

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 23.08.2018

CORAM

THE HONOURABLE MR.JUSTICE SATRUGHANA PUJAHARI

W.P.No.14885 of 2017
and W.M.P.Nos.16127 & 16128 of 2017

R.Vinoth

....Petitioner

Vs

1. The District Elementary Educational Officer,
Thiruvarur
 2. The Assistant Elementary Educational Officer,
Thiruvarur, Thiruvarur District,
 3. The Secretary,
Moses Aided Middle School,
No.50, Azad Road, Thiruvarur,
Thiruvarur District
- ... Respondents

Prayer:- Writ petition filed under Article 226 of the Constitution of India praying to issue a writ of certiorarified mandamus calling for the entire records connected with the impugned order passed by the first respondent in O.Mu.No/480/A2/2016, dated 25.02.2016, and quash the same insofar as cancelling the permission granted to fill up the post of B.T.Assistant (Tamil) by proceedings dated 09.01.2014 and consequently direct the respondents to approve the appointment of the petitioner as B.T.Assistant (Tamil) w.e.f. 28.01.2016 in the third respondent school with all consequential benefits.

For Petitioner : Mr.S.N.Ravichandran

For Respondents : Mrs.P.Kavitha,
Government Advocate for RR1&2

: No Appearance for R3

ORDER

The petitioner in this writ petition, has impugned the order of the first respondent dated 25.02.2016 refusing to

approve his appointment against the upgraded post of B.T Assistant Teacher (Tamil) in the third respondent school made pursuant to the order of upgradation of a vacant post of secondary grade teacher that had fallen vacant on 31.07.2012 on account of voluntary retirement of Tmt.Bhuvaneswari and permission of appointment granted by the first respondent vide O.Mu.No.158/A2/2004 dated 09.01.2014, by returning the proposal of the third respondent in this regard assigning the reasons that there been six surplus post in the year 2014-2015 and 7 surplus in the year 2015-2016. According to the petitioner the appointment of the petitioner being made against an upgraded post sanctioned and strictly in accordance with the stipulation in the order of the first respondent in the letter of upgradation and permission of appointment, dated 09.01.2014, the same could not have been refused on the reasons assigned inasmuch as the upgraded post is a must in the third respondent school and no eligible surplus secondary grade teachers were there to man the said posts. Hence he has filed this writ petition to quash the impugned order and direct the third respondent to resubmit the proposal with a direction to the first respondent to approve the same.

2. In the counter affidavit filed by the first respondent, it is not disputed that the petitioner was appointed as BT Assistant Teacher (Tamil) and also there was a vacancy for the post of BT Assistant Teacher (Tamil) which is an upgraded post of secondary grade teacher, but according to the first respondent since there were surplus B.T.Assistant Teacher in the school, on the date of appointment of the petitioner, the approval for such appointment was returned, consequently, the appointment of the petitioner was refused to be approved vide the impugned order.

3. The learned counsel appearing for the petitioner, submits that the post of BT Assistant Teacher (Tamil) was upgraded vide order dated 09.01.2016 and the petitioner was appointed thereafter. There is no dispute that in a recognised Aided Middle School which is the third respondent school, there must be a BT Assistant Teacher (Tamil). Against such post, even surplus B.T. Assitant Teachers are there in other subject they cannot be accommodated inasmuch as they are incompetent to teach such subject. Therefore, the petitioner submits that the impugned order is illegal and arbitrary inasmuch as admittedly there was no incumbent to man the upgraded post of BT Assistant Teacher (Tamil) in the said school. Hence the refusal of approval of appointment of the petitioner by returning the proposal of the third respondent in this regard vide the impugned order is liable to be quashed and the third respondent be directed to resubmit the proposal within a stipulated period and the first respondent be directed to approve the same in a

time bound manner.

4. The learned counsel appearing for the respondents however submits that as there were surplus staff consequently approval of petitioner's appointment against the said post was returned, hence the impugned order cannot be found fault with.

5. However, it is not disputed that the third respondent school justifies for appointment of a BT Assistant Teacher (Tamil) inasmuch as the same was an Aided Middle School and on the date of appointment of the petitioner no surplus secondary grade teacher was there except the petitioner to man the upgraded post of BT Assistant Teacher(Tamil). So also the petitioner's appointment was in accordance with the norms prescribed in the letter of permission to fill up the post by the first respondent. Accordingly, the petitioner was appointed against such upgraded post. The upgradation proposal has also not been withdrawn.

6. Considering the aforesaid fact that the school in question justifies the appointment of BT Assistant Teacher (Tamil) and accordingly the post of secondary grade teacher was upgraded and permission was granted to make appointment against that post by the first respondent vide letter No.09.01.2014 and the petitioner stated to be a qualified person, was undisputedly appointed against the said post as per the norms prescribed thereafter even if some surplus B.T. Assistant Teachers in other subjects were there in the said school, the third respondent proposal to approve such appointment of the petitioner against such upgraded post appears to this Court was arbitrarily refused and returned by the first respondent to the third respondent. The same is more so as the upgradation order has also not been recalled and undisputedly such an upgraded post is a must in the third respondent school.

7. Hence the impugned order passed by the first respondent on 28.01.2016 returning the proposal of approval of appointment of the petitioner in the upgraded post of B.T.Assistant Teacher (Tamil) on the assigned reasons, having no sanction of law, cannot be sustained and accordingly the impugned order of the first respondent in this regard stands quashed. Consequently, the third respondent is directed to resubmit such proposal within a period of four weeks from the date of receipt of a copy of this order and the first respondent is directed to approve such appointment of the petitioner of course, if the papers submitted are in accordance with the requirement of the rules / executive instructions in this regard, so also in order, within a period of six weeks of receipt of the same.

8. With the aforesaid order, the writ petition stands disposed of. Consequently, connected miscellaneous petitions are closed. No costs.

Sd/-
Deputy Registrar

//True Copy//

Sub Assistant Registrar

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To

1. The District Elementary Educational Officer,
Thiruvarur
2. The Assistant Elementary Educational Officer,
Thiruvarur, Thiruvarur District,
3. The Secretary,
Moses Aided Middle School,
No.50, Azad Road, Thiruvarur,
Thiruvarur

+1cc to Mr.S.N.Ravichandran, Advocate, S.R.No.57719
+1cc to the Government Pleader, S.R.No. 57911

W.P.No.14885 of 2017

GN(10/09/2018)

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