

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03-08-2016

Coram

THE HON'BLE MR. JUSTICE B. RAJENDRAN

Writ Petition No.27045 of 2016  
and W.M.P.Nos.23229 and 23230 of 2016

K.Mutharasu

.. Petitioner

Vs.

1.The Director of Elementary Education  
DPI Campus, College Road  
Chennai-600 006.

2.The District Elementary Educational Officer  
Nagapattinam District  
Nagapattinam.

3.The Additional Assistant Elementary Educational Officer  
Nagapattinam Union  
Nagapattinam District.

..Respondents

Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, to call for the records of the 2<sup>nd</sup> respondent in Na.Ka.No.1603/A2/2016, dated 16.06.2016, quash the same and consequently, to direct the respondents to promote the petitioner to the post of B.T.Assistant (Science) in the existing vacancy in the Nagapattinam Union based on the panel prepared as on 01.01.2016 and approved by the 2<sup>nd</sup> respondent with all consequential benefits and pass further orders as this Court may deem fit and proper in the facts and circumstances of the case.

For Petitioner : Mr.G.Sankaran

For Respondents : Mr.S.Gunasekaran  
Additional Government Pleader

O R D E R

By consent, the Writ Petition is taken up and disposed of at the admission stage itself.

2. This Writ Petition has been filed to issue a Writ of Certiorarified Mandamus, to call for the records of the 2<sup>nd</sup> respondent in Na.Ka.No. 1603/A2/2016, dated 16.06.2016, quash the same and consequently, to direct the respondents to promote

the petitioner to the post of B.T.Assistant (Science) in the existing vacancy in the Nagapattinam Union based on the panel prepared as on 01.01.2016 and approved by the 2<sup>nd</sup> respondent with all consequential benefits.

3. The petitioner was initially appointed as Secondary Grade Teacher in the Panchayat Union Middle School, Koozhaiyar, Kollidam Union, Nagapattinam District, on 07.02.2005. According to the petitioner, he is the only eligible person to be promoted to the post of B.T.Assistant (Science) in the existing vacancy at Nagapattinam Union for the year 2016. On the verge of the promotion counseling, the panel issued for promotional post of B.T.Assistant (Science) in respect of Nagapattinam Union, dated 02.02.2016, is cancelled and the petitioner's name is sought to be deleted from the panel, as per the order of the 2<sup>nd</sup> respondent, dated 16.06.2016, on the ground that the petitioner studied two degrees simultaneously. In this regard, the 2<sup>nd</sup> respondent issued a show cause notice, dated 07.06.2016 and it was served only on 14.06.2016 calling upon the petitioner to offer his explanation within five days. The grievance of the petitioner is that even before the expiry of five days and even before, he could submit his explanation, the 2<sup>nd</sup> respondent passed the impugned order, dated 16.06.2016, cancelling the panel prepared for the year 01.01.2016, which is ex facie illegal and hence, the present Writ Petition has been filed seeking the relief stated supra.

4. Mr.G.Sankaran, the learned counsel appearing for the petitioner would submit that the 2<sup>nd</sup> respondent issued a show cause notice, dated 07.06.2016 and it was served on the petitioner only on 14.06.2016 calling upon him to offer his explanation within 5 days. He would further add that the grievance of the petitioner is that even before the expiry of five days to submit his explanation, the 2<sup>nd</sup> respondent passed the impugned order, dated 16.06.2016, cancelling the panel prepared for the year 01.01.2016, which was served on him on 20.06.2016 and therefore, the impugned order is per se illegal.

5. Mr.S.Gunasekaran, the learned Additional Government Pleader, who takes notice on behalf of the respondents, would contend that the impugned order has been passed taking into consideration that the petitioner has not given any reply and the impugned order was served on the petitioner on 20.06.2016.

6. At the outset, I have to state that the impugned order is per se illegal and it has to be set aside in limine, because, once a show cause notice is given to the petitioner and five days time is granted for offering his explanation, any order can be passed only after the expiry of the time limit, that too, if the reply is not given within the stipulated time. As rightly pointed out by the learned counsel appearing for the petitioner, the show cause notice, dated 07.06.2016, was served on the

petitioner only on 14.06.2016, calling upon him to offer his explanation within five days. To prove the fact that the show cause notice was served on the petitioner only on 14.06.2016, the endorsement to that effect with date and time is available in the very show cause notice itself. Even before the expiry of five days time to submit his explanation, the 2<sup>nd</sup> respondent passed the impugned order, dated 16.06.2016, signed by him on 17.06.2016, cancelling the panel prepared for the year 01.01.2016, which was served on the petitioner only on 20.06.2016, to which effect endorsement is available in the very impugned order itself. Thus, having regard to the fact that the show cause notice, dated 07.06.2016, was served on the petitioner only on 14.06.2016, and within three days from the date of service of show cause notice on the petitioner, the impugned order, though, dated 16.06.2016, signed by the 2<sup>nd</sup> respondent on 17.06.2016, was passed, in my considered opinion, the impugned order is per se illegal and it is liable to be set aside.

7. In the result, this Writ Petition is allowed and the impugned order, dated 16.06.2016, is set aside. It is made clear that the petitioner is granted only five days time from today, without waiting for the order copy, to give a detailed reply and on receipt of such reply, the 2<sup>nd</sup> respondent, on the basis of the original show cause notice, dated 07.06.2016, which was served on the petitioner on 14.06.2016, shall consider the same and pass appropriate orders, on merits and in accordance with law within a period of one week thereafter. Consequently, connected Miscellaneous Petitions are closed. No costs.  
paa

s/d-

Assistant Registrar (CS-VI)

True Copy

Sub-Assistant Registrar

To

- 1.The Director of Elementary Education  
DPI Campus, College Road, Chennai-600 006.
- 2.The District Elementary Educational Officer  
Nagapattinam District, Nagapattinam.
- 3.The Additional Assistant Elementary Educational Officer  
Nagapattinam Union, Nagapattinam District.

+ 1 cc to Mr.G.Sankaran, Advocate SR 43977

+ 1 cc to Govt.Pleader SR 44177

mg(co)

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W.P.No.27045 of 2016