



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 12.07.2017
CORAM :
THE HONOURABLE MR.JUSTICE T.RAJA

WEB COPY

WP (MD) Nos.3570 of 2017 and 16333 of 2016
and
WMP (MD) No.11936 of 2016

WP (MD) No.3570 of 2017

S.Josephin Vijaya

... Petitioner

vs.

1) The Chief Educational Officer,
Tirunelveli.

2) The District Educational Officer,
Cheranmadevi,
Tirunelveli District.

3) The Correspondent,
St.Antony's High School,
Somanathaperi,
Tirunelveli District.

... Respondents

Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorarified Mandamus, calling for the records pertaining to the order passed by the 2nd respondent in his proceedings in Na.Ka.No. 4414/A1/2016 dated 09.12.2016, quash the same and direct the 2nd respondent to approve the promotion for the petitioner as B.T. Assistant with effect from 01.06.2012 with all monetary benefits.

For Petitioner : Mr.V.Panneer Selvam

For Respondents : Mr.R.Karthikeyan

1&2

Additional Government Pleader

WP (MD) No.16333 of 2016

T.Mariagnanam

... Petitioner

vs.

1) The District Educational Officer,
Cheranmadevi,
Tirunelveli District.

2) The Correspondent,
<https://hcservices.ecourts.gov.in/hcservices/>
St.Antony's High School,
Somanathapethi, Tirunelveli District.

... Respondents



Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Mandamus, directing the 1st respondent to approve the appointment of the petitioner as B.T. Assistant in the 2nd respondent school from the date of appointment i.e. from 01.06.2012 with all monetary benefits by considering the proposal submitted by the 2nd respondent dated 04.04.2014.

For Petitioner : Mr.V.Panneer Selvam

For 1st Respondent : Mr.R.Karthikeyan

Additional Government Pleader for R1

COMMON ORDER

WP(MD)No.3570 of 2017

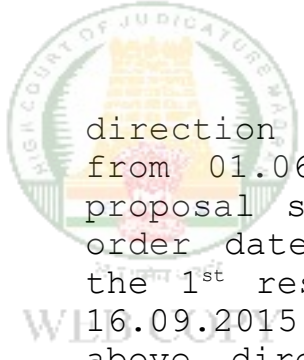
The petitioner herein/S.Josephin Vijaya has filed W.P.3570/17 challenging the impugned order dated 09.12.2016 passed by the 2nd respondent refusing to accept the proposal sent by the 3rd respondent school, for approval of the appointment of the petitioner.

2.Assailing the impugned order, it is contended that the petitioner was appointed on 26.10.1992 in the secondary grade post and posted at R.C.Elementary School, Barbarammalpuram under the control of R.C.Management School, Tuticorin Diocese. The said school is a minority educational institution and it is also stated that her appointment was also approved. Thereafter, she was transferred to the 3rd respondent school on 16.03.1994. At that time, the 3rd respondent school was only a Middle School. Subsequently, the 3rd respondent school was upgraded as High School in the year 1998. However, Standards IX and X were under the self financing scheme and Standards VI to VIII were all fully aided.

3.While so, Mr.Pauldurai, who is working in the 3rd respondent school as a Secondary Grade Teacher in Middle School Section, reached the age of superannuation and relieved from service on 31.05.2012. As the said teacher worked in the Middle School section namely, from Standards VI to VIII, as per the policy decision of the Government and as per the Rule subsequently amended, the post was automatically upgraded as B.T. Assistant, therefore, the petitioner was promoted and appointed as B.T. Assistant on 01.06.2012. On this basis, a proposal was sent to the 1st respondent on 25.07.2012, but the 1st respondent returned the same with a direction to re-submit the proposal enclosing the relieving order of the retired teacher Mr.Pauldurai. On receipt of the same, the 3rd respondent school also re-submitted the proposal enclosing the relieving order of the said teacher to the 1st respondent. However, finding no response, reminder was sent on 16.09.2015.

<https://hcservices.ecourts.gov.in/hcservices/>

4.Again, there was no any response, therefore, the petitioner was constrained to come to this Court with W.P.No.15274/2016 for a



direction to approve her promotion as B.T Assistant with effect from 01.06.2012 with all monetary benefits by considering the proposal sent by the school on 16.09.2015. This Court also by order dated 18.08.2016 considering the limited prayer, directed the 1st respondent therein to pass orders on the proposal dated 16.09.2015 on merits and in accordance with law. In spite of the above direction issued by this Court, the 2nd respondent has wrongly passed the impugned order, stating that when the vacancy in question arose on retirement of Mr. Pauldurai who worked in the Middle School section namely, Standards VI to VIII and reached the age of superannuation on 31.05.2012, the said vacant post should have been brought to the notice of the official respondents for conversion and the school ought to have obtained proper permission for conversion of the said post of Secondary Grade Teacher into that of B.T. Assistant. The said reasoning given in the impugned order is wholly misconceived for the simple reason that when the Government has taken a policy decision by introducing a Rule stating that in the Middle School Section, namely from Standards VI to VIII, if the post of Secondary Grade Teacher falls vacant, the said post would automatically be upgraded as B.T. Assistant.

