

IN THE HIGH COURT OF JUDICATURE AT MADRAS**DATED:05.09.2017****CORAM****THE HON'BLE MR.JUSTICE M.V.MURALIDARAN****Writ Petition No.31591 of 2013****and****M.P.Nos.1 to 3 of 2013 and 1 of 2014**

T.Subramania Bharathi

.. Petitioner

/versus/

1.The Director of School Education,
College Road, Chennai - 6.2.The Chief Educational Officer,
Nagapattinam.3.The District Educational Officer,
Mayiladuthurai, Nagapattinam District.4.The Secretary,
Muthusamy Viswanathan High School,
Mathiravelur 609 102,
Nagapattinam District.

.. Respondents

PRAYER: Writ Petition filed under Article 226 of Constitution of India to issue a writ of Certiorarified Mandamus, to call for the entire records connected with the impugned order vide Na.Ka.No.6761/Aa2/2013, dated 18.11.2013, passed by the 3rd respondent and quash the same in so far as the petitioner's concerned and consequently direct the respondents to approve the appointment of the petitioner as B.T.Assistant (Science) w.e.f 15.04.2008, in the 4th respondent school, with all consequential benefits.

For Petitioner :Mr.S.N.Ravichandran

For Respondents :Mr.R.Govindasamy
Special Government Pleader for R1 to R3
Mr.S.Srinivasan for R4

ORDER

The writ petition has been filed by the petitioner seeking for issuance of a Writ of Certiorarified Mandamus, to call for the entire records connected with the impugned order vide Na.Ka.No.6761/Aa2/2013, dated 18.11.2013, passed by the 3rd respondent and quash the same in so far as the petitioner's concerned and consequently direct the respondents to approve the appointment of the petitioner as B.T.Assistant (Science) w.e.f 15.04.2008, in the 4th respondent/Muthusamy Viswanathan High School, with all consequential benefits.

2. The case of the petitioner is that he is residing at No.1/10, Periyar Street, Mathiravelur Post, Sirkali Taluk, Nagai District and his father was Agriculturist. In the year of 2003, the petitioner has passed B.Sc (Zoology) with 1st class at Bharathidasan University. Thereafter, he acquired qualification in B.Ed(English and Natural Science) in June, 2005 at Annamalai University. Subsequently, he has passed M.Sc (Zoology) in the

month May, 2007. Thereafter, the petitioner registered his Educational Qualification in the District Employment Exchange for the teaching post. The 4th respondent school is a non-minority school and governed by the Tamil Nadu recognised Private School Regulations Act and government orders were issued from time to time. In that school, two vacancies arose for the post of B.T.Assistant (Science) in the 4th respondent/ Muthusamy Viswanathan High School, due to promotion of one K.Kumar, B.T.Assistant as Headmaster on 01.06.2007 and promotion of J.Jacob, Secondary Grade Teacher as a B.T.Assistant on 11.09.2007. Both the posts falls under S.C.Roster and MBC Roster. Pursuant to the permission granted by the 2nd respondent, by proceeding dated 12.03.2008 to fill up the vacancies, the 4th respondent school has notified the vacancy in the Employment Exchange and also issued the paper advertisement on 04.04.2008. Based on the above advertisement, the petitioner had applied for the post of B.T.Assistant (Science) against the MBC Roster to the 4th respondent school. The 4th respondent school committee after duly conducting the interviews, selected and appointed the petitioner as the B.T.Assistant (Science) by an order dated 15.04.2008 as against the vacancy due to the promotion of Jacob on 11.09.2007 and following the M.B.C Roster. In another vacancy one B.Nickson Paulraj was appointed as B.T.Assistant (Science) following the S.C. Roster. Pursuant to the appointment of the

petitioner as well as Nickson Paulraj, the 4th respondent/Muthusamy Viswanathan High School sent proposals to the 2nd respondent through 3rd respondent for approval for the said appointment.

