

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On:13.07.17

Delivered : 28.02.2018

CORAM :

THE HON'BLE MR. JUSTICE M.V.MURALIDARAN

Writ Petition No.7161 of 2013

and

M.P.No.1 of 2013

J.Mercy Metilda

.. Petitioner

Vs.

1.The Union Territory of Puducherry,
Rep. By its Secretary,
Education Department,
Government of Puducherry,
Chief Secretariat,
Puducherry.

2.The Director of School Education,
Perunthalaivar Kamarajar Centenary
Education Complex,
100 Feet Road,
Anna Nagar, Nellithope,
Puducherry - 605 005.

3.The Senior Accounts Officer,
O/o. Directorate of School Education,
Perunthalaivar Kamarajar Centenary
Education Complex,
100 Feet Road,
Anna Nagar, Nellithope,
Puducherry - 605 005.

4.The Manager,
Nirmala Ranee Govt. Aided Girls
Higher Secondary School,
No.33, Nehru Street,
Karaikal - 609 602.

.. Respondents

PRAYER: Petition under Article 226 of the Constitution of India
to issue a writ of Certiorarified Mandamus, to call for the

records relating to the impugned rejection proceedings in No.14-1/DSE/G1 AS/U.3/2012-13 dated 18.07.2012 passed by the third respondent and quash the same as arbitrary, unreasonably improper, illegal against the rules and regulations the respondents and fundamental rights guaranteed under the Constitution of India and thereby directing the respondents to approve the appointment of the petitioner as trained graduate teacher (Science) at Nirmala Renee Government Aided Girls Higher Secondary School, Karaikal from the date of her initial appointment dated 09.06.2008 with all consequential monetary and other service benefits by granting the release of grand-in-aid to the petitioner as per the time frame fixed by this Court.

For Petitioner : Mr.G.Sankaran

For Respondents: Mr.Syed Mustafa (for R1 to R3)
Special Government Pleader

Dr.Fr.Xavier Arul Raj Senior Counsel for
M/s.A.Arul mary (for R4)

ORDER

This writ petition has been filed by the petitioner seeking to quash the impugned order in No.14-1/DSE/G 1 AS/U.3/2012-13, dated 18.07.2012 and to direct the respondents to approve the appointment of the petitioner as trained teacher (Science) in the fourth respondent school from the date of her initial appointment with all consequential monetary benefits.

2. Briefly stated, the case of the petitioner is as follows:

The petitioner was appointed as School Assistant Grade-II in the fourth respondent school on 09.06.2008 in the retirement vacancy of the incumbent A.Chandra and continued to work as such for four years. On 29.03.2012, the fourth respondent, by another order of appointment stated that she had been appointed as Trained Graduate Teacher w.e.f. 29.03.2012 in the pay scale of Rs.9300-3480 + GP 4600/- plus other allowances, but she was paid consolidated pay of Rs.5000/- from June 2012.

3. On 30.3.2012, the fourth respondent school Management sent a proposal to the Education Department for approval of the teachers and release of salary from the Government. On 15.05.2012, the Education Department approved the appointment of seven teachers, whereas the appointment of the petitioner was not approved with an endorsement that the subject requirement not in conformity with the norms. On 14.06.2012, the fourth respondent school Management forwarded another proposal to the Director of School Education to consider the petitioner for approval as trained graduate teacher by referring to the

transfer of Paul Mary with effect from 06.06.2012 AN and to release staff grant to the petitioner.

4. On 18.07.2012, the Director of School Education issued impugned order stating that the request for release of grant-in-aid qua the petitioner as trained graduate teacher could not be considered. After passing of the impugned order, on 31.07.2012, the fourth respondent school Management sent a representation to the School Education Department to release the grant-in-aid to the petitioner.

