

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 31.07.2017

Pronounced on : 02.01.2018

CORAM

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

W.P.No.24217 of 2012 and
M.P.Nos.1 and 2 of 2012 and
M.P.Nos.2 and 4 of 2013

S.Rajeswari ... Petitioner
Vs.

1.The Director of School Education,
College Road,
Chennai - 600 006.

2.The District Educational Officer,
Tindivanam Taluk,
Villupuram District.

3.Sri Sivaprakasa Swamigal Higher Secondary School,
Mailam & PO.,
Tindivanam Taluk, Villupuram District.
Rep. by its Secretary.

4.S.Ramu ... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, to issue a writ of Certiorarified Mandamus, to call for the records relating to the proceedings of the third respondent issued in No.178 of 2011, dated 07.01.2012 and the subsequent proceedings of the 1st Respondent issued in Na.Ka.No.11285/T1/E4/2011 dated 07.08.2012 and to quash the same in so far as the Petitioner is concerned and consequently forbearing the Respondents 1 and 2 from approving the appointment of 4th Respondent in the post of B.T. Assistant Tamil in the 3rd Respondent School and to direct the 3rd Respondent to promote the Petitioner to the post of B.T. Assistant Tamil in the 3rd Respondent School based on eligibility and seniority within the time frame to be fixed by this Court.

(Prayer Amended as per order dated 12.06.2014

by this Court in M.P.No.1 of 2013 in WP.No.24217 of 2012)

For Petitioner : Mr.G.Sankaran

For Respondents: Mr.R.Govindasamy (for R1 and R2)
Special Government Pleader

Mr.T.Baskaran (for R3)

Mr.P.Ganesan (for R4)

O R D E R

The case of the petitioner is that he possessed with the educational qualification of B.Lit., M.A., B.Ed., and M.Phil,. He registered all his qualifications with the Employment Exchange concerned. Further, there were no qualified or eligible candidates available for the appointment to the post of Secondary Grade Teacher in the reserved category meant for SC/ST between the year 1997 to 2001. So, to clear the backlog in this regard, the Government issued orders in G.O.No.301 of School Education Department dated 15.10.1999 with regard to the private schools permitting them to fill up the posts of Secondary Grade Teachers with Graduate Assistant through Employment Exchange.

2.The appointment of the Graduate Assistants in the post of Secondary Grade Teacher was directed to be made with certain stipulations, namely:

- (i) They will get the pay as that of a Secondary grade Teacher only and will not be entitled to as for pay as that of Graduate Teacher;
- (ii) They will not be entitled to ask for any incentive on the basis of their higher qualification that required for the post;
- (iii) They will not be eligible to be considered for direct promotion or by way of special appointment to any post in the school.
- (iv) The candidates appointed with higher qualification in the post of Secondary Grade Teacher would be given Child Psychology Training for a period of one month before regular appointment.

3.It is the further case of the petitioner that in terms of the Government Order referred above, he was appointed as Secondary Grade Teacher in the 3rd respondent school on 06.09.2001. However, it is the specific case of the petitioner that he has to wait for further promotion until he gets his seniority. Since, the above referred Government Order has not been understood in its proper perspective, the petitioner was not considered for further promotion to the post of B.T.

Assistant, in spite of the fact that a vacancy to the post of B.T. Assistant (Tamil), arose on 01.06.2011 as the incumbent of the said post was promoted as Head-Master. Hence, the petitioner made representation to the 3rd respondent sought promotion to the post of B.T., Assistant (Tamil) as he is the senior most qualified Secondary Grade Teacher working in the 3rd respondent school.

4. It is the further contention of the petitioner is that in view of Government Order in G.O.Ms.26 of School Education Department dated 02.02.2011 that the Graduate Assistant appointed as Secondary Grade Teachers as per the G.O.Ms.No.301, School Education Department, dated 15.10.1999, are entitled for promotion to the post of B.T. Assistant followed by G.O.Ms.No.171, School Education Department, dated 18.08.2008 which was issued in respect of School. So, the petitioner made representation to the respondent Nos.1 and 3 for the consideration of his promotion on 26.12.2011, but the same was not considered, which constrained the petitioner to file a Writ Petition before this Court in W.P.No.1837 of 2010 to include his name in the panel for promotion to the post of B.T., Assistant. Considering the grievance of the petitioner, this Court, directed the concerned respondents to consider the claim of the petitioner in accordance with law within a period of 12 weeks from the date of receipt of copy of the order. Even after receipt of copy of the said order, the 3rd respondent did not pass any order. However, the Joint Director of School Education Department by his proceedings dated 07.08.2012 on behalf of the 1st respondent stated that no vacancy was available to the post claimed by the petitioner and the request of the petitioner was rejected. On the other hand, the 3rd respondent appointed the 4th respondent as B.T., Assistant by direct recruitment on 07.01.2012. In pursuance to the appointment, the same was sent to the 2nd respondent for approval.

