



W.P.(MD)No.23457 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 15.06.2023

CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P.(MD)No.23457 of 2022
and
W.M.P.(MD)No.17539 of 2022

A.Vijayalakshmi

... Petitioner

vs.

- 1.The Joint Director of Elementary
Education (Minority),
DPI Campus, College Road,
Chennai - 600 006.
- 2.The District Educational Officer,
(formerly DEEO/ Madurai - DEO, Melur),
Madurai 625 001.
- 3.The Block Educational Officer,
Madurai East, Tallakulam,
Madurai 625 002.



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4.Thanam Middle School,
(Christian Minority Government Aided School),
represented by its Manager and Correspondent,
Gandhi Nagar, Madurai 625 020.

5.P. Stanley,
Manager and Correspondent,
Thanam Middle School,
(Christian Minority Government Aided School),
Gandhi Nagar, Madurai 625 020.

6.The Headmistress,
Thanam Middle School,
Gandhi Nagar, Madurai 625 020.

7.S.Balakrishnan

... 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 relating to the punishment order Roc.No.43/2022, dated 27.09.2022, passed by the 5th respondent and to quash the same and consequently, to direct the respondents 1 to 5 to reinstate the petitioner into service with continuity of service and grant all the service and monetary benefits within a time limit to be fixed by this Court.



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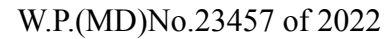
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For Petitioner : Mr.A.Vijayalakshmi
Party in person
For R1 to 3 : Mr.V.Omprakash
Government Advocate
For R4 and 5 : M/s.Pamelin Joseph

ORDER

This writ petition is filed for writ of Certiorarified Mandamus, to quash the punishment order, dated 27.09.2022, passed by the 5th respondent and consequently to direct the respondents 1 to 5 to reinstate the petitioner into service with continuity of service and grant all the service and monetary benefits within a time limit to be fixed by this Court.

2. The petitioner is possessing qualification B.Com., B.A.(English) and B.Ed. Based on this qualification, the petitioner is eligible to be appointed as B.T. Assistant. After conducting interview in December



3. The contention of the petitioner is that the appointment order was not served on the petitioner but as per the entry in the service register, no condition was prescribed by the 4th respondent for the petitioner's appointment. The appointment of the petitioner was approved by the 2nd respondent and the approval was also entered in the service register and the petitioner was receiving salary from time and again. Subsequently, the 5th respondent became the Manager and Correspondent of the 4th respondent School. Then, the relationship between the petitioner and the School was not smooth. Hence, the 5th respondent issued a memo, dated 12.04.2018 for having submitted representation to the 3rd respondent on 13.03.2018. The petitioner has submitted an



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explanation on 16.04.2018 to the memo. In the staff meeting held on 19.04.2018, the 5th respondent threatened to send the petitioner and three other teachers out of the School in June 2018, hence the said teachers submitted representations to the 3rd respondent but the 3rd respondent did not take any action.

4. In the meanwhile, the 5th respondent has passed suspension order, dated 30.04.2018 and placed the petitioner under suspension with effect from 01.05.2018. The management had raised various allegations against the petitioner and the main allegation as stated in the affidavit is extracted here under:

- “(i) The petitioner in the Whatsapp group has uploaded a derogatory report about the School Management,*
- (ii) The petitioner has got "Double Degree" and if the same was made known at the time of appointment, I could not have been appointed,*
- (iii) The petitioner made a false report that all the original certificates were handed over to the School Management,*



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(iv) The petitioner did not produce "Genuineness Certificates" for the Degree Certificates as instructed in the appointment order and

(v) The petitioner did not pass "TET examination within five years from the date of appointment."

5. In the meanwhile, the petitioner filed W.P.(MD)No.11002 of 2018, challenging the suspension order and this Court has granted an interim stay on 16.05.2018. Later, a compromise was arranged by the 3rd respondent between the 5th respondent and the four Teachers that they have to pay Rs.5,000/- per month against the demand of Rs.13,000/- per month. Subsequently the 5th respondent did not draw and pay the other allowances, hence the petitioner submitted a representation dated 04.02.2022.

6. In the meanwhile the 5th respondent issued Show Cause Notice in Letter No. 06/22 dated 15.02.2022 and the petitioner has submitted an



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explanation on 23.02.2022 to the memo. However, the 5th respondent, vide letter, dated 11.03.2022, issued a charge memo framing five charges by repeating the same allegations. The petitioner has submitted an explanation on 25.03.2022 denying all allegations.

