

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 27.07.2018

DELIVERED ON : 11.08.2018

CORAM

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

W.P.No.8554 of 2009

and

M.P.No.1 of 2009

S.Shanti Matilda ... Petitioner

Vs.

1. The State of Tamil Nadu
rep. by its Secretary,
School Education Department,
Fort St. George, Chennai.

2. The Director of School Education,
College Road, Nungambakkam,
Chennai.

3. The Accountant General,
Chennai.

4. The Correspondent,
Home Church Higher Secondary School,
Nagercoil, Kaniyakumari District.

.. Respondents

Prayer : Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, to call for the records relating to the order in Letter No.39549/D2/2008-2, dated 3.4.2009 passed by the first respondent and quash the same and further direct the respondents to approve the petitioner's post as B.T.Assistant, Maths, and pay all salary from 26.6.1995 to 2.5.2006 with retirement benefits and pension.

For Petitioner : Mr.K.M.Ramesh

For Respondents : Mr.A.Rajaperumal
Addl. Government Pleader
for respondents 1 and 2

Mr.T.Ravikumar
for 3rd respondent

Mr.Godson Swaminath
for 4th respondent

ORDER

The petitioner has filed this writ petition seeking issuance of a writ of Certiorarified Mandamus to call for the records relating to the order in Letter No.39549/D2/2008-2, dated 03.04.2009, passed by the first respondent, to quash the same and to further direct the respondents to approve the petitioner's post as B.T.Assistant (Maths), and pay all salary from 26.06.1995 to 02.05.2006 with retirement benefits and pension.

2. The facts in a nutshell are as under: By an order of appointment dated 26.06.1995 issued by the fourth respondent school, the petitioner was appointed as B.T. Assistant (Maths) in the 4th respondent school and it is stated that from the date of appointment, the petitioner served in the said post to the utmost satisfaction of her superiors.

3. It is stated that at the time of appointment, the fourth respondent school assured the petitioner that as soon as the post is sanctioned by the Government, the name of the petitioner would be sent to the Government for approval.

4. It is further stated that in the year 1997, when one post of B.T. Assistant was sanctioned to the fourth respondent school, the fourth respondent school instead of sending the name of the petitioner, had chosen to send the name of one Janchy Latha, who was appointed on 02.06.1997 and is junior to the petitioner.

5. It is alleged that even during the year 1999, when one post of B.T. Assistant was sanctioned to the fourth respondent school, they had sent proposal for appointment of one Mabel Sakunthala Selvamani.

6. It is stated that assailing said action, the petitioner filed a suit in O.S.No.9 of 1999 before the learned District Munsif Court, Nagercoil, which decreed the suit holding that the petitioner alone is entitled to be appointed in the

Maths B.Ed., sanctioned/scheduled to be sanctioned post in future and an order of injunction was passed in this regard.

7. Calling in question the said order, the respondents appealed to the learned Principal Sub Court, Nagercoil, by filing A.S.No.199 of 2004 and same is stated to have been dismissed.

8. It is specifically pleaded that even though the government sanctioned the post in 1997, the fourth respondent school had wantonly kept the post vacant

9. It is claimed that the petitioner after putting in more than ten years of service in the fourth respondent school attained the age of superannuation on 02.05.2006. The petitioner alleges to have made a detailed representation pursuant to the direction of this Court in W.P.No.19761 of 2006 seeking payment of salary and other terminal benefits. However, it is alleged that the first respondent rejected the claim of the petitioner.

10. Hence, the present writ petition for the relief stated supra.

11. The learned counsel appearing on behalf of the petitioner submitted that despite sanctioning of post of B.T. Assistant on more than one occasion, the fourth respondent School had preferred to appoint juniors to the petitioner without assigning any reason whatsoever, giving a go-bye to the seniority list and the resolutions passed by the fourth respondent's School Committee, more particularly on 22.10.1998, and, therefore, the order of the first respondent passed without considering the resolutions of the School Committee is liable to be set aside.

12. It is further submitted despite holding a decree from the Civil Court in O.S.No.9 of 1999, which was confirmed in A.S.No.199 of 2005, the fourth respondent had wantonly not sent the proposal of the petitioner with a view to accommodate her juniors and this vital factor was not considered by the first respondent while passing the impugned order.

