



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 06.02.2018

CORAM :

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)No.18086 of 2017

and

WMP(MD)Nos.14548 & 14549 of 2017

S.Kalyani

... Petitioner

Vs.

1.The Director of School Education,
DPI Campus, Chennai - 6.

2.The Chief Educational Officer,
Tirunelveli - 3.

3.The District Educational Officer,
Tenkasi - 627 811.

4.The Educational Agency,
C/o.Ramasamy Pillai Higher Secondary
School, Ilanji - 627 805,
Tirunelveli District,
Through its Secretary.

5.The President,
The Educational Agency,
C/o.Ramasamy Pillai Higher
Secondary School,
Ilanji - 627 805, Tirunelveli District.

6.Thamizharasi

... 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 of the second respondent in Mu.Mu.No.8530/Aa2/2017 dated 14.09.2017 and quash the same and further direct the respondents 1 to 5 to appoint the petitioner as graduate Teacher for Maths in the vacancy arising out of retirement of Thiru.K.Eswaran and pay her all increment on her higher qualification with arrears.

For Petitioner : Mr.T.S.R.Venkatramana

For Respondents : Mr.K.Saravanan,



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Mr.V.Meenakshi Sundaram
for R4

Mr.B.Rajesh Saravanan
for R5

G.Mohan kumar for R6

O R D E R

Heard the learned counsel on either side.

2.The writ petitioner herein joined the fourth respondent school as a Secondary Grade Teacher with effect from 30.03.1994. She became a Graduate in 1998 and completed M.Sc., Maths in 2008. She acquired B.Ed qualification in 2010. The higher qualifications acquired by the writ petitioner have been duly entered in her service register. A vacancy arose in the post of B.T.Assistant (Maths) in the fourth respondent school. Though the petitioner is qualified to be promoted to the said post, the school management appointed the sixth respondent herein by way of migration. The proposal submitted by the school management was also approved by the second respondent 14.09.2017. The sixth respondent had joined the fourth respondent school on 18.09.2017. This writ petition came to be filed on 20.09.2017.

3.The writ petitioner's specific contention is that the impugned order dated 14.09.2017 granting approval in favour of the sixth respondent is violative of Rule 15 of Tamilnadu Recognized Private School (Regulation) Rules, 1974. When the writ petitioner is very much available, it was not open to the management to have gone in for appointing a rank outsider.

4.The learned counsel appearing for the school management contended that the petitioner acquired the higher qualifications without proper permission of the school management and the Education Department. It was also contended that the petitioner had earlier voluntarily relinquished her promotion to the post of B.T.Assistant (Maths) and cannot now stake a claim when a subsequent vacancy arose. It was further submitted that the second respondent accorded the impugned approval only based on the request of the school management and after verifying the endorsement of relinquishment made by the petitioner on the earlier occasion. The learned Additional Government Pleader appearing for the official respondents also wanted this Court to sustain the order impugned in this writ petition.

5.This Court gave is anxious consideration to the rival contentions. It is not in dispute that a regular vacancy arose in the post of B.T.Assistant (Maths) in the fourth respondent school. The petitioner is possessed of the requisite eligibility



qualifications required for being promoted to the said post. That she is eligible to be considered for the said post is beyond dispute because even the management is presently harping primarily on the acts of relinquishment made by the petitioner on the earlier occasions.

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6.The question of relinquishing one's right will arise only if there was a pre-existing right. One cannot give up something that one does not already possess. Therefore, it would be too late in the day for the management to raise the contention that the petitioner's acquiring higher qualification was without permission from the management and the Education Department and that therefore they cannot be looked into.

7.This Court in the unreported decision made in WP(MD)No.21895 of 2015 dated 08.12.2015, while considering the claims for conferment of incentive increment for acquiring qualifications and the contention that they were acquired without prior permission, held that conferment of incentive increment cannot be denied on that score. Acquiring higher qualification by the Teacher is only for the benefit of students. In that view of the matter, the first ground of opposition stands rejected.

8.It is true that the petitioner had earlier submitted a letter dated 05.03.2012 informing the management that even though she is having the necessary qualifications, she need not be given promotion as B.T.Assistant (Maths) during the academic year 2011-12. But, in the very same letter, the petitioner requested the management to promote her as B.T.Assistant when the next vacancy would arise. Similar request was made vide letter dated 21.01.2015. Therefore, the relinquishment made by the petitioner was purely temporary. The present vacancy arose only during the academic year 2017-18 following the retirement of the incumbent Eswaran. At no point of time, the petitioner relinquished her claim in respect of this vacancy. In fact, on the other hand, she had specifically requested the management to promote her if vacancy arose in future vide her letter dated 21.01.2015. In other words, her relinquishment was confined to specific academic years 2012-13 and 2014-15.

