

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 22-02-2021

Coram:

The Honourable Mr. Justice R. Subbiah
and
The Honourable Mr. Justice Sathi Kumar Sukumara Kurup

W.A. No. 2770 of 2019

1. The State of Tamil Nadu
rep. by its Secretary
Labour and Employment Department
Fort St. George
Chennai - 600 009
 2. Teachers Recruitment Board
rep. by its Member Secretary
College Road, Chennai - 600 006
 3. The District Employment Officer
District Employment Office
Mohanur Road, Namakkal
Namakkal District
 4. The Professional Executive Employment Officer
(P.G. Employment Office)
Madurai P.G. Employment Office
Madurai District
 5. The Commissioner of Employment & Training
Guindy, Chennai - 600 032
 6. The State of Tamil Nadu
rep. by its Secretary
School Education Department
Fort St. George
Chennai - 600 009
 7. The Director of School Education
DPI Campus, College Road
Chennai - 600 006
- .. Appellants
- Versus
- .. Respondent
- K. Balakrishnan

Appeal filed under Clause 15 of Letters Patent against the order dated 05.03.2019 passed in WP No. 23974 of 2014 on the file of this Court.

WP.No. 23974 of 2014: Prayer:- The Writ Petition is filed under Article 226 of the Constitution of India, seeking for issuance of Writ of Certiorarified Mandamus to call for the records relating to the order of the second respondent dated 08.01.2014 in RC.No.7010/LC/2012 and quash the same and consequently direct the respondents to forthwith appoint the petitioner as Post Graduate Assistant on the basis of the Land Acquisition Priority Category in any one of the existing vacancies.

For appellants : Mr. K. Kumaresh Babu
Additional Advocate General XII
assisted by Mr. C. Munusamy
Special Government Pleader (Education)

For respondent : Mr. K. Balakrishnan
Petitioner - in - Person

JUDGMENT

(Judgment of the Court was delivered by R. Subbiah, J)

This appeal has been filed by the State as against the order dated 05.03.2019 passed by the learned single in WP No. 23974 of 2014, thereby allowing the writ petition filed by the respondent herein.

2. The respondent has filed WP No. 23974 of 2014 praying to quash the order dated 08.01.2014 passed by the second appellant herein and consequently direct the appellants to forthwith appoint the respondent herein as Post Graduate Assistant on the basis of the land acquisition priority category in any one of the existing vacancies.

3. The respondent has filed the writ petition by stating that he obtained M.A. Degree in Tamil Literature and B.Ed., It is his case that his grand father's land had been acquired by the Government of Tamil Nadu for formation of Lower Bhavani Canal and for establishing Adi Dravidar Colony. It is claimed by the respondent that the Revenue Tahsildar, Erode has also issued a Certificate dated 05.08.2003 confirming that the respondent is the legal heir of M. Kandasamy Gounder born through the daughter of M. Kandasamy Gounder and he is entitled for preferential treatment in the matter of appointment in public employment since his family has been affected by reason of acquisition of land. On receipt of such certificate, the respondent made a representation in the month of October 2003 to grant the benefits of preference in the matter of appointment in public employment, but no reply was forthcoming. Therefore, he made another representation to the appellants on 26.07.2004 to provide him employment under the preference category.

