



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 26.05.2017

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THE HON'BLE MR. JUSTICE M.V.MURALIDARAN
W.P. (MD) No.10019 of 2014

Uma Maheswara Higher Secondary
School Committee
rep. By its Secretary, S.Ramanathan
Karandhai Tamil Sangam
Kurunthittaikudi
Thanjavur - 613 002.

.. Petitioner

vs

1. The Director of School Education
College Road, Chennai - 6.
2. The Chief Educational Officer
Thanjavur District, Thanjavur.
3. The District Educational Officer
Thanjavur District, Thanjavur.

.. Respondents

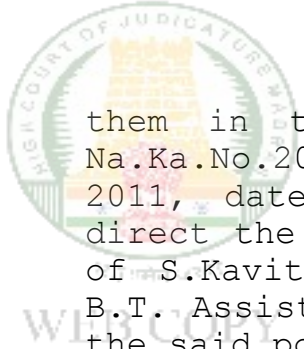
Writ Petition filed under Article 226 of the Constitution of India for issuance of a writ of certiorarified mandamus to call for the records on the file of respondents 3 and 1 in connection with the orders passed by them in their Proc. In O.Mu.No.2016/A3/2011, dated 04.05.2011, Na.Ka.No.2016/A3/ 2011, dated 02.06.2011 and Na.Ka.No.69516/D1/E4/2011, dated 12.06.2014, respectively, to quash the same and to direct the respondents to accord formal approval to the appointment of S.Kavitha as B.T. Assistant (English) and R.Gopalakrishnan as B.T. Assistant (History) with effect from the date of their joining the said post on 01.05.2010.

For Petitioner : Mr.R.Singgaravelan
Senior Counsel
for Mr.D.Selvanayagam

For Respondents : Mr.A.Muthukaruppan
Additional Govt. Pleader
for respondents 1 to 3

ORDER

The petitioner has filed this writ petition seeking issuance of a writ of certiorarified Mandamus to call for the records on the file of respondents 3 and 1 in connection with the orders passed by



them in their Proc. in O.Mu.No.2016/A3/2011, dated 04.05.2011, Na.Ka.No.2016/A3/2011, dated 02.06.2011 and Na.Ka.No.69516/D1/E4/2011, dated 12.06.2014, respectively, to quash the same and to direct the respondents to accord formal approval to the appointment of S.Kavitha as B.T. Assistant (English) and R.Gopalakrishnan as B.T. Assistant (History) with effect from the date of their joining the said post on 01.05.2010.

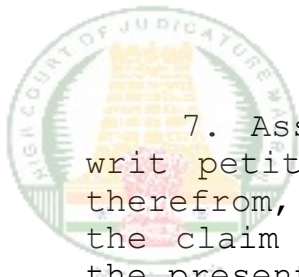
2. It is the case of the petitioner/school that it was started in the year 1940 and its student strength is around 2000; teachers strength is 56; and the strength of non teaching staff is 9. It is the case of the petitioner that due to superannuation of the existing B.T. Assistant (Social Science), by an order dated 22.02.2010, the second respondent permitted the school to fill up the vacancy and based on such permission, one S.Kavitha was appointed, of course through the employment exchange, in that vacancy on 22.03.2010 and the said appointment is said to have been approved by the third respondent vide his proceedings dated 15.04.2010.

3. It is stated that on account of voluntary retirement of another B.T. Assistant (English), the petitioner school posted Kavitha as B.T. Assistant (English) on transfer, at her request, as she was fully qualified to hold the said post. It is the case of the petitioner that the School Committee is fully competent to make such transfers and that the same does not involve any financial burden to the Government.

4. It is further stated that one R.Gopalakrishnan, Record Clerk, was also promoted to the post of B.T. Assistant (History) as per the provisions of the Tamil Nadu Recognised Private Schools (Regulation) Act, 1973 and the Rules framed thereunder.

5. When approval of the above said internal transfer and appointment was sought, the third respondent returned the file seeking certain clarification holding that the transfer and promotion are irregular. Assailing the same, the petitioner appealed to the second respondent, who, by order dated 15.03.2011, held that the request of the petitioner could be considered only when there is a recommendation from the third respondent, when the fact remains that the third respondent has rejected the request of the petitioner school. Challenging the said order, the petitioner school preferred an appeal to the first respondent on 12.05.2011 and was awaiting orders.

6. It is averred that in the meanwhile, the third respondent by order dated 02.06.2011 returned the salary claim made by the petitioner school for all the teachers with a request to delete the names of Kavitha and Gopalakrishnan, ignoring the fact that the said two individuals are already employees of the petitioner school and



7. Assailing the said orders, the petitioner school preferred writ petition and based on the orders passed in contempt arising therefrom, ultimately, the first respondent passed order rejecting the claim of the petitioner without assigning any reason. Hence, the present writ petition for the relief stated supra.

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8. The learned Senior Counsel appearing on behalf of the petitioner submitted that as per Rule 15(4) of the Tamil Nadu Recognised Private Schools (Regulation) Rules, Gopalakrishnan, who is fully qualified person, is eligible for promotion and merely because he relinquished his right for promotion on one occasion, he cannot be denied promotion and there is no in-built provision prescribing three years bar for promotion when the candidate has relinquished his rights once.

