



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 28.06.2017
DELIVERED ON : 20.07.2017
CORAM :

WEB COPY

THE HONOURABLE MR.JUSTICE **S.S.SUNDAR**

W.P.(MD)No.12639 of 2016

and

W.M.P.(MD) Nos.9554 and 9555 of 2016

The Secretary,
Maipparai High School,
Maipparai Post,
Tiruvengadam Taluk-627 713m
Tirunelveli District.

... Petitioner

Vs.

1. The State of Tamil Nadu,
Represented by its Secretary,
Department of School Education,
Fort St.George, Chennai - 600 009.
2. The Director of School Education,
College Road, Chennai - 600 006.
3. The Joint Director of School Education,
(Secondary Education),
College Road, Chennai - 600 006.
4. The Chief Educational Officer,
Tirunelveli, Tirunelveli District.
5. The District Educational Officer,
Tirunelveli, Tirunelveli District.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying to issue of a Writ of Certiorarified Mandamus, to call for the records relating to the impugned proceedings issued by the fifth respondent DEO in O.Mu.No.4434/A2/2015 dated 14.01.2016 and the consequential proceedings issued by the third respondent Joint Director of School Education (Secondary Education) in Na.Ka.No.001740/D2/E3/2016 dated 29.04.2016 and quash the same and further to direct the respondents herein to approve forthwith the appointment of Tmt.P.Meena, as B.T. Assistant (English) in the petitioner school, namely Maipparai High School, Maipparai, Tirunelveli District with effect from the date of her initial appointment i.e., 08.03.2010 with all attendant benefits including arrears of salary.



For Petitioner

: Mr.Isac Mohanlal
Senior Counsel
for Mr.T.Chakraborty

For Respondents

: Mr.N.S.Karthikeyan,
Additional Government Pleader.

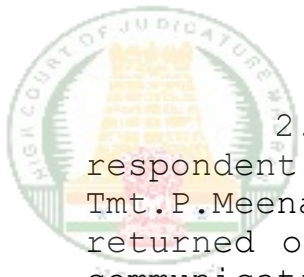
ORDER

The above Writ Petition has been filed for issuance of a Writ of Certiorarified Mandamus to quash the impugned proceedings of the fifth respondent, dated 14.01.2016 and the order of the third respondent, dated 29.04.2016, confirming the order of fifth respondent. The Writ Petition is also filed for issuing a direction to the respondents to approve the appointment of one Tmt.P.Meena, B.T. Assistant(English) in the petitioner school with effect from 08.03.2010.

2.The brief facts that are necessary for the purpose of disposal of the above Writ Petition are as follows:

2.1.The petitioner school is a Government aided private school. The school is offering education from standards 1 to 10 and the medium of instruction is Tamil. One post of Secondary Grade Teacher fell vacant in the petitioner school on 01.07.2009 due to retirement of the then incumbent on 30.06.2009. In order to get prior permission for filling up of the said Secondary Grade with B.T. Assistant in English under BC category, (as the Government issued G.O.Ms.No.79 dated 14.06.2002 to fill up Secondary Grade Post with Graduate Teacher) the petitioner school submitted a proposal, dated 27.07.2009 to the fourth respondent. The fifth respondent granted permission for the same by order dated 16.09.2009.

2.2.Thereafter the school committee, after inviting application from the District Employment Exchange and after an advertisement in newspaper, conducted an interview by calling the candidates who have applied. Since, no one was found suitable, the petitioner school issued a notification afresh in the newspaper viz., "Dinamalar" on 04.02.2010, inviting candidates to fill up the said post under BC category. After an overall assessment of the merits and ability etc., the school committee selected one Tmt.P.Meena, for the said post and gave appointment to her, by resolution dated 08.03.2010. The teacher also joined in the petitioner school on 08.03.2010 and she is working ever since she joined in the school.



2.3. The petitioner school submitted proposal to the fifth respondent on 09.03.2010 seeking approval for the appointment of Tmt.P.Meena, with effect from 08.03.2010. This application was returned originally, seeking for some particulars and details, by communication dated 24.03.2010 and the petitioner school submitted the particulars regarding the constitution of school committee and the decision of the school committee, which was in consonance with the Rules framed under the the Tamil Nadu Recognized Private Schools (Regulation) Act, 1973 and the Rules 1974 framed thereunder.

3. By proceedings dated 30.04.2010, the fifth respondent returned the proposal stating that the approval could be granted only after the disposal of suit in O.S.No.64 of 2010. Thereafter, there was an election in the educational agency of the petitioner school for the period 2011-2014 and the new Office bearers assumed their office and new school committee was also formed. The District Registrar of Society registered Form-VII submitted by the society and the fifth respondent approved the newly formed committee as well as Secretaryship of the school by proceedings dated 01.06.2011.

