

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.08.2017

CORAM :

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

W.P.No.28926 of 2007

and

M.P.Nos.1/2007, 1/2009 & 1/2010

K.Mani

.. Petitioner

Vs.

1. The Director of School Education,
College Road,
Chennai - 600 006.

2. The Chief Educational Officer,
Rajaveedhi,
Coimbatore.

3. The District Educational Officer,
Coimbatore.

4. K.Vedhanayagi

5. K.Maheswari

.. Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India to issue a writ of Certiorarified Mandamus, calling for the entire records in connection with the proceedings of the 2nd respondent in O.Mu.No.3039/A4/2007 dated 28.05.2007, quash the same and direct the respondents to appoint the petitioner temporarily in the post of Drawing Teacher in Coimbatore District by releasing one Post of Drawing Master out of the 18 sanctioned posts.

For Petitioner : Mr.P.Ganesan

For Respondents: Mr.A.Rajaperumal (for R1 to R3)
Additional Government Pleader

Mr.P.K.Shivakumar (for R4)

M/s.P.Indumathi (for R5)

ORDER

The petitioner has filed this writ petition seeking issuance of a writ of Certiorarified Mandamus, calling for the entire records in connection with the proceedings of the 2nd respondent in O.Mu.No.3039/A4/2007 dated 28.05.2007, quash the same and direct the respondents to appoint the petitioner temporarily in the post of Drawing Teacher in Coimbatore District by releasing one Post of Drawing Master out of the 18 sanctioned posts.

2.The case of the petitioner is that he completed his SSLC in the year 1986 and thereafter passed the Higher Secondary course in the year 1988. Subsequently, the petitioner has completed the Technical Examination in Free hand outline and Model Drawing in the month of September 1989. The petitioner also completed the Technical Teachers Certificate Course (3 months) in the year 1991 and also completed B.Lit.(Tamil) in the year 1999. Thereafter, the petitioner has registered his name in the employment exchange on 11.05.1992. Then, as per the above qualifications, this petitioner is fully qualified for being appointed to the post of Drawing Teacher.

3.It is the further case of the petitioner is that when his turn of seniority came up for consideration during the year 2005 and at that time, the petitioner was eligible under O.C. category, but he was not given appointment on the ground that another candidate by namely Krishnaveni, who also registered her name in the employment exchange on the same date, though the said Krishnaveni was younger than the petitioner was given appointment. She was given appointment in the year 2005 on the ground that the vacancy is for O.C. non-priority. Therefore, the petitioner has made a representation to the then Chief Educational Officer, who in turn and he assured the petitioner that his claim for appointment will be considered in the next batch in the O.C. turn, of course orally.

4.The petitioner further states that thereafter the Government of Tamil Nadu has issued orders to fill up 18 posts of Secondary Grade Teachers and craft instructors as per the seniority in the employment exchange. While conducting selection for the year 2006, the respondents 2 and 3 were called for the list of names from the employment exchange for the purpose of filling up the 18 vacant posts allotted for Coimbatore District. Pursuant to the above, calling for the candidates name list from the employment exchange, the certificate verification was conducted by the respondents on 29.03.2007. Though the Government has instructed to call for the list of candidates in the ratio of 1:1 and the respondents 2 and 3 also called for the list containing 145 names for filling up 18 vacancies. However, the petitioner was No.1 in the seniority under the O.C. category

and the petitioner was also sponsored by the employment exchange, but, the petitioner was not given appointment, whereas the 4th respondent one Mr.K.Vedhanayagi was given appointment as Drawing Teacher. Though the list furnished by the respondents 2 and 3, the 4th respondent was shown as O.C. non-priority Women.

5.The petitioner further submits that though the petitioner was registered his name in the employment exchange on 11.05.1992 whereas the 4th respondent has registered her name only on 26.05.1994. But she was not given appointment. Therefore, the petitioner has sent a representation to the 2nd respondent objecting to the appointment of the 4th respondent inasmuch as she is far junior to the petitioner. But the 2nd respondent by his communication dated 28.05.2007 informed the petitioner that the vacancies are filled up only according to the communal rotation without stating as to how O.C. vacancy has been filled up by appointing the 4th respondent in the non-priority category. As stated above, already one O.C. non-priority vacancy has been given to one Krishnaveni in the year 2005 itself. While resorting to selection and appointment in the year 2006, it is not known as to how again O.C. non-priority has gone to another women incumbent, since the O.C. non-priority women will not immediately come into operation.