7. Heard Mr.A.Vijayalakshmi, Party in person, Mr.V.Omprakash, the Learned Government Advocate appearing for respondents 1 to 3 and M/s.Pamelin Joseph, the Learned Counsel appearing for the respondents 4 and 5 and perused the records.

8. As far as the allegation of TET is concerned the petitioner submitted that the 4th respondent school is a Minority institution and hence TET is not necessary for minority institutions. This Court is not inclined to accept this contention since as per T.M.A. Pai Foundation's case, the government has power to fix the qualification for teachers.



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Since TET is a qualification fixed for the teaches, the same is applicable to the minority institutions also. However, in the present case at the time of appointment the petitioner was not possessing the qualification of TET, subsequently, she has passed TET on 28.03.2023. Therefore, the said allegation that the petitioner is not possessing TET cannot be sustained.

9. The next allegation is that the petitioner did not produce the genuineness certificate for the B.Ed. Course. The contention of the petitioner is that she had produced the genuineness certificate. However, there was a defect while mentioning the year of course. The petitioner was admitted to the B.Ed. course on 16.11.2007 and had completed the course on 30.06.2008. But while issuing the certificate it was mentioned that the date of admission as 16.11.2008. Hence the petitioner had approached the college and obtained the rectification in the same



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certificate, wherein the Principal of the said College had strike out the year as 2007 and affixed the signature and seal. The rectification was issued on 16.11.2021. But the respondents submitted that as on the date of obtaining the rectification the college is not in existence, hence, the said rectification could not have been obtained. For this allegation, this Court directed the official respondents to take instructions and submit before this Court. The Learned Government Advocate on instructions from the official respondents submitted that admittedly, the College was in existence in the year 2007-2008 and the college was affiliated to Madurai Kamaraj University. In the list of colleges affiliated to Madurai Kamaraj University, the said Raj College of Education was listed in serial No.46. The Learned Government Advocate further produced the communication dated 22.05.2015 issued by National Council for Teacher Education wherein it is stated that Raj College of Education after it has consented to come under New Regulations is hereby granted recognition



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for conducting B.Ed. program. From these two documents it is evident that the said College was functioning. But subsequently the college was not functioning due to various and as on date a school is running in the premises. After hearing the submission of the Learned Government Advocate this Court is of the considered opinion that the submission of the Management that the College was never in existence at all cannot be accepted. Infact the Management ought to have ascertained the genuineness by approaching the Madurai Kamaraj University. If the Management had approached the Madurai Kamaraj University, this issue would not have arisen at all. Therefore, this allegation cannot be sustained.

10. As far as the double degree, open university degree is concerned, the respondents contended that the petitioner has completed B.Com. in the year 2006, B.A.(English) Degree in the year 2007 as one-



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year course, B.Ed. in the year 2008. The petitioner submitted that the petitioner completed S.S.L.C. and Higher Secondary Course in the regular stream. Then completed B.Com. in open university in the year 2003 itself. But the petitioner has completed B.A. English in open university as one year degree in the year 2006-2007 and B.Ed. 2007-2008. Since the petitioner has completed B.Com. in the 10+2+3 pattern there is no illegality. Now the validity of B.A. and B.Ed. ought to be ascertained. The issue of studying in open university is elaborately dealt with by this Court in W.P.(MD)No.23360 of 2016 vide order dated 26.09.2022 in the case of **A.V.Vahitha Begum** reported in **2022 (2) WLR 917**. The relevant portion is extracted hereunder:

“13. The issue of course offered in Open Universities without the basic bachelor degree was considered in the case of Annamalai University represented by Registrar Vs. the Secretary to Government, Information and Tourism Department and others



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reported in (2009) 4 SCC 590. In that case one N. Ramesh was temporarily promoted as Principle which was challenged by Sibi Madan Gabriel stating that the said N. Ramesh without completing bachelor degree has acquired master degree and hence he is not qualified to be promoted as Principle. While considering the case, the Hon'ble Supreme Court has held that the said N. Ramesh is not eligible to be promoted, but his order of appointment cannot be quashed for the reason that on the date of completing the M.A. degree, it is possible to acquire the degree without completing the bachelor degree. The Hon'ble Supreme Court has also held that the Madras High Court was also on the same view and the Hon'ble Supreme Court has confirmed the said view. The relevant portion is extracted hereunder:

