

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.03.2016

CORAM

THE HON'BLE Mr. JUSTICE **T.RAJA**

W.P.No.34080 of 2013
& M.P.No.2 of 2015

A.Beaula

... Petitioner

Vs.

1.The District Elementary Educational
Officer, Chennai – 600 006.

2.The Assistant Elementary Educational
Officer, Triplicane,
Chennai – 600 005,

3. The Manager/Correspondent,
CSI Middle School,
Triplicane,
Chennai – 600 005.

... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India praying for the issuance of a Writ of certiorarified mandamus to call for the records relating to the proceedings of the 1st respondent in O.Mu.No.1519/A2/2013 dated 20.11.2013 and to quash the same and consequently direct the respondents to approve the promotion given to the petitioner to the post of Middle School Headmaster in the 3rd respondent School with effect from 01.07.2013 with all consequential benefits including arrears of salary with interest, within a time frame to be fixed by this Court.

For Petitioner : Mr.G.Sankaran
For Respondents : Mr.S.Gunasekaran,
Additional Govt.Pleader
for RR.1 and 2

ORDER

Heard the learned counsel appearing for the petitioner and Mr.S.Gunasekaran, learned Additional Government Pleader appearing for respondents 1 and 2.

2. The petitioner was appointed as Secondary Grade Teacher in a minority Aided School run by CSI-Diocese, Madras in the year 1989. Subsequently, he was promoted as Primary School Headmaster in the year 2002. The claim of the petitioner shows that after qualifying herself with B.A., Economics in the year 1997, M.A., Economics in the year 2004 and B.Ed., in the year 2011, as a teacher, she is qualified with the Degree in other subjects viz., Sociology, Political Science and Economics, as per G.O.Ms.No.134 School Education department dated 15.06.2007 for promotion to the post of BT Assistant/Middle School Headmaster, provided she would have obtained Bachelor Degree prior to 01.01.2007. She became eligible for promotion to the post of Middle School Headmaster as

per G.O.Ms.No.134 dated 15.03.2007. While so, when a vacancy arose to the post of Middle School Headmaster after the retirement of Tmt.Mary Nirmala on 31.3.2013 in CSI Middle School, Triplicane, the CSI-Diocese prepared a joint seniority list showing the petitioner as a senior most person to be considered for the post of Middle School Headmaster. Subsequently, the Central Recruitment Board of CSI- Diocese of Madras conducted selection to the post of Middle School Headmaster, in which petitioner also participated in the interview conducted on 21.5.2013. The petitioner was also successfully selected for promotion to the post of Middle School Headmaster. Based on the selection, the Central Recruitment Board of CSI-Diocese of Madras issued promotion and transfer orders on 23.6.2013 promoting the petitioner to the post of Middle School Headmaster of CSI Middle School, Triplicane with effect from 1.7.2013. The petitioner also joined the post of Middle School Headmaster on 1.7.2013. Thereafter, when the 3rd respondent forwarded proposal to the 2nd respondent seeking approval for her promotion, the 2nd respondent in turn forwarded the same to the 1st respondent. After scrutiny of the papers, the 1st respondent passed proceedings dated nil.10.2013 calling for further particulars from the 3rd respondent and the same were also furnished. But the 1st respondent after receiving additional particulars rejected the proposal forwarded by the 3rd respondent by proceedings

dated 20.11.2013, which is impugned herein.

3. Challenging the impugned order, it has been contended by learned counsel for petitioner that the issue raised in the present writ petition is squarely covered by an order of this Court in the case of C.Devanesan Vs. The District Elementary Educational Officer, Villupuram District and another in W.P.No.21679 of 2012, dated 27.8.2012 and the relevant portion of the order passed therein is as under:

"12. In my considered opinion, this stand of the respondents deserves summary rejection for more than one reason. Firstly, the Special Service Rule, which is statutory in character cannot be overridden either by a circular or by a Government Order issued on the executive side or administrative side of the Government. If the statutory rule is to be varied, modified or repealed, it can only be done by means of appropriate amended rule issued in exercise of the rule making power of the Government.

