



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on 02.12.2016

Pronounced on 28.03.2017

CORAM :

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

W.P. (MD) .No.5181 of 2013

K.Koori

.. Petitioner

.Vs.

1. The Joint Director of Aided Elementary Education,
College Road, Chennai-6.

2. The District Elementary Educational Officer,
R.M.S. Road, Madurai.

3. The Assistant Elementary Educational Officer,
Madurai East, Madurai.

... Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, to call for the records in மு.மு.எண்.5781/ஆ4/2012, Dated 04.07.2012, on the file of the 2nd respondent, quash the same and further direct the 2nd respondent to approve the appointment of K.Koori as a primary school teacher in the Hindu Aided Primary School, Mangulam, Madurai with effect from 01.06.2012.

For Petitioner : Mr.M.V.Venkateseshan

For Respondents : Mr.K.Guru
Additional Government Pleader

O R D E R

The Petitioner has filed the Writ Petition for issuance of a Writ of Certiorarified Mandamus, to call for the records in மு.மு.எண்.5781/ஆ4/2012, Dated 04.07.2012, on the file of the 2nd respondent, quash the same and further direct the 2nd respondent to approve the appointment of K.Koori as a primary school teacher in the Hindu Aided Primary School, Mangulam, Madurai with effect from 01.06.2012.

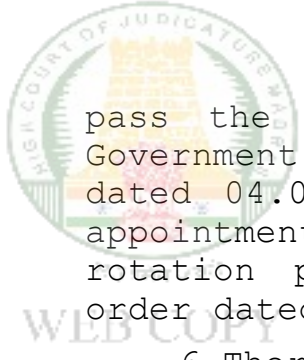


2.The case of the petitioner is that the petitioner by namely Mr.K.Koori son of Mr.S.Karuppiah, is the Secretary of the Hindu Aided Primary School at Mangulam, Madurai District. The school was started in the year 1949 by his late grandfather, then it was managed by his father and after the death of his father Mr.S.Karuppiah, this petitioner being the son of the said Mr.S.Karuppiah, is serving as Secretary-cum-Correspondent from the year of 2000. He is the candidate passed Higher Secondary School and having in possession of the Teacher Training Certificate. Therefore, the petitioner states that he is fully eligible for the post of Primary School Teacher, since he belongs to Backward Class.

3.The writ petitioner also states that one Mrs.G.Indira Gandhi, teacher worked in the school was retired from service on 31.03.2011, already there was one post of Primary School Teacher vacant due to the transfer of one Mr.Gurusamy. Therefore, from 04.03.2011 onwards, this petitioner is working in the said post of Primary School Teacher in the said school, which was acknowledged by the third respondent/Assistant Elementary Educational Officer, Madurai East, Madurai, when he visited the school and report has been kept in the school. Therefore, after the retirement of the above said teacher, this petitioner sought for the appointment as a new teacher. Therefore, on 01.11.2011, the 3rd respondent/Assistant Elementary Educational Officer directed the petitioner to furnish the report, to that effect, even though the vacancy of Mr.Gurusamy was available as per the order made in W.P.No.19073 of 1998 dated 05.03.2008, this petitioner has permitted to fill up atleast the retirement vacancy.

4.Pursuant to that by his proceedings of the 2nd respondent/ District Elementary Educational Officer, RMS Road, Madurai, dated 27.04.2012 granted permission for filling up the retirement vacancy by a candidate from O.C. Category. Therefore, pursuant to the above approval, they called for eligible candidates from employment exchange and by paper publication also. Four candidates were appeared and they were interviewed by the authorities. In fact, this petitioner also appeared for interview, since out of 4 candidates this writ petitioner is one among them.

5.It is the case of the petitioner that it is well known fact that if the suitable O.C. candidate has not appeared for interview, then the candidate belonging to any community can be appointed in the said post. Among the 4 Backward Class candidates, who attended interview, the 3 of them backed out at the time of interview. Therefore, this petitioner was the only eligible candidate for the said post and therefore, he was appointed as a teacher on 01.06.2012. At the time of sending his requisition for appointment of approval of this petitioner as a teacher, this petitioner has categorically stated that he would



pass the Teacher Eligibility Test within 5 years as per the Government Orders. But, in the meantime, the impugned letter dated 04.07.2012, the 2nd respondent has declined to accept his appointment on the ground that he has not followed the communal rotation properly while making appointment and therefore, the order dated 27.04.2012 issued by his office is being recalled.

