

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 28.07.2017

CORAM

THE HON'BLE MR. JUSTICE M.V.MURALIDARAN

W.P.No.9073 of 2004
and
WP.MP.No.10579 of 2004

M.Mercy Gnanalet

.. Petitioner

Vs.

1. The Director of School Education,
Chennai-6.
 2. The Director of Elementary Education,
Chennai-6.
 3. The Chief Educational Officer,
Nagercoil, Kanniyakumari District.
 4. The District Educational Officer,
Kuzhithurai at Marthandam,
Kanniyakumari District.
 5. The District Elementary Educational Officer,
Nagercoil, Kanniyakumari District.
 6. The Correspondent,
Concordia Lutheran High School,
Kalparapottai,
Kollancode Post,
Kanniyakumari District.
 7. The Correspondent,
Lutheran Middle School,
Vanniyur, Malaiadi Post,
Kuzhithurai Range,
Kanniyakumari District.
- .. Respondents

Prayer : 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 orders passed by the fifth respondent in his Proceedings Na.Ka.No.4291/A/2003, dated 09.10.2003 and Na.Ka.4291/A3/2003, dated 22.12.2003 and quash

the same and direct the respondents to allow the petitioner to join in the 6th respondent school with all arrears of salary from 11.06.2001 and other consequential benefits.

For Petitioner : Mr.P.Ganesan
for M/s.S.Mani

For Respondents : Mr.R.Govindasamy
Spl. Government Pleader
for R1 to R5

ORDER

This writ petition has been filed by the petitioner seeking a writ of certiorarified mandamus to call for records of the fifth respondent in Proceedings Na.Ka.No.4291/A/2003, dated 09.10.2003 and Na.Ka.4291/A3/2003, dated 22.12.2003 and quash the same and to direct the respondents to allow the petitioner to join in the 6th respondent school with all arrears of salary from 11.6.2001 and other consequential benefits.

2. The case of the petitioner is that she possessed B.Sc., B.Ed. and M.Ed. qualification and was appointed as Secondary Grade Teacher on 01.06.1991 in the 6th respondent school. Though at the time of appointment, she did not possess the Secondary Grade Teacher Training certificate, since there was no qualified Secondary Grade hands available, the Government permitted to go for the B.T. qualified persons to fill up the post of Secondary Grade Teacher and, accordingly, she was appointed and also her appointment was approved by the Department. While she was working as Secondary Grade Teacher, the petitioner was awarded Selection Grade on 01.06.2001.

3. Further case of the petitioner is that both the 6th and 7th respondent schools are Corporate schools and they are maintaining common seniority and the promotion and appointment were made according to the seniority. The post of Headmaster of Middle School in the 7th respondent school fell vacant due to the retirement of the incumbent Nesamony. Since for the post of Headmaster of the Middle School, the minimum required qualification was degree with B.Ed., the Management promoted and transferred and also appointed the petitioner as Headmaster of the Middle school in the 7th respondent on 11.06.2001. The petitioner had also joined in the 7th respondent school and papers were forwarded for approval to the educational authorities.

4. According to the petitioner, originally, the 7th respondent school was Elementary school and thereafter it was upgraded as Middle school. The post of Headmaster of Elementary school was available and Nesamony was holding the post of Headmaster of Elementary school, At the time when the 7th respondent school was upgraded as Middle school, Nesomany was posted as Headmaster of the 7th respondent and he continued there upto his retirement on 31.05.2001. The Management had appointed the petitioner in the place of Nesomany, Headmaster of Elementary school.

5. The Educational authorities have raised queries on the approval of the petitioner that there was no sanctioned post of Headmaster of the Middle school in the 7th respondent school and even if the petitioner have to be approved in the place of Nesomany, who retired as Headmaster of Elementary school, for which the petitioner should have Teacher Training Certificate, which was the requisite qualification for the post of Secondary Grade Teacher.