4. Once again the petitioner school re-submitted the proposal to the fifth respondent on 22.06.2011 requesting the fifth respondent to approve the appointment of Tmt.P.Meena as B.T. Assistant (English) with effect from 08.03.2010. Unfortunately the fifth respondent once again cited the pendency of suit in O.S.No.64 of 2010 and held that the proposal could be accorded only after the final verdict in the suit in O.S.No.64 of 2010. Thereafter the concerned teacher filed a Writ Petition in W.P.(MD) No.5325 of 2014 before this Court, seeking a direction to the respondent to approve her appointment as B.T. Assistant (English) with effect from 08.03.2010. It is alleged that the fifth respondent assured the said teacher to withdraw the Writ Petition in order to grant approval to her appointment. It is stated that the said teacher withdrew the Writ Petition on the *bona fide* impression that the fifth respondent would approve her appointment.

5. In the meanwhile, the suit in O.S.No.64 of 2010 was dismissed by the Additional District Munsif Court, Sankarankoil, Tirunelveli District, by judgment and decree dated 12.08.2015. Hence, the petitioner school re-submitted the proposal on 30.09.2015 to the fifth respondent for granting approval. However, this time the fifth respondent rejected the proposal by the impugned proceedings dated 14.01.2016 on the ground that the teacher had completed B.A. English in a single year i.e., double degree and that her appointment could not be approved in view of the order passed by this Court in a Writ Petition and the



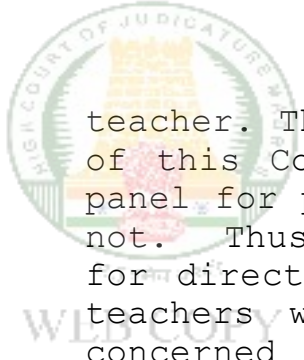
consequential order passed by the second respondent by proceedings dated 17.12.2012.

6. Since the reason for rejecting the proposal in the year 2016 was not available at the time when the proposal was re-submitted and the teacher was in service for more than six years, the petitioner school preferred an appeal to the third respondent on 09.02.2016. The third respondent sought for certain documents from the petitioner school and the petitioner school supplied the documents and gave a detailed explanation by way of representation. It is pertinent to mention that the fifth respondent, forwarded the proposal to the third respondent along with his recommendation for granting approval to the appointment of Tmt.P.Meena in the petitioner school by communication dated 12.03.2016.

7. The fourth respondent, the Chief Educational Officer, Tirunelveli District also recommended for approval by another communication dated 08.03.2016. However, ignoring the recommendations of the respondents Nos. 4 and 5, the third respondent rejected the appeal reiterating the same stand that the person, having double degree could not be considered for appointment as per the proceedings of Director, namely the second respondent dated 17.12.2012 and that the issue relating to double degree is pending before the Honourable Supreme Court. Hence the above Writ Petition has been filed challenging the order of fifth respondent dated 14.01.2016 rejecting the proposal submitted by the petitioner school and the subsequent order passed by the third respondent rejecting the appeal by proceedings dated 20.04.2016.

8. The learned Senior Counsel appearing for the petitioner submitted that the disqualification on account of the dual degree was on account of the judgment of this Court dated 14.08.2012, in the case of **Thirunavukkarasu vs. The State of Tamil Nadu** reported in **2012 (5) CTC 129**, wherein it was held that one year degree cannot be recognized as equivalent to three year degree, as that would sound the death knell for the schools run by Government. He further submitted that the Educational Authorities, having granted approval earlier by recognizing double degree, now refused to grant approval on the basis of judgment of this Court, which was rendered subsequent to the appointment of the teacher in the petitioner school.

9. The learned Senior counsel further admitted that in the judgment **Thirunavukkarasu vs. The State of Tamil Nadu** reported in **2012 (5) CTC 129**, this Court has held that teachers with dual degree are not eligible to be considered for being appointed as a



teacher. The question, which arose before the learned single Judge of this Court was whether the persons, who were included in the panel for promotion are eligible to be considered for promotion or not. Thus, Writ Petition were filed by Secondary Grade Teachers for directing official respondents to include name of only those teachers who have completed a three year degree course in the concerned subject for promotion as B.T. Assistants in Middle Schools.