6.In the said circumstances, the petitioner has approached the employment exchange to furnish the list of names sponsored to the respondents 2 and 3 by invoking the provisions of Right to Information Act and a list was also furnished to the petitioner. It is the case of the petitioner is that from the list, the petitioner was surprised to note that the 4th respondent has been sponsored under the B.C. Non-priority category. The vacancy under which she was appointed under O.C. non-priority. Therefore, without filling up the O.C. candidate, namely the petitioner, the respondents 2 and 3 appointed the 4th respondent under the O.C. non-priority women. In fact, the petitioner states that the appointment now given to the 4th respondent should have been given to the petitioner, since the 4th respondent should have been accommodated in the B.C. Non-priority vacancy, which was given to the 4th respondent, who is junior to the petitioner in the registration of employment exchange.

7.It is further case of the petitioner is that the 1st respondent has played a mischievous role and abused his position thereby deprived the petitioner's valuable chance of appointment, which came up after 15 long years. Though the Government has issued orders to fill up the vacancies according to the employment exchange seniority, the 2nd respondent has not adhered to it and filled up the vacancies according to the petitioner's whims and fancies. In fact, the Government has

ordered to be filled up 18 vacant posts, but the 2nd respondent has filled up only 8 vacancies and surrendered the remaining 10 posts to the Government. In fact, the communication dated 28.05.2007, it was simply stated that there is no vacancies at all, on the other hand, the petitioner understand that there are four vacancies in various schools.

8.The petitioner further states that to his knowledge there are three vacancies in the various Government Schools in Coimbatore District and they are (1) Government High School, Attakatti; (2) Government High School, Rottikadai; and (3) Government Higher Secondary School, Chencheriputhur. On the request made by the District Level Officer, the Government has released vacancies or sanctioned post, the 1st respondent after ascertaining the vacancies alone, rather to say the need, the authorities would request the Government, of course, the 1st respondent and the 1st respondent after getting concurrence from the Government allotted 18 posts for Coimbatore District. But there is no justification in surrendering 10 posts. Therefore, the order passed by the 1st respondent dated 28.05.2007 is illegal and challenging the said order, the petitioner has filed the present writ petition before this Court and prayed this Court to allow the writ petition.

9.Though the writ petition has been filed in the year 2007, but till date no counter affidavit has been filed by the respondents, whereas, I heard Mr.P.Ganesan, learned counsel appearing for the petitioner and Mr.Rajaperumal, learned Additional Government Pleader appearing for the respondents 1 to 3, Mr.P.K.Shivakumar, learned counsel appearing for the 4th respondent and M/s.P.Indumathi, learned counsel appearing for the 5th respondent and perused the entire records.

10.It is the case of the petitioner is that after passing his SSLC, Higher Secondary Course, Technical Examination, Technical Teachers Certificate Course (3 months) and B.Lit. (Tamil) in the year 1999, the petitioner has registered his name on 11.05.1992 in the employment exchange. Though the petitioner was called on two occasions, during the year 2005, one Krishnaveni was appointed in the vacancy for the O.C. category non-priority and the 2nd time the petitioner was called for in the year 2007, but even then he was not given appointment whereas, the 4th respondent was appointed under the category of O.C. non-priority.

11.It is the further case of the petitioner is that the petitioner has belongs to O.C. category, but the appointment made in favour of the 4th respondent is only comes under the B.C. Non-priority category. But how the respondents 1 to 3 were appointed the 4th respondent against the O.C. non-priority, when

the 4th respondent belongs to B.C. non-priority category.

12. Though the petitioner was registered her name on 11.05.1992, whereas the 4th respondent has registered her name on 26.05.1994, how they appointed the 4th respondent, when the 4th respondent was junior to the petitioner in the employment seniority. It is the case of the petitioner is that when he registered his name on 11.05.1992 and he was called for two occasions for certificate verification, but he was not given appointment for the reasons best known to the respondents 1 to 3.

13. As per the seniority list under the communal rotation in the year 2005-2006 issued by the Chief Educational Officer, dated 25.06.2007 it is made clear that though the Government has allotted 18 posts, but the respondents 1 to 3 particularly the 2nd respondent filled up only 8 posts and surrendered the balance 10 posts to the Government. It is very shock to this Court that when the candidates like the petitioner are available for appointment and why the 2nd respondent was surrendered the 10 posts, to that effect there was no explanations or documents produced by the respondents 1 to 3 before this Court.

14. Pursuant to the interview conducted on 29.03.2007 namely the certificate verification, the 4th respondent was appointed, it made clear that her appointment is totally illegal, since the petitioner was available under the O.C. category, without appointing the petitioner the very appointment made by the 2nd respondent to the 4th respondent is totally against the law and natural justice. It is my absolute view that her appointment can be cancelled on sole ground that since the 4th respondent registered her name on 26.05.1994, whereas the petitioner has registered his name on 11.05.1992, therefore, it made clear that the 4th respondent is junior to the petitioner. But, even after lapse of 25 years, the petitioner was not appointed till date.

