

IN THE HIGH COURT OF JUDICATURE AT MADRAS

CORAM :

THE HONOURABLE MR. JUSTICE SATRUGHANA PUJAHARI

Reserved on	Pronounced on
23.02.2018	.06.2018

W.P.Nos.17040 & 17041 of 2014
and MP.Nos.1 & 1 of 2014

W.P.No.17040 of 2014

V.Kalaiarasi

.. Petitioner

Vs.

- 1.The Government of Tamil Nadu,
Rep. by Secretary,
School Education Department,
Fort St. George,
Chennai-9.
- 2.Director,
Elementary Education,
DPI Campus, Nungambakkam,
Chennai-600 006.
- 3.District Elementary Education Officer,
Erode District, Erode.
- 4.Assistant Elementary Education Officer,
Chennimalai Union, Erode District.
- 5.P.Amutha

.. Respondents

Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus, to call for the concerned records relating to the order of the third respondent dated 23.01.2014 transferring and posting the fifth respondent as BT Assistant in English in the fourth respondent Union, to quash the same and consequently direct the third respondent to promote the petitioner as BT Assistant in English and post her in the place of the fifth respondent.

W.P.No.17041 of 2014

D.Sasikumar

.. Petitioner

Vs.

1.The Government of Tamil Nadu,
rep. by Secretary,
School Education Department,
Fort St. George,
Chennai-9.

2.Director,
Elementary Education,
DPI Campus, Nungambakkam,
Chennai-600 006.

3.District Elementary Education Officer,
Erode District, Erode.

4.Assistant Elementary Education Officer,
Chennimalai Union, Erode District.

5.B.Sudha

.. Respondents

Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus, to call for the concerned records relating to the order of the third respondent dated 19.06.2014 transferring and posting the fifth respondent as BT Assistant in English in the fourth respondent Union, to quash the same and consequently direct the third respondent to promote the petitioner as BT Assistant in English and post him in the place of the fifth respondent.

For Petitioner : Mr.N.G.R.Prasad for
(in both W.Ps.) M/s.Row & Reddy

For R1 to 4 : Mr.P. Raja,
(in both W.Ps.) Government Advocate

C O M M O N O R D E R

The writ petitioners in these two writ petitions, have challenged the denial of promotion to them to the post of B.T.Assistant in English by the third respondent on account of the non-availability of the posts, within the fourth respondent

Union, as the same were filled up on transfer by the private respondents in the respective writ petitions with a prayer to quash their such order of transfer and direct re-transfer of them, from Chennimalai Union of Erode District to any other place and appoint the petitioners against the vacancies caused on such transfer, by promotion.

2. In both these writ petitions similar question of law and facts being involved, both are heard together and disposed of by this common order on consent of the parties.

3. As it appears, the petitioners were working as secondary grade teachers in Chennimalai Union, Erode District under the respondent no.3, but, they having three years Bachelor Degree in English with necessary teachers training and experience, were eligible for promotion against three vacancies arose from 01.01.2013 to 31.12.2013 as they were qualified for the same on crucial date i.e. 01.01.2013 alongwith another, who is senior to them. But a seniority list of 8 Secondary Grade Teachers including 5 ineligible and the petitioners and another eligible one was drawn, inasmuch as in W.P.No.15578 of 2012 and batch in the case of (R.Thirunavukkarasu Vs. The state of Tamil Nadu) reported in 2012(5) CTC 129 filed by some eligible candidates, challenging the inclusion of secondary grade teachers with a dual degree of graduation obtained in a subject, in one year for promotion as B.T. Assistant in the subject concerned, it was held vide order dated 14.08.2012 that those candidates having such dual degree are ineligible to be promoted as B.T. Assistant in the dual degree subject obtained in one year. Later on, writ appeals having been filed against such order before this Court vide W.A.Nos.529 of 2013 and etc. batch in the case of (Smt. Premakumari and others Vs.R.Karthikeyan and others), was also dismissed by order dated 05.02.2014. On account of the pendency of the writ appeal and the interim orders passed, the petitioners could not be promoted, though qualified in all respect, as the first five persons in the seniority list drawn were ineligible in view of the order passed in the writ petition. However, during the pendency of the writ appeal when the Government respondents decided to fill up the post in the B.T. Assistant in English on transfer in the fourth respondent Union, the petitioners, who are the intervenors in the writ appeals, made a prayer, to injunct them from doing so as that would defeat their right to be considered for promotion as well as to be promoted. This Court however, passed order on 26.09.2013 that such transfers shall be subject to the fetter of result of the writ appeal. The writ appeal in the meanwhile having been dismissed, in the counselling for promotion are the three vacancies for B.T. Assistant in English that occurred from 01.01.2013 to

