IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 26.11.2018
CORAM:
THE HON'BLE Dr. JUSTICE S.VIMALA

Writ Petition No.26256 of 2018
and W.M.P.No.30505 of 2018

Tmt. R.Viji ... Petitioner

..vs..

1 The Director of Elementary
Education College Road chennai-6
2 The District Educational officer
Attur Salem District
3 The Block Educational officer
Gangavalli Block salem District
4 Tmt.N.Bhuvaneswari
BT Assistant(Maths) Panchayat Union Middle School,
Mookkagoundenpudur Gangavalli Block
Salem District ... Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus calling for the records of the second respondent in Na.Ka.No.009/A1.2018 dated 12.06.2018 and the consequential orders of the third respondent in Na.Ka.607/A1/2018 dated 13.06.2018 and quash the same and direct the respondents permit the petitioner to function as BT Assistant (Maths) in third respondent school.

For Petitioner : Mr. S.Kamadevan
For Respondents : Mrs. P.Kavitha, Govt. Advocate.

O R D E R

Seeking directions to the respondents to permit the petitioner to function as BT Assistant (Maths) in third respondent school, this writ petition has been filed by the petitioner.

2. The petitioner was appointed as Secondary Grade Teacher in Gangavalli Panchayat Union School and the next avenue of promotion is to the post of Elementary School Headmaster or B.T.Assistant, subject to possession of necessary qualifications and availability of vacancies. The petitioner was promoted as B.T.Assistant (Maths) on 23.05.2017 during the general counselling meant for promotion and transfer and posted to Mookkagoundenpudur

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Middle School. She reported for duty as B.T. Assistant (Maths) on 01.06.2017. Thereafter, on the same date, i.e., on 01.06.2017, the fourth respondent also got promoted as B.T.Middle School Headmistress and posted to Othiyathur and she reported for duty and thereafter, exactly after one year one week, the fourth respondent made a request for reversion as B.T.Assistant and wanted to work in the previous school citing her family circumstances.

3. Accepting the request of the fourth respondent, she was reverted as B.T.Assistant (Maths) and posted in the place of the petitioner and consequently, the petitioner was also reverted as secondary grade teacher. This order is under challenge in this writ petition.

4. The issue raised by the learned counsel appearing for the petitioner is that when the fourth respondent wanted demotion the request for demotion should have been rejected on the ground that there is no vacancy available in the post of B.T.Assistant (Maths). It was pointed out that the petitioner, after promotion as B.T.Assistant (Maths), joined on 01.06.2017 and she had been functioning as B.T.Assistant (Maths) and therefore, the reversion of the petitioner, in order to accommodate the request of the fourth respondent, is not justified.

5. The learned counsel for the petitioner also relied upon Section 57 of the Tamil Nadu Government Service (Conditions and Service) Act, 2016, which reads thus:-

> "57. (1) Any person may, in writing, relinquish any right or privilege to which he may be entitled under this Act or the special rules if, in the opinion of the appointing authority, such relinquishment is not opposed to public interest; and nothing contained in this Act or the special rules shall be deemed to require the recognition of any right or privilege to the extent to which it has been so relinquished.
>
> (2) Relinquishment of a right or privilege for a temporary period shall be accepted if it is made for a period of not less than three years, subject to the condition that after the expiry of the said period, the claim of the right or privilege relinquished will be with reference to the state of affairs that exist on the date of

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expiry of the period of relinquishment and without restoration of original seniority. If relinquishment of right or privilege is made permanently and is accepted, subsequent claim of the relinquished rights or privileges shall not be entertained."

6. It is not the case of the respondents that the fourth respondent relinquished her right to promotion, before accepting the promotion. If the family circumstances warranted, she might have offered to relinquish her right to promotion before accepting it and it is not for the fourth respondent to accept the promotion and after working for one year to say that she must be reverted. In that event, the appointing authority should have considered that the offer of relinquishment would affect the right of the petitioner also. Protection of right of one person cannot be a detriment to the right of the other person.

7. Under the said circumstance, the learned counsel appearing for the respondents would rely upon the fact that there is no provision in the Tamil Nadu Educational Subordinate Service Rules for the issuance of prior notice before demotion or reversion.

8. This contention cannot be accepted. Even if there is no provision under the Act, considering the acquired right in favour of the petitioner and having accepted the promotion and having worked in the promoted post, the principle of natural justice require that her interest must be protected and she ought to have been issued with notice of hearing and without hearing, the respondents ought not to have passed the order of demotion. The decision reported in 1978 AIR 597, 1978 SCR (2) 621 Maneka Gandhi vs Union Of India is relevant for consideration, wherein, it has been held as follows:-

"... Judicial tribunals and bodies of persons invested with authority to adjudicate upon matters involving civil consequences. It is one of the fundamental rules of our constitutional set-up that every citizen is protected against exercise of arbitrary authority by the State or its officers. Duty to act judicially would, therefore arise from the very nature of the function intended to be performed, it need not be shown to be super- ,added. If there is power to decide and determine to the

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prejudice of a person, duty to act judicially is implicit in the exercise of such power. If the essentials of justice be ignored and an order to the prejudice of a Person is made, the order is a nullity. That is a basic concept of the rule of law and importance thereof transcends the significance of a decision in any particular case."

8.1. Since the opportunity of hearing is not given to the petitioner, the impugned order passed, reverting the petitioner, is not valid.

9. The next contention raised by the learned Government Advocate appearing for the respondents is that the petitioner, being junior-most, is liable to be reverted based on the request of the fourth respondent.

10. As already pointed out, when the fourth respondent claims for demotion, the authorities concerned should have noted whether there was a vacancy at all for considering her request for demotion. Instead of rejecting the request of the fourth respondent, the same has been accepted and consequently this petitioner's right has been made to suffer and she has been demoted, which is not justified.

11. Under the stated circumstances, the impugned order, demoting the petitioner, is liable to be set-aside and it is set-aside accordingly.

12. In the result, writ petition is allowed. No costs. Consequently, the connected WMP is closed.

srk

Sd/-

Assistant Registrar(CS vi)

//True Copy//

Sub Assistant Registrar

To

1 The Director of Elementary
Education College Road chennai-6

2 The District Educational officer
Attur Salem District

3 The Block Educational officer
Gangavalli Block salem District

+1 CC TO GOVERNMENT PLEADER SR.NO. 81387

+1cc to Mr.S.Kamadevan , Advocate SR.No. 80320

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A.SK(10/01/2019)

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