



WEB COPY



W.P. No.9731 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.08.2024

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THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

W.P. No.9731 of 2023

and

W.M.P. No.9815 of 2023

A.K.Anil Kumar

...Petitioner

Vs.

- 1.The State of Tamil Nadu,
Rep. By its Secretary,
Department of School Education,
Fort St.George, Chennai-600 009.
- 2.The Director of School Education of Tamil Nadu,
College Road, Chennai-600 006.
- 3.The Chief Educational Officer,
Udhagamandalam, Nilgiris-643 001.
- 4.The Headmaster,
Government Higher Secondary School,
Ambalamoola, Nilgiris-643 240.
- 5.Sobha Gopalan

...Respondents

PRAYER: Writ petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Quo Warranto calling upon the 4th Respondent to show cause by what authority 5th Respondent claims to have use, handle and



W.P. No.9731 of 2023

perform the rights, duties, privileges of the office of the B.T.Assistant at Government Higher Secondary School, Amabalmoola and consequently direct the 4th Respondent to remove the 5th Respondent from the post of B.T.Assistant at Government Higher Secondary School, Ambalamoola.

For Petitioner : Mr.M.Vijayamehanath

For Respondents : Mrs.E.Ranganayaki
Additional Government Pleader (R1 to R4)

Mr.S.Karthikei Balan (for R5)

ORDER

This writ petition has been filed questioning the authority of the 5th Respondent to hold the post of B.T. Assistant at the 4th Respondent School and for a consequential direction to the 4th Respondent to remove the 5th Respondent from the post of B.T. Assistant.

2. The writ petition has been filed on the short ground that the 5th Respondent has only secured 31 marks in Social Science subject in SSLC and whereas G.O.Ms.No.38 dated 19.01.1987 prescribes that 35 marks must be obtained in each subject in SSLC and therefore, the 5th Respondent who has not fulfilled this basic qualification cannot be permitted to hold the post of B.T. Assistant at the 4th Respondent School.



W.P. No.9731 of 2023

3. The 3rd Respondent has filed a counter affidavit. In the counter affidavit it has been stated that a show cause notice was issued to the 5th Respondent on 10.04.2023 and the 5th Respondent has also given a reply to the show cause notice. Thereafter the matter was placed before the Joint Director and further orders are awaited.

4. Heard Mr.M.Vijayamehanath, learned counsel for the petitioner and Mrs.E.Ranganayaki, learned Additional Government Pleader appearing for Respondents 1 to 4 and Mr.S.Karthikei Balan, learned counsel for Respondent 5.

5. The main ground that has been raised by the learned counsel for the petitioner is that the 5th Respondent is holding the post of B.T. Assistant without the minimum general qualification in violation of G.O.Ms.No.38 dated 19.01.1987.

6. The learned counsel for the 5th Respondent questioned the very maintainability of the writ petition on the ground that the relevant rule only



W.P. No.9731 of 2023

prescribes/ mandates a pass in SSLC and it does not provide for the marks to be secured. The learned counsel submitted that the 5th Respondent has fulfilled this requirement. Therefore, an executive order passed under Article 162 of the Constitution of India by means of a Government Order cannot outweigh the statutory rule that has been issued under Article 309 of the Constitution of India. It was therefore submitted that in the absence of the 5th Respondent holding the position contrary to any statutory rule, a writ of quo warranto will not lie.

7. The learned counsel further submitted that similar issue was also considered by this Court on earlier occasions and it has been held that the appointments cannot be interfered only on the ground that the person has not secured 35 marks in each subject. The learned counsel therefore sought for the dismissal of this writ petition.

8. The Government Order in G.O.Ms.No.38 dated 19.01.1987 prescribes that a person must secure 35% of marks in each of the subject in the SSLC Examination for the purpose of minimum general educational



W.P. No.9731 of 2023

qualification for employment. There is no dispute with regard to the fact that the 5th Respondent had secured 31 marks in Social Science subject, however, based on the system that was prevailing at that point of time, aggregate 35% was sufficient in order to declare a person as pass in SSLC.

9. The above issue was considered in many cases. It will be relevant to take note of one such order passed in W.P.No.34006 of 2019 dated 22.12.2023. That was also a case where the concerned person had secured below 35 marks in two subjects and was declared as pass in SSLC examination on the ground that he has secured an aggregate of 35% in the Secondary Education Examination. This Court placing reliance on the earlier orders passed came to the conclusion that the person has secured 35% aggregate marks and has been declared as pass in the examination and therefore the same cannot be held to be bad warranting interference.

10. This position was also considered by the Division Bench of this Court in W.A.No.4024 of 2019 by order dated 22.11.2019.



W.P. No.9731 of 2023

11. The relevant Rule provides for pass in SSLC examination. The Government order that was relied upon specifies that the person must have secured 35 marks in each of the subject. In the State of Kerala, the 5th Respondent has been declared to have passed 10th Standard on the ground that the 5th Respondent has secured 35% aggregate. Therefore, what is now available is a statutory rule issued under Article 309 of the Constitution of India which merely talks about a pass in 10th Standard and an executive order issued under Article 162 of the Constitution of India in G.O.Ms.No.38 dated 19.01.1987 which talks about securing 35 marks in each subject.

12. A writ of Quo Warranto can be issued only if an appointment has been made in violation of a statutory rule. This Court does not find that there is any such violation since the 5th Respondent has been declared as pass in the 10th Standard examination. The prescription in the Rule cannot be overridden by a Government Order which is issued under Article 162 of the Constitution of India. Therefore, strictly speaking a writ of Quo Warranto may not lie in the present case.



W.P. No.9731 of 2023

13. The 3rd Respondent has taken the stand that already a show cause notice has been issued to the 5th Respondent and a reply has been received and the matter has been placed before the Joint Director and is pending. Therefore, as and when the Joint Director wants to enquire this matter and take a decision, it will be left open to the Joint Director to give an opportunity to the petitioner and thereafter take a decision. Except giving this clarity no further orders can be passed.

14. In the result, the writ petition is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

20.08.2024

Index : Yes / No
Speaking (or) Non-Speaking order
Neutral Citation: Yes / No
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W.P. No.9731 of 2023
N.ANAND VENKATESH, J.

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To:

- 1.The Secretary,
Department of School Education,
Fort St.George, Chennai-600 009.
- 2.The Director of School Education of Tamil Nadu,
College Road, Chennai-600 006.
- 3.The Chief Educational Officer,
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3/3