5. The main contention of the petitioner that in view of Rule 15 of the Tamil Nadu Private School Regulations, 1974 the vacancy to the post of Teacher in Private Aided School ought to have been filled up by promotion by considering the eligible candidates working in the feeder category only. Since, his request for promotion was not considered legally, he preferred the instant writ petition.

6. In this regard, the 3rd respondent has filed his counter affidavit refuted the averments of the affidavit filed along with the writ petition. Further, it is the contention of the 3rd

respondent that in view of G.O., 79 and 100 the Government directed to fill up the posts in the vacancies of Secondary Grade Teachers for the classes VI to VIII by Graduate Teachers. The said G.O., also said that the appropriate amendments were contemplated for the Tamil Nadu Private Schools Regulation Act and till such time the Private Schools (aided) shall not follow the said G.O.100. So, it is justified by saying that the petitioner has no legal right to seek promotion to the post of B.T., Assistant in the 3rd respondent school as no service rule is directed them to consider the claim of the existing teachers by way of promotion to the vacancies that may arise. Apart from that it is the contention of the 3rd respondent that no reliance can be placed upon the Government Order in GO Nos.171 and 26 as they are no way applicable to the aided schools.

7.At the same time, the 3rd respondent has admitted that on 01.06.2011 a vacancy was arisen in the post of BT Assistant (Tamil) (General Turn), pursuant to that permission was sought for with the Chief Educational Officer on 31.10.2011 to fill up the post with a Graduate B.T., Assistant (Tamil). Accordingly, on 28.11.2011 permission was granted and thereafter, the 3rd respondent sought for list of eligible candidates from the employment exchange and on 08.12.2011 list was received. Immediately all the candidates were intimated the date of interview in addition to that publication was given in vernacular local news papers. Among the candidates attended the interview, the 4th respondent here was found as most suitable candidate and accordingly the order of appointment was issued to him on 07.01.2012 and thereafter the same was approved by the 1st respondent on 31.05.2012. So, either in the rejection of the claim of the petitioner or in the appointment of the 4th respondent, no legal and procedural norms are violated and the writ petition is deserved dismissal.

8.It is the Specific case of the learned Counsel for the petitioner that the 3rd respondent has misconstrued the conditions made in the G.O.Ms.No.301, School Education Department, dated 15.10.1999 to suit his convenience knowing the fact very well that the petitioner alone is the eligible candidate to get appointment on the vacancy arisen on 01.06.2011 as he is having the appropriate seniority on the particular day and he is the senior most secondary grade teacher working in the school of the 3rd respondent. So, he prays that the claim of the petitioner is having legal force and moreover in view of the Rule 15 of Tamil Nadu Private School Regulations Rule, 1974, the petitioner is entitled to be promoted as B.T. Assistant, (Tamil) in the 3rd respondent school. The learned counsel for the

petitioner has relied on the following authorities, wherein it is held as follows:

"(i) 2005 (1) CTC 8 (The Secretary, Saliar Mahajana Higher Secondary Schools, Aruppukottai, Virudhunagar District Vs. G.Subburaj and others)

(ii) (2005) 4 MLJ 679 (R.Balavadivel Vs. Chief Educational Officer, Dindigul and others)

(iii) (2001) 1 MLJ 84 (M.Joseph and others Vs. The District Educational Officer, Virudhunagar & others)

(iv) (1997) 1 LLJ 709 Madras (DB) (R.Balasubramanian Vs. S.Subrmaniam and others)"

9.Per Contra, the learned Counsel for the respondents would justify that the order impugned in the writ petition is passed after adhering all the legal norms. Moreover, it is the contention of the learned Counsel for the 3rd respondent that even in the order of appointment issued to the petitioner, it was specifically mentioned that the petitioner shall not claim promotion or incentives based on his excessive educational qualification as matter of right for the promotion and other things. So, the prayer in the writ petition is deserved dismissal.

