

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.11.2018

CORAM:

THE HON'BLE MR.JUSTICE S.MANIKUMAR
AND
THE HON'BLE MR.JUSTICE SUBRAMONIUM PRASAD

W.A.No.2582 of 2018

M.S.Nalantha

... Appellant

Vs.

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

2. The Joint Director,
School Education,
DPI Compound,
College Road, Chennai - 600 006.

3. The Chief Educational Officer,
Saidapet, Chennai.

4. The District Educational Officer (Chennai East),
Chennai - 600 002.

5. The Secretary,
The Hindu Higher Secondary School,
149, Big Street, Triplicane,
Chennai - 600 005.

... Respondents

Writ Appeal filed under Clause 15 of the Letters Patent against the Order dated 21.09.2017 made in W.P.No.28005 of 2016.

For Appellant : Mr.C.Johnson

For Respondents : Mr.C.Munusamy [Edu.]
Spl. Govt. Pleader (for R1 to R4)

J U D G E M E N T

(Order of the Court was delivered by S.MANIKUMAR, J)

Appellant has obtained B.Lit (Tamil) Degree, in May 2000 from Univeristy of Madras, M.A. in Tamil, from University of Madras in May 2006 and M.Phil. Degree in Tamil from University of Madras in December 2009.

2. Appellant was initially appointed as a Sweeper in Hindu Higher Secondary School, Chennai and promoted as Library Attendant by the Secretary of the said School on 12.02.2011. Approval of the appellant's appointment has been rejected by the District Educational Officer (Chennai-East), Chennai, 1st respondent. Fifth Respondent/School vide order dated 27.04.2012, reverted the petitioner from the post of Library Attendant to Sweeper. Being aggrieved, petitioner has filed W.P.No.13151 of 2012 and that the same is stated to be pending. Rejection of approval is stated to have been stayed in M.P.No.1 of 2012 in W.P.No.13151 of 2012 dated 04.05.2012.

3. According to the appellant, as per the proceedings of the Director of School Education, Chennai, two Tamil Pandit posts have been notified for the period 2015-16 and as on 01.08.2015, there was only one Tamil Pandit viz., Stella Christopher. The remaining one post of Tamil Pandit has not been filled up from 2015. Therefore, the petitioner made a representation dated 12.05.2016 to the Secretary, Hindu Hr. Secondary School, 5th respondent

herein, to promote her as Tamil Pandit, in the vacancy which was likely to be caused due to retirement of one Mr.Ramachandra Elango on 31.05.2016. As the said representation has not been considered, appellant has filed W.P.No.28005 of 2016, for a writ of certiorarified mandamus, directing the respondents therein to consider her representation dated 12.05.2016 submitted, claiming promotion to the post of Tamil Pandit.

4. After hearing the learned counsel for the appellant, vide order dated 21.09.2017, writ Court dismissed W.P.No.28005 of 2016. Being aggrieved, instant appeal is filed on the following grounds.

a) Writ Court has failed to consider that the writ petition was filed for a Writ of Mandamus, directing the 5th respondent to consider the representation of the appellant dated 12.05.2016 for promotion to the post of Tamil Pandit in the 5th respondent School. The appellant is fully qualified and the senior most candidate and as such entitled to seek for promotion. It is for the authorities to consider the request one way or the other, upon consideration of the relevant materials and facts.

b) Being qualified and suitable to hold the post of Tamil Pandit, the appellant made several requests to the 5th respondent / management and the Writ Court has failed to see that it is only the 5th respondent, who is the

competent authority under the Tamil Nadu Recognized Private Schools (Regulation) Act to consider the case of the appellant for appointment to the post of Tamil Pandit in his school and that the writ Court, ought to have issued directions as prayed for.

c. As per the provisions of the Private School Regulation Act, 1973 and the Rules framed thereunder, appointment to the posts of teachers is permitted either by way of promotion or by transfer. When the Act and Rule permits such appointment, the appellant is entitled to make a claim and the respondents are bound to consider such claim in a proper perspective keeping in mind the law applicable.

d. Writ Court has failed to consider that when the 5th respondent, vested with the power to consider the case of the appellant for promotion, failed to exercise the same, then the writ Court ought to have issued directions.

e) Writ Court has failed to consider that the 5th respondent is vested with power, either to allow or reject the representation of the writ petitioner / appellant and non-exercise of such power cannot be justified especially when the fifth respondent has made several appointments ignoring seniority, merit and ability.

f) Writ Court has misunderstood the prayer and that the same is evident from the extracted portion of the order dated 21.09.2017 “In the absence of establishing a right, no writ can be entertained or any direction relating to the promotion can be granted”. The appellant only prayed for a writ of Mandamus to consider her case.

g) Writ Court has failed to consider that the appellant / writ petitioner has established her right for issuance of writ of mandamus, when there is a duty coupled with power, cast on the 5th respondent to consider and pass orders on the representation of the appellant / writ petitioner.”

5. On the above grounds and referring to Rule 15 of the Tamilnadu Recognized Private Schools (Regulation) Rules, 1974, Mr.C.Johnson, learned counsel for the appellant submitted that the said rule enables the school committee of 5th respondent to make promotion and fill up the vacant post of Tamil Pandit, even by transfer of service of the appellant, who is fully qualified to the post of Tamil Pandit. He further submitted that right to consider for promotion is a right which is recognized under the provisions of Tamilnadu Recognized Private Schools (Regulation) Rules, 1974 and the Rules framed therein and therefore, the 5th respondent School has to consider his representation dated 12.05.2016. Learned counsel for the appellant further contended that the appellant is entitled to the post as per rule of reservation.