5. On 10.01.2013, the petitioner made a representation to the respondent authorities requesting to approve her appointment and release grant-in-aid from the date of her initial appointment and the same had been kept pending without consideration till date. According to the petitioner, the impugned order is arbitrary, unreasonable and unsustainable and prays for setting aside the same and consequently, approve the appointment of the petitioner as trained graduate teacher (Science) in the fourth respondent school from the date of her initial appointment and to pay consequential monetary benefits.

6. I heard Mr.G.Sankaran, learned senior counsel appearing for the petitioner, Mr.Syed Mustafa, learned Special Government Pleader for the respondents 1 to 3 and Fr.Saviera Arul Raj, learned senior counsel appearing for the 4th respondent. I have also perused the materials on record.

7. The case of the petitioner is that the fourth respondent school is a minority Government aided Higher Secondary school. The student strength to Standards VI to X headed by the trained graduate teacher is more than 1100. As per the norms fixed by the Government of Puducherry qua student-teacher ratio, the staff strength is 29 teachers for 1100 students, whereas in the fourth respondent school, they are running 20 Sections with 60 students for each Section approximately for Standards VI to X.

8. The learned counsel for the petitioner submitted that the School Education department has proceeded to fix the teacher ratio as 6 trained graduate teacher by taking into consideration number of Sections. If number of students studying in the school for Standards VI to X is taken into consideration, then the requirement would be of 90 trained graduate teachers.

9. The learned Special Government Pleader appearing for the respondents 1 to 3 submitted that the impugned order is not vitiated by any provisions of law and the same need not be interfered with.

10. The petitioner passed SSLC examination in April 1993 and had passed Higher Secondary examination in March 1995.

After completing her school education, the petitioner completed B.Sc. (Chemistry) and had obtained degree in 2000. She had also completed B.Ed. degree in Second Class in the examination held in April 2000 and registered her name in the Employment Exchange. The aforesaid qualification acquired by the petitioner has not been disputed by the respondents 1 to 3.

11. According to the petitioner, she came to know about the vacancy in the cadre of School Assistant (Science) in the fourth respondent school and had applied for the said post. It is the say of the petitioner that upon interview, the petitioner was selected and appointed as School Assistant (Science) on 09.06.2008 in the scale of pay Rs.5500 - 175 - 9000 plus other allowances under the Grant-in-aid Code Rules. The appointment order states that the appointment of the petitioner will be placed on probation for a period of two years. Following the appointment order, on 09.06.2008, the fourth respondent issued another letter to the petitioner that the appointment of the petitioner is in regular vacancy subject to approval by the Education Department and will be paid consolidated pay of Rs.2000/- per month. The letter dated 09.06.2008 reads thus:

"Your appointment will be under the following conditions.

It is regular vacancy subject to approval by the Education department. You will be eligible for Government salary only after it is sanctioned by the Government and from the date for which it will be sanctioned. Until then you will be paid Rs.2000/- per month as consolidated pay by the Management. This amount paid to you shall be refunded for the period for which you receive the Government salary. Your appointment is purely on temporary basis for one year."

12. It is to be noted that on 29.03.2012, the petitioner was issued another appointment order. The appointment order dated 29.03.2012 reads thus:

"The undersigned is pleased to appoint Tmt.J.Mercy Metilda, B.Sc., B.Ed. as Trained Graduate Teacher in Nirmala Rane (Govt. Aided I-X) Girls Hr. Sec. School, Karaikal, from the forenoon of 29th March 2012 on a pay of Rs.12540/- plus Grade Pay Rs.4600/- in the scale of pay Rs. PB-2: 9300-34800 plus GP Rs.4600 plus other allowances admissible under the Grant-in-aid Code Rules.

Tmt.J.Mercy Metilda will be placed on probation for two years with effect from her date of appointment."

13. Thus, from the aforesaid appointment orders, I find that initially the petitioner was appointed as School Assistant (Science) and worked as such till the fourth respondent school

appoints her as Trained Graduate Teacher on 29.03.2012 and thereafter, she joined the said post and continued to work without any disturbance. Apart from the petitioner, the fourth respondent had also appointed some other persons in various posts, altogether 13 persons. The appointment of the petitioner as well as others were intimated to the Director of School Education, Puducherry by the fourth respondent school vide letter dated 30.03.2012.

