



WP(MD)No.14011 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 12.08.2022

DELIVERED ON : 01.09.2022

CORAM:

THE HONOURABLE MR.JUSTICE M.S.RAMESH

W.P.(MD)No.14011 of 2022

and

W.M.P.(MD)No.9997 of 2022

Mrs.S.Kirubavathi

... Petitioner

/vs./

- 1.Government of Tamil Nadu,
Rep. by Secretary to Government,
Education Department,
Secretariat, Chennai – 600 009.
- 2.The Director of School Education,
College Road, Chennai – 600 006.
- 3.The Joint Director of School Education
(Secondary Education),
DPI Compound, Chennai – 600 006.
- 4.The Chief Educational Officer,
Tirunelveli District – 627 009.
- 5.The District Educational Officer (In-charge),
Tirunelveli, Tirunelveli District.



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6.The Correspondent,
Cathedral Higher Secondary School,
Palayamkottai, Tirunelveli District – 627 002. ... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, to call for the records from the impugned order passed by the fifth respondent in Na.Ka.No.2873/A3/2016 dated 26.09.2016 is illegal, arbitrary and quash the same and to issue consequential direction, directing the respondents 1 to 5 to approval of the petitioner appointment for the post of B.T.Assistant (English) from the date of her initial appointment with effect from 16.07.2012 and to disburse the arrears of salary with all other benefits.

For Petitioner : Ms.Shabnam Banu

For Respondents : Mr.S.Shaji Bino,
Special Government Pleader.

ORDER

The 6th respondent herein is a private minority aided educational institution. The petitioner herein was appointed to the post of B.T.Assistant (English) on 16.07.2012 in a sanctioned vacancy, arising out of the retirement of a Teacher. In connection with the appointment, the 6th respondent had sent a proposal to the 5th respondent herein on



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10.06.2016, seeking for approval of the petitioner's appointment to the post, with effect from 16.07.2012. The proposal came to be rejected, through the impugned proceedings dated 26.09.2016, predominantly on the ground that the petitioner herein had obtained dual degrees in B.A.English, which is a disqualification.

2. Thereafter, the petitioner had completed the regular course of B.A.English in the year 2016, to which the 5th respondent had approved her appointment from the date of completion of this regular course. Since the petitioner had been working as a B.T.Assistant from 16.07.2012 onwards, she now claims approval from the date of her initial appointment, for which purpose, the earlier rejection order dated 26.09.2016, is sought to be quashed in the present writ petition.

3. In the reasons assigned by the 5th respondent herein in the impugned order dated 26.09.2016, disqualifying the petitioner's appointment on the ground of dual degrees, the 5th respondent had placed reliance on a decision of this Court in the case of ***R.Thirunavukkarasu Vs. The State of Tamil Nadu, School Education and others*** reported in



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2012 5 CTC 129. The decision in ***R.Thirunavukkarsu*** was rendered on 14.08.2012. In the case of ***Thirunavukkarasu*** (supra), the learned Single Judge of this Court had held that the teachers holding double degrees cannot claim benefits arising out of such degrees. Incidentally, the decision in ***R.Thirunavukkarasu*** came to be distinguished by an Hon'ble Division Bench of this Court in the case of ***The State of Tamil Nadu and others Vs. The Secretary, Maipparai High School*** in ***W.A.No.(MD)No. 1201 of 2017***, (pronounced on 14.08.2012) whereby, it was categorically held that the ratio laid down in ***Thirunavukkarasu*** decision (supra), would only have a prospective effect and thereby would not take away the rights of the Teachers, who were appointed prior to the judgment. The relevant portion of the order reads as follows:

“12. Undoubtedly, the legal position pursuant to the decision of this Court in Thirunavukkarasu's case (supra) is that a dual degree obtained by a candidate, upon undergoing a course of the duration of one year cannot be equated to a degree obtained after undergoing a course of the duration of three years.

13. Having said so, the decision in Thirunavukkarasu's case has been rendered on 14.08.2012 and would apply only in respect of appointments made thereafter. The application of the ratio thereof is thus prospective. It certainly cannot affect the



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appointment of Mrs.Meena made as early as on 08.03.2010, particularly since her service has been utilised for more than eight years as on date and six years as at the time of disposal of the writ petition.

14. A Division Bench of this Court in the case of Sakthi Rani V. Secretary, Bar Council of Tamil Nadu and others (2010 (4) MLJ 849) considered a challenge to the orders of the State Bar Council to the effect that persons with Post Graduate qualifications from open universities would not be entitled to enrolment in the State Roll.

15. While upholding the constitutionality of the Rule, the Division Bench made it clear that the Rules could only be applied prospectively and not in respect of those that had completed the law course at the time when the Rule came into force.

16. Equally so, in the present case. The pronouncement of this Court in Thirunavukkarasu's clarifying the position relating to the entitlement of persons to be appointed as B.T Assistant on 14.08.2012 cannot be read retrospectively to affect the employment of those already in service.

17. It is also pertinent to note that reliance upon the ratio laid down in Thirunavukkarasu's case was made for the first time in 2016 and all prior rejections by the DEO were solely on the ground of pendency of the suit inter se the school management. Then again, had the appointment of Mrs.Meena been considered favourably pursuant to the schools' proposals dated 09.03.2010 or 22.06.2011, the ratio of the decision in



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Thirunavukkarasu's case would have been unavailable to the appellants.

18. The appellants do not dispute the qualifications or the eligibility of Mrs.Meena for the post of BT Assistant. Neither they do dispute the position that she has been in service for eight long years.

19. It is a settled position that the qualification to be reckoned in deciding eligibility or otherwise of a candidate in appointment/recruitment is the qualification at the time of recruitment itself and not in terms of any requirements that may have been introduced at a latter point in time (see Madan Mohan Sharma and Another Vs. State of Rajasthan and Others [(2008) 3 Supreme Court Cases 724] and Gopal Krushna Rath V. M.A.A.Baig (Dead) by LRS. and others (1999 1 SCC 544).”

The aforesaid extract is self-explanatory. Thus, the benefits accrued in favour of the Teachers, who were appointed prior to the judgment in ***Thirunavukkarasu case*** (supra), cannot be abridged in view of the prospective applicability of the case, as clarified by the Hon'ble Division Bench.

4. The petitioner herein was appointed on 16.07.2012 and the decision in ***Thirunavukkarasu case*** was rendered on 14.08.2012.



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Accordingly, the ratio laid down therein would not be an embargo to the petitioner's claim for approval from the date of her original appointment. Consequently, the reliance placed by the 5th respondent herein in the impugned order on *Thirunavukkarasu's case*, cannot be sustained.

5. In the result, the impugned order dated 26.09.2016 on the file of the 5th respondent is quashed. Consequently, there shall be a direction to the respondents 3 to 5 herein to pass orders, approving the petitioner's appointment to the post of B.T.Assistant (English) from 16.07.2012, which is the date of her initial appointment, together with all service and monetary benefits. Such orders shall be passed, atleast, within a period of four (4) weeks, from the date of receipt of a copy of this order.

6. This writ petition stands allowed. No costs. Consequently, connected miscellaneous petition is closed.

01.09.2022

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M.S.RAMESH, J.

vsm

To

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Government of Tamil Nadu,
Education Department,
Secretariat, Chennai – 600 009.
- 2.The Director of School Education,
College Road, Chennai – 600 006.
- 3.The Joint Director of School Education
(Secondary Education),
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- 4.The Chief Educational Officer,
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- 5.The District Educational Officer (In-charge),
Tirunelveli, Tirunelveli District.

Order made in
W.P.(MD) No.14011 of 2022

Dated:
01.09.2022