



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 03.01.2018

CORAM :

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

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W.P (MD) No.19096 of 2014

K.Athisayamary
Primary School Headmaster,
Hindu Primary School,
Veerapandian, Panagudi,
Tirunelveli District.

... Petitioner

Vs.

1. The State represented by
The Secretary to the Government,
School Education Department,
Secretariat, Chennai.
2. The Director of Elementary Education,
Directorate of Elementary Education,
DPI Campus, College Road, Chennai.
3. The Secretary,
Hindu Primary School,
Veerapandian, Panagudi,
Tirunelveli District.
4. The District Elementary Educational
Officer,
Tirunelveli, Tirunelveli District.
5. The Assistant Elementary
Educational Officer,
Valliyoar, Tirunelveli District.

... Respondents

Prayer: This Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus to call for the records relating to the proceedings of the order in Letter No.7602/நீ.வ.2(2)/2014 dated 16.10.2014 and quash the same and further directing the first respondent to grant necessary teaching experience to the petitioner as per G.O.Ms.No.97, School Education Department dated 05.07.2001 and further directing the fourth respondent to approve the appointment of the petitioner as Primary School Headmaster in the third respondent school.

For Petitioner

: Mr.R.Maheswaran

For Respondents

: Mr.M.Alagathevan,
Special Government Pleader

**ORDER**

The writ petitioner is the Secretary of the third respondent school. The said school is a non minority institution. It has two sanctioned teaching posts, namely, Secondary Grade Teacher and Primary School Headmaster. The post of Primary School Headmaster fell on vacant on 14.07.2010. The vacancy did not arise on account of reaching of superannuation by the then incumbent. He was dismissed from service.

2.The department permitted the school to appoint a suitable candidate as a Headmaster in the said vacancy. The writ petitioner who is the Secretary of the school applied for being appointed as the Headmaster of the school. As per the recruitment rules, the eligibility for being a candidate for the said post is that the candidate must possess a teaching experience of five years.

3.Admittedly, the writ petitioner did not possess the said eligibility experience. Therefore, exemption was sought. The department declined to grant the said exemption. It passed an order dated 04.09.2013 to that effect. That was questioned in WP (MD)No.19708 of 2013 before this Court. This Court quashed the said order of rejection and directed the 4th and 5th respondents herein to send a proposal pertaining to the writ petitioner to the Government for exemption. The first respondent herein by the impugned communication dated 16.10.2014 rejected the proposal seeking exemption. The same is challenged in this writ petition.

4.The learned counsel appearing for the writ petitioner contended that the impugned order is contumacious. According to him, the issue regarding grant of exemption in favour of the writ petitioner was already dealt with by order dated 06.04.2014 in WP (MD)No.19708 of 2013. When this Court set aside the order of rejection dated 04.09.2013 and directed the respondents 4 and 5 herein to send a proposal to the Government, this Court actually meant that the formal orders approving the appointment of the writ petitioner should be passed. That was clear intendment behind the order of this Court on the earlier occasion.

5.The learned counsel appearing for the writ petitioner also drew my attention to Section 20(3) of the Tamil Nadu Recognized Private Schools Regulations Act, 1973 which enables the Government to exempt any person from possessing the qualification prescribed under Section 19 relating to age and experience for appointment as a Teacher or Employee in any private school. In this case, the eligibility qualification is five years of teaching experience. Pursuant to the said statutory amendment that was vide in the Tamil Nadu Act 11 of 1999, the Government issued G.O.Ms.No.97, School Education Department, dated 05.07.2001.



6.If the eligible candidates possessing five years' teaching experience are not available for the post of Headmaster of the primary school, then certainly exemption can be granted. This power according to the learned counsel for the petitioner, is coupled with a duty. In the present case, the employment exchange was subsequently requested to furnish the list of eligible candidates. The employment exchange had given a non availability certificate. Thereafter, the school had also issued an advertisement in Dhina Thanthi calling for applications from eligible candidates. Since the candidates possessing five years teaching experience did not turn up, the petitioner was therefore appointed in the said vacancy.

