

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 16.04.2019
CORAM:
THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN
AND
THE HONOURABLE MR.JUSTICE P.D.AUDIKESAVALU
W.A.No.884 of 2019

K.PUNITHAVALLI

... appellant/ Petitioner

Vs

1. THE DIRECTOR OF ELEMENTARY EDUCATION
DPI CAMPUS COLLEGE ROAD CHENNAI.
 2. THE DISTRICT ELEMENTARY EDUCATIONAL OFFICER,
THIRUVALLUR, THIRUVALLUR DISTRICT
 3. THE DISTRICT ELEMENTARY EDUCATIONAL OFFICER KANCHEEPURAM
, KANCHEEPURAM DISTRICT
- ... respondents/ Respondents

Appeal filed against the order passed by this Court dated 06.02.2019 in WP No.1084 of 2018.

Prayer in WP No.1084 of 2018:

Writ Petition filed under Article 226 of the Constitution of India Praying to issue a Writ of Certiorarified Mandamus To call for the records relating to the impugned proceedings issued by the 1st respondent in Na.Ka.No.023898/ J2/2017-2 dated 06.12.2017 (served on 12.01.2018) and the subsequent order issued by 2nd respondent in Na.Ka. No.3998/ A1/2017 dated 10.01.2018 and the consequential order issued by the 3rd respondent in Na.Ka. No.0010/ A5/2018 dated 08.01.2018 (served on 13.01.2018) and to quash the same and consequently directing the respondents to allow the petitioner to continue to work in the post of Assistant Elementary Educational Officer in Villivakkam Union Tiruvallur District with all consequential and other attendant benefits.

For appellant : No appearance

For Respondents : Mr.C.Munusamy, Spl.G.P.

J U D G M E N T
(made by K.K.SASIDHARAN, J.)

The School Education Department, taking into account the seniority position of the appellant in the post of Middle School Headmaster, appointed her as Assistant Elementary Education Officer. The appointment was made on 26 June 2009. However, she was reverted to the post of Middle School Headmaster by order dated 6 December 2017 and

it was served on 12 January 2018. The order was unsuccessfully challenged before the writ court. Feeling aggrieved, the appellant has come up with this intra court appeal.

2. The post of Assistant Elementary Educational Officer is an administrative post in the Department of Elementary Education to be filled up by transfer from the post of Middle School Headmaster, based on seniority in the panel. The Education Department prepared a panel of Middle School Headmasters fit for appointment as Assistant Elementary Educational Officer by proceedings dated 26 June 2009. The appellant, pursuant to the proceedings dated 26 June 2009, on the file of the Director of Elementary Education, joined the post of Assistant Elementary Education Officer on 1 July 2009. She was transferred and posted as Assistant Elementary Education Officer, on 19 August 2015.

3. The appellant appears to have taken leave on medical grounds, resulting in issuing notice by the Education Department, invoking the disciplinary jurisdiction.

4. The Director of Elementary Education, by order dated 6 December 2017, which was served on the appellant on 12 January 2018, reverted her to the post of Middle School Headmaster. The appellant filed the Writ Petition primarily on the ground that she was unceremoniously removed from the post and made Middle School Headmaster, denying her further promotion to the post of High School Headmaster.

5. Before the writ court, and before us, the Government has taken up a contention that the post of Middle School Headmaster and the Assistant Elementary Educational Officer are one and the same category and as such, the transfer from the post of Assistant Elementary Educational Officer to the post of Middle School Headmaster would not amount to reversion.

6. There is no dispute that the scale of pay for both the posts are one and the same. However, that is not the sole consideration to decide as to whether the post of Assistant Elementary Educational Officer and Middle School Headmaster are one and the same.

7. The Government issued Special Rules for Tamil Nadu School Education Service and it was amended as per the Government Order in G.O.Ms.No.127, School Education (A1) Department, dated 25 May 2012. The post of Assistant Elementary Education Officer is a feeder category for promotion to the post of High School Headmaster. There is a stipulation that 3% of the total vacancy in the post of High School Headmaster shall be filled up from among the holders of the post of Assistant Elementary Education Officer, subject to the condition that such Officer must have served for a period of five years in the said post.

8. The appellant was appointed as Assistant Elementary Officer on 26 June 2006 and she joined the post on 1 July 2009. The appellant is therefore qualified for promotion to the post of High School Headmaster. By transferring her from the post of Assistant Elementary Educational Officer, the respondents have denied her of an opportunity to claim promotion to the post of High School Headmaster.

9. The learned Special Government Pleader during the course of his arguments, submitted that the appellant has taken leave indefinitely, to make a point that the transfer was not a regular one. In case there are materials to take action against the appellant on account of her conduct, nothing prevented the authorities from initiating disciplinary proceedings. The transfer from the post of Assistant Elementary Education Officer to the post of Middle School Headmaster cannot be made in the manner in which it was made by the respondents.

10. The learned single Judge proceeded as if it is a normal transfer on administrative ground. The question raised by the appellant that on account of the transfer from the post of Assistant Elementary Educational Officer her name would not be included in the panel for further promotion to the post of High School Headmaster was not considered by the learned Single Judge. We are therefore of the view that the appellant must succeed.

11. The order dated 6 December 2017 is set aside. The order passed by the learned Single Judge dated 6 February 2019 is also set aside. The Writ Petition filed by the appellant is allowed. However, we make it clear that this judgment would not stand in the way of the authorities from taking disciplinary action against the appellant in case there are materials for invoking the disciplinary jurisdiction.

12. The intra court appeal is allowed with the above observation. No costs. Consequently, connected miscellaneous petitions in C.M.P.Nos.8619 and 9007/2019 are closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

tar
To

2. THE DISTRICT ELEMENTARY EDUCATIONAL OFFICER
THIRUVALLUR, THIRUVALLUR DISTRICT

3. THE DISTRICT ELEMENTARY EDUCATIONAL OFFICER
KANCHEEPURAM, KANCHEEPURAM DISTRICT

+1 cc to Government Pleader Sr.No. 38254

W.A.No.884 of 2019

A.SK(27/06/2019)



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