9.The issue can be considered from another perspective also. Right to be considered for promotion is a fundamental right. In *Basheshar v. Commissioner of Income Tax* (AIR 1959 SC 149), it was held by the Hon'ble Supreme Court that the fundamental rights cannot be waived. This doctrine of waiver in relation to fundamental rights has been explained in the recent decision of the Hon'ble Supreme Court reported in (2017) 10 SCC 1 (*K.S.Puttaswamy(Retd) vs. Union Of India And Ors*), in the following manner :

A simple example would suffice. If a person was to paste on Facebook vital information about himself/herself, such information, being in the public domain, could not possibly be claimed as a privacy right after such disclosure.



10. In this case, if the petitioner had asserted her claim for promotion to the said post for the academic years 2012-2013 and 2014-15, then certainly, the defence of relinquishment would have been a clean defence for the management. The Hon'ble Madras High Court on more than one occasion held that any letter of undertaking obtained from candidates wanting to join a teaching post in a private school that they would forego claims for promotion cannot be put against them when any subsequent vacancy arises and when the candidate stakes claim therefor.

11. Therefore, this Court is clearly of the view that the defence of relinquishment put forth by the respondents both official as well as private will not lie. Rule 15(4) of Tamil Nadu Recognized Private School (Regulation) Rules, 1974 is clear and specific. When an eligible and suitable in-service candidate is very much available, the vacancy in the higher post must be filled up by promoting the said candidate and it would not be open to the management to scout for candidates from outside.

12. In the present case, it is not in dispute that the sixth respondent is an outsider. She came to the said post by way of migration. It is not the case of the management that the petitioner is not eligible or suitable. The fact that the endorsement of relinquishment was entered in the service register itself would go a long way in establishing that even according to the management, the petitioner is eligible and suitable to be promoted to the said post. The department had overlooked the statutory mandate while according approval to the appointment of the sixth respondent in the fourth respondent school by way of migration.

13. In fact, the second respondent ought to have issued notice to the petitioner before according such approval. The appointment of the sixth respondent by the fourth respondent and approval of the same by the second respondent clearly infringed the civil rights of the petitioner. Therefore, not putting the petitioner on notice is violation of the principles of natural justice. The impugned order is vulnerable on that account also.

14. This Court finds the petitioner to be possessed of the requisite qualifications for being considered for the said post of B.T. Assistant (Maths). Since the sixth respondent who came as an outsider was appointed by ignoring the legitimate claims of the petitioner, there is a clear infraction of the statutory mandate set out in Rule 15(4) of the Tamil Nadu Recognized Private School (Regulation) Rules, 1974.

15. For all these reasons, the order impugned in this writ petition is quashed. It is not the case of the school management that apart from the writ petitioner there are other eligible candidates who have also been considered along with the petitioner



for promotion to the said post of B.T.Assistant (Maths). Since the said plea has not been put forth, the petitioner is definitely entitled to be appointed as B.T.Assistant in the fourth respondent school. Appropriate orders in this regard shall be issued by the private respondents herein within a period of four weeks from the date of receipt of a copy of this order and the Education Department is also directed to approve the same within a period of four weeks thereafter.

16.This writ petition stands allowed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/

Assistant Registrar (Crl side)

/True copy/

Sub Assistant Registrar

To

1.The Director of School Education,
DPI Campus, Chennai - 6.

2.The Chief Educational Officer,
Tirunelveli - 3.

3.The District Educational Officer,
Tenkasi - 627 811.

+1cc to Mr.D.NALLATHAMBI, Advocate, SR.No.46651

+1cc to Mr.G.MOHAN KUMAR Advocate, SR.No. 46980

+1cc to Mr.T.S.R.Venkatramana, Advocate, SR.No.46402

+1cc to M/s.Special Government Pleader,SR.No. 47288

W.P (MD) No.18086 of 2017
and

WMP (MD) Nos.14548 &
14549 of 2017
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KK/SKN RSK/13.03.2018/SAR-3/5P-8C