marks. Despite that, since he was given promotion and he worked for 1½ years. Thereafter, it was found that his promotion was mistakenly given by taking into account 9 marks instead of 10 marks. Therefore, show cause notice was issued and that was challenged, where the Tribunal took the view that, it is not the mistake of the employee and therefore at this length of time, his promotion shall not be disturbed and the said view taken by the Tribunal, in the appeal filed by the Department, in fact has been upheld and the relevant portion of the Division Bench order reads thus,

" 2. After having worked for more than one and half years, he was issued show cause notice dated 01.05.2014 to show cause as to why promotion should not be canceled, as he had secured only 9 marks as against the minimum required marks of 10,

though, on an overall consideration he has secured sufficient marks. After finding that the reply was not satisfactory, the order was passed canceling his promotion.

3. The Tribunal by placing reliance upon the order passed by the Karnataka High Court in the case of P. Shiva v. Union of India and others in WP No. 20665/2003 dated 01.09.2003, allowed the application, inter alia, holding that it is not the mistake of the second respondent. Challenging the same, the present writ petition has been filed.

4. Learned counsel appearing for the petitioners submitted that the second respondent has secured only 9 marks as against the required mark of 10, though, he has secured overall qualifying marks cumulatively and as there was no qualification, the impugned order was passed.

5. We do not find any merit in this writ petition. Admittedly, it was not the fault of the second respondent. It is the petitioners' who declared him as promoted. Not only that, for the mistake committed by the petitioners, the second respondent cannot be made to suffer. Had he been declared as not qualified, he would have written the examination in the next selection. Now, at least two examinations were over in the interregnum. This selection was made in the year 2013. Now, we are in the year 2018. If the contention of the petitioners is accepted, then the second respondent will have to write the examination once again in the year 2018. Therefore, for the mistakes committed by the petitioners, second respondent will be affected by not getting promotion for five years. All juniors would have been promoted in the interregnum. Therefore, the principle of estoppel would certainly come into play. As of now, the second respondent has been working from the year 2013 onwards for over five years. Therefore, looking from any angle, we are not inclined to interfere with the order of the Tribunal."

Here in this case, the petitioner was appointed in 2002 and till date she has been continuously working and absolutely there is no complaint against the petitioner with regard to her method of teaching and her teaching calibre. Moreover, if the qualification of Pandit's training examination in Telugu language obtained from Andhra Pradesh Government is not equivalent qualification of B.Ed degree at the time of entry into service, the same should have been decided by a

Equivalence Committee or by a Committee of Academicians, since that attempt has not been so far done, this Court is of the view that, the said qualification might be equal and if at all the said qualification is not equal, the same can only be construed as irregular appointment that can be regularized at any point of time as per the settled proposition in this regard and in this case, the petitioner has acquired the qualification of B.Ed degree also in the year 2011.

Nearly about 19 years since the petitioner has been working. At this length of time, disturbing her position for such a reason that it is an irregular appointment would be a great injustice to the petitioner, for which this Court feels that, there is no plausible reason is available.

31. In view of all the above discussion, this Court is of the considered view that, the impugned order cannot be sustained and the same is liable to be quashed. Accordingly, it is quashed. Whatever the service benefits to be conferred on the petitioner, if not already been conferred, the same shall be conferred on her and she shall be permitted to continue her job as if her appointment in the year 2002 is a regular and valid appointment.

32. With these observations, the writ petition is allowed. No costs.

Sd/-

Assistant Registrar (CO)

//True Copy//

Sub Assistant Registrar

KST

To

1.The Member Secretary,
Government of Tamil Nadu
Teachers Recruitment Board
4th Floor, EVK Sampath Buildings
College Road, Chennai 600 006.

2.The Joint Director (Higher Secondary)
Directorate of School Education
College Road, Chennai 600 006.

+1cc to Mr.G.Chamki Raj, Advocate, S.R.No. 13532
+1cc to the Government Pleader, S.R.No. 14195

W.P.No.38213 of 2005

VG II(CO)

GN(30/06/2021)

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