

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 09.08.2017

CORAM:

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

W.P.No.22018 of 2013

and

M.P.No.1 of 2013

Aided Middle School,
rep. by its Secretary R.Murugendiran,
Mullipallam, Bhuvanagiri Range,
Cuddalore.

.... Petitioner

Vs

- 1.The Director of Elementary Education,
DPI Compound, College Road,
Chennai-6.
- 2.The District Elementary Educational Officer,
Cuddalore District.
- 3.The Additional Assistant Elementary Educational Officer,
Bhuvanagiri,
Cuddalore District. ... Respondents

Petition is filed under Article 226 of the Constitution of India for the issuance of writ of certiorarified mandamus calling for the entire records connected with the impugned proceedings of the second respondent passed in O.Mu.1165/A7/2011 dated 10.09.2012 and quash the same and direct the second respondent to approve the appointment of M.Rathina Sabapathy B.Lit, B.Ed. as B.T.Assistant (Tamil), in the petitioner school with effect from 26.4.2012 with all consequential benefits based on the proposal of the petitioner dated 27.4.2012.

For Petitioner : Mr.S.N.Ravichandran

For Respondents : Mr.A.Rajaperumal
Additional Government Pleader

O R D E R

This writ petition has been filed by the petitioner seeking a writ of certiorarified mandamus calling for the records of the second respondent in O.Mu.1165/A7/2011 dated 10.09.2012 and quash the same and direct the second respondent to approve the appointment of M.Rathina Sabapathy B.Lit, B.Ed. as B.T.Assistant (Tamil), in the petitioner school with effect from 26.4.2012 with all consequential benefits based on the proposal of the petitioner dated 27.4.2012.

2. I heard Mr.S.N.Ravichandran, learned counsel for the petitioner and Mr.A.Rajaperumal, learned Additional Government Pleader for the respondents and perused the entire materials available on record.

3. The case of the petitioner is that a vacancy arose for the post of B.T. Assistant (Science) due to promotion of one M.Hariharan, B.T. Assistant (Science) as Headmaster on 06.1.2010. In order to fill up the vacant post, the petitioner school made a representation to the respondents on 11.2.2011 seeking permission to fill up the vacant B.T. Assistant (Science) post by converting it as B.T. Assistant (Tamil) post for the reason that the promoted Headmaster of the school is also a B.T. Assistant (Science). By a proceeding dated 14.2.2011, the second respondent recommended the proposal for appointment of B.T. Assistant (Tamil) by conversion of the post of B.T. Assistant (Science) to the first respondent for his consideration. Since the first respondent has not passed any order and in anticipation of conversion, the petitioner school decided to fill up the vacant post and notified the vacancy in the District Employment Exchange and list of persons with requisite qualifications were called for. Though the District Employment Exchange furnished the list of candidates, no one participated in the interview.

4. According to the petitioner, having left with no other option, the petitioner school made an advertisement in Tamil daily newspaper for the vacant B.T. Assistant (Tamil) post and one M.Rathina Sabapathy was appointed as B.T. Assistant (Tamil) by the School Committee resolution dated 25.04.2012 on merit and ability after following statutory formalities as direct appointment. The appointment proposal was forwarded to the third respondent for approval on 27.04.2012. In the meanwhile, the first respondent, by proceedings dated 11.6.2012 directed the second respondent to pass order of conversion on following G.O.Ms.No.231 dated 11.6.2010. The second respondent, by the impugned proceedings dated 10.9.2012, granted permissions to fill up the post by converting the post of B.T. Assistant (Science) as B.T. Assistant (Social Science) instead of B.T.

Assistant (Tamil), which is challenged in this writ petition. Since Rathina Sabapathy has not passed Teachers Eligibility Test, the petitioner school also sought interim prayer for direction to grant temporary approval of the appointment.

