



W.A.2168 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	Pronounced on
25.10.2021	10.12.2021

CORAM:

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN
and
THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

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and
C.M.P.No.16794 of 2018

1. The Joint Director of School Education (Secondary),
Chennai-6.
 2. The District Educational Officer,
Coimbatore-18.
- VS-
1. J.Joseph Irudayaraj
 2. The Correspondent,
St.Michael's Higher Secondary School,
Coimbatore-641 001.
- ... Appellants/Respondents
... Respondent/Petitioner
... 2nd Respondent/2nd Respondent

Prayer: Writ Appeal filed under Clause 15 of Letters Patent to set aside the order dated 26.06.2014 made in W.P.No.15545 of 2014 and thereby allow the Writ Appeal.

For Appellants : Mr.K.V.Sajeevkumar
Govt. Counsel

For R1 : Mr.P.Ganesan
For M/s.C.S.Associates

For R2 : No Appearance

J U D G M E N T



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S.VAIDYANATHAN,J.,

and

R.VIJAYAKUMAR,J.,

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The issue involved in this case is trivial in nature.

To be more precise, can an act, done in a reversely order against an established state, be justified or approved?

“A reversal is just anything that is a surprise.

It is a way of keeping the audience interested” -

Tony Gilroy, an American Filmmaker.

The degree of the Writ petitioner can be compared to a Tamil Proverb

“ஏட்டுச் சுரைக்காய் கறிக்கு உதவாது”

This Writ Appeal has been filed by the Appellants for setting aside the order of the learned Single Judge dated 26.06.2014 made in W.P.No.15545 of 2014, in and by which, the Respondents were directed to approve the appointment of the 1st Respondent herein as B.T.Assistant in the 2nd Respondent school.

2. For the sake of brevity, the parties would be referred to by their original nomenclature found in the Writ Petition as 'the Writ Petitioner', 'Appellants/Respondents 1 and 2' and 'the School/R3'.

3. It was the case of the Writ Petitioner that he came out successful in the 10th Standard during the year 1984 and had completed his graduation in 1991, after due completion of a Foundation Course. Subsequently, he had cleared his B.Ed. Course and secured his B.Ed. Degree in the year 1993 and thereafter, he joined the Higher Secondary Course and passed the exam with flying colours in 2010. It was



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further case of the Writ Petitioner that pursuant to the vacancy arisen in the school, the Writ Petitioner was selected and appointed in the post of B.T.Assistant in the year 2007. When a proposal was forwarded to the 1st Respondent for approval, the same was rejected on various grounds, more so, on the ground of non possession of educational qualification in an orderly manner, namely, 10+2+3 followed by a B.Ed. Degree. The said rejection was also upheld in the Writ Petition filed by the Writ Petitioner in W.P.No.9854 of 2012, but, however, in the Writ Appeal in W.A.No.1064 of 2012, the order of the learned Single Judge was reversed, on the ground that the Respondents, having allowed the Writ petitioner to work in the school for so long years, cannot be thrown out from the job.

3.1. It was also the case of the Writ Petitioner that on the basis of the favourable order in the Writ Appeal, a fresh proposal was forwarded to the Respondents by the school, which was against rejected by the 2nd Respondent on 16.04.2014, which resulted in one more round of litigation in W.P.No.15545 of 2014, in which, learned Single Judge, while allowing the Writ Petition impugned herein, observed as follows:

“4. A perusal of the records would go to show that the Division Bench has already declared that the petitioner is entitled for being appointed as B.T. Assistant. When that be so, the same cannot be reopened. However, the impugned order has been passed on the ground tehat the petitioner did not do the courses in order viz., 10th followed by +2, followed by degree and then followed by B.Ed.,



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degree. This issue has already been examined by this Court in V.Kanimozhi vs. Director of School Education, (2014) 3 MLJ 606, wherein this Court has held that it is not a disqualification. In view of the above settled position, the impugned order is liable to be set aside.

5. In the result, the Writ Petition is allowed with a direction to the respondents to afresh consider the proposal and pass appropriate order within a period of three months from the date of receipt of a copy of this order...”

3.2. According to the Writ Petitioner, his appointment was not approved mainly on the ground that the school has not followed the subject roster. The query raised by the Respondents with regard to the eligibility of the petitioner to the post was suitably answered by citing G.O.Ms.No.180, Personnel & Administrative Reforms Department dated 11.09.2000, wherein it was made clear that a degree obtained through the correspondence course by way of Open University is valid for any appointment. Therefore, learned Single Judge, considering all the factors, rightly directed the Respondents to approve the appointment of the Writ Petitioner, which does not call for any interference by this Court.

4. The Respondents 1 & 2 in the Writ Petition / Appellants herein strenuously contended that the order of the learned Single Judge is erroneous, as the learned Single Judge failed to look into G.O.Ms.No.107 dated 18.08.2009,



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which clearly stipulated the qualification for appointment to the B.T.Assistant post, by stating as follows:

“4. The Government have examined the matter in detail and decided to accept the recommendation of the Equivalence Education Committee and accordingly, the Government direct that Diploma / Under graduate / Post Graduate Degree courses offered by the Tamil Nadu Open University shall be considered only after completing Plus 2 for the purpose of appointment / promotion in public services.”