“33. It is also not a case as has been contended by Mr. K. Parasaran as also Mr. R.V. Kameshwaran, that we should invoke our jurisdiction under Article 142 of the Constitution of India. Writ petitioners - respondents has moved the High Court at the earliest possible opportunity. It is a case of promotion. It is not a case of fresh entry in services. Our judgment would not affect the service of appellant Ramesh. He cannot only be promoted to the



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post of Principal of the Institute. Even in the earlier round of litigation, the Madras High Court opined:

"9. When all these reasons have been given by the Government for appointing the appellant as the Principal, we see no arbitrariness in the appointment and in particular, when the stand of the University Grants Commission is clear that on the date when the appellant obtained his M.A. Degree, it was possible for a person who did not have the basic degree to obtain the M.A. degree, the order appointing the appellant as the principal cannot be quashed." In view of a long pending litigation, in our opinion, it will be unjust to deprive the writ petitioner - respondent from his lawful demand. We, therefore, are of the opinion that it is not a case where discretionary jurisdiction of this Court under Article 142 can be invoked.

14. The Hon'ble Supreme Court has also observed that, in the earlier round of litigation, the Hon'ble Division Bench of Madras High Court has opined as stated supra. On perusing the order dated 14.02.2006 passed in the earlier round of litigation in



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W.A.No.1221 of 2005 and W.A. No. 82 of 2006 and W.P.No. 36307 of 2004, it has been held in para 7 of the judgment that,

“7. We were not sure to what extent we could rely on these letters which are not supported by affidavit. Therefore in order to ascertain the correct position, we issued notice to Mr. Udayakumar, the Learned Standing Counsel for the University Grants Commission and Mr. Udaykumar appeared in Court today and submitted that at the relevant point of time when the appellant obtained the M.A. Degree, the degree granted by the Annamalai University was a valid one and that the U.G.C. recognises such degrees.” After ascertaining from the U.G.C. counsel, thereafter the Hon’ble Division Bench has held as stated supra i.e. “9. When all these reasons have been given by the Government for appointing the appellant as the Principal, we see no arbitrariness in the appointment and in particular, when the stand of the University Grants Commission is clear that on the date when the appellant obtained his M.A. Degree, it was possible for a person who did not have the basic degree to obtain the M.A. degree, the order appointing the appellant as the principal cannot be quashed.”



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15. A similar case was considered by the Hon'ble Division Bench of the Madras High Court in the case of K. Sakthi Rani Vs the Secretary of the Bar Council of Tamil Nadu and others reported in 2010 (2) Law Weekly 746 and the question for consideration is whether the persons who studied law without basic degree, but obtained Post Graduate degree in Open Universities are entitled to be enrolled as Advocates and the judgment rendered in Annamalai case is relied on. In K. Sakthi Rani's case it has been held that, it is after the Annamalai University's case the Bar Council refused to enrol the advocates who had not qualified bachelor's degree, but obtained master degree in open universities. In the said Judgment it has been further held as under: "49. Admittedly, neither the petitioners nor the Bar Council of Tamil Nadu and the Bar Council of India are parties to the above said judgment. The issue involved therein was the promotion of the parties involved therein. Even in the said judgment, the Honourable Apex Court was pleased to hold that the appointment cannot be nullified, but the appellant will not get the promotion based upon the said degree. Therefore, the Honourable Apex Court was applying the law only for future



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promotion and it did not take away the right which has become accrued and vested. ... 51. Considering the above said principles laid down by the Honourable Apex Court and applying the same to the present case on hand, we are of the considered opinion that the above said judgment of the Honourable Apex Court would be a binding precedent insofar as it holds that a degree obtained under the Indira Gandhi National Open University Act, 1985 from an Open University is not a valid degree in the eye of law. However, the said judgment cannot be construed to hold that a person, who after obtaining the said degree from the Open University and thereafter, completed law course, would be barred from getting himself enrolled. In other words, in a case where, a right has been crystallised and vested, then the same cannot be taken away. 52. Hence, we are of the opinion that the judgment of the Honourable Apex Court cannot be made applicable to the case of the petitioners herein who have completed the law course even before the said judgment. Hence, we answer Point (iv) in favour of the petitioners on the facts and circumstances of the case.” Even in the present case the petitioner had completed M.A. degree in the year 2003 i.e. even prior to the judgment rendered in the Annamalai University case. In such



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circumstances applying the principles laid down in the aforesaid Hon'ble Division Bench judgment and judgment rendered by Hon'ble Supreme Court in the Annamalai's case, this Court is of the considered opinion the petitioner should succeed.

