



W.P.No.10266 of 2011

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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ORDER RESERVED ON : 22.09.2022

ORDER PRONOUNCED ON : 11.10.2022

CORAM:

THE HON'BLE MRS. JUSTICE N.MALA

W.P.No.10266 of 2011
and W.M.P.No.2 of 2011

K.Chandra ... Petitioner

vs.

1.Director of School Education,
Chennai – 6.

2.District Educational Officer,
Ponneri,
Thiruvallur District.

3.Correspondent and Secretary,
Sir Ramaswami Mudaliar,
Higher Secondary School,
Ambattur, Chennai – 600 053.

... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records pertaining to the order passed by the second respondent in O.Mu.No.1982/Aaa 1 / 2020 dated 18.01.2011 and the consequential order passed by the third respondent in No.Nil dated 18.02.2011 and quash the same, and direct the respondents to



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appoint the petitioner as BT Assistant from the initial date of appointment Viz. 03.02.2009 in the third respondent School, and confer all the consequential benefits.

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

For R1 & R2 : Mr.C.Sathish
For R3 : Mr.Anand Gopalan for
T.S.Gopalan & Company

* * * * *

ORDER

This writ petition is filed for a Writ of Certiorarified Mandamus, calling for the records pertaining to the order passed by the second respondent in O.Mu.No.1982/Aaa 1 / 2020 dated 18.01.2011 and the consequential order passed by the third respondent in No.Nil dated 18.02.2011 and quash the same, and direct the respondents to appoint the petitioner as BT Assistant from the initial date of appointment Viz. 03.02.2009 in the third respondent School, and confer all the consequential benefits.

2.The petitioner was appointed as B.T. Assistant on 03.02.2009. The petitioner joined as B.T. Assistant with B.Com., B.Ed., in the third respondent school which is a Government aided private school on 08.06.1995



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as a Management staff. While the petitioner was so working the post of Secondary Grade Assistant fell vacant on 31.05.2008, due to the retirement of a Teacher.

3. According to the petitioner, as per the Government policy, as and when Secondary Grade Post became vacant, the same was to be up-graded as B.T. Assistant and therefore the petitioner was appointed as B.T. Assistant on 03.02.2009. The third respondent forwarded the papers of the petitioner for approval as B.T. Assistant to the second respondent on 23.03.2009. The second respondent sought for certain clarifications and ultimately rejected the request of the third respondent for approval vide the order dated 18.01.2011. The third respondent communicated the said order to the petitioner on 18.02.2011. It was the petitioner's further case that the second respondent in the impugned order relied on a Government order which according to the petitioner was not applicable to her. According to the petitioner, the Government Order came into force on 17.08.2009 much after the appointment of the petitioner as B.T. Assistant and therefore the said Government Order could not be applied to her. The petitioner contended that the second respondent denied the approval by relying on a Government Order



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in G.O.Ms.No.107 – P & A R Department dated 18.08.2009 where in it was stated that the candidate should have obtained the Graduation Degree in the 10 + 2 + 3 pattern. According to the petitioner though she had not undergone the +2 course she underwent foundation course before getting the Degree under the Distance Education Programme and the said foundation Degree was equivalent to the Pre University Course and further according to the Tamil Nadu Recognised Private School (Regulation) Act, 1973 and Rules, 1974, the qualification required was a Bachelor Degree in any course with B.Ed.

4.The second respondent filed a counter wherein it was stated that the petitioner had obtained her Under Graduate Degree (B.A., Degree) from Annamalai University through open University, without passing XII Standard and therefore she did not possess the educational qualification for the post of B.T. Assistant. According to the second respondent, the contention of the petitioner that the foundation course underwent by her was equivalent to the +2 course was untenable. The letter dated 06.08.2010 issued by the Tamil Nadu Distance Education, University of Madras did not speak of any equivalence as claimed by the petitioner. According to the second respondent



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even the B.A. (History) Degree obtained by the petitioner was obtained as a double degree from Annamalai University and the duration of the said course was one year only. The petitioner was therefore not eligible for appointment to the post of B.T. Assistant (History) as she did not possess the three years Bachelors Degree in History.

5.The second respondent relied on the Government Order in G.O.Ms.No.107 – P & A R Department dated 18.08.2009 and submitted that as the petitioner had not obtained the degree in the 10 + 2 + 3 pattern she was not eligible for appointment to the post of B.T. Assistant.

6.The third respondent filed a counter stating that it was only a formal/nominal party as no relief was claimed against it. It was admitted by the third respondent that the petitioner obtained her Degree through open University. According to the third respondent the appointment of the petitioner as a B.T. Assistant (History) was subject to the approval of the second respondent and as the second respondent did not approve her appointment, she was relieved from service on 18.02.2011. The third respondent further submitted that the petitioner reached the age of 60 years



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on 31.10.2021.

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7.The learned counsel for the petitioner submitted that the denial of approval by the second respondent was unjustified and untenable. The learned counsel submitted that G.O.Ms.No.107 – P & A R Department dated 18.08.2009, was not made applicable to the petitioner as she was appointed to the post of B.T. Assistant (History), much earlier to the Government Order. The learned counsel for the petitioner further submitted that though the petitioner had not undergone the 10 + 2 + 3 pattern of education, she obtained a Bachelor's Degree in B.Com. (three year course), B.A. (History) (one year course) and B.Ed. Degree and she further obtained M.A. (History) and M.Com. Degree. The learned counsel for the petitioner submitted that the petitioner was very much eligible for the said post on the basis of the Degrees obtained by her. The learned counsel submitted that the foundation course underwent by the petitioner for B.Com. through Open University was equivalent to +2 Course. The petitioner's counsel submitted that not possessing the B.A., (History) Degree in the regular pattern of three years is irrelevant because the educational qualification for the said post was a



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Degree in any course with B.Ed., and as the petitioner had a B.Com., Degree (three years course) and B.Ed., (Degree) she was eligible for appointment as a B.T. Assistant (History). The learned counsel therefore submitted that the impugned orders deserves to be set aside.