10. The contesting respondents relied upon the judgment of Honourable Division Bench of this Court in the case of **Sakthirani vs. Secretary Bar Counsel of Tamil Nadu** reported in **2014 4 MLJ 849**. In the said case, the Division Bench of this Court, while considering whether persons, who studied Law without basic degree, but obtained post graduate degree from an open University are entitled to be enrolled as Advocates or not, held that the enrollment of the Advocates cannot be cancelled. In other words by applying well settled principles of promissory estoppel, acquiescence and legitimate expectations, the Honourable Division Bench having regard to the fact that advocates were permitted to enrolled, in the state Roll can be permitted to have their enrollment certificates.

11. Though the judgment was approved by the learned single Judge in Thirunavukkarasu case, on facts it was distinguished and held that the principles of law laid down on Sakthirani case are not applicable to those, who were only included in the panels for promotion and that mere inclusion of name in promotion panel or select lists for appointment would not confer a right upon persons, who are so included. For better appreciation, paragraph No.61 of the said judgment is extracted below:

"61. In Sakthi Rani, the Division Bench of this Court was concerned about the validity of the decision taken by the State Bar Council to the effect that those who joined Degree Courses in Law after obtaining Post Graduate Degrees from Open Universities are not entitled to be enrolled as Advocates. The said decision was virtually upheld by the Division Bench. However, in so far as persons who were already enrolled as Advocates, the Division Bench held that their enrolment cannot be cancelled. The Division Bench held so, by applying the principles of promissory estoppel, legitimate expectation and equity. But in so far as the contesting respondents, in this case, are concerned, they have not already been promoted. They were only included in the panels for consideration for promotion. It is well settled that mere inclusion in the panels for promotion or select lists for appointment, would not confer a right upon persons who



are so included. In fact, the decision of the Division Bench in *Sakthi Rani*, is in favour of persons who were promoted last year, despite having a dual degree of a duration of one year. In so far as the contesting respondents are concerned, the principle of law laid down in *Sakthi Rani*, are against their contentions. Therefore, the fourth contention is also rejected. "

12. The learned senior counsel also relied upon the judgment of Division Bench in the case of **K. Sakthirani vs. Secretary Bar Council of Tamil Nadu** reported in **2014 4 MLJ 849** wherein the Paragraph Nos. 68 and 70 of judgment are relevant and extracted hereunder for the sake of convenience.

"68. At the time of joining the various law institutions, there was no express bar under the Advocates Act, 1961, or the rules made thereunder for the petitioners in joining the institutions. Even the prospectus of some of the Universities including that of Dr. Ambedkar Law University provides for the entry of the petitioners. The Bar Council of India has passed a resolution in the year 2002 which was reiterated in 2007 permitting the persons like the petitioners with the Master's degree from the Open Universities to be enrolled as advocates in the State Roll. Based upon the said decision, the Bar Council of Tamil Nadu has also permitted the enrollment of candidates as advocates in the rolls.

70. With the above said facts, the principles of promissory estoppel, acquiescence, legitimate expectation, and equity will have to be seen."

13. The learned senior counsel submitted that the fifth respondent has given approval for the appointment of several BT Assistants, who were having only dual degree at the time of appointment. Few instances of such appointment was referred to in the original affidavit.

14. The learned senior counsel then drew the attention of this Court the information furnished in the additional affidavit filed by the petitioner on 14.06.2017, wherein it has been pointed out with regard to the four instances of such appointment of four B.T. Assistants in English, having dual degree. Since the Educational Authorities have not disturbed the appointments of those teachers with dual degree, by following the subsequent judgment of this Court on 14.08.2012, the appointment of the teacher in the petitioner school, which was on 08.03.2010, cannot



be disturbed .

15. The learned senior counsel submitted that the issue of double degree was raised only in the year 2007 and settled by judgment of this Court dated 14.08.2012 in W.P.(MD).No.196 of 2012 and batch, reported in **2012 (5) CTC 129**. In view of the appointment of several teachers and approval granted to everyone of them before August 2012 it was contended by senior counsel appearing for the petitioner that the approval for appointment in the present case cannot be denied, as the said discrimination would amount to violation of Article 14 of the Constitution of India.

16. Finally, the learned senior counsel submitted that the recommendation of the respondents 4 and 5 were not considered by the third respondent and that the teacher who was working with effect from 08.03.2010, in the sanctioned vacancy under BC category, after getting necessary permissions from the fourth respondent cannot be disturbed by denying the approval after allowing the teacher to work for six long years without salary. The principle on equity was pressed into service.