6. Heard the learned counsel for the appellant and perused the materials available on record.

7. Rule 15(4) of the Tamilnadu Recognized Private Schools (Regulation) Rules, 1974, deals with Promotion and the same is extracted hereunder.

15(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 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.

In the case of appointment from any other school or by direct recruitment, the School Committee shall obtain the prior permission of the District Educational Officer in respect of Pre-Primary, Primary and Middle School and that of the Chief Educational Officer in respect of High Schools and Higher Secondary Schools, Teacher Training Institutions setting out the reasons for such appointment. **In respect of corporate body running more than one school, the schools under that body shall be treated as one unit for purpose of this rule.**

(d) Appointment to the post of Headmaster of Higher Secondary School shall be made by the method specified in clause (ii) either from the category of Headmasters of High Schools or Teachers Training Institutes or from the category of Post Graduate Assistants in academic subjects or Post-Graduate Assistants in Languages provided they possess the prescribed qualifications.

8. Reading of the Rules makes it clear that it is the duty of the employer

<http://www.judis.nid.in> 5th respondent School, to make promotion from among the qualified teachers

in that school or if no qualified and suitable candidate is available, then the School can appoint any other persons employed in that school, provided they are fully qualified to hold the post of teachers and if there are no qualified and suitable candidates, from whom, promotion could be made, then the employer / 5th respondent school can make appointment from any other school or even by direct recruitment. Appellant has no right to claim that 5th respondent has to adopt the method under 15(4)(i)(ii)(a), i.e., appointment of any other person in that school provided that they are fully qualified to hold the post of teachers.

9. Appellant seemed to have made a representation dated 12.05.2016 on the premise that she has a right to demand that the method of appointment under 15(4)(i)(ii)(a) alone has to be followed, forgoing other modes of appointment, stated supra. When the petitioner has no constitutional or statutory right to make a demand, i.e., to bye pass the procedure contemplated in Rule 15(4) of the Tamil Nadu Recognized Private Schools (Regulation) Rules, 1974, mandamus cannot be issued to consider even the representation made on that score.

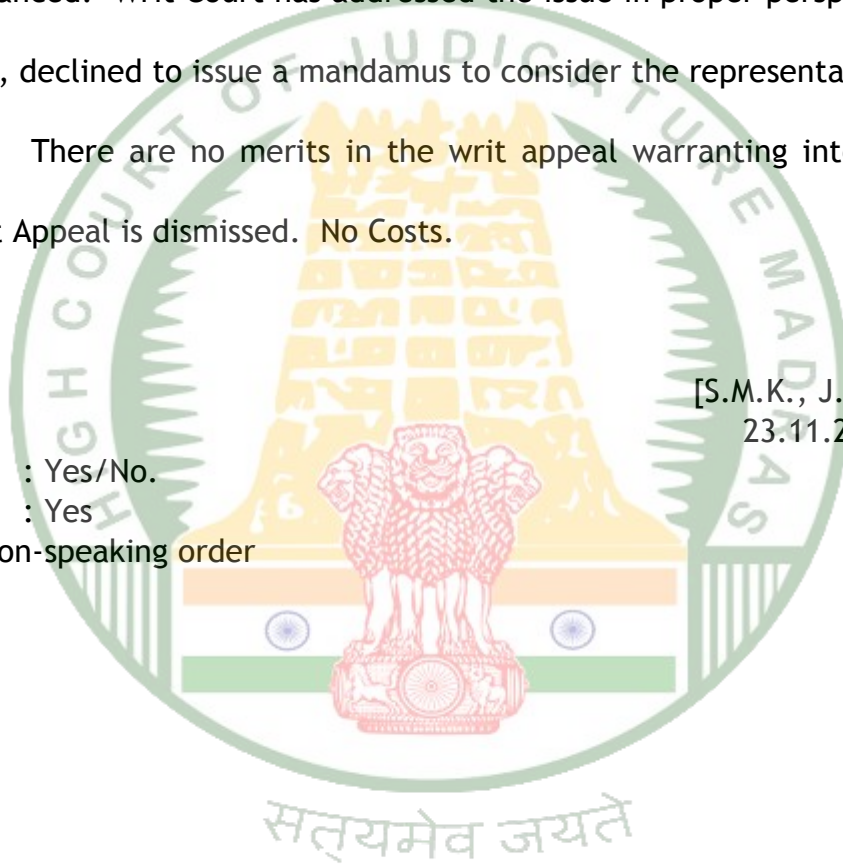
10. Contention of the appellant that she has got a right to be considered for promotion, cannot be countenanced, as it is not automatic, de hors, the rules. At this juncture, it is also to be noted that the very right of the

petitioner/appellant to retain the post of Library Attender itself is an issue before this Court in W.P.No.13151 of 2012.

11. Contention of the appellant based on communal reservation cannot be countenanced. Writ Court has addressed the issue in proper perspective and accordingly, declined to issue a mandamus to consider the representation dated 12.05.2016. There are no merits in the writ appeal warranting interference. Hence, writ Appeal is dismissed. No Costs.

[S.M.K., J.] [S.P., J.]
23.11.2018

Index : Yes/No.
Internet : Yes
Speaking/Non-speaking order
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S. MANIKUMAR, J.
AND
SUBRAMONIUM PRASAD, J.

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