14. On 15.05.2012, the Director of School Education, Puducherry issued a Memorandum releasing the Grand-in-aid to the management of the fourth respondent school for 10 persons and the petitioner's name was not found in the list. The reason for not considering the grant-in-aid qua two posts, (one post meant for the petitioner) is "subject requirement not in conformity with the norms".

15. After issuing memorandum dated 15.05.2012, the fourth respondent school sent a proposal dated 14.06.2012 to the Director of School Education to consider the appointment of the petitioner and to release the staff grant for her. Upon receipt of the proposal, the Director of School Education issued the impugned order stating that the petitioner as trained graduate teacher could not be considered, since the resultant vacancy could be filled up only after the Recruitment rules are framed and approved by the Director.

16. In response to the impugned order, the fourth respondent school addressed a letter to the Director of School Education stating that as the fourth respondent school had seven trained graduate teachers for science, the only way to reduce the number to six is to transfer one of them. So, the fourth respondent transferred Pauline Mary, who was working as Science trained graduate teacher from 01.06.2005 and in her place, the fourth respondent school appointed one Ezhilarasi trained graduate teacher (Maths) with effect from 07.06.2012. In the said letter, the fourth respondent also informed that the post occupied by the petitioner in one of the nine trained graduate teacher posts vacant as on 29.03.2012 and not a new vacancy and thus, requested to release the staff grant in respect of the petitioner with effect from 29.03.2012.

17. Though the Director of School Education received the letter sent by the fourth respondent school, as per the version of the learned counsel for the petitioner, till date the same has not been considered.

18. In Rohit Singhal v. Jawahar N.Vidyalaya, reported in AIR 2003 SC 2088, the Hon'ble Supreme Court declared that "education is an investment made by the nation in its children

for harvesting a future crop responsible adults productive of a well functioning society. It is also held that children are not only the future citizens, but also the future of the earth. The State must ensure that children suffer no harm in exercising their fundamental rights and civic duty. The States, thus, bear the additional burden of regulation, ensuring that schools provide safe facilities as part of a compulsory education".

19. Admittedly, in the case on hand, the petitioner was working from 09.06.2008 without any blemish. The fourth respondent school repeatedly requested the Director of School Education to approve the appointment of the petitioner and release the grant in aid, which shows that the petitioner is discharging her duty without any remarks.

20. The reasoning given by the Director of School Education for not approving the appointment of the petitioner are: (i) subject requirement not in conformity with the norms; (ii) should pass Teachers Eligibility Test; and (iii) resultant vacancy could be filled only after the recruitment rules framed and approved.

21. It is pertinent to point out that the appointment of the petitioner has been made in the retirement vacancy that too within the approved cadre strength and discipline that arose due to the retirement of one A.Chandra, School Assistant (Science). The appointment order states that the appointment is in a regular vacancy. When the petitioner's initial appointment itself is in regular vacancy, respondent authorities ought to have considered the case of the petitioner favourably.

22. Coming to stipulation of passing of Teacher Eligibility Test, the non-possession of the qualification of the TET is not a basis for approval/regularization of the in service teachers, as it is not applicable to the petitioner's case, since the Act came into force only after 26.08.2009. It is also settled that once appointed as teachers after having been found eligible as on said date of their appointment, they cannot be expected to write examination to qualify in such examination at much later point of time. Non-qualifying in TET by teachers already in service should not defeat the object of Government to provide quality and standard education.

23. On a perusal of the typed set of papers, I find that the respondent authorities failed to consider that one Ezhilarasi, who was appointed as trained graduate teacher (Maths) under the fourth respondent school was approved without

insisting the qualification of TET. Whereas in the case of petitioner, the respondent authorities insisted upon such qualification, which shows discrimination and also violation of the fundamental rights guaranteed under Article 14 and 16 of the Constitution of India.