10.I heard Mr.G.Sankaran, learned counsel for the petitioner, Mr.R.Govindasamy, learned Special Government Pleader for the respondents 1 and 2, Mr.T.S.Baskaran, learned counsel for the 3rd respondent and Mr.P.Ganesan, learned counsel for the 4th respondent and perused all the materials available on record.

11.The point for consideration in this writ petition is that whether the petitioner is entitled to get appointment as B.T., Assistant (Tamil) in the 3rd respondent school in view of his original appointment as per the Government Order in G.O.Ms.301, School Education Department, dated 15.10.1999.

12.Before parting with the issue involved in this writ petition, it is useful to refer the Rule 15 of Tamil Nadu Private School Regulations Rule,1974 as follows:

15.Qualifications, conditions of Service of Teachers and other persons

(1). The number of Teachers and other persons employed in a private school shall not exceed the number of posts sanctioned by the Director of School education, from time to time, with reference to the academic requirements teacher - pupil ratio and overall financial considerations.

(2) (i) The school Committee of every Private School shall enter into an agreement with the teacher or other person in Form VII- A or VII - B if the appointment is for a period exceeding three months.

(i - A) The school Committee of every Private School shall enter into an agreement with the person appointed as Junior Grade Teacher in Form VII- C.

(ii) Three copies of the agreement shall be executed, one copy shall be furnished to the teacher or other person concerned, the other copy shall be retained by the School Committee and third copy shall be forwarded to the District Educational Officer.

(3) In a regular vacancy a fully qualified candidate shall be appointed only on regular basis. However in temporary vacancy, deputation for training or suspension of the Teacher's Certificate, a teacher or other person may be appointed for specified period. In such cases, the agreement to be executed shall be in Form VII - B.

(4) (i) Promotion shall be made on grounds of merit and ability, seniority being considered only when merit and ability are approximately equal.

(4) Appointments to the various categories of teachers shall be made by the following methods:-

i) Promotion from among the qualified teachers in that school.

ii) If no qualified and suitable candidate is available by method (i) above, -

(a) Appointment of other persons employed in that school, provided they are fully qualified to hold the post of teachers.

(b) Appointment of teachers from any other school.

(c) Direct recruitment.

13.It is an admitted case that a vacancy was arisen on 01.06.2011. The appointment of the 4th respondent was made on 07.01.2012 and the same was approved by the 1st respondent on 31.05.2012 and the petitioner sent his representation on 26.12.2011 itself for promotion. However, it is the case of the respondents that the petitioner is have no legal right to seek promotion, the 3rd respondent appointed the 4th respondent as B.T., Assistant (Tamil). So, it is very clear that even prior to the interview process, the petitioner sent his representation to the respondent Nos.1 and 3 and no doubt that he is the eligible candidate with sufficient and required educational qualifications.

14.Further, the respondents have not able to discard the Rule 15 of the Private School Regulations Rule, 1974 and it is on the part of the 3rd respondent to follow all the rules made therein and in the considered opinion of this court, the 3rd respondent is bound by the said rules. The case of the respondents that no reliance can be placed upon the G.O.Nos.171 and 26 is unacceptable and moreover it is not the case of the respondents that the petitioner is not having required educational qualification or seniority. So, the petitioner is entitled to get promotion as per her claim. At the same time the appointment of the 4th respondent is also approved by the 1st respondent without considering the total legal and factual circumstances. So, all these chaos are by the approval accorded by the 1st respondent and also by the 3rd respondent and they are liable to answer the claim of the petitioner as she is having all legal right to get promotion.

15.In the foregoing discussions, this court is of the firm opinion that the writ petition filed by the petitioner is allowed with the following directions:

(a)That the 3rd respondent is directed to appoint and promote the petitioner as B.T., Assistant (Tamil) from the date when the petitioner's representation was received by the 1st and 3rd respondents whichever is earlier. Further, the petitioner is to be accommodated even by creating supernumerary post without disturb the 4th respondent;

(b)That the 3rd respondent is directed to send necessary records to the 1st respondent within a period of 4 weeks pertaining to the promotion of the petitioner and the same has to be considered for approval by the 1st respondent within a period of 4 weeks thereafter;

(c)The petitioner is entitled for all the monetary and

service benefits attached with the promotional post.

