



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 18.07.2017

CORAM :

THE HONOURABLE MR.JUSTICE T.RAJA

WP(MD)No.5788 of 2014

T.Deva Sahaya Jerlin Rosetti

... Petitioner

vs.

1)The District Elementary Educational Officer,
Tirunelveli.

2)The Assistant Elementary Educational Officer,
Radhapuram,
Tirunelveli District.

3)The Correspondent,
St.Therasa's Primary School,
Kuthenkuly,
Tirunelveli District.

... Respondents

Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Mandamus, directing the respondents to approve the appointment of the petitioner from the date of appointment i.e., 24.07.2009 and confer all the consequential benefits.

For Petitioner : Mr.V.Panneer Selvam

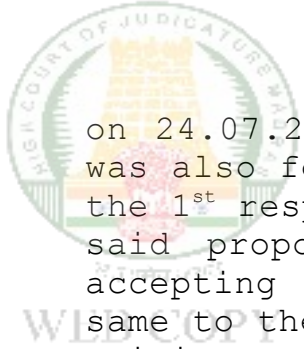
For Respondents : Mr.D.Muruganantham

Additional Government Pleader

ORDER

The petitioner has come to this Court seeking issuance of a Writ of Mandamus, directing the respondents to approve her appointment from the date of appointment i.e., 24.07.2009 and confer all the consequential benefits.

2.The petitioner having passed 10th Standard in 1989, +2 in 1991 and Diploma in Teacher Education in 2004 stood qualified to be appointed as Secondary Grade Teacher. While so, the 3rd respondent Management being a minority educational institution, selected and appointed the petitioner as Secondary Grade Teacher on 24.07.2009 in a sanctioned permanent vacancy caused due to the relieving of Mrs.S.Mercy on 14.07.2009. Accordingly, the petitioner joined the teaching service as Secondary Grade Teacher



on 24.07.2009 at 3rd respondent school. Subsequently, a proposal was also forwarded by the 3rd respondent Management for approval to the 1st respondent through the 2nd respondent. After receipt of the said proposal from the 3rd respondent, the 2nd respondent also accepting the proposal, made a recommendation by forwarding the same to the 1st respondent, but the 1st respondent returned the same raising some queries. After answering the queries, the 3rd respondent re-submitted the proposal. The stand taken by the 3rd respondent shows that the respondents have fixed staff strength for the year 2009-10 and the school was sanctioned with 5 posts and all these 5 teachers were working including the petitioner and therefore, there is no surplus teacher in the 3rd respondent school. As on the date of appointment of the petitioner, 195 students were studying and there were three posts lying vacant which were also to be filled up, therefore, there was no any surplus teacher at the relevant point of time. Moreover, the respondents 1 and 2 have not undertaken any inspection to find out any surplus teacher in the recent past, hence, the proposal made by the 3rd respondent through the 2nd respondent should be accepted by the 1st respondent.

3.A detailed counter affidavit has been filed by the 1st respondent. The learned Additional Government Pleader appearing for the respondents would submit that when the petitioner was appointed by the Manager of R.C Schools, Tuticorin Diocese, in the 3rd respondent school by order dated 24.07.2009, the said Manager of R.C Schools has not been impleaded as one of the parties who is obliged to pay the salary to the petitioner till the approval is granted to her appointment. There are many surplus Secondary Grade Teachers working in various schools under the R.C Schools Management. Without even verifying whether the schools run by the Management of R.C schools are having surplus teacher, the 3rd respondent has sent a proposal stating that there is no surplus teacher in the 3rd respondent school. When the Manager of R.C Schools, Tuticorin is under obligation to transfer the surplus teachers working in various RC schools to the eligible vacancies as and when such vacancies arise in other schools, the proposal ought not to have been sent, therefore, the proposal till date has not been acted upon. Since there are many surplus teachers in various schools in the said Diocese, the proposal sent by the 3rd respondent school could not be accepted.

4.This Court is not able to find any merit whatsoever either in the counter affidavit or the contentions made by the respondents for the following reasons:-

Firstly, the counter affidavit does not disclose how many schools are being run by the Management of R.C Schools in Tuticorin Diocese. Secondly, when the official respondents 1 and 2 have not undertaken any inspection to find out the students-teachers ratio in any of the schools run by the RC schools in



Tuticorin diocese and thirdly, nowhere the counter affidavit mentions as to how many teachers are found surplus, this Court is unable to believe the case of the respondents. Moreover, if the 1st respondent is of the view that the 3rd respondent school run by the Management of RC Schools, Tuticorin Diocese should not have filled up the sanctioned post by appointing the petitioner and on the other hand, the surplus teachers working in other schools run by Management of RC Schools should have been transferred to the 3rd respondent school, he could have passed a reasoned order indicating as I mentioned above, in which school run by the Management of RC Schools, Tuticorin Diocese, surplus teachers found as on today should be transferred to the 3rd respondent school. But, the case on hand shows that the petitioner was appointed way back on 24.07.2009 in a sanctioned permanent vacancy left by relieving of Mrs.S.Mercy on 14.07.2009. When the respondents 1 and 2 have not even applied their mind on any of these aspects, it goes without saying that they do not have any merits in their case.

5. Therefore, the proposal sent by the 3rd respondent through the 2nd respondent to the 1st respondent is directed to be accepted by the 1st respondent within a period of four weeks from the date of receipt of a copy of this order and appropriate orders shall be passed thereon. Needless to mention that salary of the petitioner from 24.07.2009 shall also be disbursed.

With the above direction, this Writ Petition stands allowed. No costs.

Sd/-

Assistant Registrar(CS-II)

/ True Copy /

Sub Assistant Registrar(C.S.)

To

1) The District Elementary Educational Officer, Tirunelveli.

2) The Assistant Elementary Educational Officer,
Radhapuram, Tirunelveli District.

+1cc to M/S.V.PANNEER SELVAM, Advocate SR.No.66378

+1cc to Special Government Pleader, SR.No.66257

nbi

MAS/MR-KKR/SAR1:31.07.2017:3P-5C

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