15. Though the respondents 1 to 3 have not filed any counter denying the allegations set out by the petitioner in the affidavit and the respondents 4 and 5 also not filed any counter before this Court by denying the very appointment of the respondents 4 and 5 it made clear that the very appointment of the petitioner is not correct.

16. It is the Government, to get appropriate explanations from the 2nd respondent namely the Chief Educational Officer, Coimbatore, on what reason when the Government has allotted 18 posts to the Coimbatore District and 8 posts alone filled up and remaining 10 posts were surrendered. But even after filing the writ petition, there is no explanation from the respondents 1 and 2 in respect of surrendering the 10 posts. If the respondents, particularly, the 2nd respondent applied his mind

properly, definitely the respondents 1 and 2 would have appointed this petitioner in one of the posts already sanctioned by the Government.

17. As per the impugned order dated 28.05.2007, the 2nd respondent Chief Educational Officer, Coimbatore has stated that though the Government has directed to verify the certificate under the ratio of 1:1, but before issuing Government Order in G.O.Ms.No.65 Chief Educational Officer dated 30.03.2007, has verified the certificate as 1:10. Therefore, the 8 posts were filled up along with the two back log vacancies and remaining 10 vacancies were surrendered to the Government on the ground that there are no vacancies from the Government School.

18. It is admitted fact that the 2nd respondent has conducted the interview on 29.03.2007, whereas the Government Order has been issued in G.O.Ms.No.65 dated 30.03.2007, but ignoring the Government Order, the 2nd respondent has made appointment under the ratio 1:10, which is totally against the said Government Order.

19. The 2nd respondent has exceeded his limit and ignoring the Government Order in G.O.Ms.No.65 dated 30.03.2007 on the simple reason saying that he has made certificate verification on 29.03.2007 for the issuance of Government Order in G.O.Ms.No.65 dated 30.03.2007, therefore, he made an appointment based on the interview conducted on 29.03.2007, when the Government Order in G.O.Ms.No.65 dated 30.03.2007 specifically stated that the 2nd respondent ought to have conducted the certificate verification only under the ratio of 1:1, but the 2nd respondent has verified the certificate under the ratio of 1:10, when the G.O. has been issued, the respondents, particularly the 2nd respondent has made an appointment by certificate verification under the ratio 1:1 of what prevented in cancelling the certificate verification dated 30.03.2007 and conducted fresh certificate verification by applying the ratio 1:1. Therefore, the 2nd respondent Chief Educational Officer, Coimbatore, has exceeded his limits and ignoring the Government Order, which was issued only two days after the interview conducted on 29.03.2007. It is not the case of the 2nd respondent that he made an appointment on 29.03.2007. But he made only certificate verification, but the orders were issued later and there was no proof produced by the respondents 1 and 2 showing that the 2nd respondent has made appointment on 29.03.2007 itself. Therefore, the 2nd respondent has totally violating the G.O.Ms.No.65 dated 30.03.2007 and also against the natural justice.

20. In the above circumstances, the petitioner has made out the case before this Court, therefore, it is just and necessary, this Court warranting interference in the order dated 28.05.2007

and it is liable to be quashed. But, though the appointment of 8 posts were made on in the year 2008 itself and the respondents 4 and 5 along with other 6 candidates were working for more than 10 years and above, this Court feels that there is no necessity to set aside their order of appointment, instead of, this Court directs the respondents 1 and 2 to appoint the petitioner immediately as Drawing Teacher in any of the School in Coimbatore District, after obtaining necessary orders from the 1st respondent.

21.In the result:

(a) this writ petition is allowed;

(b) this Court without setting aside the impugned order dated 28.05.2007 directing the respondents 1 and 2 to appoint the petitioner as Drawing Teacher in any one of the School in the Coimbatore District;

(c) the respondents 1 and 2 are directed to complete the said exercise within a period of four weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Deputy Registrar

//True Copy//

Sub Assistant Registrar

vs
To

1. The Director of School Education,
College Road, Chennai - 600 006.

2. The Chief Educational Officer,
Rajaveedhi, Coimbatore.

3. The District Educational Officer,
Coimbatore.

+1cc to Mr.S.P.Yuaraj, Advocate, S.R.No.61391

+1cc to Mr.CS Associates, Advocate, S.R.No.61583

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CS/06/12/17