6. The grievance of the petitioner is that though 1½ years have elapsed, her appointment was not approved and salary has not been paid from June 2001 onwards. Since the petitioner was not paid salary either in the cadre of Secondary Grade Teacher or in the cadre of Headmaster of Elementary school, he made a representation to the Educational authorities. As there was no response, she filed W.P.No.9710 of 2003 seeking a writ of mandamus to consider and pass orders on the representation. By an order dated 20.08.2003, this Court directed the second respondent to consider and pass orders qua payment of salary as well as approval to the appointment to the post of Headmaster of Middle school.

7. According to the petitioner, when the petitioner was agitating, the Management of the 7th respondent school redeployed the petitioner and two others. The 5th respondent had passed the impugned order dated 09.10.2003 redeploying the petitioner to St.Joseph Middle school, Karunyapuram. When the petitioner went and reported duty, the Management declined to take the petitioner. Thereafter, by the impugned order dated 22.12.2003, the 5th respondent modified the order dated 09.10.2003 and posted the petitioner to St.Alozius Primary School, Marthandamthurai. The petitioner was not allowed to join duty in the said school and the same was informed to the 5th respondent on 26.12.2003.

8. The case of the petitioner is that she came to know that her juniors were working in the 6th respondent school. When juniors were retained, the redeployment orders passed by the 5th respondent are arbitrary, illegal and vitiated by errors of law and the same are liable to be set aside.

9. I heard Mr.P.Ganesan for M/s.S.Mani, learned counsel for the petitioner and Mr.R.Govindasamy, learned Special Government Pleader appearing for the respondents 1 to 5 and also perused the materials available on record.

10. The learned counsel appearing for the petitioner submitted that on the date of appointment though the petitioner was not possessing qualification of Teacher Training Certificate, she was appointed as Secondary Grade Teacher and her appointment was also approved by the Department taking into consideration the fact that there were no qualified hands available for being appointed as Secondary Grade Teacher. Therefore, it amounts to deemed relaxation in the eye of law, rather it could be said that the Department have waived the acquisition of Teacher Training Certificate and hence, it was no longer open for them to insist the said certificate that too after putting in 10 years of service as Secondary Grade Teacher.

11. The learned counsel argued that as per Government Orders whenever the school was upgraded, the post of Headmaster has to be upgraded so as to enable to protect salary of the incumbent as well as to man the upgraded school. Despite orders of the Government, the post of Headmaster of Elementary school was not upgraded to Headmaster of Middle school. Thus, the Educational authorities have to issue orders approving the petitioner's appointment as Headmaster of Middle school, which could be possible only on upgradation of the post of Headmaster of the Elementary school into one Headmaster of the Middle school. There was no impediment for the Department to upgrade the Headmaster of Elementary school and approve the petitioner's appointment.

12. Qua redeployment, the learned counsel argued that the Management had deliberately retained juniors and redeployed the petitioner and therefore, the impugned orders redeploying the petitioner was illegal and without any justification and therefore, the impugned orders are liable to be quashed.

13. The learned Special Government Pleader submitted that since teachers strength has been increased by the Government, it is for the petitioner to work out her remedy in the manner known to law.

14. Considering the submission made by the learned Special Government Pleader that the position was now changed and subsequent to the filing of the writ petition, teachers strength

has been increased by the Government, I am of the view that there is no need to look into the merits of the averments in the affidavit filed in support of the petition. It is seen that there were also no interim orders operating against the respondents.

15. Since subsequent to the filing of the writ petition teachers strength has been increased by the Government, without going into the merits of the matter, the writ petition is closed with a direction to the petitioner to work out her remedy in the manner known to law. No costs. Consequently, WP.MP.No.10579 of 2004 is also closed.

Sd/-

Assistant Registrar (CS-V)

//True Copy//

Sub Assistant Registrar

vs

To

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4. The District Educational Officer,
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5. The District Elementary Educational Officer,
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+ 1 cc to Mr.Government Pleader Sr.54291

W.P.No.9073 of 2004

and

WP.MP.No.10579 of 2004

RV(CO)

EU(25/06/2018)