

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.11.2016

CORAM

THE HONOURABLE MR. JUSTICE R.SUBBIAH

Writ Petition No.41132 of 2016

G.Indumathi

... Petitioner

Vs

- 1 The Director of School Education DPI Campus College Road Chennai 6
 - 2 The Joint Director of School Education (Personnel) DPI Campus College Road Chennai 6
 - 3 The Chief Educational Officer Thiruvallur District Thiruvallur 602 001
- ... Respondents

Writ petition has been filed under Article 226 of the Constitution of India, praying for a Writ of Mandamus directing the respondents to pass orders for declaration of probation of the petitioner in the post of B.T. Assistant (English) with all consequential attendant benefits including arrears of salary based on the proposal submitted by the 3rd respondent to the 2nd respondent in Na. Ka. No. 3674/A4/2014 dt 8.12.2014 within a time frame to be fixed by this Court.

For Petitioner : Mr.G.Sankaran

For Respondents : Mr.V.Anandhamoorthy,
Addl. Govt. Pleader (Edn)

ORDER

By consent, the main writ petition itself is taken up for final disposal.

2. The petitioner has come up with the present writ petition for a mandamus, directing the respondents to pass orders for declaration of her probation in the post of B.T. Assistant (English) with all consequential attendant benefits including arrears of salary based on the proposal submitted by the third respondent to the second respondent in Na. Ka. No.

3674/A4/2014 dated 8.12.2014 within a time frame to be fixed by this Court.

3. It is the case of the petitioner that she has possessed the qualification of X Standard in the year 1998 and without pursuing higher secondary education, she has completed B.A. English in the year 2005 and thereafter, she has also acquired the qualification of B.Ed. from SRM University in the year 2007. While so, the Teachers Recruitment Board has conducted selection for the post of BT Assistant and she was selected to the post of BT Assistant English. However, she was not issued with the posting order. Hence, she approached this Court by filing a writ petition in W.P.No.5187 of 2009. When the said writ petition came up for hearing on 20.11.2009, the learned Government Advocate produced a proceeding dated 2.3.2009 for release of the results for the withheld candidates. Thus, this Court, by recording the release order issued by the Teachers Recruitment Board dated 2.3.2009, closed the said writ petition. Subsequently, the petitioner was issued with an order of appointment by the Director of Elementary Education vide proceedings dated 3.12.2009 appointing her as BT Assistant English in Thiruvallur Municipality Middle School, Aeravoor, Thiruvallur District and she joined in the said post on 7.12.2009 and her service was also regularized. While so, she came to know that her probation was not declared on the premise that she has not studied XII Standard after X Standard before acquiring graduation and therefore, she has not been satisfied 10+2+3 stream of education as required under G.O.Ms.No.107, Personnel and Administrative Reforms Department dated 18.8.2009. However, the said GO will not be applicable for the selection already made prior to the date of GO. In the case of the petitioner, she was selected to the post of BT Assistant in the year 2008. When her selection is in the year 2008 and selection order was issued on 2.3.2009, there cannot be any applicability of the said GO, since she was selected much earlier to the GO. In this regard, the third respondent has also sent a proposal to the second respondent for declaration of her probation, stating that she has been selected prior to the issuance of the said GO and hence, the said GO is not applicable to her. In spite of the same, her probation was not declared. Hence, the petitioner has come up with the present writ petition seeking a direction to the respondents to declare her probation in the post of B.T. Assistant (English) with all consequential attendant benefits including arrears of salary.

4. Today, when the matter was taken up for consideration, learned counsel appearing for the petitioner submitted that the issue involved in the present writ petition is covered by the judgment of the First Bench of this Court dated 12.7.2013 made in W.A.No.1372 of 2013.

5. I have also heard the learned Additional Government Pleader, who has taken notice on behalf of the respondents.

6. Keeping the submissions made on either side, I have carefully gone through the materials available on record.

7. The relevant portion of the judgment dated 12.7.2013 passed by the First Bench of this Court in W.A.No.1372 of 2013 is usefully extracted hereunder:-

"17. On the crucial date i.e., 1.9.2009, for promotion to the post of Under Secretary, the respondent/writ petitioner, in terms of Annexure to the Tamil Nadu General Service, has fulfilled all the necessary qualifications and therefore, the appellant/official respondent ought to have considered his claim. A reading of the affidavit filed in support of the writ petition, would also disclose that he was included in the panel for promotion to the post of Under Secretary and later on only, his name was dropped on the misconception that G.O.Ms.No.107, P & AR (M) Department, dated 18.8.2009, and G.O.Ms.No.92, P & AR (C) Department, dated 20.6.2012, would be applicable to the case on hand. In the considered opinion of the Court, the learned Single Judge has rightly taken into consideration the legal as well as the factual aspects and rightly arrived at a decision that the writ petitioner is eligible to be considered for promotion to the post of Under Secretary and accordingly, granted the relief. This Court is of the view that there is no error apparent or infirmity in the reasons assigned by the learned Single Judge for allowing the writ petition and finds no merit in this writ appeal."

8. Considering the facts and circumstances of the case and considering the submissions made on either side, without going into the merits of the claim projected by the petitioner, this Court directs the petitioner to send a fresh representation along with a copy of this order to the first respondent within a period of two weeks from the date of receipt of a copy of this order and on receipt of the same, the first respondent is directed to consider the said representation seeking to declare her probation in the post of B.T. Assistant (English) with all consequential attendant benefits including

arrears of salary and pass appropriate orders, on merits and in accordance with law and also in the light of the judgment of the First Bench of this Court dated 12.7.2013 made in W.A.No.1372 of 2013 (The Secretary to Government v. S.Mathavan Pillai) and also based on the proposal submitted by the third respondent to the second respondent in Na. Ka. No. 3674/A4/2014 dated 8.12.2014, within a period of six weeks thereafter. The writ petition is disposed of accordingly. No costs.

Sd/-
Asst.Registrar (J)

/true copy/

Sub Asst. Registrar

To

- 1 The Director of School
Education DPI Campus College Road
Chennai 6
- 2 The Joint Director of School
Education (Personnel) DPI Campus College
Road Chennai 6
- 3 The Chief Educational Officer
Thiruvallur District Thiruvallur 602 001

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krd 16/12

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