4.1. In terms of the aforesaid Government Order, unless a person completes graduation after completion of +2, he is not eligible to be considered and if the plea of the Writ Petitioner is accepted, it would amount to putting a cart before a horse. It was further contended by the Appellants that the judgment rendered in W.A.No.1064 of 2012 has been referred to in the subsequent judgment of the Division Bench of this Court in the case of *The Chairman, TRB, Chennai and another vs. V.Kanimozhi [W.A.No.805 of 2014] decided on 06.08.2014* and the plea of the Respondent therein was negatived, by holding as under:

“5.7. Coming to the other decisions relied on by the respondent as considered by the learned single Judge, we are of the view that they do not have any application to the case on hand. In Writ Appeal No.1064 of 2012 dated 6.11.2013, the Division Bench of this Court merely directed the authorities to re-consider the matter. On a perusal of the Order passed by the learned single judge, it is seen that the ratio laid down in W.A.No.1064 of 2012 dated 6.11.2013 (Joseph Vs. Irudayaraj Vs. Joint Director of School Education) has been wrongly relied upon. The direction was specific to the effect that the entire issue will have to be considered in the light of paragraph No.4 of G.O.(Ms).No.107 Personnel & Administrative Reforms (M) Department, dated 18.8.2009. We have already discussed the scope and ambit of paragraph No.4 of the G.O. Therefore, we are of the view that the said decision does not throw any light on the issue raised before us, that



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too, in favour of the respondent. Similarly, we are of the view that the decision dated 21.4.2014 relied upon by the respondent as rendered by the single Judge of this Court in W.P.No.13054 of 2010 etc., batch does not have any application to the case before us in view of the discussion made above, wherein, we have already held that fixing qualification is different from recognising a degree.”

It was pointed out that the judgment of the Division Bench has been confirmed by the Supreme Court on 02.12.2014, reported in MANU/SCOR/51608/2014. Since the Writ Petitioner appeared in all examinations as a private candidates before completion of Plus 2, the order of the learned Single Judge is erroneous in nature and is liable to be set aside.

5. Heard the learned counsel on either side and perused the material documents available on record.

6. It is seen that the Writ Petitioner joined the services of the School as Junior Grade B.T.Assistant (English) and even as per his own averments made in the Writ Petition, he had cleared his Higher Secondary examinations only in the year 2010, which is admittedly after completion of other courses, namely, Degree and B.Ed. Courses. It is obvious that a candidate must undergo 10+2+3 to be eligible for suitable consideration. Though a Division Bench of this Court in **W.A.No.1064 of 2012 (supra)** observed that the Writ Petitioner had been working much prior to the judgment of the Supreme Court in the case of **Annamalai**



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and others, reported in **(2009) 4 SCC 590** and therefore his candidature should be considered, it cannot be accepted, in view of the subsequent judgment rendered by another Division Bench in W.A.No.805 of 2014, wherein both the judgments of the Supreme Court as well as the Division Bench were discussed.

7. In the present case on hand, the initial appointment in respect of the Writ Petitioner itself is bad and therefore, the Writ Petitioner does not come under the zone of positive consideration in view of G.O.Ms.No.180, Personnel & Administrative Reforms Department dated 11.09.2000, wherein it has been clearly mentioned as follows:

“3. அரசாணை எண் 107 பணியாளர் மற்றும் நிர்வாகச் சீர்திருத்தத் (எம்) துறை நாள் 18.08.09 என்பது அரசாணை எண் 180 நாள் 11.09.2000க்கு அளிக்கப்பட்ட விளக்கமாகும் என்றும் 10வகுப்பு தேர்ச்சி மேல்நிலைக்கல்வி +2 தேர்ச்சி பெற்ற பின் பெறப்படும் பட்டங்களே பொதுப் பணிகளில் நியமனம், பதவி உயர்வு பெறதகுதியானது என்பதும் அரசாணை எண் 180 நாள் 11.09.2000ல் தெரிவிக்கப்பட்டதின் உட்கருத்தாகும்.”

8. In yet another case in **G.Bappudurai vs. The Registrar, The Tamil Nadu Dr.Ambedkar Law University, Chennai- 600 028 and others, [Writ Petition No.3513 of 2014] decided on 23.01.2015**, a learned Single Judge, after an extensive discussion / consideration of the judgments rendered by the Supreme Court, reported in **(2009) 4 SCC 590** (supra) and the Division Bench of this Court in W.A.No.1064 of 2012, was pleased to hold as under:



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“16. Fortunately, the Supreme Court put an end to the perversion created by various Government Orders, in its decision in [Annamalai University vs. Secretary to Government, Information and Tourism Department](#) [2009 (4) SCC 590]. Thereafter, the Government issued orders to the effect that unless a person had completed 10 years of schooling and two years of Higher Secondary Course before acquiring a degree, the qualification of a degree obtained through Open Universities will not be recognized. This Government Order has also been upheld by a Division Bench of this Court.