5. The writ petition was admitted on 13.8.2013. No counter-affidavit has been filed by the respondents.

6. The petitioner school stated to be established as early as in the year 1885 with a noble object to provide education to poor and downtrodden people in and around Mullipallam village. Earlier, it was a Primary School and later it was upgraded as Middle School and the school is a recognised school and receives aid from the Government and it is governed by the Tamil Nadu Private School Regulations Act. The petitioner school has the student strength of 223 students from Standard I to VIII with original sanctioned post of 9 Secondary Grade Teachers, 1 Headmaster and 1 Full Time Pre-vocational Instructor.

7. It appears that due to promotion of one Hariharan, B.T. Assistant (Science) as Headmaster, a vacancy arose for the said post. On 11.2.2011, the petitioner school made a representation to the respondents requesting permission to fill up the vacant post i.e., B.T. Assistant (Science) post by converting it as B.T. Assistant (Tamil) post, as there was no B.T. Assistant for Tamil subject and due to that the children's education highly affected. Hence, in the interest of children's education, the petitioner school made a request for conversion and the second respondent also recommended the proposal for appointment of B.T. Assistant (Tamil) by conversion of the post of B.T. Assistant (Science) to the 1st respondent. Even after a lapse of one year, the first respondent has not passed any order qua conversion of post. Therefore, in order to protect the education of the children and in anticipation of the conversion, to fill up the post, the petitioner school notified the vacancy in the District Employment Exchange and list of qualified persons were called for. Since no one participated in the interview, which resulted the petitioner school in making the advertisement in the Tamil daily calling for application.

8. Pursuant to the advertisement, one M.Rathina Sabapathy, possessing B.Lit, B.Ed. was appeared for interview and was appointed as B.T. Assistant (Tamil) by the School Committee on 25.4.2012 based on merit and ability. Thereafter, the appointment proposal was forwarded to the third respondent on 27.4.2012. By the proceedings dated 11.6.2012, the first respondent directed the second respondent to pass an order of conversion by following G.O.Ms.No.231 dated 11.6.2010. However, by the impugned proceedings dated 10.9.2012, the second respondent granted permission to fill up the post by converting

the post of B.T. Assistant (Science) as B.T. Assistant (Social Science).

9. It is to be noted that the representation of the petitioner seeking conversion of the post of B.T. Assistant (Science) as B.T. Assistant (Tamil) and appointment of the Rathina Sabapathy was on 11.2.2011. The second respondent has also recommended the proposal for appointment of B.T. Assistant (Tamil) by conversion of the post of B.T. Assistant (Science) to the first respondent on 01.03.2011. While so, the second respondent, by the impugned order changed the conversion as B.T. Assistant (Social Science). Only after following the statutory formalities and in anticipation of orders, the petitioner School appointed one M.Rathina Sabapathy as B.T. Assistant (Tamil).

10. According to the petitioner school, the reason for seeking conversion of the post B.T. Assistant (Science) as B.T. Assistant (Tamil) is that since the B.T. Headmaster who was handling Science subject and two B.T. Assistants who were handling Mathematics and English and no language teacher was available to handle Tamil subject. It is not the case of the respondents that at the relevant point of time language teacher was available to handle Tamil subject in the petitioner's school. It is also not the case of the respondents that no conversion of post was given by them to any school. On the other hand, the petitioner School has produced proceedings of the second respondent ordering for conversion of post B.T. (Maths) as B.T. (English) in respect of The.Pavazhangudi Thiruvalluvar Aided Middle School, Cuddalore District.

11. Whether the Department can direct the Management to fill up the post by following subject roster or not was came up for consideration in the decision in The Corporate Manager, CSI Corporate Schools v. The State of Tamil Nadu, reported in 2006 (5) CTC 504. In the said judgment, this Court held that the subject roster prescribed in G.O.Ms.No.100 is not applicable to aided schools and the proceedings of the Directorate of School Education fixing subject roster is not applicable to aided schools.

