

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 24.04.2019

CORAM

THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

W.P.No.22352 of 2010

Mrs.Joan Pramodhini

... Petitioner

Vs.

1. The Director of Teacher Education
Research and Training,
College Road,
Chennai - 600 006.
2. District Institute of Education and Training
Rep. by its Principal
Ranipet, Vellore District,
PIN - 632 401.
3. Beattie Memorial Teacher Training Institute
Rep. by its Correspondent
Ranipet, Vellore District,
PIN - 632 401.
4. Rt. Rev. Dr.Y.William
Bishop and Manager of Diocesan Schools
CSI Vellore Diocese
CSI Diocesan Office
1/A, Officer's Line
Vellore - 632 001.
5. Padmini Perci Bai
Beattie Memorial Teacher Training Institute
Ranipet, Vellore - 632 001.

... Respondents

Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records of the first respondent herein, culminated in the order Na.Ka.No.10041/E4/2009 dated 18.11.2009 impugned herein and to quash the same and consequently quash the letter dated 16.11.2007 of the third respondent and remove the entry dated 13.02.2007 in the Service Register of the petitioner and direct the first respondent to accord approval to the

appointment of the petitioner in the sanctioned post of B.T.Assistant.

For Petitioner : Mr.C.K.M.Appaji

For R1 & R2 : Mr.K.Karthikeyan
Government Advocate

For R3 & R4 : Ms.Sheeba
For Mrs.Paul & Paul

R5 - Served
No Appearance

ORDER

This Writ Petition has been filed seeking to quash the order in Na.Ka.No.10041/E4/2009 dated 18.11.2009 of the first respondent and consequently, quash the letter dated 16.11.2007 of the third respondent and to remove the entry dated 13.02.2007 in the Service Register of the petitioner and direct the first respondent to accord approval to the appointment of the petitioner in the sanctioned post of B.T.Assistant.

2. The petitioner submitted that she is a post graduate in English and she has completed the same in the year 1999 from Annamalai University. Even prior to that, she has completed her M.Ed. in the year 1997 securing 59% while the minimum required qualification for a teacher was only 55% in M.Ed. and was looking for an appropriate employment.

3. The petitioner further submitted that the Church of South India consists of about 22 Dioceses and each Diocese run several educational institutions. The Vellore Diocese of the CSI is one such Diocese having several educational institutions under its control. The third respondent institute is one such institution belonging to the Vellore Diocese of the CSI. The fourth respondent, as a Bishop, is the Manager of all the Educational Institutions in the said Diocese including the third respondent.

4. The petitioner also submitted that the third respondent institute is a private minority institution belonging to the Church of South India Diocese, Vellore, receiving grant in aid in part from the State Government. Out of the total number of teachers employed at the institute, the salaries in respect of a few posts alone are paid by the Government and rest of the teaching staffs are paid from the fees collected from the students by the management. The third respondent being a Teacher Training Institute is under the Administrative Control of the Director of Teacher Education Research and Training at Chennai.

The National Council of Teacher Education (NCTE), New Delhi, prescribes a minimum number of teachers to be maintained, depending on the number of students in the institute. Every year, a list of the teachers working in each of such institutes must be sent to the NCTE to establish that the prescribed number of teachers are working at the institute. While the third respondent institute adheres to such norms prescribed by the NCTE, due to paucity of funds, only three teaching posts i.e. the Principal, B.T.Assistant and Craft Teacher are treated as sanctioned posts at the third respondent institute, receiving grant in aid from the Government.

5. The petitioner further submitted that on 11.08.2000, she was appointed as Pedagogy - II teacher Educator (as the B.T.Assistant Post was then called) in the third respondent institute and at that time, all three sanctioned posts were already filled up and therefore, she was appointed on a consolidated pay of Rs.4000/- per month in the said post and has continued to work in the third respondent institute. While so, the post of Principal, which is one of the sanctioned posts, fell vacant as the then Principal retired. The third respondent promoted one Mrs.Mary Jagadam, who had been appointed in the post of B.T.Assistant (Sanctioned Post) as a Principal on 01.06.2006 onwards. Since the petitioner was already working with the third respondent institute for about six years and as she possessed the necessary qualifications, she was appointed as Junior Lecturer - English (B.T.Assistant) in the sanctioned post, in the place of Mrs.Mary Jagadam, who got promoted. The appointment order was issued to her on 29.11.2006 and she took charge in the said post with effect from 30.11.2006. A copy of her appointment order was sent to the other respondents on 30.11.2006 and on the same day, necessary entries were also made in her service register by the third respondent.

