

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.12.2018

CORAM:

THE HONOURABLE MR.JUSTICE T.RAJA

W.P.No.40585 of 2016
and
W.M.P.Nos.34581 and 34582 of 2016

D.Shantha

.. Petitioner

Vs.

1. The State of Tamil Nadu,
Rep. by its Principal Secretary to Government,
School Education Department,
Secretariat, Fort St.George,
Chennai-600 009.
2. The Director of School Education,
DPI Campus, College Road,
Chennai-600 006.
3. The Director of Adi Dravidar Welfare,
Ezhilagam,
Chepauk, Chennai-600 005.

.. Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus relating to the proceedings of the second respondent in Na.Ka.No.020840/W2/E1/2016, dated 11.08.2016 and quash the same and consequently direct the respondents to restore the petitioner back to Tamil Nadu Higher Secondary Education Services in School Education Department as PG Assistant in Government Higher Secondary School based on the selection conducted by Teacher Recruitment Board as per Notification/Advertisement No.3 of 2012, dated 28.02.2012 without any loss of seniority, in the light of the orders passed by State Government in similar cases in G.O.(Ms).No.7, School Education (HSC) Department, dated 17.01.2002 and orders passed in G.O.(Ms). No.147, School Education Department, dated 16.09.2002 with all consequential and other attendant benefits within a time frame to be fixed by this Court.

For petitioner : Mr.G.Sankaran

For respondents: Mr.M.Elumalai, Govt. Advocate

ORDER

The petitioner has filed the above Writ Petition praying for issuance of a Writ of Certiorarified Mandamus relating to the proceedings of the second respondent in Na.Ka.No.020840/W2/E1/2016, dated 11.08.2016 and quash the same and consequently direct the respondents to restore the petitioner back to Tamil Nadu Higher Secondary Education Services in School Education Department as PG Assistant in Government Higher Secondary School based on the selection conducted by Teacher Recruitment Board as per Notification/Advertisement No.3 of 2012, dated 28.02.2012 without any loss of seniority, in the light of the orders passed by State Government in similar cases in G.O.(Ms). No.7, School Education (HSC.1) Department, dated 17.01.2002 and orders passed in G.O.(Ms).No.147, School Education (HSC.1) Department, dated 16.09.2002 with all consequential and other attendant benefits within a time frame to be fixed by this Court.

2. The petitioner applied to the post of P.G. Assistant (Mathematics), pursuant to the Notification/Advertisement of the Teachers Recruitment Board in No.3 of 2012, dated 28.02.2012, inviting applications for direct recruitment to the post of P.G. Assistant in Tamil Nadu Higher Secondary Education Service coming under the School Education Department, notifying 315 vacancies to the post of P.G. Assistant Mathematics.

3. Learned counsel for the petitioner submitted that the petitioner was expecting that she would be selected as P.G. Assistant in Mathematics subject in the Tami Nadu Higher Secondary Education Service coming under the School Education Department, she, having written the competitive examination conducted on 27.05.2012 and secured 110 marks. The Teachers Recruitment Board also issued provisional list of candidates for Certificate verification on 23.10.2012 showing the petitioner's name in Sl.No.314 under Reserved Category of BC (G). As such, the petitioner took part in the Certificate verification process and produced all the Certificates, which were duly verified by the officials concerned. The final select list was not published by the TRB.

4. Learned counsel for the petitioner further submitted that the petitioner was issued with an order by the third respondent as per proceedings dated 11.02.2013 for allotment of school coming under the Adi Dravidar Welfare Department and was accordingly appointed as P.G. Assistant in Government Adi Dravidar Girls Higher Secondary School, Nallammapuram, Tirunelveli, as per proceedings dated 22.02.2013 and she accordingly joined in the said

post. It is submitted that the petitioner had not exercised option to be posted in Adi Dravidar Welfare Department, nor called to consent for allotment to a different Department other than the School Education Department for which she was selected. Hence, the petitioner submitted representation, dated 01.07.2015 seeking to transfer her back to School Education Service. Finding no response, the petitioner approached this Court and filed W.P.No.4874 of 2016, in which this Court passed final order on 09.02.2016 by referring to the fact that she was selected for appointment to the post of P.G. Assistant in Government Higher Secondary School, whereas she was allotted to Adi Dravidar Welfare School coming under separate Department governed by Separate Service Rules, and this Court accordingly directed the respondents 2 and 3 to pass orders on the said representation, dated 01.07.2015 on merits and in accordance with law, within a period of eight weeks from the date of receipt of a copy of the order.

5. Learned counsel for the petitioner also submitted that pursuant to the said order of this Court, the impugned order dated 11.08.2016 had been wrongly passed. Learned counsel relied on a similar issue taken into account by this Court in a batch of Writ Petitions in W.P.Nos.28641, 28642 and 28233 of 2016, and by order dated 24.07.2018, this Court directed the respondents therein to transfer the petitioners therein to the Tamil Nadu Higher Secondary Education Service of the School Education Department as P.G. Assistants in the vacancies available in the Government Higher Secondary Schools on the basis of the selection pursuant to the Notification, dated 28.02.2012 with all attendant benefits like seniority, etc., and that the transfer as prayed for in those Writ Petitions was directed to be granted by the respondents/competent authorities, within a period of eight weeks from the date of receipt of a copy of the order. The third respondent therein was also directed to pass appropriate orders in order to enable the Government to effect transfer as prayed for in those Writ Petitions.