24. Before passing the impugned order, the respondent authorities failed to consider that the petitioner's appointment is not coming under the resultant vacancy, as her appointment has been made in the regular vacancy under the approved cadre strength and within the subject requirement of the respective discipline. Further, the appointment of the petitioner as School Assistant (Science) is in accordance with the existing recruitment rules. Therefore, the act of the respondent authorities denying approval to the appointment of the petitioner on the ground that resultant vacancy could be filled only after the recruitment rules are framed and approved does not arise in the case on hand and the said approach adopted by the respondent authorities is unsustainable.

25. In *State of Orissa v. Mamata Mohanty*, reported in (2011) 3 SCC 436, the Hon'ble Supreme Court held that standard of teaching shall not suffer on the ground of want of funds/paucity of funds cannot be a ground for the State for not maintaining the standard of education and not providing quality education to its citizens. In Paragraph 33, the Hon'ble Supreme Court held thus:-

"33. In view of the above, it is evident that education is necessary to develop the personality of a person as a whole and in totality as it provides the process of training and acquiring the knowledge, skills, developing mind and character by formal schooling. Therefore, it is necessary to maintain a high academic standard and academic discipline along with academic rigour for the progress of a nation. Democracy depends for its own survival on a high standard of vocational and professional education. Paucity of funds cannot be a ground for the State not to provide quality education to its future citizens. It is for this reason that in order to maintain the standard of education the State Government provides grant-in-aid to private schools to ensure the smooth running of the institution so that the standard of teaching may not suffer for want of funds."

26. As stated above, the post occupied by the petitioner in one of the trained graduate teacher posts vacant as on 29.03.2012 and not a new vacancy and therefore, the fourth

respondent requested the respondent authorities to release the staff grant in respect of the petitioner with effect from 29.03.2012.

27. The learned counsel for the petitioner was right in saying that the respondent authorities have failed to consider the original proposal as also the revised proposals sent by the fourth respondent school to the Director of School Education explaining that the appointment of the petitioner has been made in conformity with the subject requirement norms and her cadre comes within the six trained graduate teacher (Science) of approved cadre.

28. Considering the service rendered by the petitioner as School Assistant / Trained Graduate Teacher continuously without any break in service and without any blemish, impeccable record of service by teaching Science to the students of Standards VI to IX, this Court is of the view that the appointment of the petitioner as Trained Graduate Teacher (Science) should be approved in the fourth respondent school from the date of her initial appointment dated 09.06.2008 with consequential monetary benefits.

29. In the result:

(a) the writ petition is allowed and the impugned rejection order in No.14-1/DSE/G 1 AS/U.3/2012-13 dated 18.07.2012 passed by the third respondent is quashed;

(b) the respondents are directed to approve the appointment of the petitioner as trained graduate teacher (Science) in the fourth respondent school viz., Nirmala Renee Government Aided Girls Higher Secondary School, Karaikal from the date of her initial appointment dated 09.06.2008 with all consequential, monetary benefits by granting the release of grant-in-aid to the petitioner;

(c) the respondents 1 to 3 are directed to undertake the said exercise within a period of eight weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Asst.Registrar (CS IX)

/true copy/

Sub Asst. Registrar

To

1.The Secretary,
Union Territory of Puducherry,
Education Department,
Government of Puducherry,
Chief Secretariat,
Puducherry.

2.The Director of School Education,
Perunthalaivar Kamarajar Centenary
Education Complex,
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3.The Senior Accounts Officer,
O/o. Directorate of School Education,
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Education Complex,
100 Feet Road,
Anna Nagar, Nellithope,
Puducherry - 605 005.

+ 1 cc to Mr.G.Sankaran Advocate,SR.15575

+ 2 cc to M/s.Father Xavier Associates Advocate,SR.16167

order made in
W.P.No.7161 of 2013
and
M.P.No.1 of 2013

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nr 02/05/2018

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