6. The petitioner also submitted that she has been working in the post of Junior Lecturer - English from 30.11.2006 onwards, however, she continued to receive only a consolidated pay as she was informed that the first respondent has to approve her appointment before the salary could be paid to her as per the Government scale of pay. She was informed that the same would be done in due course and the necessary paper work would be processed by the Institute through the second respondent, the District Institute of Education and Training (DIET). However, even after the commencement of the academic year 2007-2008, she had not received any approval and continued to draw only a consolidated pay. Therefore, she approached the third respondent to know the status of the approval and subsequently, it was informed by the Principal of the third respondent that her file was still pending at the office of the first respondent for approval. While that being the position, she was later informed

that the management of the third respondent appointed one Padmini Perci Bai, the fifth respondent herein, to the same post which the petitioner was holding without getting any approval from the authorities concerned.

7. The petitioner further submitted that aggrieved by the act of the third respondent, the petitioner filed a Writ Petition No.5533 of 2008 before this Court, seeking for a direction to grant approval to the appointment of her in the sanctioned post of B.T.Assistant. Since the petitioner was already appointed to the sanctioned post, only a formal approval from the first respondent was awaited. While the above Writ Petition was pending, the said Mrs.Padmini Perci Bai was appointed in the said post and her appointment has been approved by the first respondent immediately. Subsequently, this Court, by an order dated 22.08.2008, directed the first respondent to dispose of the petitioner's representation dated 13.02.2008 within a period of six weeks from the date of receipt of the order. But, no action had been taken by the first respondent on this issue. Hence, the petitioner filed a Contempt Petition No.525 of 2009 before this Court. Thereafter, only in the course of enquiry, she came to know that the third respondent had sent a letter dated 16.11.2007 withdrawing her appointment. Subsequently, she obtained documents through the Right to Information Act that the second respondent had cancelled her appointment on 13.02.2007 itself on the basis of a letter dated 24.01.2007 alleged to have been sent by the first respondent. Therefore, the petitioner submitted that the third respondent has no authority or power to unilaterally withdraw her appointment after making necessary entry in the service register.

8. The petitioner also submitted that though the cancellation was made in the service register, no notice was given to her and shockingly, the second respondent has cited the first respondent's letter dated 24.01.2007 directing him to conduct a general enquiry in all the appointments made in the third respondent institution and to cancel the petitioner's appointment on 13.02.2007, whereas the second respondent in fact conducted an enquiry on 06.02.2009 and in his report it is found that her appointment is in accordance with rules. As such, the first respondent, without taking note of all the above facts, has passed the impugned order, which is completely in violation of Principles of Natural Justice.

9. Denying the allegations of the petitioner, the first respondent has filed a counter affidavit, wherein, it has been submitted that the petitioner was appointed as Junior Lecturer in the third respondent institute on 30.11.2006. He has acquired the following educational and professional qualifications:-

1. B.Sc., Zoology May 1981 - Madras University
2. B.Ed., April 1987 - Madras University
3. M.A., (English) May 1999 - Annamalai University
4. M.Ed., May 1987 - Annamalai University

10. The first respondent further submitted that as per the direction of this Court dated 30.02.2008 in W.P.No.5533 of 2008 filed by the petitioner, the Joint Director (Admin) has heard the petitioner and the fifth respondent on 09.07.2009 and both of them had submitted their representations on the day of hearings. The first respondent has scrutinised the records and the representation of the petitioner dated 13.02.2008 and noticed the followings points and informed the petitioner vide Rc.No.10041/E4/2009 dated 18.11.2009:-

