

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.06.2018

CORAM

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

W.P.No.26996 of 2013
and MP.1/13 MP.2/13

G.Rajeswari

.. Petitioner

Vs

1.The Director of School Education,
Chennai-6.

2.The Chief Educational Officer,
Saidapet, Chennai-15.

3.The District Educational Officer,
Central Chennai, Saidapet,
Chennai-15.

4.The Correspondent,
Avvai Home T.V.R.Girls Hr. Sec. School,
41, Besant Avenue, Adyar,
Chennai-20.

5.K.Gunasundari

... Respondents

Writ Petition filed under Article 226 of the Constitution of India for issuance of writ of certiorarified mandamus to call for the records pertaining to the order passed by the 4th respondent in his Proceedings No. Nil, dated 03.10.2012 and quash the same and direct the respondents to promote the petitioner as P.G. Assistant (Economics) and confer all the consequential benefits.

For Petitioner

: Mr.R.Singaravelan
Senior Counsel
for Mr.R.Raman Laal

For Respondents : Mrs.M.E.Raniselvam
Addl. Government Pleader
for respondents 1 to 3

Mr.N.L.Rajah
Senior Counsel
for Mr.R.Kumar
for 4th respondent

No appearance
for 5th respondent

ORDER

The petitioner has filed this writ petition seeking issuance of a writ of certiorarified mandamus to call for the records pertaining to the order passed by the fourth respondent in his Proceedings No. Nil, dated 03.10.2012 and quash the same and direct the respondents to promote the petitioner as P.G. Assistant (Economics) and confer all the consequential benefits.

2. The facts in a nutshell are as under: The petitioner, who joined as Secondary Grade Teacher in the fourth respondent school on 01.10.1991, was, on her acquiring the requisite qualification, promoted to the post of B.T. Assistant (History) on 01.06.2009. Thereafter, the petitioner pursued M.A. (Economics) in 2012.

3. It is stated that one post of P.G. Assistant (Economics) fell vacant due to promotion of the existing candidate and, therefore, the petitioner sent an application on 10.07.2012 to the Management requesting to give promotion as P.G. Assistant (Economics). The fourth respondent, by the impugned order dated 03.10.2012, by referring to a government order dated 14.07.2008, informed the petitioner, that she is not qualified for promotion as sought for.

4. Thereafter, the petitioner made a representation on 15.10.2012 claiming that the said government order dated 14.07.2008 relates to P.G. Assistant (English) and is not applicable for P.G. Assistant (Economics). However, the said representation is stated to have evoked no response from the fourth respondent management. It is the alleged by the petitioner that the fifth respondent had been appointed to the post of P.G. Assistant (Economics).

5. Under such circumstances, the present writ petition is filed for the relief stated supra.

6. The learned Senior Counsel appearing on behalf of the petitioner submits that the fourth respondent management had erroneously referred to government order dated 14.07.2008, which is not applicable to P.G. Assistant (Economics) and moreover, the said government order pertains to Tamil Nadu Higher Secondary Service Rules, whereas the fourth respondent management is governed by the Tamil Nadu Recognized Private Schools (Regulation) Act and the Rules framed thereunder.

7. Relying on Rule 15(4) of the Tamil Nadu Recognized Private Schools (Regulation) Rules, 1974, the learned Senior Counsel submitted that it is incumbent of the management of the private school to consider the claim of the teachers working in the same school whenever any post becomes vacant and if there is more than one qualified person, an interview should be conducted and inasmuch as in the fourth respondent school there is no other qualified person, the petitioner should have been appointed to the said post.

8. The learned Senior Counsel further contended that the fifth respondent is not working in the fourth respondent school in the cadre of B.T. Assistant in the sanctioned post and, therefore, in the eye of law the fifth respondent is an outsider and hence, she ought not to have been appointed to the post of P.G. Assistant (Economics).

9. The learned Additional Government Pleader appearing on behalf of respondents 1 to 3 submitted that the fifth respondent had completed her P.G. (Economics) way back in May, 1999, whereas the petitioner completed her P.G. (Economics) course only in the year 2012 and only after calling for list of candidates from the employment exchange and publishing an advertisement, the selection was made as per the provisions contained in the Tamil Nadu Recognized Private School (Regulation) Act and Rule 15(4) of the Rules.

10. Mr.N.L.Rajah, learned Senior Counsel appearing on behalf of the fourth respondent submitted that the petitioner had just completed her M.A. Economics and has no teaching experience in Economics and her graduation is in History and not economics and inasmuch Rule 15(4) of the Rules states that promotion shall be made on the basis of merit and ability, the non consideration of the case of the petitioner for promotion does not warrant interference of this Court. He added that the selection process followed was strictly as per the Rules and there is no violation of the Rules whatsoever.