4. According to the respondent, the second respondent had resorted to a recruitment drive to fill up the post of Junior cum Graduate Assistant particularly from among the legal heirs of the persons whose lands have been acquired on priority basis. On 17.10.2004, the second and third appellants conducted written test for filling up the post of Junior cum Graduate Assistant in which the respondent also participated and wrote the examination. Thereafter, he sent representation on 29.10.2004 requesting the appellants to give him priority in the matter of public appointment, but the same was not considered. Hence, he filed WP No. 37906 of 2004 and this Court by an order dated 21.12.2004 directed the respondents therein to consider the representation dated 26.07.2004 of the respondent herein and to pass orders thereof within a period of six weeks. Thereafter, the first appellant, by order dated 01.08.2005 rejected the request of the respondent by stating that the respondent/writ petitioner is not the direct legal heir of Kandasamy Gounder (grand son born through his daughter) and therefore he could not be given preference in appointment. In fact, the respondent's mother is class I legal heir of his grand father. All the legal heirs of Late. Kandasamy Gounder have given no objection in favour of the respondent. The Revenue Tahsildar, Erode also issued a Certificate dated 05.08.2003 stating that he is the legal heir of Late. Kandasamy Goudner born through his daughter and he is entitled for giving preference in government appointment. In such circumstances, challenging the order dated 01.08.2005, the respondent filed WP No. 27069 of 2005 before this Court. This Court, by an order dated 11.09.2012 set aside the order dated 01.08.2005 of the first appellant and directed Teachers Recruitment Board to pass fresh orders in accordance with G.O. Ms. No.656, Labour and Employment Department dated 29.06.1978. Since the Teachers Recruitment Board has not passed an order, as directed, the respondent herein filed a Contempt Petition No. 2083 of 2013 against the Chairman of Teachers Recruitment Board. At this juncture only, the second appellant produced a copy of the order dated 08.01.2004 in which it was stated that as per G.O. Ms. No.17 dated 24.07.2013, the recruitment for Graduate and Post Graduate Teachers made through written examination from the year 2003-2004 was not conducted on the basis of the candidates sponsored from employment exchange. According to the respondent, the very same reason was stated by the first appellant in the order dated 01.08.2005, which was set aside by this Court in WP No. 27069 of 2005 filed by him. While so, the appellants are estopped from assigning the same reason to deny him employment. Therefore, challenging the order dated 08.01.2014, the respondent has filed the instant WP No. 23974 of 2014.

5. The learned single Judge, by considering the earlier

order passed by this Court in WP No. 27069 of 2005 filed by the respondent herein, allowed the instant writ petition No. 23974 of 2014 and directed the appellants to consider the claim of the respondent for appointment of Post Graduate Assistant on the basis of land acquisition priority category subject to passing Teachers Eligibility Test. Aggrieved over the same, the appellants are before this Court with this writ appeal.

6. The learned Additional Advocate General appearing for appellants submitted that as per G.O. Ms. No.107, School Education Department dated 24.07.2003, the recruitment to the post of Graduate Assistant/Post Graduate Assistant must be made by conducting written examinations and not on the basis of employment registration seniority. The respondent cannot seek for appointment through direct recruitment under the priority category for the post of Graduate Assistant. For recruitment to the post of Graduate Assistant, written examination was conducted by the Teachers Recruitment Board and unless the respondent secures a pass in the competitive examination, he cannot be appointed to the post of Graduate Assistant. In other words, the post of Graduate Assistant will be filled up only through direct recruitment. In the present case, the respondent did not register his name in the employment exchange and therefore, he cannot seek for appointment under the priority category. This was clearly stated by the second appellant in the order dated 08.01.2014, which was impugned in the writ petition before the learned single Judge. However, this aspect has not been considered by the learned single Judge while allowing the writ petition.

7. On the above contentions of the learned Additional Advocate General appearing for the appellants, this Court heard the respondent/ Petitioner in person and perused the materials placed on record.

8. It is not in dispute that the lands of the grand father of the respondent was acquired by the Government for a public purpose. It is also not disputed by the appellants that the respondent is the legal heir entitled to inherit the estate of his grand father and consequently, he is entitled for appointment under the preference category. The respondent also obtained a Certificate to that effect from the Revenue Tahsildar, Erode on 05.08.2003. The respondent is also in possession of requisite qualification for appointment to the post of Graduate Assistant. Therefore, there is no embargo for the appellants to appoint the respondent to the post of Graduate Assistant. In fact, before the learned single Judge, reference was made to the enactment of Right to Education Act and the need to pass the Teachers Eligibility Test (TET) as a condition precedent for appointing the respondent to the teaching post.

