

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.04.2019

CORAM

THE HONOURABLE MR. JUSTICE K.RAVICHANDRABAABU

W.P.No.13963 of 2015
and
W.M.P.No.1 of 2015

Vanitha Mary

... Petitioner

Vs

1. The District Elementary Educational Officer, Tiruvannamalai.
2. The Additional Assistant Elementary Educational Officer, Polur, Tiruvannamalai.
3. The Central Manager & Chairman, Education Board, D.M.Elementary and Higher Elementary Schools, ALC Central Office, Cuddalore.
4. The Correspondent, D.M.Middle School, Polur, Tiruvannamalai District.

.. Respondents

Writ Petitions filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus to call for the records pertaining to the impugned order of 2nd respondent in O.Mu.544/A2/2012 dated 23.07.2012 and quash the same and consequently direct the respondents approve the appointment of the petitioner and to extent all benefits both service and monetary thereto.

For Petitioner : Ms.T.Dharani

For Respondents : Mrs.V.Annalakshmi,
Government Advocate for R1 to R3

O R D E R

The petitioner is aggrieved against the order of the 2nd respondent dated 23.07.2012, wherein and whereby, the 2nd respondent returned the proposal sent by the 4th respondent for approving the appointment of the petitioner as Secondary Grade Teacher on the reason that the petitioner is working in a surplus post.

2. Heard both sides.

3. It is seen that one P.Hanna Priya, who was working as Secondary Grade Teacher at the 4th respondent School was promoted as B.T. Assistant (English) and in that vacancy, the petitioner was appointed as Secondary Grade Teacher on 19.01.2011. The 4th respondent Institution is a minority Institution. It is seen that on the date of appointment of the petitioner, the post was held by the said person by name, P.Hanna Priya and thus, it is evident that the post was sanctioned, in which, the said person was functioning and got promoted to the post of B.T. Assistant. In the vacancy so occurred, the petitioner was appointed as Secondary Grade Teacher. Assuming that the post, in which, the petitioner was appointed became surplus later, the respondents ought to have deployed the petitioner to other needy School by following G.Os.No.525 School Education Department dated 21.12.1997 and paid the salary. But the proposal sent by the 4th respondent was returned through the impugned order simply by stating that the post was surplus.

4. I do not think that the official respondents are justified in refusing to approve the appointment of the petitioner who is said to be working in the 4th respondent School even as on today without payment of salary all these years. In W.P.No.19821/2003 etc. dated 22.01.2013, this Court, after following the Division Bench decision made in 2006(2) MLJ 784 (M.Sundersingh vs. Government of Tamil Nadu and others) has observed at paragraph No.4 as follows:

4. It is brought to the notice of this Court by the learned counsel appearing for the petitioner that an identical issue was decided by this Court in an earlier writ petition being W.P.No.4310 of 2002, dated 09.07.2010 [R.Vimala vs. The Director of School Education]. In the said writ petition a direction was sought for to approve the appointment of the petitioner therein as Secondary Grade Teacher. In the said case, the petitioner, who was Tamil Pandit, was appointed as Secondary Grade Teacher in a school, which is aided minority institution. This Court after taking into consideration the order passed by the Hon'ble Division Bench, allowed the writ petition. The operative portion of the order reads as follows:-

6. The facts relating to the petitioner's appointment and continuance in the fifth respondent school are all matters of record. The reason assigned by the department for not approving the petitioner's appointment is on the ground that she is a Tamil Pandit and she has been appointed in a Secondary Grade vacancy. The Government order in G.O.Ms.No.559, dated 11.07.1995 prohibited appointment of B.Ed., qualified candidates and the same was challenged in a batch of cases and ultimately, the Hon'ble Division Bench of this Court in Secretary and Correspondent Uswathun Hasana Oriental (Arabic) Girls Higher Secondary School V. The State of Tamil Nadu reported in 2002 WLR 173 held that the appointments made up to 19.05.1998 were permitted to be approved with a direction to the Government to work out the modalities. Thereafter, the Government issued G.O.Ms.No.155, dated 03.10.2002 and directed to provide One Month Child Psychology Training to graduate teachers with B.Ed qualification appointed as Secondary Grade Teachers from 11.07.1995 to 19.05.1998.

7. Though, the petitioner also obtained an interim direction from this Court in W.P.M.P.No.5401/2003 in W.P.No.4310/2003 dated 13.02.2003, she was not sent for training. Admittedly, four posts of Secondary Grade Teacher were sanctioned to the fifth respondent school by G.O.Ms.No.13, dated 29.11.1998 and the petitioner was appointed in one of the four posts on 01.06.1997. In the counter affidavit, it is stated that subsequently, based on a staff fixation done during 2001-02, it was found that the post held by the petitioner was surplus. However, in the counter affidavit, it has been stated that the petitioner had been continuously working from 01.06.1986 and in fact her salary was also paid for the period from 01.06.1986 to 31.10.1987 and thereafter, she has been working without salary from 01.11.1987. The question whether, the petitioner can be penalized for not having been sent for Child Psychology Training came for consideration before this Court in M.Sundersingh Vs. Government of Tamil Nadu and others (2006) 2 M.L.J. 784 and this Court held as follows:-

"11. The learned counsel for the petitioner submitted that the petitioner is continuously working without getting salary. Petitioner is to be paid salary from 02.06.2003 as it has been given to other similarly placed Teachers. As and when Child Psychology Training is given through D.I.E.T., the petitioner shall undergo the said training. The service of the petitioner from 07.01.1998 to 02.06.2003 shall be counted for pension purposes only as held by the Division Bench decision reported in 2004 (2) LW 591 (State of Tamil Nadu & Others V. Pallivasal Primary School). Denial of sending the petitioner for training is due to the fault of the respondents and therefore the same cannot be put against the petitioner for delaying payment of his salary.

