



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 12.06.2018

CORAM:

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THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

W.P. (MD) No.12487 of 2018

and

W.M.P. (MD) Nos.11356 and 11357 of 2018

V.Mariadass Brucelee

... Petitioner

-Vs-

1. The State of Tamil Nadu,
Represented by its Secretary,
Department of School Education,
Fort St.George, Chennai-9.
2. The Director of Elementary Education,
College Road, Nungambakkam,
Chennai-6.
3. The District Elementary Education Officer,
(O/o) District Elementary Education Office
Theni, Theni District.
4. The Block Education Officer-II,
(O/o) Block Education Office
Uthamapalayam,
Theni District.
5. The Correspondent,
St.Theresa's R.C.Middle School,
Thevaram-625 530,
Theni District.

... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus, calling for the records pertaining to the impugned order passed by the fourth respondent in Na.Ka.No.394/A4/2018, dated 04.06.2018 and quash the same as illegal and consequently to direct the respondents 3 and 4 to approve the appointment of the petitioner as B.T. Assistant (Mathematics) at St.Theresa's R.C Middle School, Thevaram, Theni District, with effect from the date of appointment on 07.08.2017 with all monetary and service benefits with a stipulated time prescribed by this Court.



For Petitioner : Mr.K.M.Arun Prasath
For R1 to R4 : Mr.D.Muruganandham
Additional Government Pleader

ORDER

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The prayer sought for in this writ petition is for a Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned order passed by the fourth respondent in Na.Ka.No.394/A4/2018, dated 04.06.2018 and quash the same as illegal and consequently to direct the respondents 3 and 4 to approve the appointment of the petitioner as B.T. Assistant (Mathematics) at St.Theresa's R.C Middle School, Thevaram, Theni District, with effect from the date of appointment i.e., on 07.08.2017 with all monetary and service benefits.

2.Heard Mr.K.M.Arun Prasath, learned counsel appearing for the petitioner and Mr.D.Muruganandham, learned Additional Government Pleader, who takes notice on behalf of the respondents 1 to 4. Since no adverse order is going to be passed against the 5th respondent, notice to the 5th respondent is dispensed with.

3.By consent of both parties, this Writ Petition is taken up for final disposal at the stage of admission itself.

4.The learned counsel appearing for the petitioner would submit that since one P.Arockiasamy, Secondary Grade Teacher working in the fifth respondent school was promoted on 07.08.2017 as Headmaster of the School, the said post had been vacant, therefore, the petitioner was appointed as Secondary Grade Teacher on 07.08.2017 in the fifth respondent school. Pursuant to the said appointment, the petitioner joined duty immediately and has been working there since then. The fifth respondent school on 05.10.2017 had sent a proposal for approval of the petitioner's appointment to the respondents 1 to 4 along with all relevant documents.

5.However, the said proposal was rejected by the impugned order of the fourth respondent dated 04.06.2018. The two reasons cited in the impugned order are unsustainable and therefore, the petitioner is before this Court.

6.In this regard, the learned counsel appearing for the petitioner would submit that, insofar as the demand of Teacher Eligibility Test qualification through the impugned order is no more valid requirement, in view of the fact that the fifth respondent school is a minority school, where such demand was made. Therefore, as per the law declared by this Court, the requirement of TET qualification for the teachers, who are working in the minority schools does not arise. Therefore, the said reason given in the impugned order shall not stand.



7. In respect of the staff fixation order is concerned, the learned counsel invited the attention of this Court at the proposal sent by the fifth respondent, where a list of documents annexed with the said proposal had been given in the typed set of papers, wherein staff fixation order for the year 2016-17 also had been sent. Therefore, the learned counsel for the petitioner would submit that both the reasons are unsustainable and therefore, the impugned order is liable to be quashed.

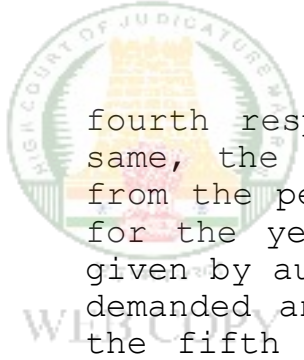
8. I have heard Mr. D. Muruganandham, learned Additional Government Pleader appearing for the respondents 1 to 4, who would submit that insofar as the second reason demanding TET qualification from the petitioner may not be justifiable, in view of the law declared by this Court in this regard.

9. However, the learned Additional Government Pleader would submit that in respect of the first reason i.e. non-submission of staff fixation order for the academic year 2017-18 is concerned, it is essential document. It should be submitted before the Authorities for consideration.

10. I have considered the said submissions made by both sides. As has been rightly pointed out by the learned counsel for the petitioner as accepted by the learned Additional Government Pleader, the demand of TET qualification from the petitioner for having been appointed in the fifth respondent school, which is a minority school, is not a valid demand and therefore, such a reason given in the impugned order is not sustainable and therefore, for that reason the impugned order cannot stand. Insofar as the other reason, namely, non-submission of staff fixation order for the year 2017-18 is concerned, it is pointed out by the learned counsel for the petitioner that the fifth respondent school had forwarded the staff fixation order for the year 2016-17. So far as 2017-18 is concerned, the order is yet to be granted. Therefore, the same could not be annexed.

11. In this regard, even though the fifth respondent school is a party herein, it cannot be ascertained from the counsel for the petitioner as well as the learned Additional Government Pleader appearing for the official respondents that as to whether the staff fixation order for the year 2017-18 was passed by the official respondents or not.

12. Be that as it may, if the said order is already passed, it would have also been annexed by the fifth respondent school. If such order is not passed i.e., staff fixation order for the year 2017-18, the question of demanding such order does not arise. In that view of the matter, this Court is of the considered view that the impugned order at any rate will not be sustained and therefore, the same is liable to be quashed. Accordingly, it is quashed. Now the matter is remitted back to the respondents, especially the



fourth respondent for re-consideration. While re-considering the same, the respondents shall not insist upon the TET qualification from the petitioner. Insofar as the demand of staff fixation order for the year 2017-18 is concerned, if the said order is already given by authorities to the fifth respondent school, the same can be demanded and if any such demand comes from the fourth respondent, the fifth respondent school shall forward the same to the fourth respondent for re-consideration.

13. After completing these formalities, a final order with regard to the approval of the appointment of the petitioner shall be passed by the third respondent, within a period of eight weeks thereafter.

14. This writ petition is allowed as indicated above. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar (CO)

/True Copy/

Sub Assistant Registrar (CS-II)

To

1. The Secretary,
Department of School Education,
Fort St. George, Chennai-9.
2. The Director of Elementary Education,
College Road, Nungambakkam,
Chennai-6.
3. The District Elementary Education Officer,
(O/o) District Elementary Education Office
Theni, Theni District.
4. The Block Education Officer-II,
(O/o) Block Education Office
Uthamapalayam,
Theni District.

+ 1 CC TO SPECIAL GOVERNMENT PLEADER IN SR No. 68007 & 67883
+ 1 CC TO Mr.K.M.ARUN PRASATH, ADVOCATE IN SR No. 10187

MYR/RMI
TE/BK/SAR-2 : 29/11/2018 : 4P/7C