31.12.2013 were not shown but only one vacancy was shown, as two were already exhausted by occupation of the private respondents on transfer from other Union. The senior most eligible candidate to the petitioner in the Union was promoted against the sole vacancy shown in the counselling held in the month of June 2014. Since the petitioners were denied promotion by counselling in the absence of the vacancies that occurred from 01.01.2013 to 31.12.2013 in spite of the order passed by this Court on 22.04.2014 in W.P.No.9127 of 2017 and batch in the case of (P.Geetha and Others Vs. State of Tamilnadu and another), to fill up the posts taking into the seniority list on the crucial date of 01.01.2013 and the transfers of the private respondents in the writ petitions were subject to the order of the W.A.No.529 of 2013 batch, the petitioners have come to challenge the same inter alia on the grounds that since they were qualified to be promoted within the Union and posts were also available for them from 01.01.2013 to 31.12.2013, but, they were not promoted on account of the litigations and such filling up the post on transfer was subject to the order of the writ appeal and in the meanwhile, the writ appeal has since been disposed of, there was no apparent reason not to promote the petitioners by re-transferring the private respondents in each of the writ petitions, who had exhausted the vacancies. The reason assigned that non-availability of the post is not tenable one, as the same was an interim arrangement during the pendency of the writ appeal, which can be visualized from the interim order of this Court allowing the respondent to fill up the post on the exigency representation, but subject to result of the writ appeal. Therefore, the denial of promotion to the petitioners being illegal and arbitrary, the petitioners have made the aforesaid prayer in the writ petitions as stated earlier.

4. In the counter affidavit filed, the Government respondents though not disputed the eligibility of the petitioners to be promoted on 01.01.2013 and vacancies that occurred in the panel year 01.01.2013 to 31.12.2013, were there to accommodate them but, as the counselling for promotion was not taken up in that year, they could not be promoted. However, their stand is that, since in view of the litigations, such promotion also could not be taken up later and by the time, the litigations, that is, the writ appeals were disposed of, no post being there to accommodate the petitioners, they could not be promoted. In the absence of any vacancy, the claim of the petitioners though eligible for promotion, being untenable, these writ petitions challenging their non-promotion is devoid of merit and liable to be dismissed.

5. No counter affidavit has been filed by the private respondents and no representations also on their behalf inspite of notice.

6. Learned counsel appearing for the petitioner, has submitted that since the writ petitioners were qualified to be promoted on the crucial date against the vacancy of B.T. Assistant in English within the Union against the vacancies that arose from 01.01.2013 to 31.12.2013 and posts were also available for their accommodation during that period but for the pendency of the writ appeal they could not be promoted, the Government respondents were duty bound to show such vacancy in the counselling held in June 2014 to fill up the vacancies. However, since two out of those three vacancies were filled up on transfer during the pendency of the writ appeal, they did not show the same in the counselling and only one vacancy was shown against which one of the eligible seniors to the petitioners was promoted. In view of the specific order passed by this Court on 26.09.2013 in writ appeal that the transfers if any made shall be subject to the result of the writ appeal and also this Court in the W.P.No.9127 of 2014 batch having specifically directed to fill up the vacancy that occurred from 01.01.2013 to 31.12.2013, with the seniority list of the crucial date i.e., 01.01.2013, the Government respondents could not have refused to show those two vacancies in the counselling. In all the fairness of the thing, they should have retransferred the private respondents and shown the vacancy there of in the counselling and promoted the petitioners against the same, as they were the eligible candidates for being promoted against the vacancies. Hence, it is submitted by the learned counsel for the petitioners that the writ petitions deserve to be allowed with the relief sought for.

7. In response, the learned counsel appearing for the Government respondents has submitted that no doubt the petitioners were qualified to be promoted as far the seniority list on the crucial date of 01.01.2013 as B.T. Assistant in English, against the vacancy arose from 01.01.2013 to 31.12.2013 in the fourth respondent Union as posts were available for these petitioners but the same as could not be taken up for the pendency of the litigation and in the meanwhile, on administrative ground, two of the posts having been exhausted on transfer of B.T. Assistant in English from other Union and the third one has already been filled up on promotion by an eligible secondary grade teachers within the Union, who is undisputably senior to the petitioners during counselling, there was no more vacancy by the time the counselling was taken up, hence the petitioners could not be promoted. Therefore, the petitioners have no case inasmuch as, the question of promotion of eligible candidates does not arise in the absence of vacancy in the

promotional cadre. Hence, both the writ petitions are devoid of merits and liable to be dismissed, is the submission of the learned counsel for the respondents.

