

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 28.01.2020
CORAM

THE HONOURABLE MR. JUSTICE D.KRISHNAKUMAR

W.P.No.7716 of 2016
and WMP. No.4790 of 2016

S.Kamatchi

... Petitioner

Vs.

1. The Joint Director of School Education,
(Secondary), Chennai-6.

2. The District Educational Officer,
Vridhachalam,
Cuddalore District.

3. The Secretary,
DVC Higher Secondary School,
Sri Mushnam, Kattumannarkoil Taluk,
Cuddalore District.

4. D.Dhevi

5. S.Suresh

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the records pertaining to the order passed by the first respondent in his proceedings in Na.Ka.No.6896/D2/E1/2012, dated 01.02.2013 and quash the same and direct the respondents to cancel the appointment of the respondents 4 and 5 and direct the 3rd respondent to give promotion to the petitioner as B.T.Assistant (Tamil) as per Rule 15(4) of the Tamil Nadu Recognised Private Schools (Regulation) Rules and confer all the consequential benefits to the petitioner.

For Petitioner : Mr.Ganesan for M/s.C.S.Associates

For Respondents : Mrs.P.Kavitha - R1 & R2

Government Advocate

Mr.V.Anand - R3

No appearance - R4 & R5

O R D E R

This writ petition has been filed by the petitioner seeking for a Certiorarified Mandamus directing the first respondent to cancel the appointment for the respondents 4 & 5 and further directing the respondents 2 and 3 to give promotion to the petitioner as B.T.(Assistant) in the 3rd respondent's school.

2. In the affidavit filed in support of this petition, the petitioner has stated that she has joined 3rd respondent's school as Secondary Grade Teacher on 18.01.1991 and she was fixed in a time scale from 01.09.1992. Later, as per the Government policy decision, the petitioner was appointed on consolidated pay for two years i.e. 1990-1991 and 1991-1992. Thereafter, at the intervention of the Hon'ble Court, all the teachers were given time scale from the initial date of appointment. However, the management has not claimed and got the time scale from 18.01.1991 and her request has not been forwarded to the authorities concerned.

3. According to the petitioner, she acquired her B.Lit., and B.Ed., Qualification in the 1994 and 1996 respectively. According to the petitioner, she is fully competent to be appoint as B.T. Assistant (Tamil). Due to the promotion of the incumbent B.T.(Assistant) Tamil, a vacancy arose for the said post. However, the petitioner was not considered and appointment was made from open market. During the year 2007, another vacancy arose due to the retirement of the incumbent teacher. Even at the time, the petitioner was overlooked and a candidate from the open market was appointed. Despite repeated representation from the petitioner's side, the same was not considered by the third respondent and therefore, having no other option, the petitioner has come forward with this writ petition.

4. The second respondent viz., District Elementary Officer has filed a detailed counter refuting the claim made by the petitioner. According to the second respondent, the management has informed that the petitioner has relinquished her promotion. The second respondent has also stated that the petitioner has approached the said authority belatedly, after lapse of four years, from the date of appointment of the respondents 4 and 5. The second respondent has also stated that as per Rule 15(4)(i) of the Tamil Nadu Private Schools Regulation Act 1973 and Rules 1974, stated that promotion shall be made on the grounds of merit and ability, seniority being considered only when merit and ability are approximately equal. According to the second respondent, the writ petition is devoid of merits and is liable to be dismissed.

5. The third respondent, contesting respondent, has filed a detailed counter affidavit wherein it has stated that the quality of teaching of the petitioner was not satisfactory and the management received several complaints from the students as well as parents. Therefore, the management was taken up the complaints to the Education Department and an enquiry was conducted and a test was given to the petitioner on 14.11.2011. Based on the said enquiry, it was found that the petitioner was not upto the mark. Therefore, further time was given to the petitioner and a test was undertaken on 18.01.2012. Even on that

occasion also, the petitioner has not scored adequate marks and even in basic knowledge of Tamil, she was obtained very low marks. In view of the same, the petitioner herein gave a letter dated 01.04.2010 to the Head Master stating that she is not willing for getting promotion. Only on the said circumstances, two vacancies arose for the post of B.T. Assistant (Tamil). The management has selected candidates from open market. The petitioner has approached this Court by filing W.P.No.7716 of 2013, after lapse of five years. At the time, the department had also given a finding in the enquiry conducted with regard to the suitability and eligibility of the petitioner, vide its order dated 01.02.2013 in Na.Ka.No.6896/D2/E1/2012. The petitioner has also filed subsequent writ petitions. However, she has not got any favourable orders from this Court. The petitioner has given a letter that she would continue to be a secondary grade teacher and that she would never claim promotion. Having given such a statement before the Management, she has again filed a writ petition against the management before this Court.

