

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.06.2022

CORAM

THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.NO.3761 OF 2014

V.Sakthivel Pandian

... Petitioner

-Vs-

1. The Government of Tamil Nadu,
Rep. by the Secretary,
Education Department,
Fort St. George,
Chennai - 600 009.
2. The Director of School Education,
D.P.I. Complex, College Road,
Chennai -600 006.
3. The Joint Director (Vocational)
of School Education,
D.P.I. Complex, College Road,
Chennai -600 006.

... Respondents

PRAYER:-

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus calling for the records on the file of the 1st respondent culminated in order made in Letter No.21806/VE/2011-1 dated 26.10.2012 and quash the same and direct the respondents 1 to 3 to sanction and approve the petitioner's post as Vocational Instructor/Teacher Grade-II from 18.08.1997 to 07.07.2004 and thereafter as Grade-I from 08.07.2004 to 08.09.2007 and to accord all attendant service benefits including service seniority, salary and other allowances as accorded to other Vocational Instructors/Teachers.

For Petitioner : Mr.C.Johnson

For Respondents : Mr.M.Bindran
Additional Government Pleader

ORDER

The order dated 26.10.2012 rejecting the claim of the petitioner for retrospective regularization of his services in the post of Vocational Instructor is challenged in the present writ petition. Further direction is sought for to approve the appointment of the petitioner in the post of Vocational Instructor with effect from 18.08.1997 to 07.07.2004 and thereafter as Teacher Grade-I from 07.07.2004 to 08.09.2007 and accord all attendant and service benefits including service seniority, salary and other allowances.

2. The writ petitioner was appointed as part-time Vocational Instructor/Teacher on 02.12.1996 at Sri.M.Ct.M. Higher Secondary School. The petitioner states that he passed Higher Secondary course and B.Sc., (Computer Science) through regular pattern and further completed Post Graduate Diploma in Computer Application, M.Sc., (Computer Science) and B.Ed., degree. Thus, the petitioner states that he is fully qualified to the post of Vocational Instructor/Teacher even on the date of his appointment.

3. The petitioner was allowed to continue in the post of Vocational Instructor and he was discharging his duties. However, his appointment was not approved by the competent authorities of the Education Department. Several such Vocational Instructors were appointed by many schools and the issue was taken up for consideration by the Government and as far as the petitioner herein is concerned, his appointment was approved and he was brought under the regular establishment in a sanctioned post of Vocational Instructor, pursuant to the Government Order issued in G.O.Ms.No.35, School Education Department, dated 09.02.2007. From the said date, the petitioner is working as a regular Vocational Instructor.

4. The grievance of the petitioner is that many other similarly placed persons were granted with the benefit of retrospective regularization in other Government Orders and the petitioner, even on the day of his appointment, was fully qualified to hold the post of a Vocational Instructor. Thus, the petitioner is also entitled to be regularized with retrospective effect, along with all attendant benefits.

5. The writ petitioner made several representations and none of the representations were considered taking note of the fact that other similarly placed persons were granted such similar benefits. Even the Government Order issued in G.O.Ms.No.46, dated 12.09.2006 granting the benefit of approval of appointment to a set of Vocational Instructors.

6. The learned counsel for the petitioner reiterated that when many other similar cases were considered by the respondents, the case of the writ petitioner was not considered for grant of retrospective approval of appointment with all attendant benefits and the writ petitioner earlier filed writ petitions in W.P.No.20641 of 2008 and thereafter, in W.P.No.10545 of 2011 and inspite of that, the case of the writ petitioner was not considered.

7. The learned Additional Government Pleader appearing for the respondents opposed the said contention by stating that the petitioner was initially appointed as a part-time Vocational Instructor in a minority aided school. However, the cases of such persons who were appointed by the private schools were taken by the Government and an order was passed for approving the appointment of those Teachers as special cases. Therefore, the Government issued an order in G.O.Ms.No.35, dated 09.02.2007, granting approval of appointment to several similarly placed persons including the petitioner. No doubt, other Government Orders are passed with reference to the appointments made and the petitioner during the relevant point of time was falling under the categories mentioned in G.O.Ms.No.35 and therefore, his case was considered for approval of appointment with effect from the date of order, i.e. 09.02.2007.

8. As pointed out by the learned counsel for the petitioner, the Government extended the benefit of approval of appointment to several other similarly placed Vocational Instructors. One such Government Order was issued in G.O.Ms.No.46, dated 12.09.2006, wherein 12 part-time Vocational Instructors were brought under the regular establishment. The said Government Order was passed based on the judgement of the High Court dated 01.03.2004 in W.P.No.13961 of 1996. Therefore, the writ petitioners in the said writ petition were granted the benefit of approval of appointment in the said G.O.Ms.No.46. Another order was issued by the Government in G.O.Ms.No.69, dated 20.03.2007, upgrading the post of Teacher Grade-II as Grade-I. The said order was also passed based on the judgement of the High Court dated 08.07.2004 in W.P.Nos.9780 of 1995 and 14027 of 1996.