3. During the pendency of the appointment and the permission proposal before the second respondent, one P.Balakrishnan, Secondary Grade Teacher, working in the 4th respondent/Muthusamy Viswanathan High School has claimed promotion as B.T.Assistant against the vacancy which arose on 02.06.2006 due to promotion of K.Kumar, B.T.Assistant as Headmaster on 01.06.2007. Thereafter, he filed a writ petition in W.P.No.9251 of 2008, challenging the paper advertisement dated 04.04.2008 and seeking direction to promote P.Balakrishnan as B.T.Assistant (Science). By an order dated 10.06.2011, this Court directed the Joint Director of School Education to dispose the appeal filed by P.Balakrishnan on merits in accordance with law within six weeks from the date of receipt of a copy of that order. This Court also directed that the authority shall hear all the parties concerned before passing the order so as to avoid allegation of violation of principles of natural justice. The petitioner was appointed on 15.04.2008 and he discharged his duties sincerely and honestly without any rooms for compliant. However, the 3rd respondent by letter dated 11.11.2010, informed the petitioner that his

appointment was not approved in view of the pendency of the appeal filed by P.Balakrishnan.

4. While pendency of the above appeal and also approval of the petitioner, the 4th respondent has issued another order of appointment to the petitioner dated 12.04.2012, appointing the petitioner as B.T.Assistant (Science) in the vacancy arose for the post of B.T.Assistant (Science) due to retirement of Tmt.Sakunthala, on 28.02.2011. Aggrieved, against the said appointment dated 12.04.2012, the petitioner has sent a representation dated 16.04.2012 requesting for approval for appointment w.e.f 15.04.2008 and the 4th respondent also orally informed the petitioner and that his appointment would be approved from 15.04.2008. The 3rd respondent by proceedings dated 05.05.2012 had approved his appointment with effect from 12.04.2012 and the said order was served by the 4th respondent on 10.06.2012. Immediately, the petitioner has sent a representation to the 3rd respondent stating that the 4th respondent requested the second respondent for approval of the petitioner from his initial appointment i.e. 15.04.2008. The 4th respondent informed that in view of the order passed by the Joint Director of School Education in the appeal filed by P.Balakrishnan, the 3rd respondent returned the proposal for approval of appointment. Pursuant to the order of the Joint Director of

School Education dated 24.08.2011, the 4th respondent promoted P.Balakrishnan by an order dated 21.11.2011 as a B.T.Assistant (Science) in the vacancy arose due to promotion of K.Kumar as Headmaster on 01.06.2007. Therefore, there was no impediment to the 3rd respondent in approving his appointment as B.T.Assistant w.e.f. 15.04.2008, wherein his appointment was made against the vacancy arose due to the retirement of M.Jacob on 11.09.2007. The 4th respondent, without cancelling his earlier appointment, appointed him in another vacancy by an order dated 12.04.2012 is illegal arbitrary and unreasonable.

5. The learned counsel for petitioner also states that the Government of Tamil Nadu issued G.O.Ms.No.181 dated 15.11.2011, implemented the Right of Child to Free and Compulsory Education Act, 2009, and prescribed qualification for appointment to the post of B.T.Assistants and Secondary Grade Teacher with condition to pass Teacher eligibility Test. Pursuant to this Act, by proceedings dated 07.11.2013, the 1st respondent had directed to all the District Chief Education Officers to take immediate action to cancel the order of approval granted to the teachers who were appointed after 15.11.2011, without passing teacher eligibility test. Pursuant to the 1st respondent proceedings, the 3rd respondent has passed the present impugned order

vide Na.Ka.No.6761/Aa2/2013, dated 18.11.2013, cancelling the order of approval of the petitioner's appointment dated 05.05.2013. Challenging the said order, the petitioner has filed the present writ petition.

6. The counter affidavit which has been filed by the 4th respondent states that the petitioner was appointed as B.T.Assistant (Science) on 15.04.2008 through the interview conducted by the 4th respondent. The 4th respondent also states that in fact along with the petitioner and two other persons were also appointed one as B.T.Assistant (Science) and another as P.E.T. The 4th respondent also states that one Balakrishnan has filed a W.P.No.9251 of 2008 on the file of this Court for promotion. Subsequently, after the disposal of the writ petition by order dated 10.06.2011 the said P.Balakrishnan has been promoted as B.T.Assistant with effect from 21/11/2011. Admittedly, the said P.Balakrishnan is not impleaded as a party respondent. The petitioner had not chosen to challenge the appointment by way of promotion to the said P.Balakrishnan, even though the vacancy fell in the year of 2008, due to the pendency of the writ petition filed by P.Balakrishnan. The process of finalizing approval of the proposals have some procedural difficulties not only to the post of the petitioner, but also pertaining to the other two persons could not be filled up. Therefore, his claim for approval from the

year 2008 is unsustainable. The 4th respondent also states that the writ petitioner is indirectly trying to reopen the issue of the appointment of P.Balakrishnan again. Even the appointment of P.Balakrishnan came to be regularised only from 2011. Since the official respondents have not chosen to approve the appointment, due to the above said reasons the respondent school could not do anything except to wait till the year 2012.