5. Taking support from paragraph 3 of the order made in ***The Correspondent vs. The State of Tamil Nadu (W.P(MD) No.1912 of 2013 dated 05.07.2016)***, learned counsel for the petitioner would submit that the Government have issued G.O.Ms.No.79, Secondary Education (U-1) Department, dated 14.06.2002, upgrading the post of Secondary Grade Teacher into one of Graduate Teacher. It is pertinent to extract below paragraph 3 of the said order:-

'3. The courses and the curriculum of the school are regulated by the instructions issued by the Government from time to time. The number of staff and the quantum of grant-in-aid are fixed by the Government periodically. The qualification for appointment of teachers is prescribed under the Rules framed by the Government. So far as middle school sections (Standards 6, 7 and 8) are concerned, the Secondary Grade Teachers were handling those standards upto May, 2002. They had the qualification of Teachers Training Certificate courses (Diploma in Teacher Education). In the year 2002, the State Government, taking note of the fact that such Secondary Grade Teachers were not qualified enough to handle the advanced syllabi prescribed for the middle school sections, evolved the policy of appointing Graduate Teachers in those schools. The Government issued G.O.Ms.No.79, Secondary Education (U-1) Department, dated 14.06.2002, in that regard. The posts of Secondary Grade Teachers were decided to be upgraded into that of Graduate Teachers with effect from 01.06.2002.'

6. Therefore, on the strength of the aforesaid order passed by this Court, the learned counsel for the petitioner sought to set aside the impugned order by allowing the writ petition.



7.No counter affidavit has been filed. The learned Additional Government Pleader appearing for the respondents repeating the stand taken in the impugned order would submit that once the post of Secondary Grade Teacher falls vacant in the Middle School Section, without obtaining prior permission from the competent authority, the 3rd respondent school ought not to have appointed the petitioner as B.T. Assistant giving promotion. But, this contention has been considered by this Court in the aforementioned order dated 05.07.2016.

8.Therefore, when it is an admitted case that when one Mr.Pauldurai working as Secondary Grade Teacher in the Middle School Section namely, Standards VI to VIII in the 3rd respondent school retired on reaching the age of superannuation on 31.05.2012, as per G.O.Ms.No.79, Secondary Education (U-1) Department, dated 14.06.2002 the post of Secondary Grade Teacher stands automatically upgraded into that of Graduate Teacher with effect from 01.06.2002.

9.Therefore, this Court finds no infirmity in the proposal sent by the 3rd respondent school and finding grave error in the impugned order dated 09.12.2016, this Court sets aside the same. The 1st respondent is hereby directed to approve the appointment of the petitioner as B.T. Assistant with effect from 01.06.2012 and pass appropriate orders within a period of four weeks from the date of receipt of a copy of this order along with salary arrears and other benefits.

WP(MD)No.16333 of 2016

10.So far as the appointment of the petitioner herein is concerned, he has been directly appointed as B.T. Assistant in the vacancy caused due to the promotion of the petitioner in W.P.3570/17/S.Josephin Vijaya who was working as Secondary Grade Teacher in the 2nd respondent school herein. When S.Josephin Vijaya was promoted as B.T. Assistant, the post of Secondary Grade Teacher held by her became upgraded as per G.O.Ms.No.79, Secondary Education (U-1) Department, dated 14.06.2002. In that upgraded post of B.T. Assistant, the petitioner herein/T.Mariagnanam has been appointed.

11.Hence, the 1st respondent herein is hereby directed to accept the proposal of the 2nd respondent school herein, by granting suitable approval for appointment of the petitioner herein as B.T. Assistant from 01.06.2012 and pass appropriate orders within a period of four weeks from the date of receipt of a copy of this order along with salary arrears and other benefits.

In the result, both the Writ Petitions stand allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS-III)



To

1) The Chief Educational Officer,
Tirunelveli.

2) The District Educational Officer,
Cheranmadevi,
Tirunelveli District.

+2ccs to Mr.V.PANNEER SELVAM, Advocate SR.No.65485&65486

+1cc to the Special Government Pleader, SR.No.65654&65605

nbi

MAS/SKN-RSK/SAR2:26.07.2017:5P-6C

WP(MD) Nos.3570 of 2017
and 16333 of 2016
12.07.2017