- The petitioner possesses Zoology in UG and English in PG as major subjects. Since the petitioner falls under the Cross Major category.
- Since the petitioner comes under the Cross Major category, the appointment of the petitioner was withdrawn by the appointing authority.
- The respondent Mrs.Padmini Prici Bai was appointed on 08.02.2008.
- The respondent Mrs.Padmini Prici Bai has acquired the qualification for the appointment of Junior Lecturer in the aided Teacher Training Institutes and hence the appointment was approved by the Principal, District Institute of Education and Training, Ranipet on 02.07.2008.
- The action of the correspondent in first withdrawing the appointment of Mrs.Joan Promodini and then appointing the fully qualified respondent Mrs.Padmini Prici Bai is in accordance with the powers vested in the Tamil Nadu Minority Schools (Recognition and Aid) Rules 1977. Therefore, the department cannot interfere with the action taken by the correspondent.

11. The first respondent also submitted that the appointment of the petitioner in the Junior Lecturer aided post in the third respondent institute is erroneous, because the person to be appointed in the Junior Lecturer Post of Aided T.T.I should possess the same Major Subject in both U.G. and P.G. along with the B.Ed. and M.Ed. or M.A. Education. But, the petitioner possesses Zoology in U.G. and English in P.G. as Major Subjects,

thereby, she falls under Cross Major Category and not eligible to be appointed as Junior Lecturer in the sanctioned aided B.T.Assistant Post of any Teacher Training Institute. The Correspondent of the third respondent institute, after knowing that the appointment of the petitioner is irregular, has withdrawn her appointment on 29.11.2007 and appointed the qualified person Mrs.Padmini Price Bai, the fifth respondent, in the place of the petitioner on 08.02.2008 as Junior Lecturer and the appointment was also approved by the Principal, DIET, Ranipet, on 02.07.2008.

12. The first respondent further submitted that the petitioner has only stated that she has completed M.A.English in Annamalai University in the year 1999 and M.Ed. in the year 1997 with more than 55% marks in M.Ed. But, she purposely avoided to mention that she has passed the B.Sc. Zoology in 1981 which falls under Cross Major Category. This itself shows that the petitioner tries to hide the facts and claims the Junior Lecturer (B.T.Sanctioned Post) in Aided T.T.I. Hence, sought for dismissal of this Writ Petition.

13. The third respondent also filed a counter affidavit denying the allegations of the petitioner, wherein, it has been submitted that initially the petitioner was appointed as Junior Lecturer (B.T.Assistant) against a sanctioned post even though, she had post graduate qualification which was cross major as she had a B.Sc. Degree in Zoology and an M.A. in English. At the time of her appointment on probation, in the appointment order itself clearly mentioned that the same was subject to the approval of the Education Department. Accordingly, her case was sent to the second respondent for approval. However, it was not approved by the first and second respondents and kept pending for an inordinate length of time, as a result of which, the salary of the petitioner was continued to be paid by the third respondent from out of the management funds as she would be a management staff till her appointment is approved by the first and second respondents. Thereafter, on enquiry, the respondents came to know that the delay was on account of the fact that the petitioner's qualification was cross major, which, according to the rules and practice followed by the first respondent, would render the petitioner ineligible for the appointment. Therefore, her appointment was later withdrawn by the respondents and appointed the qualified person, Mrs.Padmini Perci Bai, in the place of the petitioner. Hence, sought for dismissal of this Writ Petition.

14. On perusal of the impugned order dated 18.11.2009, it is seen that certain norms and standards have been notified in the NCTE Regulations 2002 - Appendix.5, for appointing a Lecturer in the educational institutions, which reads as follows:-

5. Qualifications of teaching staff:

(b) Lecturer:

(i) Good academic record with M.Ed/M.A (Education) with 55% Marks, preferably with Specialization in elementary education.

(or)

(ii) Good academic record with Master's Degree with 55% Marks in the relevant school subject and Bachelor of Elementary Education (B.El.Ed.) or B.Ed. preferably with specialization in elementary education, and with five years teaching experience in recognized elementary schools.