9. Therefore, there were many such part-time appointments of Vocational Instructors made on various occasions by the Aided Schools and in Government Schools, both by the management and the Parent Teacher Associations. However, those appointments were not made in accordance with the recruitment rules in force. Some Teachers were found qualified and others were not qualified. Therefore, the rules relating to recruitment were regularized by the Government in such case. A policy decision

was taken to grant the benefit to those Teachers who were appointed as part-time Vocational Instructors and their appointments were approved by the Government from the date of issue of the Government Order. Such absorptions were made in a phased manner through Government Orders, either at the instance of the Government or pursuant to the orders passed by the High Court. However, the fact remains that the appointments were not made in accordance with the recruitment rules during the relevant point of time. However, the benefit of approval of appointment was granted to those Teachers based on the respective Government Orders passed.

10. As far as the case of the writ petitioner is concerned, his appointment was approved based on G.O.Ms.No.35, dated 09.02.2007. The said Government Order reveals that the Government considered the cases for grant of approval of appointment for 201 part-time Vocational Instructors who are fully qualified to hold the post. It is a one time measure and concession extended by the Government, considering the fact that the said 201 Vocational Instructors were fully qualified to hold the said post. The appointments made in various districts were benefited from and out of the said Government Order.

11. G.O.Ms.No.35 was issued in the year 2007 and the appointment of the writ petitioner was approved pursuant to the Government Order and the said order was passed in favour of those Teachers by way of concession as they were initially appointed as part-time Vocational Instructors. Such concession granted by the Government cannot be now modified for the purpose of granting retrospective approval of appointment to the writ petitioner.

12. Even presuming that in some cases Government has granted such approval of retrospective appointment, those cases cannot be a precedent for the purpose of continuance of such irregularity and more specifically the concession extended is to be confined and a mistake or irregularity committed by the Government, if any, in the matter of grant of retrospective approval of appointment, such irregularity cannot be continued for the purpose of grant of retrospective approval of appointment to all other cases. In other words, an irregularity or illegality cannot be a ground to claim equality under Article 14 of the Constitution of India.

13. In this regard, it is relevant to rely on the judgment of the Hon'ble Supreme Court of India in the case of Basawaraj and another Vs. Special Land Acquisition Officer reported in (2013) 14 SCC 81, wherein it was held as follows:-

"8. It is a settled legal proposition that Article 14 of the Constitution is not meant to perpetuate illegality or fraud, even by extending the wrong decisions made in other cases. The said provision does not envisage negative equality but has only a positive aspect. Thus, if some other similarly situated persons have been granted some relief/benefit inadvertently or by mistake, such an order does not confer any legal right on others to get the same relief as well. If a wrong is committed in an earlier case, it cannot be perpetuated. Equality is a trite, which cannot be claimed in illegality and therefore, cannot be enforced by a citizen or court in a negative manner. If an illegality and irregularity has been committed in favour of an individual or a group of individuals or a wrong order has been passed by a Judicial forum, others cannot invoke the jurisdiction of the higher or superior court for repeating or multiplying the same irregularity or illegality or for passing a similarly wrong order. A wrong order/decision in favour of any particular party does not entitle any other party to claim benefits on the basis of the wrong decision. Even otherwise, Article 14 cannot be stretched too far for otherwise it would make functioning of administration impossible. (Vide: Chandigarh Administration & Anr. v. Jagjit Singh & Anr., AIR 1995 SC 705, M/s. Anand Button Ltd. v. State of Haryana & Ors., AIR 2005 SC 565; K.K.Bhalla v. State of M.P. & Ors., AIR 2006 SC 898; and Fuljit Kaur v. State of Punjab, AIR 2010 SC 1937)."

14. In the case of Ekta Shakti Foundation Vs. Government of NCT of Delhi reported in (2006) 10 SCC 337, the Hon'ble Supreme Court held as follows:-

"12. It was submitted that in some other cases, a departure has been made. No definite material has been placed in that regard. In any event,

"Article 14 has no application or justification to legitimize an illegal and illegitimate action. Article 14 proceeds on the premise that a citizen has legal and valid right enforceable at law and persons having similar right and persons similarly circumstanced, cannot be denied of the benefit thereof. Such person cannot be

discriminated to deny the similar benefit. The rational relationship and legal back up are the foundations to invoke the doctrine of equality in case of persons similarly situated. If some person derived benefit by illegality and had escaped from the clutches of law, similar persons cannot plead nor court can countenance that benefit had from infraction of law and must be allowed to be retained. Can one illegality be compounded by permitting similar illegal or illegitimate or ultra vires acts? Answer is obviously no."

13. In *Coromandel Fertilizers Ltd. v. Union of India and Ors.*, [(1984) Supp SCC 457], it was held in paragraph 13, that wrong decision in favour of any party does not entitle any other party to claim the benefit on the basis of the wrong decision. In that case, one of the items was excluded from the schedule, by wrong decision, from its purview. It was contended that authorities could not deny benefit to the appellant, since he stood on the same footing with excluded company. Article 14, therefore, was pressed into service. This Court had held that even if the grievance of the appellant was well founded, it did not entitle the appellant to claim the benefit of the notification. A wrong decision in favour of any particular party does not entitle another party to claim the benefit on the basis of the wrong decision. Therefore, the claim for exemption on the anvil of Article 14 was rejected.