17. The fifth respondent has filed a detailed counter affidavit. A specific stand was taken by the fifth respondent stating that the petitioner did not have requisite qualification on the basis of the judgment of this Court in W.P.No.19631 of 2011 dated 14.08.2012, reported in **2012 5 CTC 129**, justifying the order of the third respondent. The fifth respondent has not denied the sequence of events and pendency of the proposal for approval was due to the pendency of a suit in O.S.No.64 of 2010. A specific stand is also taken by the petitioner that several teachers having dual degree were appointed earlier in several cases throughout state and that in all cases, the one year degree (dual degree) was recognized as equivalent to three year degree. The grant of approval to all those appointments is not denied, despite, the fact that the details of the appointments and the school in which the appointments were made was specifically given in the Additional affidavit as well as in the original affidavit. It was also admitted that the matter is also pending before the Honourable Supreme Court as to the validity of appointment of the persons having dual degree.

18. The legal position, that dual degrees obtained after undergoing a course of one year is not equivalent to the degree after undergoing the course of three years, is not in dispute. Hence a person, who holds only a dual degree in English is not qualified to be appointed as B.T. Teacher in English in the wake of **R.Thirunavukarasu and others vs State of Tamil Nadu** reported in **2012 5 CTC 129**. The respondents admit that the matter is pending before the Honourable Supreme Court.



The issue now before this Court is with regard to the validity of appointment, which was made long prior to the decision of this Court in the case of R.Thirunavukarasu case. The approval was pending for a long time, on account of pendency of a suit, because of some dispute in the management. When the fact remains that several appointments of teachers with dual degree were approved by the Educational Authorities, prior to the judgment of this Court in Thirunavukarasu case, the question is whether the rejection of approval in the present case will amount to discrimination and whether the teacher who was in service for more than six years is entitled to approval in equity.

19. The appointment of Tmt.P.Meena was made on 08.03.2010. The said teacher was in service for almost six years and that it would amount to discrimination having regard to the admitted facts that several appointments made before the judgment of this Court in Thirunavukarasu case, were approved. The facts that the concerned teacher was appointed in the petitioner school on 08.03.2010 and that she was serving more than six years, have to be considered by applying the doctrine of equality and the principles of equity. The impugned order passed by the fifth respondent was only on the basis of letter issued by the second respondent dated 17.12.2012, based on the judgment of this Court in R.Thirunavukarasu case reported in **2012 (5) CTC 129**, pursuant to which, the third respondent also confirmed the order of fifth respondent by referring to the proceedings of the second respondent dated 17.12.2012.

20. Hence, this Court is able to see in this case the fate of a poor teacher to suffer an order of rejection of approval only on account of delay in considering the proposal for approval for no *bona fide* reasons. The teacher was eligible at the time of her appointment as several appointments were approved at the time of her appointment and none of them with dual degree and got appointment earlier were disturbed. The teacher was never at fault. This Court is of the view that the teacher concerned who was in service for more than six years without getting salary need not be disturbed after this length of time on the basis of the eligibility, due to changed circumstances later in point of time. Added feature in this case is the admitted position that the appointment of a teacher with dual degree which was prior to the judgment of this Court in Thirnavukarasu's case was not disturbed in any other case by cancelling the appointment or by terminating the service. The teacher's eligibility should also be considered by applying the equitable principles because of the facts that the delay in approval was for on valid reason and that the teacher concerned was in service for several years.

<https://hcservices.ecourts.gov.in/hcse/ices/> Since this Writ petition is allowed and the impugned order passed by the fifth respondent dated 14.01.2016 and the impugned order passed by the third respondent dated 29.04.2016 are

quashed. The respondents 4 and 5 are directed to approve the appointment of Tmt.P.Meena, as B.T. Assistant in English in the petitioner school with effect from the date of her appointment i.e., 08.03.2010 with all attendant benefits and arrears of salary etc. This exercise shall be done by the fifth respondent within a period of six weeks from the date of receipt of a copy of this order. Consequently the connected W.M.P.(MD) Nos.9554 and 9555 are closed. No Costs.

Sd/-

Assistant Registrar(Crl side)

/True copy/

Sub Assistant Registrar

To

1. The Secretary,
The State of Tamil Nadu,
Department of School Education,
Fort St.George, Chennai - 600 009.
2. The Director of School Education,
College Road, Chennai - 600 006.
3. The Joint Director of School Education,
(Secondary Education),
College Road, Chennai - 600 006.
4. The Chief Educational Officer,
Tirunelveli, Tirunelveli District.
5. The District Educational Officer,
Tirunelveli, Tirunelveli District.

+1 cc to Mr.T.Cibi chakaraborthy , Advocate in SR.No. 66851

gsp/cmr

AE/MR KKR/SAR2/28.07.2017/9P/7C

ORDER MADE IN
W.P. (MD) No.12639 of 2016
and
W.M.P. (MD) Nos.9554 and 9555 of 2016
20.07.2017