15. As per the above norms of the National Council for Teacher Education (NTCE), the petitioner has acquired Master's degree with 55% Marks in the relevant school subject, but, she did not have five years of teaching experience in any recognized elementary school and also, she possesses two different subjects i.e. Zoology in U.G. and English in P.G., which are cross majors and therefore, her appointment was withdrawn by the respondents on 29.11.2007 and the qualified person Mrs.Padmini Perci Bai, the fifth respondent, was appointed in her place on 08.02.2008 as Junior Lecturer and the said appointment was approved by the Principal, DIET, Ranipet, on 02.07.2008.

16. In view of the appointment order dated 29.11.2006, it is seen that the petitioner was appointed as Junior Lecturer - English (B.T.Assistant) in the third respondent institute on probationary basis with effect from 30.11.2006 in the Scale of Pay of Rs.5500 - 175 - 9000 in the place of Mrs.D.Mary Jagadam, who has been promoted as Principal with effect from 01.06.2006 and which is subject to the approval of the Education Department.

17. It is seen from the records that the third respondent institute has requested the second respondent, regarding the approval of the petitioner's appointment and the petitioner has also sent a representation to the first respondent. However, it was not considered by the authorities concerned and therefore, the petitioner has filed W.P.No.5533 of 2008 before this Court, seeking for a direction, directing the first respondent to grant an approval to her appointment in the sanctioned post of B.T.Assistant. In the meanwhile, since the third respondent has found that the petitioner is ineligible to the post of B.T.Assistant, has withdrawn the appointment of the petitioner and appointed the qualified person Mrs.Padmini Perci Bai to the said post. Thereafter, the Writ Petition filed before this Court has been disposed of with a direction to the first respondent to consider the representation of the petitioner dated 13.02.2008

within a period of six weeks from the date of receipt of the order.

18. It is also seen from the records that despite the order of this Court, the first respondent has not considered the petitioner's representation dated 13.02.2008 and therefore, the petitioner has filed Contempt Petition No.525 of 2009 before this Court. Thereafter, the first respondent has considered the representation of the petitioner and passed the impugned order dated 18.11.2009 in Na.Ka.No.10041/E4/2009, confirming the action of the third respondent institute in withdrawing the appointment of the petitioner as B.T.Assistant and appointing the fifth respondent to the said post.

19. As per the Tamil Nadu Minority Schools (Recognition and Payment of Grant) Rules, 1977, since the power granted to the minority institutions, the members of the minority institutions have withdrawn the approval of the petitioner's application and forwarded the application of the fifth respondent for approval. Further, the minority institutions have got power to appoint any person in the posts which are not sanctioned. Only in the sanctioned post, the respondent seeks for necessary qualification for appointing them in the said post. Accordingly, when the petitioner was initially appointed as Junior Lecturer, it was only a temporary post and subject to the approval of the Education Department. Thereafter, since it has been found by the third respondent institute that the petitioner is ineligible for the said post as she had cross major subjects, her appointment was withdrawn and the fifth respondent who had the necessary qualification as per the norms, was appointed in the said post.

20. Even though the petitioner's appointment was withdrawn by the respondents, she had worked in the third respondent institute as managerial staff till her superannuation on 30.06.2017 without any approval. Further, since she had been working as managerial staff for more than 10 years, the management of the third respondent institute paid the salary to her, the third respondent had withdrawn the appointment of the petitioner after they found that the petitioner is ineligible for the post of B.T.Assistant. Hence, challenging the said appointment of the fifth respondent by the petitioner, is not found to be correct. Moreover, the submission of the petitioner that she was not given a personal hearing, is found to be false as she was called for an enquiry by the first respondent, after the orders of this Court in W.P.No.5533 of 2008 dated 30.02.2008.

21. Since the third respondent institute is a minority institution, the Correspondent of the institution is the appointing authority and the second respondent institute is only a approving authority, the first respondent cannot interfere

with the action of the Correspondent of the third respondent institute in withdrawing the appointment of the petitioner which is not as per rules and appointing the fifth respondent in the sanctioned post of B.T.Assistant. The first respondent, after considering these aspects, has rightly rejected the case of the petitioner and has concurred with the appointment made by the third respondent. Further, when the statutory rule contains specific provisions regarding qualification, they cannot be altered and given a go by.

