



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 26.03.2018
Pronounced on : 04.06.2018

WEB COPY

CORAM:

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P. (MD) No.4118 of 2018
and
W.M.P. (MD) .No.4278 of 2018

J.Kulandai Therese

... Petitioner

Vs.

1. The District Elementary Educational Officer,
Ramanathapuram District.
2. The Additional Assistant Elementary Educational Officer,
Thiruvadanai, Ramanathapuram District.
3. The Correspondent,
Little Flower Primary School,
Andavoorani, Ramanathapuram District. ... Respondents

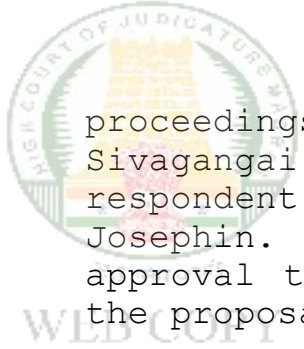
PRAYER: Petition filed under Article 226 of the Constitution of India to issue a Writ of Mandamus, calling for the records pertaining to the order passed by the 1st respondent in his proceedings in Athi.Mu.No.4028/A3/17 dated 26/12/2017, quash the same and direct the respondents to approve the appointment order of the petitioner as secondary grade teacher from the date of appointment i.e. from 15/06/2017 with all consequential benefits.

For petitioner : Mr.V.Paneer Selvam
For R1 & R2 : Mrs.S.Srimathy
Special Government Pleader
For R3 : Mr.M.Moyeeson

O R D E R

Heard the learned counsel on either side.

2.The petitioner was appointed as Secondary Grade Teacher on 15.06.2017 in the third respondent school. The petitioner has enclosed the proceedings of the third respondent at page No.3 of the typed set of papers. The said proceedings issued by the Correspondent of the third respondent school refers to the



proceedings dated 15.06.2017 issued by the Superintendent of the Sivagangai R.C.diocese schools. The vacancy in the third respondent school arose on account of the transfer of Thirumathi Josephin. The third respondent forwarded the proposal for approval to the first respondent. The first respondent returned the proposal on 26.12.2017 citing these three reasons.

(1).The first one was that Sanitary Certificate was not enclosed.

(2).The second one was that the teacher name was not mentioned in the appointment order.

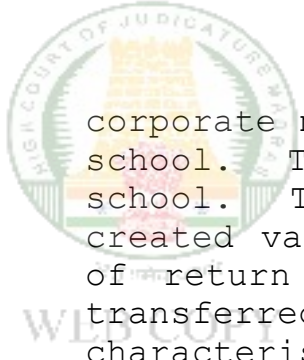
(3).The third one was that the Reliving order of the transferred teacher was not enclosed.

3.Therefore, the petitioner has filed this Writ Petition, questioning the said order returning the proposal and for directing the respondents to approve her appointment as Secondary Grade Teacher with effect from 15.06.2017 with all consequential benefits.

4.The official respondents have filed a detailed counter affidavit. The technical ground raised by the first respondent is that the impugned order is an intra-departmental communication between the first and second respondents. It has not been served on the petitioner. Therefore, it is neither open to the writ petitioner nor proper to question the same.

5.A larger issue has also been raised. The third respondent school comes under the corporate management of the R.C.Diocese, Sivagangai. It is the specific case of the department that as many as 51 Secondary Grade Teacher posts have been identified as surplus posts in Ramanathapuram District alone. The corporate management has been directed by the department to redeploy such teachers. But they continue to receive salaries by working in surplus posts. In fact, in Thiruvadanai Elementary Union alone as many as ten posts have been identified as surplus. Therefore, the Government Exchequer is incurring an expenditure of Rs.15,00,000/- per month on account of the non re-deployment of such surplus teachers. The R.C. Diocese has also been instructed to avoid making fresh appointments. This is because surplus teachers can be accommodated in the same schools coming under the corporate management by way of deployment. But willfully disobeying the same, the petitioner was appointed as Secondary Grade Teacher.

6.This Court is of the view that a regular vacancy did not arise in the third respondent school by death or retirement of a teacher working in a sanctioned post. One Thirumathi Josephin was working in the third respondent school. By orders of the



corporate management, the said Josephin was transferred to another school. That is how, vacancy had arisen in the third respondent school. This Court is of the view that this is an artificially created vacancy. That is why, the first respondent in the order of return had rightly stated that the relieving order of the transferred teacher has not been enclosed. The petitioner has characterised this as a flimsy ground. This Court does not agree with the said submission.

7. The prayer sought for in the Writ Petition cannot be granted for the reason that the petitioner was not appointed in a regularly occurring vacancy in a sanctioned post. The vacancy in this case has been engineered and artificially generated. The third respondent is receiving aid from the State. Therefore, the third respondent is bound to comply with the legitimate instructions issued by the Department. The Department cannot be made to suffer needless expenditure by paying salaries to the teachers working in surplus posts. It may be true that in the third respondent school there is no surplus post of Secondary Grade Teacher. But, then the third respondent school comes under the corporate management of R.C.Diocese. Thirumathi Josephin working in the third respondent school was transferred to another school coming under the same corporate management and in the resultant vacancy the petitioner has been appointed. It is for this reason that this Court declines to grant relief in this Writ Petition. There is no merit in the Writ Petition.

8. The Writ Petition stands dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CO)

/True Copy/

Sub Assistant Registrar

To

1. The District Elementary Educational Officer,
Ramanathapuram District.
2. The Additional Assistant Elementary Educational Officer,
Thiruvadanai, Ramanathapuram District.

+ 1 cc TO Mr.V.Panneer Selvam , Advocate in SR No. 66745
+ 1 cc TO The Special Government Pleader in SR No. 66957

tsg

AE/SV MMS/SAR4/12.06.2018/3P/5C