13. It is contended that when in respect of similarly placed person, one Annie Percila, this Court passed a favourable order and the same was also implemented by the first respondent vide G.O.Ms.No.76, dated 12.07.2004, the first respondent cannot adopt a different yardstick in respect of the petitioner.

14. Per contra, the learned counsel for the fourth respondent submitted that the Director of School Education to

approve the appointment of Science Graduate Teacher in the newly sanctioned post and, therefore, Ms.Jancy Latha was appointed on 02.06.1997 and such appointment was also approved by the Director of School Education.

15. Qua the Civil Court decree obtained by the petitioner, the learned counsel appearing on behalf of the fourth respondent submitted that against the orders passed by the Civil Court, a Second Appeal, being S.A.(MD)No.307 of 2009, has been filed by the Home Church Committee and the Secretary of the Home Church and the same is pending before this Court. In any event, he submitted that the Civil Court has no jurisdiction to adjudicate upon constitutional issues concerning rights of minorities to administer their institutions under Article 30(1) of the Constitution of India and, therefore, the decree obtained by the petitioner is non est.

16. He contended that the petitioner was appointed only temporarily and not in any government aided post and no assurance whatsoever was given to her and no government salary was paid to her and the allegations levelled against the fourth respondent school are false and baseless.

17. Lastly, he submitted that the petitioner working under self-financed scheme of education has no locus standi to file a writ petition challenging appointments made in aided post in minority school and that she has no enforceable right.

18. The learned Additional Government Pleader appearing on behalf of respondents 1 and 2 reiterated the reasons that weighed with the first respondent in passing the impugned order.

19. I heard Mr.K.M.Ramesh, learned counsel for the petitioner, Mr.A.Rajaperumal, learned Additional Government Pleader for the respondents 1 and 2, Mr.T.Ravikumar, learned counsel for the 3rd respondent and Mr.Godson Swaminath, learned counsel for the 4th respondent and perused the documents available on record.

20. It is a matter of record that the fourth respondent school is a recognized religious minority in terms of Article 30 (1) of the Constitution of India.

21. It is seen from the records that Mrs.Jancy Latha, who was working in an unsanctioned post from 27.06.1990, was appointed in the sanctioned post of B.T. Assistant and it is not in dispute that the petitioner was only appointed on 26.06.1995, much later than Jancy Latha. Therefore, the plea of the petitioner that Jancy Latha was junior to her is unsustainable.

22. Qua the appointment of one Mabel Sakunthala Selvamony, the records reveal that her proposal was sent to the District Educational Officer by the fourth respondent School, but no approval was granted and after 14.09.2010, because she was not paid salary, she got appointed as B.T. Assistant in Government School and she is presently working as B.T. Assistant in the Government school.

23. Nothing has been placed on record by the petitioner to rebut the argument of the learned counsel for the fourth respondent that the petitioner was working in the self-finance English Medium section of the school and she was paid salary from the school funds up to the date of retirement. In fact, the stand of the respondents school that the petitioner was not at all appointed in any government aided post and no government salary was drawn and paid to the individual stares at the face of the petitioner.

24. With regard to the reference made to some other teachers, where similar benefits are alleged to have been extended, it is seen that the said appointments were in aided posts in minority schools.

25. Since it is alleged that a second appeal has been filed by the fourth respondent school against the decree obtained by the petitioner from the Civil Court and the same is pending consideration, this Court does not wish to express any opinion on this issue.

26. For the foregoing reasons, this Court finds no merit in the writ petition and, accordingly, the same is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS VII)

//True copy//

Sub Assistant Registrar

vs

To

1. The Secretary,
State of Tamil Nadu,
School Education Department,
Fort St. George, Chennai.

2. The Director of School Education,
College Road, Nungambakkam,
Chennai.

3. The Accountant General,
Chennai.

+1cc to Mr.T.Ravikumar, Advocate SR.No.55172

+1cc to Mr.K.M.Ramesh, Advocate SR.No.55174

+1cc to Mr.P.Godson Swaminathan, Advocate SR.No. 55921

+1cc to Government Pleader SR.No.55642

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GN(28/08/2018)



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