16. The Hon'ble Division Bench further held in the said K. Sakthi Rani case that it is a well settled principles of law that a rule is to be construed as prospective unless the same is made retrospective. In other words until and unless it is shown that the provisions are enacted with an intention to affect the existing rights, it is deemed to be prospective alone. In the present case there is no material to show that there are provisions or rules or government orders which states that there is retrospective effect. The Annamalai University had allowed such recruitment and the candidates were in service until the university was taken over by the Government. The issue was raised after the government had taken over the university. Moreover after the judgment of the Hon'ble Supreme Court in Annamalai University case, the Government issued G.O.Ms. No. 116 P & AR (M) Department, dated 18.08.2010, wherein it is stated that the P.G. Degree holder who have obtained the said Degree in Open University System



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without qualifying bachelor's degree is disqualified to seek public appointment. Any government order would come into effect from the date of issuance of the government order, since the G.O.Ms.No.116 is issued on 18.08.2010. Therefore the candidates who have obtained master degree in open university without qualifying bachelor degree is not eligible for public employment from 18.08.2010 and the cut-off date is only 18.08.2010. Therefore this Court is of the considered opinion that the petitioner and the similarly placed persons ought to be considered in the light of the judgment rendered in Annamalai's case read with the G.O.Ms.No.116. It is pertinent to state herein that it is because of the Annamalai's case the government has raised this issue, but in Annamalai's case the Hon'ble Supreme Court has held that the proposition laid down in the case is applicable only prospectively and not retrospectively. In the present case the petitioner had completed open university degree in the year 2003 and hence the petitioner is eligible to be considered for the Special Officer post."



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Therefore, when the UGC recognized the Open University Degrees prior to Annamalai University case, the same cannot be cited as a reason for issuing termination order. Moreover, the G.O.Ms.No.116 dated 18.08.2010 was issued to declare the open university cannot be considered for public employment, which means prior to 18.08.2010 the degree was recognized. In the present case the petitioner had obtained the degree in the year 2007, 2008 and hence it is prior to the said G.O.Ms.No.116. Therefore, the allegation of double degree and open university degree against the petitioner also cannot be sustained.

11. The Learned Counsel for the respondents relied on the order passed in SLP(C)No.27633 of 2017 in the case of Sunil Kumar Soni V. State of Rajasthan. The Hon'ble Supreme Court vide order dated 28.03.2023 has held that the petitioner Sunil Kumar Soni was in service for just 15 days from 16.03.1999 to 01.04.1999 and from 1999 onwards



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judgment. Hence, the above judgement relied on by the respondents is not applicable to the present case. Therefore, the petitioner is entitled to continue in service.

12. As far as the false report of handing over of original certificates is concerned, the respondents contended that the petitioner has made false report that all the originals were handed over to the school management. Even though there was such allegation, it is submitted by both the petitioner and the respondents that after the termination of the petitioner, the original certificates are with the petitioner. Therefore, this allegation is resolved.

13. As far as the allegation of the WhatsApp message is concerned, the petitioner submitted there is a WhatsApp group and all the teaching faculties are members of the WhatsApp group. There will be several



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circulations of messages in the group and the teachers would share the difficulties among themselves. But the respondents have alleged that the petitioner has uploaded derogatory messages in the WhatsApp group. But the petitioner refuted the allegation and submitted there is no evidence and hence, it cannot be attributed to the petitioner.

14. However, this Court is not inclined to accept the contention of the petitioner. Since the posting messages in social media is affecting the smooth relationship among individuals and also affects institutions. The individuals are showing no restrain while posting their comments. Before advent of social media, while communicating among individual certain words were categorized as “harsh” and “unparliamentary” words are used in social media quietly easily. Now it is the era of dangerous social media. The petitioner being in the position to teaching youth ought to be a role model herself and not to indulge in such communications in the



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WhatsApp. Infact the petitioner should be a role model to the teaching faculties not to send derogatory messages. Therefore, this Court is strictly warning the petitioner not to indulge in such activities in future.

15. With this warning, this Court is inclined to allow the writ petition. The impugned order is quashed and the 5th respondent is directed to reinstate the petitioner but with continuity of service. However the petitioner is not entitled to backwages for non-employment period. The said exercise shall be completed within a period of four weeks from the date of receipt of a copy of this order.

16. For the reasons stated above, the writ petition is allowed in above terms. No costs. Consequently, connected miscellaneous petition is closed.

Index : Yes / No
Internet : Yes
NCC : Yes / No
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To

- 1.The Joint Director of Elementary
Education (Minority),
DPI Campus, College Road,
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S.SRIMATHY, J

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