7. Though the petitioner was appointed on 15.04.2008, the 3rd respondent has rejected the approval by the authority concerned by its proceedings in Oo.Mu.No.6111/A2/2008, dated 20.09.2008.

8. The 4th respondent also states that the Right of Children to Free and Compulsory Education (RTE), 2009 came into force w.e.f. 01.04.2010 and as per Sub-Section (1) and (2) of Section 23, of the said Central Act 35 of 2009 provides that, a teacher who at the time of commencement of this Act does not possess minimum qualification as laid down under Sub-Section (1) shall acquire minimum qualification within a period of five years. Thereafter, the Government of Tamil Nadu by its G.O.Ms.No.181, School Education Department dated 15.11.2011, directed that it is mandatory to pass the TET conducted by the Teacher Recruitment Board for getting appointment as Secondary Grade Teacher and B.T.Assistant in

Government Schools as well as Government Aided Schools. Further, as per the said G.O. the teachers should have passed the TET at the time of appointment itself and not entitled for five years time limit to acquire such qualifications prescribed in the RTE Act, i.e, persons who have passed the TET have to be appointed as teachers in the classes from VI to VIII Standards. Based on the same the official respondents/Government have passed the proceedings dated 07.11.2013 with instructions to the C.E.Os not to approve the appointment of teachers for the classes 6 to 10 in Government Aided Schools without qualifying TET and pursuant to the same the impugned order has been passed by the 3rd respondent. Therefore, the 4th respondent prayed for dismissal of the above writ petition.

9. There was no counter filed by the official respondents.

10. When the matter came up for admission on 20.11.2013, this Court has passed the following order reads as follows:

"It is seen from the records that the petitioner was appointed as B.T.Assistant (Science) on 15.04.2008 and the same was also challenged by way of writ petition before this Court in

W.P.No.9251/08 dated 10.06.2011. From the above, it is clear even before RTE Act, came into force the petitioner has got appointment.

Hence, there shall be interim stay as well as interim injunction. "

11. It is the case of the petitioner that on 15.04.2008 based on the interview conducted by the 4th respondent, the said post was allotted by the second respondent and permission granted. The 4th respondent school has notified the said two vacancies which arose in respect of two persons who were promoted as B.T.Assistant (Science), Headmaster of the school, through, employment exchange and also issued the paper advertisement on 04.04.2008. Unless, the second respondent grants permission to the 4th respondent school for appointment for filling up the said two posts, the 4th respondent would not appoint the petitioner on 15.04.2008. In fact the petitioner was appointed through the interview conducted by the school committee post and likewise along with the petitioner one B.Nickson Paulraj was also appointed as B.T.Assistant (Science) teacher in the same school.

12. It is admitted fact that appointment of the petitioner was sent for approval of the second respondent through 3rd respondent. But no

action was taken. But in this case, the 4th respondent stated one P.Balakrishnan, worked in the Secondary Grade Teacher has filed writ petition before this Court and pursuant to the orders of this court, the Joint Director of School Education was directed to conduct enquiry and pass orders on the appeal filed by P.Balakrishnan and based on the orders of this court and hence, P.Balakrishnan was appointed as B.T.Assistant only on 21.11.2011.

13. Apart from this, though the said P.Balakrishnan was appointed from 21.11.2011, this petitioner was appointed as B.T.Assistant on 15.04.2008 based on the interview conducted by the 4th respondent. As on date there is no proceedings to cancelling the appointment on 15.04.2008. The respondents 1 to 3 now come and say that the petitioner should pass the teachers eligibility test conducted by the teachers recruitment board for getting appointment as B.T.Assistant in the 4th respondent school as well as Government aided school.