9. He further submitted that the transfer of post from B.T. Assistant (Social Science) to B.T. Assistant (English) in respect of Kavitha is well within the realm of the petitioner/school, as both the posts are recognized and approved and, therefore, denial of approval of an internal transfer is arbitrary and unreasonable.

10. Per contra, the learned Additional Government Pleader appearing on behalf of the respondents submitted that the petitioner/ school transferred the candidate working as B.T. Assistant (Social Science) to B.T. Assistant (English), in violation of their promise to fill up the post by direct recruitment following communal roster.

11. It is further submitted that inasmuch as Kavitha was transferred without prior approval and Gopalakrishnan was promoted, despite his relinquishment, both without approval, the said transfer and appointment cannot be sustained, even though there is no financial involvement.

12. I heard Mr.R.Singaravelan, learned Senior Counsel for Mr.D.Selvanayagam, learned counsel appearing for the petitioner and Mr.A.Muthukaruppan, learned Additional Government Pleader appearing for the respondents 1 to 3 and perused the documents available on record.

13. In the case on hand, it is beyond any cavil that the petitioner/school appointed Kavitha as B.T. Assistant (Social Science) and such appointment was approved by the respondent authorities.

14. The said Kavitha was appointed to an approved post of B.T. Assistant (Social Science) and the post to which she has been transferred, i.e., B.T. Assistant (English), is also an approved post. The only predicament according to the respondent authorities is that the petitioner school is not empowered to transfer the candidate to another approved post without obtaining prior permission.



15. It is not the case of the respondent authorities that such appointment was made by the petitioner school without there being sufficient student strength. The issue regarding lack of student strength is not raised by the respondent authorities at any stage.

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16. Coming to the case of Gopalakrishnan, who was promoted as B.T. Assistant (Social Science), let us note the provision of Rule 15(4)(i) of the Tamil Nadu Recognised Private Schools (Regulation) Rules, 1974, which postulates as under:

"Promotion shall be made on grounds of merit and ability, seniority being considered only when merit and ability are approximately equal.

(4) Appointments to the various categories of teachers shall be made by the following methods :-

i) Promotion from among the qualified teachers in that school.

ii) If no qualified and suitable candidate is available by method (i) above, -

(a) Appointment of other persons employed in that school, provided they are fully qualified to hold the post of teachers.

(b) Appointment of teachers from any other school.

(c) Direct recruitment."

17. A perusal of the above Rule shows that appointment of outsiders can only be made if no qualified and suitable internal teacher is available. In other words, sub-clause (ii) of rule 15(4) will only apply when no teacher falling in the category of sub-clause (i) of rule 15(4) is available. It is undisputed that there were teachers available as specified in sub-clause (i) of rule 15(4) i.e. internal candidates.

18. The said Gopalakrishnan, being an internal candidate, who is fully qualified (which factor is not disputed by the respondent authorities) was considered by the petitioner school. May be the said Gopalakrishnan had relinquished his right for promotion on an earlier occasion, but being an internal candidate who was willing to opt for promotion, and considering the factor that he was due to retire shortly, the petitioner School, thought it fit to consider his candidature and appointed him on merits and in accordance with law. In any event, no other person from the petitioner School is aggrieved by such promotion of Gopalakrishnan. In my view, such act of the petitioner school is justifiable in the light of the provision referred supra.

19. That apart, both Kavitha and Gopalakrishnan are already existing staff of the petitioner school and they are not new recruits and rejecting the claim of salary payable to them and directing their names to be deleted is unjust and arbitrary.



20. In the result:

(a) this writ petition is allowed and the impugned orders passed by the respondents 3 and 1 in Proc. In O.Mu.No.2016/A3/2011, dated 04.05.2011, Na.Ka.No.2016/A3/2011, dated 02.06.2011 and Na.Ka.No.69516/D1/E4/ 2011, dated 12.06.2014, respectively, are set aside;

(b) the respondents are directed to accord the approval of the appointment of S.Kavitha, B.T. Assistant (English) and R.Gopalakrishnan as B.T. Assistant (History) with effect from the date of their joining the said post on 01.05.2010;

(c) the said exercise shall be done within a period of eight weeks from the date of receipt of a copy of this order. No costs. Consequently, M.P.(MD)No.2 of 2014 and W.M.P.(MD) No.7762 of 2017 are closed.

Sd/

Assistant Registrar (CO)

/True copy/

Sub Assistant Registrar

To

1.The Director of School Education
College Road, Chennai - 6.

2.The Chief Educational Officer
Thanjavur District, Thanjavur.

3.The District Educational Officer
Thanjavur District, Thanjavur.

+1cc to Mr.D.Selvanayagam, Advocate, SR.No.57835

W.P.(MD)No.10019 of 2014 and
M.P.(MD)No.2 of 2014 and
W.M.P. (MD) No.7762 of 2017
26.05.2017

VS

KK/SKN RSK/14.03.2018/SAR-2/5P-5C