17. Coming to the facts of the present case, it is seen that the petitioner has in fact acquired a Secondary School Leaving Certificate, a Higher Secondary Course Certificate and a Degree in Arts. However, they were not obtained in the normal sequence. The petitioner obtained a degree before completing the Higher Secondary Course. Therefore, the only question is as to whether the petitioner can be construed to have not acquired the essential qualifications for admission to the three year B.L. Degree or not.

18 to 24...

25. The reliance placed upon the definition of the expression "degree" to mean a degree obtained from a University recognized by the UGC Act, 1956, has lost its significance today. When the expression "degree" was defined in the statutes, the law makers never imagined the kind of inventions that could happen in the field of education, entitling people to acquire all qualifications in the reverse or perverse order. At the time when the expression "degree" was defined in the Statute, people would have honestly believed that a student would undertake a journey from the first standard up to the school final in a sequence and thereafter undergo the entire duration of the degree course. No one would have ever imagined even in the wildest of dreams at that time, that people may acquire a Post Graduate Degree first, followed by an Under Graduate Degree and thereafter complete the Higher Secondary Course, eventually to go to a Kindergarten. **Even in the matter of wearing costumes, we follow a particular order. The only exception to this is that of the Superman. People who complete educational courses in the reverse order can only be compared to Superman, the comic book hero.**

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28. To say that at the time of admission in September 2010 the paradox got removed, may not really be an answer. Therefore, I am of the view that the petitioner cannot be taken to have fulfilled the requirement of Rule 5 of the Rules of Legal Education, 2008. Consequently, the petitioner is not entitled to use the degree for enrolment as Advocate.

29. However, a question arises as to whether the petitioner can never make use of the law degree for any purpose and whether it is as good as a waste paper or not. Today, it is only the University (and not the Bar Council), which has issued a notice to the petitioner for the purpose of cancelling the law degree obtained by him. Since the petitioner has already undergone the course and passed it and also since the petitioner has also passed the higher secondary course, I do not wish to make that degree a waste paper. If a private employer is prepared to give employment to the petitioner on the basis of the law degree, I do not wish to stand in the way. But, the same will not entitle the petitioner to get enrolled as an Advocate in the light of the Rules of Legal Education, 2008 issued by the Bar Council.

30. Hence, the writ petition is partly allowed, setting aside the notice of the University, but declaring that with the law degree conferred on him by the University, the petitioner cannot either enrol as Advocate or enter into the Judicial Service. There will be no order as to costs. Consequently, M.P.No.1 of 2014 is closed.”

9. One of us (SVNJ) had also dealt with a similar issue in the case of

B.Madhan vs. The Registrar, University of Madras and Others, reported in

(2015) 1 MLJ 702 and observed as follows:

“12. However, before parting with, this Court is inclined to observe as follows:

a) In order to gain knowledge in the field of law or any subject, it is not a serious misconduct or an offence in pursuing the course in any mode either by way of distance education or by attending evening colleges or whatever method may be, however, the persons who got the degree by such method, are certainly not entitled to any employment;

b) If the persons who are already in employment gets a degree without prior permission or without attending college while the college is one State and their employment in another State, are not entitled to



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promotion based on such degree and even if any person gets promotion based on such invalid degree, is liable to be demoted or imposed with a lesser punishment rather than dismissal from service, which may be disproportionate;

c) Generally, permission will not be granted to sub-ordinates since they acquire more qualification than officers and in such circumstances, the employees would venture to study even without prior permission. These cases have to be dealt with separately and no punishment is warranted, but that qualification cannot be utilised for promotion; and

d) That such degree is invalid for enrolment and practice in the Bar.”

10. Any person can acquire more qualification and unless the same is obtained in a prescribed and orderly manner, it can neither be used for any purpose, much less employment, promotion, increments, etc., nor be demanded as a matter of right to claim equity. Anyhow, it is for the Government / Employer to decide about their induction into their Organizations / Institutions.

11. When there is a prescription of qualification for appointment to a post, giving a different interpretation / connotation to suit one's own convenience will definitely create chaos and confusion and in that process, the entire selection process in respect of selection to posts will become standstill and therefore, the order of the learned Single Judge will not hold good for reasons stated above.

12. In the result, this Writ Appeal is allowed and the order dated 26.06.2014 passed by the learned Single Judge in W.P.No.15545 of 2014 is hereby set aside.

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Since the Appellants have extracted works from the Writ Petitioner all these years, the salary, if any paid to the Writ Petitioner shall not be recovered from him, however, he is not entitled to any terminal benefits, for, as stated supra, the initial appointment itself is bad. No costs. Consequently, connected Miscellaneous Petition is closed.

[S.V.N.J.,] [R.V.J.,]
10.12.2021

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Pre-delivery judgment in
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