6. Therefore, the learned counsel for the petitioner submitted that the present Writ Petition is also raising the very same issue, which was granted by this Court in the said batch of Writ Petitions and hence, prayed that the present Writ Petition may be allowed on the same lines.

7. Learned Government Advocate appearing for the respondents, who took notice, submitted that the petitioner opted for appointment for the Adi Dravidar Welfare School run by the Adi Dravidar Welfare Department under its Commissioner and she was called for Certificate

verification by proceedings of the Commissioner of Adi Dravidar Welfare on 11.02.2013 and accordingly, she also joined as P.G. Assistant in the Government Adi Dravidar Welfare Government Higher Secondary School in Nallammapuram, Tirunelveli. Thereafter, she gave her representation, dated 01.07.2015, which was directed to be considered by this Court in the said W.P.No.4874 of 2016, subsequent to which the present impugned order had been passed as an outcome of the direction issued by this Court.

8. It is seen that similar issue has already been considered by this Court in the said batch of Writ Petitions in W.P.Nos.28641, 28642 and 28233 of 2016, by order dated 24.07.2018 and hence, the issue in the present Writ Petition is no longer res-integra. The relevant portion of the said order dated 24.07.2018 passed in those batch of Writ Petitions is extracted below:

"12. The learned Special Government Pleader would also submit that there was a ban in force for transfer of service and as such the claim of the petitioners could not be considered.

13. At this, the learned counsel for the petitioners would submit that the Government Orders which are referred to in regard to the ban imposed for transfer was only with reference to the particular year and that cannot be pressed into service for all the time to come. The learned counsel would also rely on the recent notification dated 26.07.2017, issued by Teachers Recruitment Board, in which, the recruitment was announced to various departments and vacancies were notified in respect of each department and each service. This would clearly show that at the time when these petitioners were recruited, the intent was clearly disclosed by the authority concerned that the recruitment was only to Tamil Nadu Higher Secondary Educational Services and not to any other Services.

14. This Court has given its anxious consideration to rival submissions of the learned counsels on both sides and perused the materials and pleadings placed on record. From the materials as made available before this Court, it emerges in clear terms that

the original intent of the authority concerned in issuing the notification has only contemplated recruitment to Tamil Nadu Higher Secondary Educational Services as evidenced in the notification dated 28.02.2012. This position is further fortified by the fact that even in the prospectus issued along with notification in paragraph 1, which is extracted supra, it was mentioned that appointment was only to Higher Secondary Schools. The said position gets further strengthened by further notification dated 23.10.2012, publishing approval list of candidates, wherein, it was once again mentioned as recruitment in Government Higher Secondary Schools.

17. In the said circumstances, mere acceptance of appointment and mere functioning as such in the Corporation Service, cannot be the fact that would be held against these petitioners for not considering the grievances, if such grievances are legally legitimate and bona fide. In any event, the fact remains that under similar circumstances, the Government had passed G.O.Ms.No.7, School Education Department, dated 17.01.2002 and G.O.Ms.No.147, School Education Department, dated 16.09.2002 and granted transfer from Adi Dravidar Welfare Department Service to Government Service, this Court does not see any justification for denying such transfer to these petitioners.

18. Be that as it may, when Teachers Recruitment Board itself has subsequently taken a correction action for issuing notification and notifying the vacancies in respect of each service, it is not open to the authorities concerned to stick to the stand that the transfer of service as far as these petitioners were concerned, was not feasible. Once in the absence of any such specific vacancies being notified in respect of each service, the appointment of these petitioners in the third respondent Corporation Service

would tantamount to an appointment without the authority of law. Such appointment of these petitioners to the third respondent Services is therefore cannot be countenanced both in law and on facts.

19. For the above reasons, this Court has no hesitation in allowing the writ petitions. There shall be a direction to the respondents to transfer these petitioners to Tamil Nadu Higher Secondary Educational Services of the School Education Department as P.G. Assistant in the vacancies available in the Government Higher Secondary Schools on the basis of the selection pursuant to the notification, dated 28.02.2012, with all attendant benefits like seniority, etc. The transfer as prayed for in the writ petitions shall be granted by the respondents/competent authorities, within a period of eight weeks from the date of receipt of a copy of this order. The third respondent is also directed to pass appropriate orders in order to enable the Government to effect transfer as prayed for in these writ petitions.

20. With the above direction, the writ petitions stand allowed. No costs. Consequently, connected miscellaneous petitions are closed."

9. In view of the subject matter involved in the present Writ Petition being covered by the order passed in the said batch of Writ Petitions, as extracted supra, the present Writ Petition is also allowed on the same terms with the same directions. No costs. Consequently, W.M.Ps. are closed.

//True Copy//

Sd/-
Assistant Registrar (CS)

Sub Assistant Registrar

CS

To

1. The Principal Secretary to Government,
School Education Department,
Secretariat, Fort St.George,
Chennai-600 009.

2. The Director of School Education,
DPI Campus, College Road,
Chennai-600 006.

3. The Director of Adi Dravidar Welfare,
Ezhilagam,
Chepauk, Chennai-600 005.

+1 CC TO GOVERNMENT PLEADER SR.NO. 87898

W.P.No.40585 of 2016

A.SK(11/02/2019)



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