8. It is not in dispute that promotion to the post of B.T.Assistant in a particular subject is required to be filled up by promotion only from among the secondary grade teachers fulfilling the eligibility criterias. The G.O.Ms.No.239 of the Education Department dated 22.09.2007 is very clear in this regard. It is also not in dispute that for promotion to the vacancies that occurred in a year for B.T.Assistant in a particular subject in a Union are required to be filled up out of the seniority panel of eligible candidates taking the 1st of January of that year as the crucial date. However, when the Government had drawn a panel of some ineligible candidates i.e., candidates having dual degree in a particular subject that was obtained in one year duration, the same was challenged by many of the eligible candidates in W.P.No.15578 of 2012 and batch wherein, this Court had directed that such secondary grade teachers having the dual degree are not eligible to be considered for promotion as B.T.Assistant in the relevant subject. Thereafter, these two writ petitioners and another were the only eligible candidates on 01.01.2013 to be considered for promotion as B.T.Assistant(English) in the fourth respondent Union, is not in dispute. However, their promotion could not be taken up by counselling inasmuch as a writ appeal was filed against the said order of the learned single Judge vide W.A No.529 of 2013 and batch inasmuch as interim order was passed not to accord promotion during the pendency of the writ appeal. But, during the pendency of the writ appeal when the Government respondents tried to fill up the posts in the respondent Union for B.T.Assistant(English) on transfer, which was going to defeat the right of the petitioners to be considered for promotion and also their legitimate expectation to be promoted inasmuch as there were only three eligible candidates including these petitioners against three vacancies, they had obtained an order on 26.09.2013 indicating that such filling up the posts on transfer shall be subject to the outcome of the writ appeals. Therefore, in all fairness of the things the transfers made during the pendency of the writ appeal should have been revisited and the private respondents should have been transferred from the fourth respondent Union to any other Union and against the vacancies caused, the petitioners should have been promoted on counselling as their eligibility for promotion is not in dispute and vacancies were also there to accommodate them after such transfer. The same is more so in view of the order passed by this Court in the W.P.No.9127 of 2014 and batch inasmuch as therein this Court had clearly observed that vacancies that occurred in the post of B.T.Assistant in a particular subject from 01.01.2013 to 31.12.2013 are required to

be filled up by the candidates eligible on the crucial date of that year i.e., 01.01.2013. Furthermore, it is also not in dispute that in the counselling to fill up the post in a particular Union, the post of B.T.Assistant, first promotion is to be taken up to fill up the posts and then the remaining vacancies are required to be filled up on transfer. The same is so not to frustrate the claim of secondary grade teachers eligible for promotion on the crucial date in a particular Union, by transfer from other Union. Therefore, the petitioners appear to have a case in their favour and as such entitled to the relief sought for. But, simultaneously it cannot be lost sight that the private respondents are occupying the posts on transfer on administrative ground which were required to be shown in the counselling for promotion of the petitioners. In such occupation of the posts by transfer on administrative ground the private respondents have no contribution in any manner. There is also no material to show that they had snatch the order of transfer from the Government to the fourth respondent Union by perpetrating any fraud. Hence, at this juncture directing their retransfer to other Union and cause the vacancies for accommodation of the petitioners on promotion against the same, though they are legally entitled for the same, would cause undue hardship to the private respondents for no mistake of their own.

9. In such premises, this Court is of the view that if the Government respondents are directed for creation of two supernumerary posts as B.T. Assistant (English) in the said Union till vacancy is caused, to accommodate the petitioners on promotion, without giving any direction to retransfer the private respondents, the same shall serve the purpose and also can be in the interest of the justice and equity.

10. Consequently, the Government respondents are directed to take all effective steps to create two supernumerary posts in the B.T. Assistant (English) in the fourth respondent Union and accord promotion to the petitioners, within three months from the date of receipt of a copy of this order. Needless to say such supernumerary posts shall be abolished on availability of the sanctioned vacancy in this regard in the said subject in due course.

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11. With the aforesaid order, these writ petitions stand allowed. However, in the circumstances, there shall be no order as to costs. Consequently, all pending connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS II)

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Sub Assistant Registrar

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To

- 1.The Secretary to Government,
The Government of Tamil Nadu,
School Education Department,
Fort St. George, Chennai-9.
- 2.The Director,
Elementary Education,
DPI Campus, Nungambakkam,
Chennai-600 006.
- 3.The District Elementary Education Officer,
Erode District, Erode.
- 4.The Assistant Elementary Education Officer,
Chennimalai Union, Erode District.

+1 cc to M/s.Row and Reddy Advocate sr 34565

+1 cc to the Govt pleader sr 35018

W.P.Nos.17040 & 17041 of 2014

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