

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.09.2015

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THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN

W.P.No.12688 of 2015

And

M.P.Nos.2 and 3 of 2015

Tmt.Rajeswari

... Petitioner

Vs.

- 1 The Principal Secretary to
Government School Education Department
Fort St. George Chennai-9.
- 2 The Director of Elementary
Education College Road Chennai-6.
- 3 The District Elementary
Educational Officer Tirunelveli
Tirunelveli District.
- 4 The Additional Assistant
Elementary Educational Officer Alangulam
Tirunelveli District.
- 5 The Secretary
Shri Shanmuga Middle School
Melamaruthapuram Village Tirunelveli
District.

... Respondents

Prayer:

Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus calling for the records of the 4th respondent in Na.Ka.No.216/A2/2015 dated 25.03.2015 and quash the same and consequently direct the 2nd respondent to grant approval to the petitioner to hold the post of Headmistress from the date of initial appointment with all consequential benefits flowing therefrom along with the applicable scale of pay.

For Petitioner : Mr.Adithya Reddy
For Respondents : Mr.R.Vijayakumar for R1 to R4
Additional Government Pleader

O R D E R

The post of Headmaster in the fifth respondent school became vacant on account of the superannuation of the incumbent on 30.09.2009 and the District Elementary Educational Officer, Thirunelveli vide proceedings dated 21.12.2009, has permitted the fifth respondent school to fill up the said post through Employment Exchange and accordingly, candidates were requested to be sponsored by the jurisdictional Employment Exchange and advertisement was also issued in the news dailies calling for applications for filling up the post of Headmaster, wherein, the petitioner has also participated in the selection process and since Teachers who had put in five years of service, did not participate in the selection process, the petitioner was selected and appointed as Headmistress of the Middle School with effect from 13.01.2010.

2.The fifth respondent school also made a request for waiving the condition of five years experience to act as Headmistress and the Additional Assistant Elementary Educational Officer, Alangulam also made a positive recommendation on 21.11.2012; however, the said request made by the fifth respondent was rejected by the fourth respondent since the petitioner did not complete five years experience as Teacher. A request was also made to the fourth respondent for granting exemption from that condition, however, the fourth respondent vide the impugned proceedings dated 25.03.2015, rejected the request of the fifth respondent institution to appoint the petitioner as Headmistress on the ground that she did not put in the mandatory years of service as Teacher and the period of five years service rendered by the petitioner also cannot be taken into consideration for the reason that the approval of the Educational Department has not been obtained and challenging the legality of the same, the writ petition has been filed.

3.The learned counsel appearing for the petitioner would submit that the petitioner has not been paid with the salary right from the date of appointment on 13.01.2010 and admittedly, she has completed five years of service on 12.01.2015 and since she is having the qualification of B.T.Assistant for the period between 13.01.2010 and 12.01.2015, the salary due and payable to the B.T.Assistant can be paid to her and the proposal submitted by the fifth respondent institution for appointing her as Headmistress may be approved with effect from 13.01.2015 and also invited the attention of this Court to the orders dated 17.09.2010 made in W.P.(MD) No.11676 of 2008 and 25.07.2013 made in W.P.No.29640 of 2012.

4.Per contra, Mr.R.Vijayakumar, learned Additional Government Pleader would submit that since the petitioner did not fulfill the qualification of five years of teaching experience as B.T.Assistant, the proposal sent by the fifth respondent institution for approval of her appointment as Headmistress was rightly rejected and the five years of teaching experience given by the petitioner was also without approval of the Education Department and therefore, their claim cannot be considered and prayed for dismissal of the writ petition.

5.This Court has carefully considered the rival submissions and also perused the materials placed before it.

6.In the order dated 18.07.2012 made in W.P.(MD) No.3712 of 2011 filed by the petitioner, the learned Single Judge has taken into consideration and directed the third respondent to invoke Section 20 (3) of the Tamil Nadu Recognised Private Schools (Regulations) Rules, 1973 by making necessary application to the Government with liberty to the Government to take appropriate decision depending upon the facts and circumstances and in compliance of the said order, the present impugned order came to be passed.

7.In similar facts and circumstances, this Court vide order dated 25.07.2013 made in W.P.No.29640 of 2012 has taken into consideration the earlier orders and quashed the impugned proceedings therein with further direction directing the respondents 1 to 3 therein to approve the appointment of the petitioner therein as Headmaster of the fourth respondent school therein with immediate effect and to confer him with all consequential benefits including B.T.Assistant scale of pay within a stipulated time frame and the said order was also put to challenge in W.A.No.1494 of 2014 and vide judgment dated 11.12.2014, the appeal filed by the official respondents came to be dismissed confirming the order passed by the learned Single Judge.

8.In my considered opinion, the petitioner is similarly placed like that of the petitioner in W.P.No.29640 of 2012. The fact remains that after obtaining permission from the concerned authority, recruitment process was resorted to calling for candidates through Employment Exchange as well as in the open market and in response to the same, the petitioner has participated in the selection process and according to the fifth respondent, Teachers with five years of teaching experience did not participate and therefore, she was selected and appointed as Headmistress on 13.01.2010. The fifth respondent school has also sent necessary proposal seeking exemption of five years teaching experience to the fourth respondent and pending consideration, the petitioner has also completed five years of teaching experience on 12.01.2015.

9.In the light of the above facts and circumstances coupled with the order dated 25.07.2013 made in W.P.No.29640 of 2012 which was also confirmed in the judgment dated 11.12.2014 made in W.A.No.1494

of 2014, the writ petition is partly allowed and the impugned order dated 25.03.2015 is set aside and the fourth respondent is directed to approve the appointment of the petitioner as Headmistress with effect from 13.01.2015 and pay the salary between 13.01.2010 and 12.01.2015 as B.T.Assistant. The fourth respondent is directed to complete the said exercise within a period of eight weeks from the date of receipt of a copy of this order and communicate the decision taken, to the petitioner as well as the fifth respondent. No costs. Consequently, the connected miscellaneous petitions are also closed.

-s/d-

Assistant Registrar (Records)

dt:08/10/2015

True Copy

Sub-Assistant Registrar

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To

- 1 The Principal Secretary to
Government School Education Department
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Education College Road Chennai-6.
- 3 The District Elementary
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+1 cc to Mr.Adithya Reddy Advocate sr.51767
+1 cc to Government Pleader sr.51891

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