***(d) It is made clear that as per Rule 15(4) of Tamil Nadu Recognized Private Schools (Regulation) Rules, 1974, though the vacancy arose on 01.06.2011, the petitioner is liable to be promoted at least from 07.01.2012, this fact was not denied by the respondents by way of filing any counter. Therefore, on promotion to the petitioner to the post of B.T.Assistant, the vacancy of Secondary Grade Teacher would be upgraded as B.T.Assistant. Therefore, the 4th respondent can be accommodated for the post of B.T.Assistant.**

(e) It is made clear that as per Rule 15(4) of Tamil Nadu Recognized Private Schools (Regulation) Rules, 1974, both the petitioner as well as the 4th respondent to be given promotion to the post of B.T.Assistant in compliance of the Rule 15(4) and hence it is modified that the 3rd respondent is directed to appoint and promote the petitioner from 07.01.2012 as B.T.Assistant (Tamil) in the vacancy arose on 01.06.2011 without creating any post and the 4th respondent also to be allowed to continue as B.T.Assistant from 07.01.2012.

With the above directions, the writ petition stands allowed. Consequently, connected miscellaneous petitions are closed. No costs.

Sd/-

Assistant Registrar(CS IV)

Dated: 10/1/2018

*Paragraph 7 and 8 of the order passed in the modification petitioner in WMP.No.1834 of 2018, on 23.02.2018, are incorporated as clause (d) and (e) in this Order dated 02.01.2018.

Sd/- Assistant Registrar(CS IV)

Dated: 09/03/2018

//True Copy//

Sub Assistant Registrar

VS

To

1.The Director of School Education,
College Road,

Chennai - 600 006.

2.The District Educational Officer,
Tindivanam Taluk,
Villupuram District.

to be substituted to
as per Order of this
court dated 23.02.2018 in
WMP/No.1834 of 2018

+1 cc to M/s.C.S.Associates Advocate sr 487

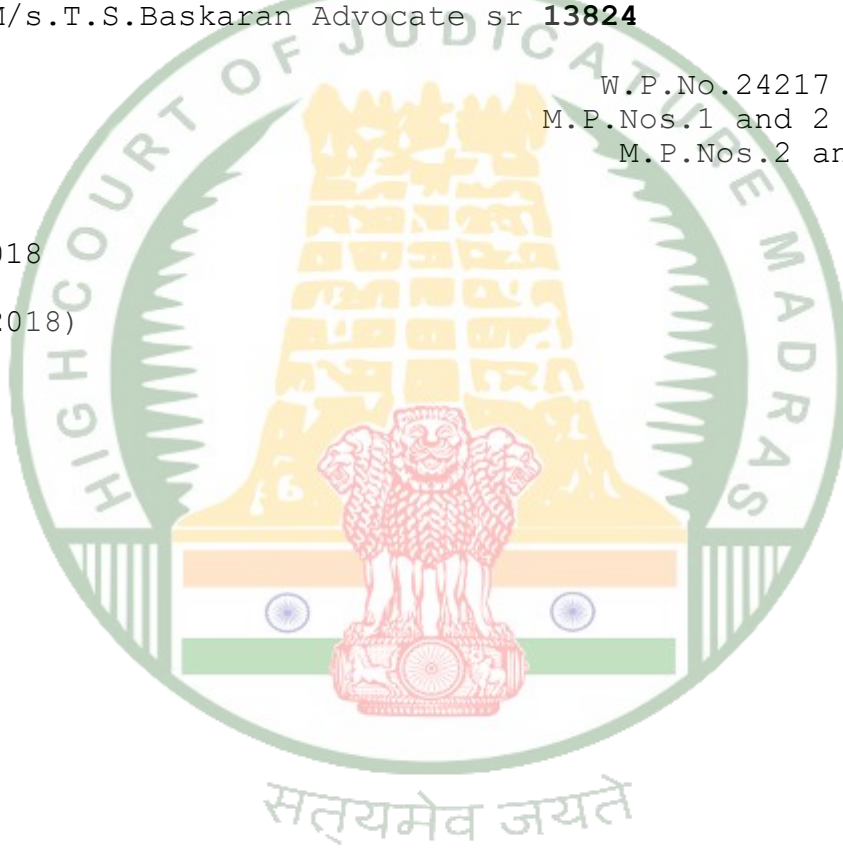
+1 cc to M/s.G.Sankaran Advocate sr **14741**

+1 cc to M/s.T.S.Baskaran Advocate sr **13824**

W.P.No.24217 of 2012 and
M.P.Nos.1 and 2 of 2012 and
M.P.Nos.2 and 4 of 2013

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