13. Here, as per Rule 6(b)(i) of the Special Rules, the basic requirement is only a degree of any University in the State. I do not understand as to how subsequently the authorities have interpreted that degree

means a degree in any subject which is taught in Middle Schools. Had it been the intention of the Government, that the Secondary Grade Teachers, who have a degree in a particular subject, can be promoted as Middle School Headmasters, if only the said subject is taught in the Middle Schools, then the Government would have done well by amending the rule to the said effect.

14. But so far the rule has not been amended. Without amending the rule, now the respondents want to rely on the Government Order in G.O.Ms.No.134. As already stated above, this Government order or any circular will not override the Rule 6(b)(i) of the statutory rules. Therefore, the contention of learned Special Government Pleader, that the petitioner had not secured B.Ed. degree prior to 01.01.2007 deserves only to be rejected.

15. Assuming that the Government Order needs to be given force, even then the petitioner is entitled for promotion. A complete reading of the above rule would go to show that it refers to the basic degree like B.A., B.Com., B.Sc. etc, and the said G.O. has got nothing to do with the date of acquisition of degree in education, namely, B.T. or B.Ed. The Government Order only states that basic degree should have been obtained prior to 01.01.2007.

16. The petitioner had acquired B.A. Degree long prior to 01.01.2007. Though it may be true, that he acquired B.Ed. degree in the year 2009, that will not come in any manner against the petitioner, as Government Order does not prescribe the date of acquisition of B.Ed. degree at all as relevant. Thus, assuming that the Government Order has got force, even then the petitioner is entitled for promotion as Middle School Headmaster.

4. A close reading of the above order shows that the petitioner has qualified with B.A.Economics in the year 1997, M.A., Economics in the year 2004, and B.Ed in the year 2011. While so, the Government, vide G.O.Ms.No.134, School Education Department, dated 15.06.2007, has stated that the required qualification as per the Special Rules is only any degree. Therefore, the Government has directed that the Secondary Grade Teachers, who had obtained any Degree prior to 01.01.2007, shall be eligible for promotion to the post of Middle School Headmaster. Hence, on the basis of the said G.O., learned counsel for the petitioner stated that the petitioner is eligible for promotion, because she has obtained B.A. Degree even prior to 01.01.2007 itself. But, a contention was raised on behalf of the respondents that as the petitioner has not obtained the B.Ed., Degree before 01.01.2007, she is not eligible for promotion. The said

issue has already been considered by this Court in the above said judgment. Therefore, the above said contention of the respondent does not appeal to this Court, for, the petitioner has obtained B.A. Degree in the year 1997 and M.A. Degree in the year 2004, which is long prior to 01.01.2007. Though the petitioner has acquired B.Ed. Degree in the year 2011, that will not go in any manner against the petitioner as the Government Orders does not prescribe the date of acquisition of B.Ed. Degree as relevant.

5. In such view of the matter, as highlighted above, when the petitioner has acquired B.A. Degree long prior to 1.1.2007, although she acquired B.Ed Degree in the year 2011, as rightly held by this Court, the above said Government Order does not prescribe the date of acquisition of B.Ed Degree at all as relevant, Therefore, the impugned order is liable to be set side and accordingly the same is set aside. Respondents are directed to permit the petitioner as Middle School Headmaster and give her seniority in the above mentioned place. The writ petition is ordered accordingly. No costs. Consequently, the connected miscellaneous petition is closed.

30.03.2016

Index: Yes/No
usk

To

- 1.The District Elementary Educational
Officer, Chennai – 600 006.
- 2.The Assistant Elementary Educational
Officer, Triplicane,
Chennai – 600 005,
3. The Manager/Correspondent,
CSI Middle School,
Triplicane,
Chennai – 600 005.

T.RAJA,J.

usk

W.P.No.34080 of 2013

30.03.2016