11. I heard Mr.R.Singaravelan, learned Senior Counsel for M/s.R.Raman Laal, learned counsel for the petitioner and Mrs.M.E.Raniselvam, learned Additional Government Pleader for the respondents 1 to 3, Mr.N.L.Rajah, learned Senior Counsel for Mr.R.Kumar, learned counsel for the 4th respondent. There was no representation on behalf of the 5th respondent and perused the documents available on record.

12. Before advertng to the merits of the matter, it is apposite to refer to Rule 15(4) of the Tamil Nadu Recognized Private Schools (Regulation) Rules, which reads as under:

"Rule 15. Qualifications, conditions of service of teachers and other persons :

(1) to (3)

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

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

(i) Promotion from among the qualified teachers in that school; or

(ii) Promotion from among the qualified Vocational Instructors in that school;

(iii) 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. The above said statutory Rule makes it clear that if qualified teachers are available in the School, the vacancies shall be filled up by way of promotion and if no qualified and suitable candidate is available, then only direct recruitment shall be resorted to. सत्यमेव जयते

14. In the case on hand, it is not the case of the fourth respondent that the petitioner was not qualified for consideration for promotion to the post of P.G. Assistant (Economics). The petitioner is very much qualified to be considered. That apart, she is concededly working in the fourth respondent school. The main reason for non consideration of the case of the petitioner, as stated by the fourth respondent school, is that the petitioner is less experienced than the fifth respondent.

15. Admittedly, in the case on hand, the representation of the petitioner seeking promotion was not considered in the right perspective. The fourth respondent, in the impugned order dated 03.10.2012, placed heavy reliance on G.O.Ms.No.152, School Education (HS2) Department, dated 14.07.2008. A perusal of the said Government Order reveals that the same pertains to Post Graduate Assistants in Languages (other than Tamil) and that too in respect of Tamil Nadu Higher Secondary Service Rules meant for the Government Schools, while the fact remains that the fourth respondent school is governed by the provisions of the Tamil Nadu Recognized Private Schools (Regulation) Act and the Rules framed thereunder.

16. One another vital factor to be noticed is that while the minutes of the meeting of the School Committee of the fourth respondent School is dated 02.10.2012, the impugned order is dated 03.10.2012 and the paper advertisement made by the fourth respondent is dated 16.09.2012. It only shows that even prior to the School Committee resolution, the fourth respondent school had decided to reject the case of the petitioner and proceeded with issuance of paper advertisement, in gross violation of Rule 15(4) of the Rules, referred supra.

17. Of course, right to promotion is not an automatic right. However, it is not the case of the fourth respondent school that the petitioner is not qualified or that she is not the sole person available for consideration for promotion. Despite the availability of a person, who is duly qualified and eligible, the fourth respondent school took a stand that she is less experienced than the fifth respondent. Even for doing so, the fourth respondent should have considered the case of the petitioner as per law and the non consideration of the same reeks of mala fide. The petitioner, in my considered opinion, ought to have been appointed to the post of P.G. Assistant (Economics).

18. For the foregoing reasons, the following order is passed:

- (i) the writ petition is allowed and the impugned order dated 03.10.2012 is set aside.
- (ii) The selection or appointment of the fifth respondent, alleged to be made through direct recruitment, cannot be sustained at all and the case of the petitioner is to be considered on priority, as laid down by the statutory rule.
- (iii) The respondents are directed to consider the case of the petitioner and promote her forthwith to the post of P.G. Assistant (Economics) in due compliance of Rule 15(4) of the Rules, referred to above.

- (iv) The respondents shall comply with the above direction within four weeks from the date of receipt of a copy of this order.
- (v) No costs. Consequently, M.P.Nos.1 and 2 of 2013 are closed.

Sd/-
Assistant Registrar (CS-II)

//True Copy//

Sub Assistant Registrar

To

1. The Director of School Education,
Chennai-6.
2. The Chief Educational Officer,
Saidapet, Chennai-15.
3. The District Educational Officer,
Central Chennai, Saidapet,
Chennai-15.
4. The Correspondent,
Avvai Home T.V.R. Girls Hr. Sec. School,
41, Besant Avenue, Adyar,
Chennai-20.

+1cc to Mr.R.RAMANLAAL, Advocate, S.R.No. 35690

order made in
W.P.No.26996 of 2013

VBA (CO)
TR(14/06/2018)

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