

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.04.2018

CORAM

THE HONOURABLE MR. JUSTICE V.PARTHIBAN

W.P.No.11488 of 2017 &
Cont. P. No.1593 of 2017 &
W.M.P.Nos.12469 & 12470 of 2012

Malar Yesuadaiyan

.. Petitioner

Vs.

1. The Director of Elementary Education,
DPI Campus,
College Road,
Chennai-600 006.
2. The District Elementary Educational Officer,
Krishnagiri District.
3. The Assistant Elementary Educational Officer,
Sulur Block,
Krishnagiri District.

..Respondents

Petition filed under Article 226 of The Constitution of India praying for issuance of a Writ of Mandamus directing the respondents herein to consider the appeal of the petitioner dated 17.04.2017 and accordingly include the petitioner in the panel for promotion for the post of B.T.Assistant (Science) in Sulagiri Panchayat Union Middle School by taking into consideration the fact that the petitioner's results had been published as early as 16.03.2016 and the petitioner's certificate was issued as early as 06.01.2017 and accordingly direct the respondents to grant the petitioner promotion to the post of B.T.Assistant (Science) in Sulagiri Panchayat Union Middle School, Krishnagiri District by including the name of the petitioner in the panel as on 01.01.2017.

For Petitioner .. Mrs.Dakshayani Reddy

For Respondents .. Ms.P.Kavitha
Government Advocate

ORDER

The petitioner has approached this Court, seeking the following relief:-

"Writ of Mandamus directing the respondents herein to consider the appeal of the petitioner dated 17.04.2017 and accordingly include the petitioner in the panel for promotion for the post of B.T.Assistant (Science) in Sulagiri Panchayat Union Middle School by taking into consideration the fact that the petitioner's results had been published as early as 16.03.2016 and the petitioner's certificate was issued as early as 06.01.2017 and accordingly direct the respondents to grant the petitioner promotion to the post of B.T.Assistant (Science) in Sulagiri Panchayat Union Middle School, Krishnagiri District by including the name of the petitioner in the panel as on 01.01.2017. "

2. The petitioner was originally appointed as Secondary Grade Teacher vide proceedings of the second respondent dated 14.12.2009 in the Panchayat Union Middle School, Thiagarasanapalli, Sulagiri Panchayat, Krishnagiri District. Her probation was also declared subsequently. The petitioner has been in a possession of B.Sc., Degree and also obtained subsequently B.Ed., Degree and therefore, she became qualified for promotion to the post of B.T.Assistant [Science]. The petitioner originally undergone undergraduate in B.Sc., [Chemistry] during the period between June, 2012 and December, 2015.

3. The petitioner successfully completed her undergraduation in the examination conducted during December, 2015. The petitioner therefore completed her degree course from Periyar University, Salem and the results were published on 16.03.2016. On being qualified, the petitioner became eligible for promotion to the post of B.T.Assistant [Science]. After the results were published, the petitioner approached the Periyar University seeking the Course Completion Certificate for the purpose of recording the same in the Service Register. However, her request was not immediately considered by the University.

4. In this connection, the petitioner submitted a representation to the second respondent on 03.12.2016 along with the mark sheet bringing to the notice of the third respondent that the petitioner has completed her degree programme and qualified for promotion to the post of B.T.Assistant [Science] in the panel which was prepared as on 01.01.2017. According to the petitioner, the representation dated 03.12.2016 has also been received by the third respondent.

5. While matter stood thus, subsequently the petitioner's Provisional Certificate was issued by the University on 06.01.2017. Immediately, the petitioner gave a representation on 01.02.2017 to the third respondent regarding the factum of

issuance of Provisional Certificate and requested for inclusion of her name in the panel for promotion as B.T.Assisat [Science]. However, without considering her request, the promotion panel was published on 14.04.2017 wherein it was mentioned that since no qualified individual was available, the panel was drawn 'Nil'. Simultaneously, while drawing of the panel, the authority has also announced counseling for B.T.Assistant Promotion which was scheduled to be conducted on 22.05.2017.