6. Therefore, the impugned order passed by the 2nd respondent dated 04.07.2012 is illegal, contrary to law and unsustainable in law and challenging the said order, the petitioner has approached this Court for the prayer to quash the impugned order dated 04.07.2012 and seeking approval of the petitioner's appointment as Teacher from 01.06.2012. Though the petitioner has challenged in various grounds particularly, the petitioner states that the order of appointment dated 27.04.2012 for filling up the vacancy post has been given only after considering various G.O.'s and communication of Director of Elementary School Education, dated 12.04.2012. Therefore, he raised the grounds that the 2nd respondent has no right to recall the order unilaterally by the 2nd respondent.

7. He has also stated that after receipt of the impugned order, the petitioner made representation dated 14.09.2012 and the same has given an undertaking that in the future vacancy or the already existing vacancy (Gurusamy Post) the petitioner would appoint MBC candidate. But, that has not yet been replied till date, and it was simply ignored, such an act is wholly unsustainable. Therefore, he filed the writ petition challenging the impugned order dated 04.07.2012 and seeking direction to the 2nd respondent to approve the appointment of K.Koori as a Primary School Teacher in the Hindu Aided Primary School, Mangulam, Madurai with effect from 01.06.2012 with all service and monetary benefits.

8. A counter affidavit has been filed by the 2nd respondent in which the 2nd respondent has denied the entire allegations set out in the affidavit filed by the writ petitioner. The 2nd respondent states that the petitioner is the Secretary of the School and the School is a non minority school, fully aided by the Government of Tamilnadu, and governed by the provisions of the Tamilnadu Recognized Private Schools Regulations Act 1973 and Rules 1974 framed thereunder. A vacancy was arosed due to retirement of Smt.G.Indira Gandhi on 31.03.2011. In the vacant post, the said petitioner was appointed, but the petitioner was already worked in the place where the vacant arosed due to the transfer of one teacher by name, Gurusamy and there was litigation the said post was not permitted to filled up. Therefore, the petitioner school requested to fill up the post which became vacant due to the retirement of G.Indira Gandhi and the 3rd respondent also recommended for filling up the post.

9. The 2nd respondent also states that as per the G.O.Ms.No.241 dated 15.10.2007, the above post should have been filled up by a candidate belonging to M.B.C. at Serial No.3 of the communal



roaster. Upon the wrong recommendation by the 3rd respondent, the 2nd respondent has permitted to fill up the vacancy from the O.C. Rotation Serial No.1, without ascertaining the same from the communal rotation. In the said circumstances, the action is being taken against the 3rd respondent for such a lapse on his part.

10. The 2nd respondent also states that the said fact was disclosed later and from the perusal of the old records, that the management has filled up Serial Nos.1 and 2 already and therefore, the present post has to be filled by Serial No.3 M.B.C. candidate. After ascertaining the required particulars the permission granted to fill up the post by a candidate belonging to Serial No.1 was cancelled by an order dated 05.07.2012 made in 5781/B1/2012.

11. In the said order, the 2nd respondent has also permitting to fill up the vacancy, but a condition was imposed that the post should be filled up by a candidate who has passed the Teacher Eligibility Test (TET). As such, the petitioner school has committed the irregularities while filling the post by appointing the petitioner, by not followed the communal roaster, since the school has appointed the post by a candidate belonging to B.C. Whereas the post belongs to M.B.C. Therefore, the appointment is totally illegal.

12. Apart from this, the 2nd respondent also states that though the petitioner has been appointing in the said post, but the mandatory condition of passing the Teacher Eligibility Test (TET) was not passed by the petitioner. Since, the condition was imposed that all fresh appointments after 23.08.2010 as per the Right of Children to Free and Compulsory Education Act 2009, and G.O.Ms.No.173 School Education Department dated 08.01.2011. Therefore, the petitioner's appointment made on 23.08.2010 is irregular and against the rules. Therefore, in the above said circumstances and also due to above lapses, the orders of the 2nd respondent in cancelling the permission already granted is legal and as per rules and hence need not be cancelled. Therefore, the 2nd respondent prayed this Court for dismissal of the writ petition.

13. I heard Mr.M.V.Venkataseshan, learned counsel appearing for the petitioner and Mr.K.Guru, learned Additional Government Pleader appearing for the respondents.

14. It is admitted fact that the School Management followed the roaster point made appointment to Serial Nos.1 and 2, and now the School Management has to appoint the candidate belongs to the roaster point in Serial No.3. After the retirement of the said Teacher on 31.03.2011 by namely Smt.G.Indira Gandhi, this petitioner being the Teacher, who serving in the same School from 23.08.2010 and after following the procedures and direction issued by the Director of Elementary Education and also by the District Educational Officer, the petitioner/school Management was properly maintained and selected the candidate through the employment exchange and by way of paper publication.