12. The learned counsel for the petitioner submitted that as and when petitioner is sent for training through D.I.E.T., he is willing to undergo the same and the said undertaking is recorded. The prayer for quashing Clause 3(IV) in G.O.Ms.NO.155 dated 3.10.2002 has become infructuous in view of the issuance of subsequent G.O.Ms.No.34 on 17.03.2003. The consequential order of the 4th respondent dated 21.09.2002 is quashed with a direction to the respondents to approve the appointment of the petitioner on 02.06.2003 and count petitioner's service for pension from 07.01.1998."

8. Further as noted above, when the post was sanctioned, there was sufficient student strength in the school and even according to the department, when the staff fixation was done, after four years in 2002 it is stated that one post has become surplus. The petitioner having been appointed in the fourth post and the school having had sufficient strength on the relevant date, the reason assigned by the department for refusal to approve the petitioner's appointment stating that 2002, the number of post got reduced cannot be countenanced and deserves to be rejected. That apart the Hon'ble Division Bench

in G.Sahadevan Nair V. Government of Tamil Nadu reported in (2008) 4 MLJ 289, while disposing of batch of cases including the two writ petitions filed by the fifth respondent management in W.P.Nos.415 & 436/1998 issued the following directions:-

29. For the aforesaid reasons, we allow the various writ petitions by giving the following directions:-

(i) The State of Tamil Nadu and the other authorities

concerned shall consider the application of each of the Institution for grant-in-aid within a period of 16 weeks without being influenced by the fact that such institutions had been established without obtaining any prior permission and also by the fact that such institutions had given letter in writing indicating that after obtaining recognition they will not claim any grant-in-aid. However, while considering such application, the relevant facts such as the existence of necessary infrastructure, teacher-student ratio and the eligibility of the concerned teacher to hold the post should be considered.

(ii) If it is found that any particular institution is entitled to receive any aid, decision should be taken with regard to eligibility within a period of four months and should be communicated to the concerned institution.

(iii) If any institution is found eligible to receive such aid, necessary payment shall be made within a further period of four months from the date of such sanction.

(iv) The continued right of any institution to receive any aid is to be considered keeping in view the relevant G.O., applicable from time to time.

(v) Similarly, in respect of minority institutions, which were receiving aid in respect of some of the posts and were seeking for approval and payment of aid for any additional post, such question is required to be considered within a period of four months by keeping in view the teacher- pupil ratio applicable during any particular period.

(vi) If, on the other hand, any school or any post is found ineligible for sanction of grant, such decision should be communicated to the

concerned institution by giving brief reasons within a period of three weeks from the date of order of refusal."

9. In an identical circumstances a writ petition came for consideration before the Madurai Bench of this Court in W.P.No.3206/2007 and this Court by order dated 13.12.2007, considering the facts as well as the law laid down allowed the writ petition by following above referred decisions and directed the approval of the appointment of the petitioner therein making it clear if the post in which, she was found working is found surplus, it is open to the department to deploy, the petitioner therein to a needy school in accordance with G.O.Ms.No.525 dated 29.12.1997 and the arrears of salary was directed to be disbursed. Against the said order, the Department filed W.A.(MD). No.617/2008 before the Hon'ble Division Bench of the Madurai Bench and the Hon'ble Division Bench by Judgment dated 25.09.2008, dismissed the writ appeal and held that the issue raised is already covered by the Judgments reported in The State of Tamilnadu and Ors Vs. Pallivasal Primary School 2004 (2) LW 591 and M.Sundersingh Vs. Government of Tamil Nadu and others (2006) 2 M.L.J. 784.

10. Therefore, for all the above reasons, the petitioner is entitled to succeed and accordingly, the writ petition is allowed as prayed for and the respondents are directed to approve the petitioner's appointment and pay the arrears of salary within a period of eight weeks from the date of receipt a copy of this order. No costs.

5. I find that the issue involved in the present case is squarely covered by the above said decision. Accordingly, in terms of the above said order, this Writ Petition is allowed and the impugned order is set aside. Consequently, the respondents 1 and 3 are directed to approve the appointment of the petitioner as Secondary Grade Teacher and pay her salary with all arrears within a period of eight weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed.

vsi

Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

To

1. The District Elementary Educational Officer, Tiruvannamalai.
2. The Additional Assistant Elementary Educational Officer, Polur, Tiruvannamalai.
3. The Central Manager & Chairman, Education Board, D.M.Elementary and Higher Elementary Schools, ALC Central Office, Cuddalore.

+1cc to Mr.T.Dharani, Advocate, SR.No.35214
+1cc to the Govt.Pleader, Vide Sr.No.35306

W.P.No.13963 of 2015

Kak (28/05/2019)