6. The 3rd respondent has also stated that after lapse of five years from the date of appointment of 4th and 5th respondents, she was started filing series of writ petitions.

7. I have heard the learned counsel for both sides and perused the materials available on record.

8. The petitioner has submitted that she was appointed as secondary Grade Teacher on a consolidated pay of Rs.800/- per month on 18.01.1991 in the third respondent's school. The petitioner was regularised and brought into time scale of pay on and from 01.09.1992.

9. The third respondent has subsequently submitted that the petitioner has acquired educational qualification for the post of B.T. Assistant (Tamil) such as B.Lit. Degree in 1994 and B.Ed. Degree in 1996. Further, two vacancies arose in the third respondent management for the post of B.T.Assistant (Tamil) and the petitioner sought promotion for the said post.

10. The petitioner has submitted that she is fully qualified for appointment of the post of B.T.Assistant (Tamil). The 3rd respondent Management has subsequently stated in the counter affidavit that the said degrees were obtained when she has relinquished promotion. The 3rd respondent has subsequently stated that the management has received several complaints from the students and parents about the teaching standards of the petitioner. Based on the said complaints, the Management has referred the complaints to the Education Department and the petitioner was subjected to knowledge test. The petitioner has failed in her first attempt and she was provided with another opportunity. Even during the second opportunity, she failed to

establish her proficiency in the Tamil language. Only in such circumstances, the petitioner has given a letter to the management that she is not willing for getting promotion. Two vacancies arose for the post of B.T. Assistant (Tamil) in the meantime and the Management has selected candidates from open market.

11. The third respondent has submitted that the petitioner did not participate in the selection process. If really the petitioner was confident in her proficiency in the language, she should have certainly attended in the selection process and come out successful. Having remain mute spectator, and having failed to score enough marks in two opportunities given to her, it is not fair on the part of the petitioner to claim promotion, and that too for a post for which she has given relinquishment. A teacher is expected to have a sound knowledge in the subject. More so, when the subject is a language because language is the tool of communication. Children are expected to learn a language without any error. If the teacher herself does not have sound knowledge, she would not be in a position to teach grammar and vocabulary to the students correctly. The Management has received several complaints about the teaching quality of the petitioner from the students and parents. Though two opportunities were given to the petitioner to prove her standard of knowledge on both the occasions she failed. Therefore, she has given a letter that she would continue to be a secondary grade teacher.

12. Section 15 (4)(i) of Tamil Nadu Private Schools Regulation Act 1974 clearly states that promotion shall be made on the grounds of merit and ability, seniority being considered only when merit and ability are approximately equal.

13. Further, the petitioner did not want to get promotion. The petitioner did not satisfy the eligibility criteria as she was not upto the standard required for even a secondary grade teacher, even in her mother tongue Tamil. Tests were conducted by Education Department to check her proficiency in the language. On both the occasions, she failed. Therefore, appointment of the 4th and 5th respondents by the 3rd respondent Management is fully justified and such appointments do not call for any interference by this Court.

14. For the forgoing reasons, the writ petition fails and the same is dismissed. No costs.

Sd/-

Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

rli

To

1. The Joint Director of School Education,
(Secondary),
Chennai-6.

2. The District Educational Officer,
Vridhachalam,
Cuddalore District.

+1 cc to Government Pleader Sr.No.7202

+1cc to Mr.V.Anand , Advocate SR.No. 6913

+1cc to M/s.C.S.Associates , Advocate SR.No. 6392

W.P.No.7716 of 2016
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A.SK(28/07/2020)



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