6. In the above circumstances, the petitioner was constained to approach this Court with the prayer as extracted supra. At the time of admission, this Court passed an interim order, dated 05.05.2017, directing the respondents to permit the petitioner to take part in the counseling for promotion to the post of B.T.Assistant [Science] in view of her qualification. In pursuance of the direction of this Court, the petitioner was allowed to take part in the counseling and in the counseling, the petitioner has chosen for promotion as B.T.Assistant [Science] in the Panchayat Union Middle School, Kadathur. However, in spite of her eligibility and qualification, the respondents were attempting to fill up the post with some other candidate by not considering the petitioner only on the ground that on the crucial date of drawing of the panel on 01.01.2017, no provisional certificate was made available by the petitioner. In the said circumstances, the petitioner has filed the present Contempt Petition in C.P.No.1593 of 2017 for disobeying the direction passed by this Court.

7. Upon notice, Ms.P.Kavitha, the learned Government Advocate entered appearance on behalf of the respondents and filed counter affidavit.

8. As regards the Contempt Petition is concerned, the learned Government Advocate would submit that the petitioner was permitted to participate in the counseling as per the direction of this Court and therefore, the question of Contempt does not arise in this case.

9. Considering the submissions made on behalf of the respondents, this Court is of the view that no further orders are necessary and therefore, the Contempt Petition is closed.

10. However, while closing the Contempt Petition, this Court has taken up the writ petition for final hearing, since the issues involved in the writ petition have already been considered by this Court at the time of admission and having found prima facie case, an interim direction was passed and the direction has also been complied with. For drawing up a panel for promotion for the year 2017, despite her eligibility, the petitioner could not register the course completion certificate

in her Service Register as on 01.01.2017, since it was not made available by the University in time. Therefore, she became ineligible for consideration for promotion to the post of B.T.Assistant [Science] as per the panel prepared on 01.01.2017. However, the fact of the matter was that the qualification obtained by the petitioner and her eligibility was not disputed by the respondents. As stated above, the only ground on which the petitioner was found to be not entitled for promotion in the year 2017, because she did not produce her undergraduation completion certificate and the same was not recorded in the Service Register before the panel was drawn up on 01.01.2017. In the Counter filed on behalf of the respondents, the same contention has been raised in various paragraphs.

11. The learned counsel for the petitioner would submit that a similar issue came up for consideration before this Court and the learned Single Judge has allowed the writ petition by order dated 24.04.2015 in W.P.(MD).No.9647 of 2014. The operative portion of the order passed by the learned Single Judge as found in paragraphs 6 and 7 are extracted below:

"6. Taking note of the submissions of both sides, it is no doubt true that the petitioner is qualified as on crucial date viz., 01.01.2014 and the only lapse on the side of the petitioner is her non-intimation to the respondents about completion of her B.Ed. Degree, which cannot be taken as a ground for denying inclusion of her name in the panel, when it is more particularly admitted by the respondents that the panel for the year 2014 was approved only in June, 2014. However, the respondent has now stated that the name of the petitioner has been included in the list drawn for the year 2015, which has also been approved by the 1st respondent. But, it is pertinent to mention here that inclusion of her name in the subsequent panel, viz., 01.01.2015, will definitely deprive her right in view of the fact she is already eligible to be included in the previous panel itself for being promoted to the post of B.T. Assistant (English). Hence, this Court directs the respondents to consider the case of the petitioner for promotion to the post of B.T. Assistant (English) and pass appropriate orders and grant the benefits from 01.01.2014 and also extend the benefits that may accrue from 01.01.2014 to the petitioner

within a period of three months from the date of receipt of a copy of this order.

