



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 12.01.2018

CORAM :

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P (MD) No.13464 of 2017
and
WMP (MD) Nos.10553 to 10555 of 2017
and
WMP (MD) No.17940 of 2017

R.Saravanakumar

... Petitioner

Vs.

1. The State of Tamil Nadu,
Rep.by its Secretary,
Department of School Education,
Fort St. George, Chennai - 600 009.
2. The Director of School Education,
College Road, Chennai - 600 006.
3. The Joint Director of School Education,
(Secondary Education),
College Road, Chennai - 600 006.
4. The Chief Educational Officer,
Tirunelveli, Tirunelveli District.
5. The District Educational Officer,
Tirunelveli, Tirunelveli District.
6. The Secretary,
S.N.Ramasamy Raja Higher Secondary School,
Sri Gomathipuram Post,
Sankarankovil - 627 756
Tirunelveli District.

... Respondents

Prayer : 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 impugned Notification issued by the sixth respondent school in Daily namely, 'Dhina Malar' dated 11.04.2017 and its consequential letter dated 24.05.2017, quash the same and further direct the sixth respondent herein to consider the petitioner for promotion to the post of P.G.Assistant (Chemistry) against the vacancy due to arise on the retirement of the present incumbent S.Kalyani.



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For Petitioner

For Respondents

: Mr. Isaac Mohanlal,
Senior Counsel for Mr. K. Prabhu
: Mr. J. Gunaseelan Muthaiah,
Addl. Govt. Pleader for R1 to R5
Mr. F. X. Eugene for R6

O R D E R

The writ petitioner was appointed as B.T. Assistant (Science) in a private aided school in Tirunelveli District. Later, on 19.06.2014 he was transferred to the sixth respondent school by way of migration and the same was duly approved by the fifth respondent vide proceedings dated 14.08.2014.

2. The writ petitioner possesses M.Sc. Chemistry and B.Ed., degrees. A vacancy arose in the post of P.G. Assistant (Chemistry) in the sixth respondent school. Instead of considering the teachers who are eligible in the institution itself, the sixth respondent chose to go in for direct recruitment. The impugned advertisement was published in the Dhina Malar issue dated 11.04.2017 calling for applications from the eligible candidates from the open market. The same is questioned in this writ petition.

3. Sri. Isaac Mohanlal, learned senior counsel appearing for the writ petitioner placing reliance on Rule 15(4) of Tamil Nadu Recognized Private Schools Regulation Rules 1974 contended that appointments to the post of P.G. Assistant shall be made only by way of promotion among the teachers in the school if qualified teachers are available. In this case, the writ petitioner is very much available and he is possessing the requisite qualification also for being appointed as P.G. Assistant (Chemistry). He therefore wanted this Court to quash the notification dated 11.04.2017 on the ground of patent violation of the said statutory provision.

4. Per contra, Sri. F. X. Eugene, learned counsel appearing for the sixth respondent contended that the writ petitioner had chosen to relinquish his claim for promotion when he entered the sixth respondent institution by way of migration from another institution.

5. The said contention raised by the learned counsel for the sixth respondent school deserves to be summarily rejected. This is because, the right to be considered for promotion has now been recognized as a fundamental right as emanating from Articles 14 and 16(1) of the Constitution of India. Fundamental rights can never be permitted to be waived. Therefore, the theory of relinquishment as projected by the learned counsel for the sixth respondent cannot be accepted.

6. The impugned notification is therefore quashed and the sixth respondent is directed to consider the case of the writ petitioner



for promotion to the post of P.G.Assistant (Chemistry) on merits and in accordance with law. This writ petition stands allowed. No costs. Consequently, connected miscellaneous petitions are closed.

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Sd/-

Assistant Registrar (T&P)

/True Copy/

Sub Assistant Registrar

To

1. The Secretary, State of Tamil Nadu,
Department of School Education,
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 2. The Director of School Education,
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 6. The Secretary,
S.N.Ramasamy Raja Higher Secondary School,
Sri Gomathipuram Post,
Sankarankovil - 627 756
Tirunelveli District.
- + 1 CC TO M/s.ISAAC CHAMBERS, IN SR No. 42361
+ 1 CC TO Mr.F.X.EUGENE, ADVOCATE IN SR No. 42122

SKM

TE/SV-MMS/SAR-1 : 18/01/2018 : 3P/9C

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