22. In view of the above facts and circumstances of the case that as per the norms of the NCTE Regulations 2002 - Appendix.5, the petitioner is ineligible to be considered for the sanctioned post of B.T.Assistant and that the petitioner, without the approval of the authority concerned, had worked in the post of B.T.Assistant in third respondent institute. Since the petitioner was working in the said post as management staff without approval, the third respondent institute found it difficult to pay the salary to her and therefore, they had withdrawn the appointment of the petitioner and appointed Mrs.Padmini Perci Bai who is qualified to the said post as per the norms of the NCTE Regulations 2002 - Appendix.5. Hence, when the third respondent has acted as per rules and her appointment itself was withdrawn, the petitioner cannot claim any right to be appointed in the sanctioned post. It is also brought to the notice of this Court that the petitioner is already retired from the third respondent institute on attaining superannuation.

23. In view of the above facts and circumstances of the case, this Court finds no merit in this case and therefore, this Writ Petition deserves to be dismissed.

24. Accordingly, this Writ Petition is dismissed. No costs

Sd/-

सत्यमेव जयते
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

To

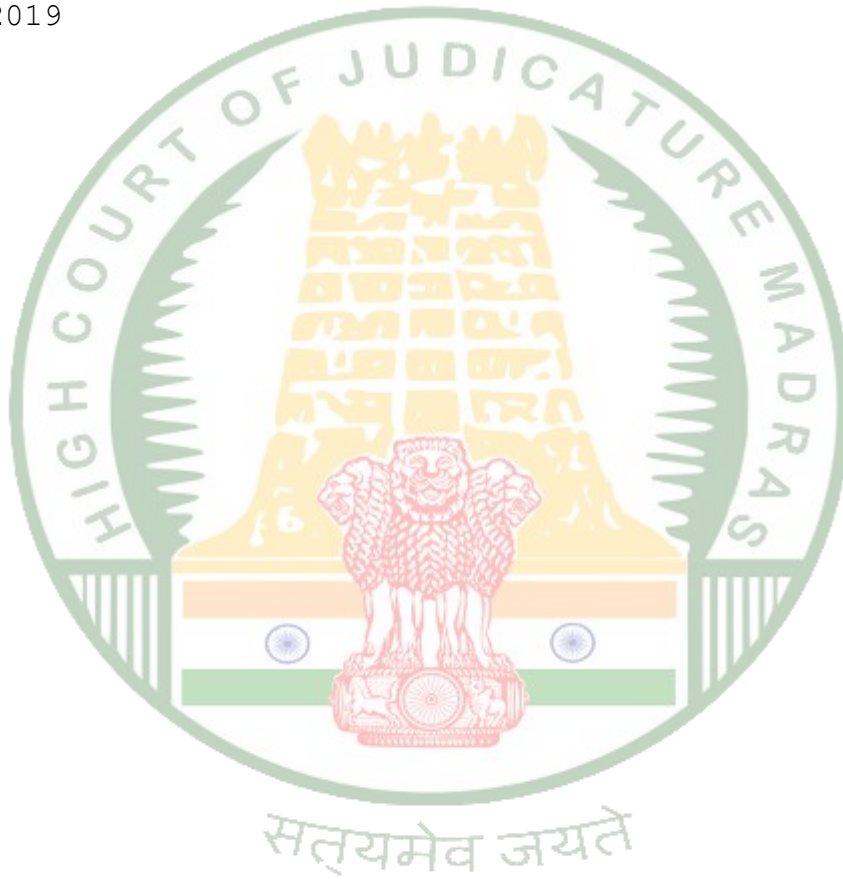
1. The Director of Teacher Education
Research and Training,
College Road,
Chennai - 600 006.

2. The Principal,
District Institute of Education and Training
Ranipet, Vellore District,
PIN - 632 401.

+1cc to Mrs.Paul & Paul, Advocate sr.39525

W.P.No.22352 of 2010

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