7.The learned counsel for the writ petitioner strongly contended that the Government by passing the impugned order had not only abdicated its duty to grant the benefit of exemption but also in the process of over reached the order dated 06.02.2014 passed by this Court in WP(MD)No.19708 of 2013.

8.The learned Special Government Pleader appearing for the respondents pointed out that the order impugned in this writ petition is sustainable in law.

9.I went through the materials enclosed in the typed set of papers. The order of appointment dated 09.04.2012 has been signed by none other than the writ petitioner herself. In other words, she is not only the candidate for the said post but she is also the appointing authority herself. It was she who forwarded the proposal dated 01.06.2012 to the department seeking exemption.

10.It is true that the order of rejection declining the grant of exemption from possessing five years' teaching experience was set aside by this Court on the earlier occasion. But then on the earlier occasion, the order dated 04.09.2013 was passed by the Assistant Elementary Educational Officer, Valliyoor. But, in the present round, the order has been passed by none other than the Secretary to Government, School Educational Department, Chennai. In fact, the issue regarding the grant of exemption should be considered only at the Governmental level. Therefore, I am not impressed by the arguments of the learned counsel appearing for the writ petitioner that the impugned order would amount to contempt of Court. The official respondents have filed their detailed counter affidavit. It is pointed out in the counter affidavit that the District Employment Exchange, Tirunelveli had earlier sponsored the names of five persons who did possess five years' teaching experience. But, the writ petitioner who is also the Secretary of the school informed the employment exchange that none of the five candidates chose to turn up for the interview since it was already held on 10.01.2011. This has cast a cloud on the entire recruitment process. The employment exchange was wrong



in giving a certificate that eligible candidates were not available. Eligible candidates were very much available. They were not less than five in number. They were actually sponsored on the earlier occasion. It was the writ petitioner who informed the employment exchange that they did not turn up.

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11. It is true that an application inviting eligible candidates from the open market was issued. It is quite possible that such candidates had responded to the said advertisement. But since it was the writ petitioner who was in charge of the recruitment process, this Court can never know the truth.

12. The counter affidavit filed by the official respondents further points out that the resolution of the school committee selecting the writ petitioner as Headmaster was passed on 06.03.2012. The interview was held on 06.03.2012. But, the non availability certificate from the employment exchange itself was received only on 05.04.2012. Thus, the materials enclosed in the typed set of papers shows that everything was pre-determined. The entire process of recruitment was a mere formality.

13. The learned counsel appearing for the writ petitioner placing reliance on the decision of the Hon'ble Supreme Court in *M.S. Gill* case would contend that the reasons set out in the counter affidavit are not found in the impugned order. While this is undoubtedly true, this Court must also remind the petitioner that granting relief in exercise of jurisdiction under Article 226 of the Constitution of India is also discretionary. In this case, it has been brought to my notice that the writ petitioner who is the candidate for a sanctioned post is herself the recruiting authority. The circumstances set out in the counter affidavit would also show that the recruitment process was not conducted in a bonafide manner. The case of the writ petitioner is that the eligible candidates were not available. It has been convincingly demonstrated that eligible candidates were very much available.

14. I therefore find no merit in this writ petition. The order rejecting the proposal submitted by the writ petitioner is sustained. This writ petition stands dismissed. No costs.

sd/-

Assistant Registrar (CS-II)

/True Copy/

Sub Assistant Registrar



To

1. The Secretary to the Government,
School Education Department,
Secretariat, Chennai.
2. The Director of Elementary Education,
Directorate of Elementary Education,
DPI Campus, College Road, Chennai.
3. The Secretary, Hindu Primary School,
Veerapandian, Panagudi, Tirunelveli District.
4. The District Elementary Educational Officer,
Tirunelveli, Tirunelveli District.
5. The Assistant Elementary Educational Officer,
Valliyoor, Tirunelveli District.

+1cc to Mr.G. Prabhu Rajadurai, Advocate Sr.No.40295
+1cc to The Spl.Government Pleader Sr.No.40254

SKM

VB/KKR/SAR4/24/01/2018/5P/8C

W.P (MD) No.19096 of 2014
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