

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.02.2018

CORAM:

THE HON'BLE MR.JUSTICE K.K.SASIDHARAN

AND

THE HON'BLE MR.JUSTICE P.VELMURUGAN

W.A.No.1959 of 2011

K.Mouleeswari

...Appellant/petitioner

Vs

1. The Director of Elementary Education
College road, Nungambakkam,
Chennai - 600 006.
2. The District Elementary Education Officer
Erode, Erode District.
3. The Assistant Elementary Education Officer,
Ammapettai, Erode District.
4. The Secretary, Periyasamy Middle School,
Ammapettai, Erode District.
5. Tmt.M.Myilavathi
(5th respondent impleaded as party vide
order of Court dated 12.09.2013
made in MP.No.1/2013.)

...Respondents /Respondents

Prayer:- Writ Appeal filed under Clause 15 of Letter Patent Act, to set aside the impugned order dated 21.09.2011 passed in W.P.No.25388 of 2009.

WP.No.25388 of 2009:Petition filed under Article 226 of the Constitution of India for issue a Writ of Certiorarified Mandamus to Call for the records relating to the proceeding in Na.Ka.No.5774/2009/A3 dt.23.11.2009 of the District Elementary Education Officer Erode 2nd respondent herein and quash the same and further direct the respondents to permit the petitioner to continue in Service as B.T.Assistant Teacher (Maths) pursuant to the approval of the appointment order made in the proceeding K.Dis.No.3426/B3/2009 dt.4.8.2009 by the District Elementary Education Officer Erode 2nd respondent herein with all consequential service benefits.

For Appellant : Mr.C.P.Sivamohan
For Respondents : Mr.K.Karthikeyan
Government Advocate (for R1 to R3)
Mr.A.S.Thambuswamy (for R4)

JUDGMENT

(Judgment of the Court was delivered by K.K.SASIDHARAN, J.)

The intra Court appeal is directed against the order dated 21 September 2011 in W.P.No.25388 of 2009, dismissing the Writ Petition filed by the appellant and declining to quash the order dated 23 November 2009 on the file of the District Elementary Educational Officer and direct them to permit her to continue in service as B.T.Assistant, pursuant to the order of appointment dated 04 August 2009.

2. The Management of the Periasamy Middle School promoted Ms. P.A.Kumudha who was the working as B.T. Assistant Teacher in Maths, as the Headmistress of the institution. Since, the post of B.T. Assistant Teacher in Maths came to be vacant on account of the promotion given to Ms.P.A.Kumudha, the appellant was appointed in the said post. Subsequently, the promotion of Ms.P.A.Kumutha was cancelled, as she was not eligible to hold the post. After passing orders by the Government declining to give approval of appointment to Ms.P.A.Kumutha as Headmistress, she was reverted back to her original post. Since there was no vacancy in the post of B.T.Assistant Teacher in Maths, the appellant was terminated. Subsequently, another teacher by name Ms.Muthulakshmi, who was working as a science teacher, was appointed as Headmistress. The appellant contended that she was entitled to be appointed as B.T.Assistant Teacher in Maths on account of the subsequent appointment and more particularly, the appointment of Ms.Muthulakshmi as Headmistress. The claim was negatived by the Management as well as by the Government on the ground that there was no vacancy in the post B.T.Assistant teacher in maths inasmuch as Ms.P.A.Kumutha after reversion assumed charge as B.T.Assistant Teacher in Maths. When this fact was brought to the attention of the learned single Judge, the Writ Petition was dismissed. Feeling aggrieved, the appellant has come up with this intra Court Appeal.

3. We have heard the learned counsel for the respective parties.

4. There is no dispute that the appointment of the appellant as B.T. Assistant Teacher in maths was consequent to the promotion given to Ms. P.A.Kumutha as Headmistress. When

it was found that P.A.Kumudha was not eligible to hold the promoted post, she was reverted to the post of B.T.Assistant Teacher in Maths. Naturally the services of the appellant was terminated. It was so because, for the lone post of B.T.Assistant Teacher in Maths, the Management could not accommodate two candidates. The appellant has no case that Ms.Muthulakshmi who was subsequently appointed as Headmistress was functioning as B.T.Assistant Teacher in Maths .The Headmistress appointment was from the science stream. Therefore, it is very clear that there was no vacancy to accommodate the appellant after the reversion of Ms.P.A.Kumutha from the post of Headmistress.

5. In view of the background facts as indicated above, we are of the view that the learned single Judge was correct in dismissing the petition.

6. The learned counsel for the appellant contended that the Assistant Elementary Educational Officer raised a bill for claiming the salary of the appellant and the money was misappropriated. It is always open to the appellant to take up the matter with the concerned authorities in case she is advised.

This intra court appeal is dismissed with the above observation. No costs.

Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

To

1. The Director of Elementary Education
College road, Nungambakkam,
Chennai - 600 006.
2. The District Elementary Education Officer
Erode, Erode District.
3. The Assistant Elementary Education Officer,
Ammapettai, Erode District.
4. The Secretary,
Periyasamy Middle School,
Ammapettai, Erode District.

+1 cc to the Govt pleader sr 12646
+1 cc to Mr.C.P.Sivamohan Advocate sr 12423
+1 cc to Mr.A.S.Thambuswamy Advocate sr 12585

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