

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.12.2018

Coram

The Hon'ble Mr. Justice M.M.SUNDRESH
and
The Hon'ble Mr. Justice KRISHNAN RAMASAMY

W.A.No.1499 of 2013

S.Lakshmi Bai ... Appellant/Petitioner

Vs

- 1.Chief Educational Officer,
Office of the Chief Educational Officer,
Tiruvannamalai, Tiruvannamalai District.
- 2.District Elementary Educational
Officer, Gandhi Nagar,
Tiruvannamalai, Tiruvannamalai District.
- 3.Sri Kanniga Parameswari Aided Primary
School rep. by its Manager,
Tiruvannamalai, Tiruvannamalai District.
- 4.K.Gandhi
- 5.The Joint Director of Elementary
Education, Chennai. ... Respondents/Respondents

Appeal preferred under Clause XV of Letters Patent against
the order dated 12.10.2012 made in W.P.No.41803 of 2002.

W.P.41803 of 2002:Petition filed under Article 226 of the
Constitution of India seeking to issue Writ of Certiorarified
Mandamus calling for the records of the third respondent in his
letter No.77 dated 30.05.94 as confirmed by the order of the
first respondent in the proceedings NA.KA.NO.8704/B1/02 dated
28.8.2002 and quash the order dated 28.8.2002 and direct the
third respondent to promote the petitioner to the post of Head
Master of the third respondent school with retrospective
effect from 1.6.1994 with all backwagesand fixation of pay and
other consequent service benefits.

For Appellant .. Mr.R.Jagadeesan
for Mr.K.V.Subramanian Associates

For Respondents.. Mr.K.Karthikeyan,
Govt. Advocate for R1, R2 and R5
R3 & R4 - No appearance

JUDGMENT

(Judgment of the Court was delivered by M.M.SUNDRESH, J.)

This appeal has been preferred by the appellant, who laid a challenge to the appointment of fourth respondent as the Headmaster by the third respondent way back in the year 1994 and as confirmed by the order of the first respondent, pursuant to the direction issued by this Court in W.P.Nos.16225 and 17451 of 1995 dated 28.08.2001.

2.Heard the learned counsel appearing for the appellant and the learned Government Advocate appearing for respondents 1, 2 and 5. Though the matter is pending for nearly five years, the private respondent viz., the fourth respondent has not been served.

3.Both the appellant and the fourth respondent were appointed on 15.10.1973 as Secondary Grade Teachers. However, the fourth respondent was appointed as the Headmaster, having found him to be more qualified as against the appellant. On the objection raised by the appellant, the District Elementary Educational Officer rejected the appointment. Under those circumstances, the writ petitions have been filed by respondents 3 and 4, as referred supra, in which, the first respondent before us was directed to consider the issue raised including the existence and competence of the School Committee.

4.The first respondent issued notices to the parties including the appellant. It appears the appellant did not appear on few occasions and therefore the order was passed on merit. It was challenged before the learned single Judge. As the writ petition was dismissed, the present appeal is before us.

5.Learned counsel appearing for the appellant would submit that statement has been made before the learned single Judge on the earlier occasion on the existence of the School Committee. Even otherwise, the learned single Judge directed the first respondent to look into the said issue. Therefore, the order passed requires interference.

6.Learned Government Advocate submits that even at the time of filing writ petition, the appellant was 57 years old. Aid can be given only for the post not the individual. The fourth respondent has worked as Headmaster and salary has been released in his favour. The appellant has attained the age of superannuation long time back. For her failure to appear before the first respondent, she cannot get any benefit. Therefore, no interference is required.

7.Rule 15 (4) of the Tamil Nadu Recognized Private Schools (Regulations) Rules, 1974 speaks about the merit first and therefore, seniority takes the back seat. If there was no School Committee, then even the appointment of appellant also cannot be considered. All these issues the appellant ought to have raised before the first respondent, which she did not do so. The submission made at the bar has to be looked into in the light of the observations made by the learned single judge on the first occasion. Existence of the School Committee is a question of fact. The appellant would have raised this issue before the first respondent by appearing before him. There is nothing on record to show that the appellant was more meritorious than the fourth respondent. No malafides have been alleged and proved as against the fourth respondent in this regard. Thus, we do not find any merit in this writ appeal and the same stands dismissed. No costs.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

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To

1.Chief Educational Officer,
Office of the Chief Educational Officer,
Tiruvannamalai, Tiruvannamalai District.

2.District Elementary Educational
Officer, Gandhi Nagar,
Tiruvannamalai, Tiruvannamalai District.

3.The Joint Director of Elementary
Education, Chennai.

+lcc to the Government Pleader Sr.85108

W.A.No.1499 of 2013

kj[co]
srg 24/01/2019