(2010) 10 MAD CK 0184

Madras High Court

Case No: Writ Petition No. 5632 of 2009

T. Kathiravan		APPELLANT
	Vs	
The State of Tamil Nadu and Others		RESPONDENT

Date of Decision: Oct. 29, 2010

Acts Referred:

- Tamil Nadu State and Subordinate Services Rules, 1955 - Rule 48

Hon'ble Judges: B. Rajendran, J

Bench: Single Bench

Advocate: M. Hidyathulla Khan, for the Appellant; A. Suresh, G.A., for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

B. Rajendran, J.

This writ Petitioner who claims that he has completed his teacher training course for the year 2000-2002 could not get his certificates as he had lack of attendance for the first year and the same was sent for condonation. But the condonation was ultimately permitted only on 29.07.2004 and therefore, the certificate of his completion also was issued on 09.10.2004 as there has been administrative delay in the process of condonation and therefore even though he completed the Course in the year 2002, he could get certificate only in the year 2004. Hence, he lost two years and two months due to the inordinate delay of the administration. Had be been given condonation earlier, he could have got certificate earlier and he would have registered his name in the Employment Exchange earlier and if he had registered earlier, he could have been selected in the selection for the year 2009. Therefore, all these process has been lost due to the only cause of administrative delay of the Government in condoning the absence from the college. Further, he would contend that as per the publication made, the persons who were eligible are those who have registered on 11.10.2004. Whereas, because he

got the certificate only on 09.10.2004, he registered himself only on 13.10.2004. He was not even considered. Therefore, he has come forward with this writ petition seeking for a Mandamus directing the Respondents to give appointment as Secondary Grade Teacher in the selection made for the years 2007-2008 and 2008-2009, after granting necessary relaxation for delay in registration in employment exchange.

2. The learned Government Advocate submitted that the writ petition itself is not maintainable as there cannot be a Mandamus directing the authorities to give exemptions enabling him to get retrospectively the exemption and employment. The Petitioner has not chosen to appear in the class and hence condonation of attendance has to be applied by him and due to excess number of days for condonation there was a delay in giving condonation which is now sought to be quashed. But unfortunately, from 2002 when he stated that he had finished the examination and the course, has not even chosen to make one representation to the Government or to the Principal seeking for his condonation. He kept quiet without giving any representation, and only after the condonation given and after getting the certificate in 2004, only when the applications were called for fulfilling the post of the teacher when he was not selected, he has come forward with this writ petition seeking for a Mandamus seeking appointment. Such a mandamus cannot be granted by this Court.

3. Heard both the parties. The short point for consideration in this writ petition is whether the writ Petitioner is entitled to the relief as claimed for by him.

4. At the outset it is pertinent to point out here that the Petitioner who had claimed that he had completed the course between 2000-2002 has not registered his eligibility till 2009. When the publication was sought for fulfilling the post of the Teachers, he has come forward with this writ petition. Whereas, even according to the Petitioner during the first year in the college he did not attend the class. Hence he has lost attendance. He had applied for condonation of the first year attendance which attendance was ultimately cleared by the Government only in 2004. In this context it is pertinent to point out here clearly that if the condonation is only for a short period, it will be condoned by the Director. Since it is more than 50 days, on his own fault in not attending the classes in the first year, the matter had to be referred to the Government and even as per the affidavit, the Government could not consider because of the then on-going strike of the Government staff and therefore, the Government also could not pass orders immediately. Infact there was a shortage of attendance of 89 days which is an inordinate delay in respect of his first year course. He having committed all these things, having not attended the first year class regularly and having kept quiet from 2002 after the completion of the course till 2004, when he has not even given a single representation to the parties concerned seeking for the condonation or for the certificate, he is not entitled to now say that delay was due to the Government in condoning his attendance. He has chose to register only on 13.10.2004 even though he got the certificate on 09.10.2004. Infact had he registered on the same day or on the next day there would have been no necessity for this writ petition at all because the Government had called for selection for the post of

Teachers by the publication dated 12.01.2009 with a cut off date of registration on 11.10.2004. The grievance of the Petitioner is that he had registered only on 13.10.2004 and there was a cut off date of registration and for those who have registered upto 11.10.2004 only were taken into consideration. Nothing prevented him to register either on 09.10.2004, 10.10.2004 or on 11.10.2004. The three days when he had actually had the original certificate also. Therefore, there also was a delay on the part of the Petitioner. Hence the Petitioner cannot seek such a prayer seeking the Government to exempt for his delay both for not attending the class which has already been exempted and for non-registration. He cannot now claim that because of the delay of the Government in the condonation, his seniority is lost or he could have got his appointment of hypothetical questions.

5. The entire prayer in the writ petition itself is only a hypothetical one.

Unfortunately, such a writ petition has been filed. Hence, this writ petition is dismissed. No costs.