8.The learned counsel for the second respondent submitted that as the petitioner had not undergone +2 course as mandated by G.O.Ms.No.107 – P & A R Department dated 18.08.2009, approval was not granted to the petitioner. According to the learned counsel as the petitioner did not possess the 10 + 2 + 3 pattern of studies she was found ineligible. The learned counsel further submitted that the letter dated 06.08.2010 relied on by the petitioner to prove the equivalence of the +2 course with the foundation course is to be rejected as the letter does not speak about the same. The learned counsel finally submitted that the petitioner is ineligible for B.T. Assistant (History) as she did not possess a three year Degree in B.A. (History) which is mandatory.

9.The third respondent reiterated the submissions made in the counter and submitted that the third respondent is only a nominal party, as far as the



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issue raised in the writ petition.

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10.I have heard all the learned counsels and have perused the records.

11.The short question to be decided in this writ petition is whether the impugned order passed by the second respondent and the consequential order passed by the third respondent is justified and sustainable in law. It is an admitted fact that the petitioner has not undergone education in 10 + 2 + 3 pattern as mandated by G.O.Ms.No.107 – P & A R Department dated 18.08.2009. The petitioner to overcome the said lacuna in her qualification tried to justify the same by claiming that the foundation course undergone by her at the time of obtaining the B.Com., Degree through Distance Education Programme under the open University System was equivalent to the + 2 course. In support of the said contention the petitioner has relied on the letter dated 06.08.2010 issued by the Institute of Distance Education, University of Madras. I have gone through the letter dated 06.08.2010 and I find that the letter does not indicate that the foundation course undergone by the writ petitioner to obtain the B.Com., Degree was equivalent to the + 2 course.



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The said letter is extracted hereunder:

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“No.IDE/OUS(Admn)/B Com/2010/2590 Date: 06.08.2010

From
The Registrar,
University of Madras.

TO WHOMSOEVER IT MAY CONCERN

Sub: IDE – B Com. Degree course offered under University
System by the Institute of Distance Education –
Preparatory Programme for Foundation Course –
Bonafide Certificate – Requested – Regarding.

Ref: (i) B Com Degree course – Candidate Enrolment
No.85151233 and Transfer Certificate SI.No.:012258 dt.6th Aug
1988.

(ii) Letter received from 05.08.2010

The candidate Ms.Chandra Periasamy has undergone the preparatory Programme for Foundation course and passed in the Entrance Test conducted by the Institute of Distance Education, University of Madras and admitted in the B.Com. Degree Course during the academic year 1985-1988 under Open University System offered by the Institute of Distance Education, University of Madras. She was a bonafide student during the academic year 1985-1988.

She has undergone the above course with Enrolment Number 85151233 on par with the syllabus prescribed for



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the regular colleges affiliated to the University of Madras. She has appeared and passed the B Com Degree course examination in May 1989 conducted by the University of Madras.

REGISTRAR

To

Ms.Chandra Periasamy,
No.7/13 Varadarajan St.,
Vijayalakshmipuram,
Ambattur,
Chennai – 600 053.”

12.The letter does not support the petitioner and hence the petitioner's contention is rejected. As far as G.O.Ms.No.107 – P & A R Department dated 18.08.2009 is concerned, it is the contention of the petitioner that the Government Order was passed long after her appointment and therefore it was not applicable to her. It is pertinent to note here that the petitioner was very much aware that her appointment was subject to the approval of the second respondent and the said fact was made clear to her even in the appointment letter dated 03.02.2009. At the time of consideration of the petitioner's application for approval, the Government Order was already passed and therefore the petitioner was found to be ineligible for the said post. The Hon'ble Supreme Court in the case of State of Himachal Pradesh



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Vs. Rajkumar and Others in Civil Appeal No.9746 of 2011, the context of consideration for promotion to a post against vacancies arising prior to the amended rules clearly held that the rules prevalent on the date of the consideration of application should be applied and therefore no fault can be found with the second respondent for relying on the said Government Order. The petitioner has admitted that she does not possess three years B.A. Degree in History. According to the petitioners she was appointed as B.T. Assistant (History) on the strength of her B.Com. Degree and B.Ed. Degree. According to the petitioner the qualification required is Degree in any course and B.Ed. The respondent on the other hand contends that the qualification required is three years Degree in the particular course, for which appointment is to be made and as the petitioner did not possess the three years Degree in B.A., (History) she was found ineligible. I find force in the respondents contention and therefore reject the petitioner's submission.

13.The learned counsel for the second respondent produced the Judgment of this Hon'ble Court in W.A.No.2168 of 2018, dated 10.12.2021 wherein a similar issue was considered by the Hon'ble Bench. The Hon'ble Bench was pleased to hold as follows:



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“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.”

I am of the view that the said Judgment applies in four corners to this case.

14.Hence, the writ petition is dismissed. Consequently the connected



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N.MALA, J.

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