14. It is made clear that the said Act came into force only from 01.04.2010. The act was passed in the year of 2009 and the petitioner who appointed as on 15.04.2008 cannot be directed to pass the teacher eligibility test and the approval was granted to the petitioner only from

18.11.2013 is totally wrong and against the said Act namely Right of Children to Free and Compulsory Education (RTE) 2009 came into force w.e.f. 01.04.2010 and as per Sub-Section (1) and (2) of Section 23, of the said Central Act 35 of 2009. On the said date of appointment on 15.04.2008, there is no necessity for the persons, who appointed as Secondary Grade Teacher B.T.Assistant to pass the teachers eligibility test.

15. The respondents 2 and 3 have not given any reasons saying that the petitioner's appointment on 15.04.2008 is bad in law. Since the said appointment was made only pursuant to the permission granted by the second respondent in his proceedings dated 12.03.2008 to fill up the vacancies in the 4th respondent school.

16. Therefore, the very appointment of the petitioner on 15.04.2008 is valid and the action of the respondents 2 and 3 in not approving the petitioner from the said date is totally illegal and the same is liable to be set aside.

17. In the result:

(a) The writ petition is allowed, by setting aside the order in Na.Ka.No.6761/Aa2/2013, dated 18.11.2013, passed by the 3rd respondent;

(b) The 2nd and 3rd respondents are directed to approve the petitioner's appointment from 15.04.2008 and to pay back wages of the service and monetary benefits of the petitioner;

(c) The said exercise shall be done within a period of eight weeks from the date of receipt of a copy of this order.

05/09/2017

Issue order copy on 12.04.2018.

Index :Yes/No
Internet :yes/No
ub

Speaking order/Non Speaking order

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M.V.MURALIDARAN,J.
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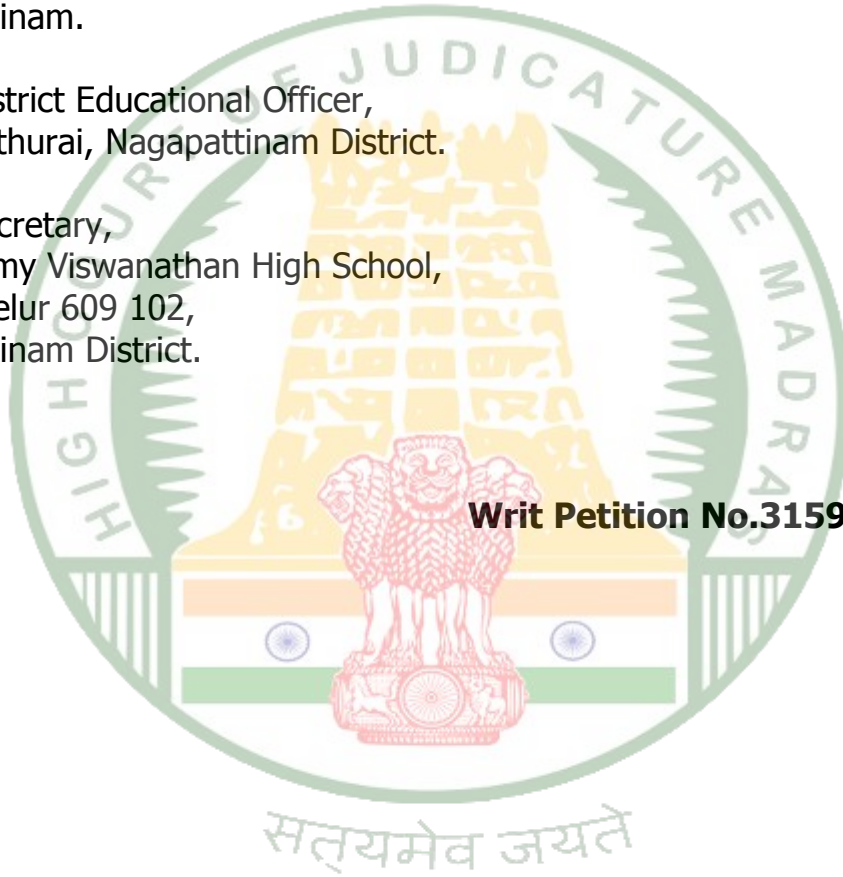
To

1.The Director of School Education,
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