

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.12.2018

CORAM

THE HON'BLE Mr. JUSTICE S.M.SUBRAMANIAM

W.P.No. 37822 of 2003

S.Anitha Kumari

...Petitioner

vs

1. Government of Tamil Nadu
Secretary of Education Department
Fort St. George, Chennai-9

2. Director of School Education
D.P.I's Office College Road
Chennai-9

3. Joint Director of Higher
Secondary Education,
D.P.I's Office, College Road
Chennai-9

4. The Chief Educational Officer
Kanyakumari District, Nagercoil.

5. The District Educational Officer
Thuckalay, Kanyakumari District.

6. The Correspondent
Devi Girls Higher Secondary School,
Kunnangal, Vaniyakudi Post,
Colachel, Kanyakumari District.

... Respondents

PRAYER :

Writ Petition filed under Article 226 of the Constitution of India praying to issue a writ of Certiorari calling for records on the 5th respondent in Na.Ka.No.6101A2/02 dated 28.01.2003 and quash the same.

For Petitioner : C.M.V Jayakumar for
Mr.T.R.Rajaraman

For Respondents : Mr.A. Raja Perumal for
respondents 1 to 5
Additional Government Pleader
Mr.K.V.Subremaniam Associates
for 6th respondent

O R D E R

The order of rejection dated 28.01.2003 stating that if the post of Lab Assistant is sanctioned by the Government the case of the petitioner would be considered, in accordance with rules. Challenging the said reply issued by the District Educational Officer in proceeding dated 28.01.2003 is under challenge in the present writ petition.

2. The learned counsel appearing on behalf of the writ petitioner strenuously contended that the writ petitioner is entitled for the relief as such sought for in the present writ petition. The petitioner was initially appointed as Lab Assistant on 01.06.1987 by the correspondent of the 6th respondent/school. The writ petitioner is continuously working in the said post of Laboratory Assistant without any break in service and have completed about 30 years. The services of the writ petitioner in the post of Laboratory Assistant has not been approved, on account of the fact that the post of Lab Assistant has not been sanctioned to the 6th respondent/school. Thus, the petitioner is constrained to move the present writ petition.

3. The learned counsel for the petitioner further states that in respect of all other similar schools in the very same district, one post of Laboratory Assistant had already been sanctioned by the Competent Authorities. When the school is upgraded as higher secondary school, one post of Lab Assistant had been sanctioned to the school by the Educational Authorities, when such a sanctioning was so passed in respect of the all other affiliated schools the same benefit is to be extended to the 6th respondent/school also. In spite of repeated request, no decision has been taken nor any order has been passed by the authorities granting sanction of one post of Laboratory Assistant to the 6th respondent/School.

4. The learned counsel appearing on behalf of the 6th respondent states that the school also made several applications requesting the authorities to sanction one post of Laboratory Assistant so as to accommodate the writ petitioner in the said post as the petitioner is serving in the school for about 3 decades. Thus, the efforts taken by the 6th respondent has not been materialized and, therefore, the case of the petitioner is to be considered.

5. The learned Additional Government Pleader appearing on behalf of the official respondents 1 to 5 disputed the contentions of the writ petitioner by stating that, the petitioner is not entitled for the relief, as the post of Laboratory Assistant has not been sanctioned to the 6th respondent/school. Sanctioning of the post will be done in

accordance with the procedures contemplated and as per the Government orders in force.

6. In the event of sanctioning the post of Laboratory Assistant the case of the writ petitioner will be considered. As of now, the post of Laboratory Assistant has not been sanctioned in respect of the 6th respondent/school and therefore, no relief can be granted to the writ petitioner in the present writ petition.

7. Considering the rival submissions of the respective learned counsel for the petitioner, the learned Additional Government Pleader and the learned counsel for the 6th respondent, this Court is on an opinion that, sanctioning or creation of a new post is an administrative prerogative of the Competent Authorities. The Court cannot issue direction for creation of a post or for sanctioning of a particular post. Sanctioning of the post is to be done strictly in accordance with the rules in force and considering the facts and circumstances with reference to the Government orders in force. So also, the petitioner cannot claim any right in respect of sanctioning of the post. Undoubtedly, the petitioner was appointed by the Management in the post of Laboratory Assistant and that will not confer any right on the petitioner to seek for a direction against the department to sanction the post. If at all the post of Laboratory assistant is sanctioned, then the petitioner may get an opportunity to claim the approval of appointment, if he is otherwise qualified in accordance with the rules for appointment to the said post of laboratory assistant.

8. This being the principles to be followed, this Court is of an opinion that the information provided by the District Educational Officer, Thuckalay in proceeding dated 28.01.2003 that the case of the writ petitioner would be considered only if the post of Laboratory Assistant is sanctioned. The said reply is an information provided to the writ petitioner and the case of the writ petitioner shall be considered only after sanctioning of a post of Laboratory Assistant in the 6th respondent/school.

9. This being the factum now placed before the Court, the learned counsel for the petitioner states the Educational Authorities themselves admitted the fact that the 6th respondent is eligible for sanction of one post of Laboratory Assistant. If that is the case, it is left open to the Competent authorities to consider the 6th respondent/School for sanctioning of one post of Laboratory Assistant in accordance with the rules and the Government orders in force. However, the relief as such sought for in the present writ petition cannot be granted.

10. In this view of the matter, the respondent shall consider the claim of the 6th respondent without causing any undue delay. With these observations the writ petition stands disposed of.

Sd/-
Assistant Registrar (CS-VIII)

//True copy//

Sub Assistant Registrar

ska/Pkn

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+1cc to Mr.T.R.Rajaraman, Advocate SR.No.89184

+2cc to Government Pleader, High Court, Madras SR.No.89436, 89920

W.P.No. 37822 of 2003

VGII (CO)
GMY (28/01/2019)