12. It is pertinent to point out that following the decision in The Corporate Manager, CSI Corporate Schools v. The State of Tamil Nadu, supra, the writ petition in W.P.No.16018 of 2007 came to be allowed on 27.4.2007. Against which, writ appeal being W.A.No.1198 of 2007 has been filed and by the judgment dated 20.9.2007, a Division Bench of this Court dismissed the writ appeal and upheld the order of the learned Single Judge quashing the order relying on the subject roster and allowed the writ petition with a further direction to approve the appointment within four weeks. The said judgment was also

followed in W.P.Nos.21885 of 2008, dated 17.9.2008 and 9928 of 2012, dated 06.06.2012 by the learned Single Judge of this Court. The grievance of the petitioner school is also similar.

13. It is apposite to note that neither the Tamil Nadu Private School Regulations Act, nor the Rules made under the Act stipulates that the vacancies should be filled in the order mentioned by the Department. As far as B.Ed. graduate teacher post is concerned, there is no subject wise post. As per the Rule, the qualification prescribed for the post of B.T. Assistant in the Middle School is B.A. or B.Sc. with B.Ed. and also as per the Rule, the appointed teacher having the requisite qualification is eligible for appointment as B.T. Assistant (Tamil). As stated supra, in any event, the subject wise roster is not applicable to the appointment made by the petitioner school. Therefore, there is no impediment in approving the appointment of M.Rathina Sabapathy as B.T. Assistant (Tamil).

14. The next point to be considered in this writ petition is M.Rathina Sabapathy, who was appointed as B.T. Assistant (Tamil) has not passed the Teachers Eligibility Test and the petitioner school sought temporary approval of the appointment under Section 23 of the Right of Children to Free and Compulsory Education Act, 2009 (for short 'RTE Act').

15. The RTE Act is effective from 01.4.2010. It envisages free and compulsory elementary education to every child in the age group 6 - 14 years. The proviso to Section 23(2) of the RTE Act specifies that all teachers at elementary level who at the commencement of the Act, did not possess the minimum qualifications as laid down under the RTE Act, need to acquire these within a period of five years i.e., from 31st March 2015. In this regard, necessary amendment inserting a new proviso to sub-section (2) of Section 23 of the RTE Act was recommended. In order to ensure that all teachers, in position as on 31st March 2015, acquire the minimum qualifications prescribed by the academic authority, necessary amendment in the RTE Act to extend the period for four years upto 31st March 2019 was also recommended.

16. A Division Bench of this Court in W.A.No.1126 of 2016 etc. batch, dated 24.1.2017, granted one opportunity to those who have been appointed subsequent to the Government Order to appear for TET conducted by the Teachers Recruitment Board and in the event of their passing in the TET, their appointment shall be approved else, they have no other option but to quit the service/ousted from service.

17. Since the amendment to the RTE Act, 2009 is subsequent to the order of the Division Bench, as per which, the cut off date was fixed for acquiring qualifications upto 31st March 2019, the petitioner is directed to secure pass in TET before 31.03.2019. If he did not secure pass before 31.03.2019, he shall vacate the office.

18. For the foregoing discussions, the impugned order dated 10.9.2012 passed by the second respondent is set aside and a direction is issued to the second respondent to approve the appointment of M.Rathina Sabapathy as B.T. Assistant (Tamil) from the date of appointment i.e., on 25.04.2012 and necessary order in this regard is directed to be passed by the second respondent within a period of six weeks from the date of receipt of a copy of this order. As far as clearing of TET qualification is concerned, an opportunity is granted to M.Rathina Sabapathy to secure pass in TET before 31.03.2019 and if he did not secure pass before 31.03.2019, he shall vacate the office.

19. The writ petition is allowed in the aforesaid terms. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1.The Director of Elementary Education,
DPI Compound, College Road,
Chennai-6.

2.The District Elementary Educational Officer,
Cuddalore District.

3.The Additional Assistant Elementary Educational Officer,
Bhuvanagiri,
Cuddalore District.

+1cc to Mr.S.N.Ravichandran, Advocate, S.R.No.57568

+1cc to the Spl Government Pleader, S.R.No.57897

W.P.No.22018 of 2013
and

M.P.No.1 of 2013

SVN(CO)
GSP(03/01/2019)