The learned single Judge also considering the said submission, directed the appellants to appoint the respondent and if any such appointment is made, it will be subject to the respondent passing the TET. The learned single Judge also referred to the earlier order dated 11.09.2012 passed by this Court in WP No. 27069 of 2005 filed by the respondent wherein it was held that when the members of the family, whose lands have been acquired by the Government for a public project, such member is entitled for a preference in the matter of public appointment. In the earlier order dated 11.09.2012 passed by this Court in WP No. 27069 of 2005 filed by the respondent, all the objections which were raised by the appellants in the present appeal have been considered and rejected. Admittedly, as against the order dated 11.09.2012, the appellants have not filed any appeal and it has reached a finality. In such view of the matter, we do not find any reason to interfere with the order passed by the learned single Judge

9. In the result, the the order dated 05.03.2019 passed in WP No. 23974 of 2014 by the learned single Judge is confirmed. The Writ Appeal fails and it is dismissed. No costs.

Sd/-

Assistant Registrar (CO)

//True Copy//

Sub Assistant Registrar

Rsh

To

1. The State of Tamil Nadu
rep. by its Secretary
Labour and Employment Department
Fort St. George
Chennai - 600 009
2. Teachers Recruitment Board
rep. by its Member Secretary
College Road, Chennai - 600 006
3. The District Employment Officer
District Employment Office
Mohanur Road, Namakkal
Namakkal District

4. The Professional Executive Employment Officer
(P.G. Employment Office)
Madurai P.G. Employment Office
Madurai District

5. The Commissioner of Employment & Training
Guindy, Chennai - 600 032

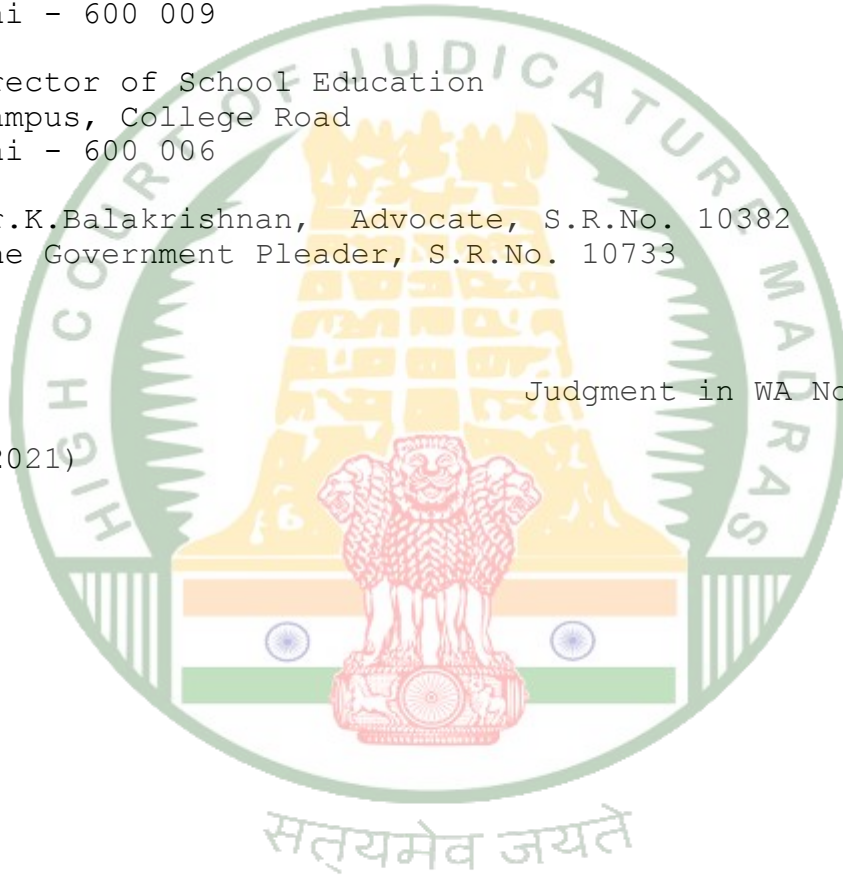
6. The State of Tamil Nadu
rep. by its Secretary
School Education Department
Fort St. George
Chennai - 600 009

7. The Director of School Education
DPI Campus, College Road
Chennai - 600 006

+3cc to Mr.K.Balakrishnan, Advocate, S.R.No. 10382
+1cc to the Government Pleader, S.R.No. 10733

Judgment in WA No. 2770/2019

BS (CO)
GN (29/03/2021)



WEB COPY