15.As per the approval given by the 2nd respondent dated 27.04.2012 granted permission for filling up the retirement vacancy by a candidate from the employment exchange and by paper publication. This petitioner / school management also issued for paper publication and also call for the candidates from the employment exchange belongs to O.C. candidate and conducted the interview. But, no B.C. candidates were appeared in the interview whereas, 4 B.C. candidates were appeared and out of four, three candidates were backed out at the time of interview, and this petitioner is the only person to appoint as a Teacher under the B.C. Category. In fact, the petitioner at the time of sending the approval of the appointment, he has given an undertaken letter that he would pass the Teacher Eligibility Test (TET) within five years as directed by the Government of India and the State Government. The 2nd respondent also states that as per the order dated 23.08.2010, all fresh appointment after 23.08.2010, the candidates should pass the Teacher Eligibility Test.

16.This condition is totally wrong since the Right of Children to Free and Compulsory Education Act 2009, and G.O.Ms.No.173 School Education Department dated 08.01.2011, has permitted the teachers who already worked should pass the Teacher Eligibility Test within a period of five years. G.O.Ms.No.181 School Education (C2) Department, dated 15.11.2011 also prescribed by the Teachers should pass the T.E.T. within 5 years. The G.O.Ms.No.181 dated 15.11.2011 specified that the Teachers appointed prior to the issue of G.O.Ms.No.181 dated 15.11.2011 will be given five years time to acquire the minimum qualification.

17.But, ignoring the said Act and also the G.O.Ms.No.173 and G.O.Ms.No.181, the 2nd respondent has imposed the condition that the person, who appointing in the post of Teacher should pass the Teacher Eligibility Test. The Hon'ble Division Bench of this Court in which I am also one of the party, clearly held that the Teachers already working in the school should pass the Teacher Eligibility Test within a period of 5 years and accordingly as per the Hon'ble Division Bench directed to be conducted the T.E.T. Exam only in the month of April 2017, so thus being the position, the condition imposed by the 2nd respondent that the Teacher Eligibility Test passed candidates are to be filled up the post is totally wrong and infact the petitioner himself given undertaking that within 5 years, he would pass the Teacher Eligibility Test. The G.O. Dated 23.08.2010 also totally wrong, since the Act is come into force in the year 2009. Thereafter, the State Government has issued G.O.Ms.No.173 only on 08.01.2011 and the subsequent G.O.Ms.No.181 dated 15.11.2011.

18.Thus being the case, the petitioner is working in the School from the year 2010 onwards. Therefore, the condition imposed by the 2nd respondent is totally wrong and the communal rotation also to be filled up in future vacancy in the place of



the teacher who transferred (Mr.Gurusamy). From 01.06.2012 almost 5 years the petitioner is working in the school and after the long experience in the school service, he cannot be thrown out from the School. The condition imposed by the 2nd respondent, the petitioner should pass the Teacher Eligibility Test may not be applicable in the petitioner's case since the petitioner is having the right to qualify in the T.E.T. Exam within 5 years from the date of working and appointment should be made only through the M.B.C. candidates also to be followed in the next appointment. Therefore, the order passed by the 2nd respondent without gone through the entire facts and circumstances of the case and also undertaking given by the petitioner has passed the present impugned order, accordingly it is liable to be quashed.

19.In the result:

(a) the writ petition is allowed by setting aside the order passed by the 2nd respondent in மு.மு.எண்.5781/ஆ4/2012, dated 04.07.2012;

(b) the 2nd respondent is hereby directed to approve the appointment of petitioner K.Koori as a Primary School Teacher in the Hindu Aided Primary School, Mangulam, Madurai with effect from 01.06.2012 and pay all the service benefits;

(c) the 2nd respondent is hereby directed to complete the said exercise within a period of eight weeks from the date of receipt of a copy of this order. No costs.

Sd/-

Assistant Registrar(CO)

/True Copy/

Sub Assistant Registrar

To

1. The Joint Director of Aided Elementary Education,
College Road, Chennai-6.
2. The District Elementary Educational Officer,
R.M.S. Road, Madurai.
3. The Assistant Elementary Educational Officer,
Madurai East, Madurai.

+1cc to Spl.Government Pleader Sr.No.19401

+1cc to Mr.M.V.Venkateseshan, Advocate Sr.No.18587

vs/skn

vb/mr/sar3/17.05.2017/6p/6c

W.P. (MD) .No.5181 of 2013
28.03.2017