7. This Writ Petition is disposed of with the above direction. No costs. Consequently, the connected miscellaneous petitions are closed. "

12. The learned counsel for the petitioner would submit that the said order of the learned Single Judge was also confirmed in the appeal in W.P.(MD).No.158 of 2017 dated 22.04.2016. As per the orders passed by the learned Single Judge as well as a Division Bench of Madurai Bench of this Court, it appears that the issue is squarely covered by the conclusion of the learned Single Judge as well as the Division Bench of Madurai Bench of this Court and therefore, the petitioner has made out a clear case for grant of the relief. In any event, the factum of the petitioner's qualification is not in dispute. More over, the petitioner herself has intimated to the authorities concerned vide letter dated 03.12.2016 about her completion of undergraduate course. The issuance of provisional certificate on 06.01.2017 immediately after drawing up of the panel on 01.01.2017 cannot be attributed to the petitioner and hence her right to be considered for promotion as on 01.01.2017 cannot be negated. In any event, the panel was published only in April, 2017, by the time, the petitioner had produced the Provisional Certificate confirming her qualification. That being the case, this Court does not see any kind of justification for denying the subject promotion to the petitioner. The stand of the respondents in this regard cannot be appreciated and the same cannot be either countenanced in law or on facts.

13. In the above said reasons, the writ petition is allowed and the respondents are directed to include the name of the petitioner in the panel for promotion to the post of B.T.Assistant [Science] by taking into consideration the fact that the petitioner was fully qualified for appointment and grant her posting as B.T.Assistant [Science] in pursuance of the counseling which was conducted on 22.05.2017 and grant her all attendant benefits as applicable. The respondent/competent authority is directed to pass consequential orders giving effect to the above direction, within a period of four weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous are closed.

Sd/-

Assistant Registrar(CS IX)

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Sub Assistant Registrar

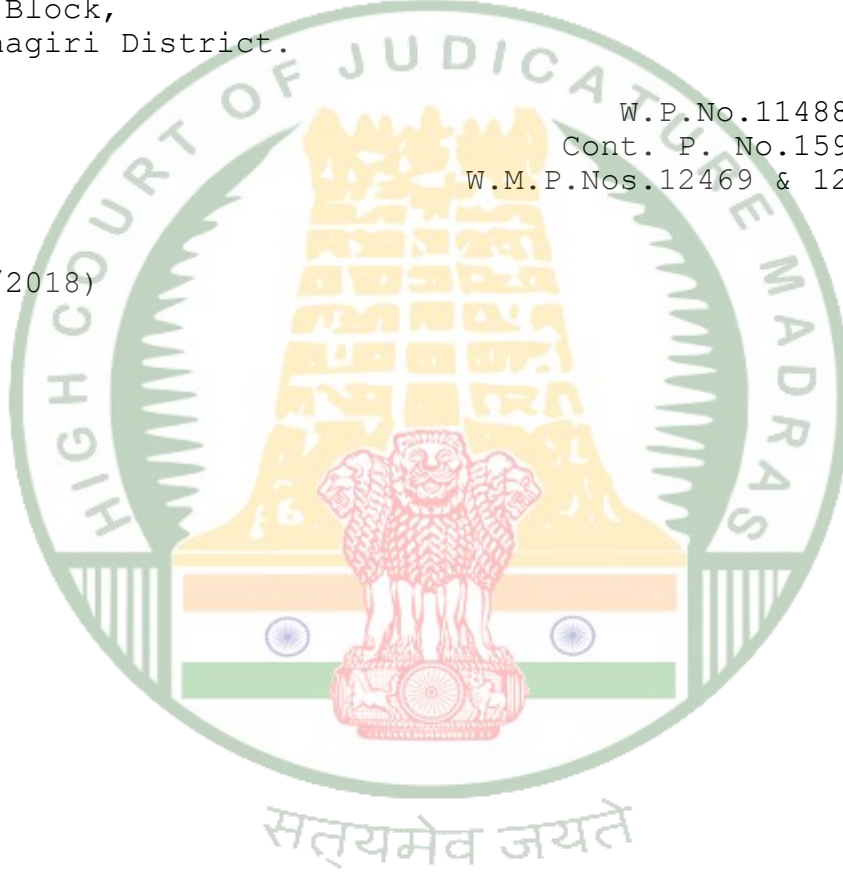
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To

1. The Director of Elementary Education,
DPI Campus,
College Road,
Chennai-600 006.
2. The District Elementary Educational Officer,
Krishnagiri District.
3. The Assistant Elementary Educational Officer,
Sulur Block,
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RRK(28/04/2018)



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