14. "If the order in favour of the other person is found to be contrary to law or not warranted in the facts and circumstances of his case, it is obvious that such illegal or unwarranted order could not be made the basis of issuing a writ compelling the respondent-authority to repeat the illegality to cause another unwarranted order. The extraordinary and discretionary power of the High Court under Article 226 cannot be exercised for such a purpose." [See : *Secretary, Jaipur Development Authority, Jaipur v. Daulat Mal Jain and Others* [(1997) 1 SCC 35].

15. "30. The concept of equality as envisaged under Article 14 of the Constitution is a positive concept which cannot be enforced in a negative manner. When any authority is shown to have

committed any illegality or irregularity in favour of any individual or group of individuals other cannot claim the same illegality or irregularity on ground of denial thereof to them. Similarly wrong judgment passed in favour of one individual does not entitle others to claim similar benefits. In this regard this Court in Gursharan Singh & Ors. v. NDMC & Ors. [1996 (2) SCC 459] held that citizens have assumed wrong notions regarding the scope of Article 14 of the Constitution which guarantees equality before law to all citizens. Benefits extended to some persons in an irregular or illegal manner cannot be claimed by a citizen on the plea of equality as enshrined in Article 14 of the Constitution by way of writ petition filed in the High Court. The Court observed: (SCC p. 465, para 9)

'Neither Article 14 of the Constitution conceives within the equality clause this concept nor Article 226 empowers the High Court to enforce such claim of equality before law. If such claims are enforced, it shall amount to directing to continue and perpetuate an illegal procedure or an illegal order for extending similar benefits to others. Before a claim based on equality clause is upheld, it must be established by the petitioner that his claim being just and legal, has been denied to him, while it has been extended to others and in this process there has been a discrimination.'

Again In Jaipur Development Authority's case (supra) this Court considered the scope of Article 14 of the Constitution and reiterated its earlier position regarding the concept of equality holding: (SCC pp. 51-52, para 28)

'Suffice it to hold that the illegal allotment founded upon ultra vires and illegal policy of allotment made to some other persons wrongly, would not form a legal premise to ensure it to the respondent or to repeat or perpetuate such illegal order, nor could it be legalised. In other words, judicial process cannot be abused to perpetuate the illegalities. Thus considered, we hold that the High Court was clearly in error in directing the appellants to allot the land to the respondents.'

31. In State of Haryana & Ors. v. Ram Kumar Mann [1997 (3) SCC 321] this Court observed:

'The doctrine of discrimination is founded upon existence of an enforceable right. He was discriminated and denied equality as some similarly situated persons had been given the same relief. Article 14 would apply only when invidious discrimination is meted out to equals and similarly circumstanced without any rational basis or relationship in that behalf. The respondent has no right, whatsoever and cannot be given the relief wrongly given to them, i.e., benefit of withdrawal of resignation. The High Court was wholly wrong in reaching the conclusion that there was invidious discrimination. If we cannot allow a wrong to perpetrate, an employee, after committing mis-appropriation of money, is dismissed from service and subsequently that order is withdrawn and he is reinstated into the service. Can a similarly Circumstanced person claim equality under Section 14 for Reinstatement? The answer is obviously "No". In a converse case, in the first instance, one may be wrong but the wrong order cannot be the foundation for claiming equality for enforcement of the same order. As stated earlier, his right must be founded upon enforceable right to entitle him to the equality treatment for enforcement thereof. A wrong decision by the Government does not give a right to enforce the wrong order and claim parity or equality. Two wrongs can never make a right'." [See : State of Bihar and others v. Kameshwar Prasad Singh and Another [(2000) 9 SCC 94]."

15. The principles are now settled that an illegality or irregularity cannot be a ground to claim equality or discrimination under Articles 14 and 16 of the Constitution of India. Thus, induction of one or two persons who are otherwise not qualified cannot be a ground to issue a direction in a writ proceedings to appoint the petitioners who were found otherwise not eligible for such appointments.

16. That apart, the petitioner has been conferred with the benefit of approval of appointment by virtue of G.O.Ms.No.35, dated 09.02.2007 and he is working in the sanctioned post for

the past about 15 years. Thus, the settled issues by way of a failure by the Government in the matter of approval of appointment need not be unsettled after this length of time and therefore, the claim of the writ petitioner for retrospective approval of appointment in the post of Vocational Instructor cannot be granted.

17. Accordingly, the Writ Petition stands dismissed. No costs.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

hvk

To

1. The Secretary,
Government of Tamil Nadu,
Education Department,
Fort St. George,
Chennai - 600 009.
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+1cc to Mr.C.Johnson, Advocate, S.R.No.39218

W.P.NO.3761 OF 2014

SSN(CO)
PBS/12/07/2022