

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date: 18.07.2019

Coram

The Hon'ble Mr.Justice V.PARTHIBAN

W.P.No.14023 of 2018

and

W.M.P.Nos.16568 and 16569 of 2018

J.Inmozhi Easumani

... Petitioner

Vs.

1. The District Elementary Educational Officer,
Villupuram.
 2. The Assistant Elementary Educational Officer,
Chinnasalem.
 3. The Central Manager & Chairman,
The Arcot Lutheran Church,
ALC Central Office 9, ALC Campus,
Cuddalore-607 001
- ... Respondents

Petition filed under Article 226 of the Constitution of India praying to issue a writ of certiorarified mandamus calling for the records relating to the order of the first respondent made in Na.Ka.No.4599/Aa4/2016, dated 30.05.2018 and to quash the same and consequently direct the respondents to forthwith approve the appointment of the petitioner as B.T.Assistant (Tamil) with all attendant benefits arising thereto.

For Petitioner

.. Mr.L.Chandrakumar

For Respondents

.. Mr.K.Karthikeyan, Govt. Advocate
for R1 and R2

No appearance for R3

ORDER

The petitioner was appointed as B.T. Assistant (Tamil) in Danish Mission Middle School, Chinnasalem, on 14.11.2016, in the vacancy caused due to retirement of the Headmistress Tmt.Joe Salomi Shoba. The said Joe Salomi Shoba was originally working

as BT Assistant (Tamil) and on the basis of her seniority, she was promoted as Headmistress, on 06.06.2008. She retired from service on 31.05.2016 and hence, the petitioner was appointed in the clear vacancy as BT Assistant (Tamil). Thereafter, on the retirement of the said Joe Salomi Shoba, the next senior most teacher, who was working as B.T. Assistant (History) viz., Mrs.P.Empress Gnanamani, was promoted as Headmistress. According to the petitioner, she is the only B.T. Assistant (Tamil) available in the school and she has been discharging her duties efficiently from the date of her appointment i.e. 14.11.2016.

2.In order to seek approval of the appointment of the petitioner, the third respondent school sent a proposal to the respondents 1 and 2, but the first respondent, who considered the proposal sent by the third respondent Management, rejected the same by his proceedings dated 30.05.2018 on the ground that the school was already having three surplus teachers and therefore, the request for conversion of B.T.Assistant (History) into B.T.Assistant (Tamil) cannot be acceded to. The petitioner is before this Court challenging the said order of rejection by the first respondent.

3.Shri.L.Chandrakumar, the learned counsel appearing for the petitioner would submit that unfortunately the third respondent school, on a mistaken appreciation of facts, had sought conversion of the post from B.T. Assistant (History) to B.T.Assistant (Tamil) and sought approval of the appointment of the petitioner, when there was a clear vacancy available in B.T.Assistant (Tamil). Since conversion was requested, the first respondent felt that it was not possible in view of three surplus teachers already employed in the school. The fact of the matter is that the petitioner was appointed in a clear vacancy as B.T.Assistant (Tamil), when the post was vacated by Joe Salomi Shoba, when she was appointed and promoted as Headmistress. The said Joe Salomi Shoba was working as B.T.Assistant (Tamil) and the post was not filled up till 2016, when the petitioner came to be appointed to the said post.

4.The learned counsel for the petitioner would also submit that as on date, the petitioner is the only Tamil teacher available in the third respondent school and hence, the question of she being declared surplus will not arise. According to the learned counsel, a simple mistake committed by the school in sending a proposal for conversion has resulted in the impugned order being passed, rejecting the request for approval, by the first respondent.

5. On notice Mr.K.Karthikeyan, the learned Government Advocate entered appearance for R1 and R2 and none appeared for R3.

6. The learned Government Advocate Mr.K.Karthigeyan, would submit that the third respondent school sent the proposal for conversion of B.T.Assistant (History) into B.T.Assistant (Tamil) and the authority has rightly rejected the same on the ground that already there were three surplus teachers working in the school and therefore, the conversion request cannot be acceded to. He would submit that there is nothing wrong in the rejection order passed by the first respondent, since in the face of surplus teachers being available in the school, further conversion could not be ordered or approved. Therefore, he would submit that the rejection order is perfectly in order and does not call for interference. However, the learned Government Advocate would not dispute the fact that the petitioner is the only Tamil teacher available as on date in the third respondent school.

7. Considering the submissions made on behalf of the counsels for the petitioner as well as the respondents 1 and 2 and also the crucial fact that the petitioner is the only Tamil Teacher available in the school, this Court is of the view that the school authority, viz., the third respondent has committed a mistake of sending a proposal for conversion of B.T.Assistant (History) into B.T.Assistant (Tamil), when the petitioner was accommodated against a clear vacancy of B.T.Assistant (Tamil). If the third respondent school had forwarded proper proposal for approving the appointment of the petitioner directly as B.T.Assistant (Tamil), probably, the first respondent would have passed orders granting approval and would not have passed orders rejecting the same. The first respondent probably was guided by the fact that when the school itself was having three surplus teachers, further conversion would add to the surplus strength and in that view of the matter, the proposal was rejected by the first respondent.

8. However, the fact of the matter is that the petitioner was accommodated against a clear vacancy caused due to the retirement of one Tmt. Joe Salomi Shoba and the post which she was working was B.T.Assistant (Tamil) and the same has been filled up with the petitioner's appointment on 14.11.2016. That being the case, this Court is unable to appreciate as to how the approval of the petitioner could be rejected if the third respondent had properly projected the proposal seeking approval directly of the appointment of the petitioner as B.T.Assistant (Tamil). The mistake, which was committed by the school, cannot result in negation of right of the petitioner to have her appointment approved. This is more so when the admitted fact is

that the petitioner is the only Tamil teacher available in the third respondent school. In such view of the matter, this Court does not find any reason as to why the appointment of the petitioner could not be approved.

9. In any event, the first respondent cannot be blamed for passing the impugned proceedings, since the school has wrongly forwarded a proposal seeking conversion and not for approval directly of the appointment of the petitioner as B.T. Assistant (Tamil).

10. Be that as it may. At the end of the day, this Court is concerned as to whether approval could be granted to the petitioner's appointment as B.T. Assistant (Tamil). In the opinion of this Court, the facts would disclose that the petitioner was indeed accommodated against a clear vacancy in the post of B.T. Assistant (Tamil) on Tmt. Joe Salomi Shoba being appointed as Headmistress of the school when she was working as B.T. Assistant (Tamil). Therefore, there was a clear vacancy in the post of B.T. Assistant (Tamil) and in that post, the petitioner came to be appointed on 14.11.2016. When the petitioner is the only Tamil teacher available, this Court does not think that the approval could be rejected on the basis of the reasons given by the first respondent about the surplus teachers available in the school. That reason may hold good for seeking conversion, but certainly will not hold good for approval to be granted to the petitioner's appointment as B.T. Assistant (Tamil).

11. For the above said reasons, this Court finds that the impugned order passed by the first respondent is liable to be interfered with and therefore, the impugned order in Na.Ka.No.4599/Aa4/2016, dated 30.05.2018, is hereby quashed. The third respondent is directed to send a proposal seeking for approval of the petitioner's appointment as B.T. Assistant (Tamil), without any request for conversion, which is not required in this case, in the opinion of this Court, and on such proposal being made, the first respondent shall consider the same and pass necessary orders of approval, if the appointment of the petitioner is otherwise in order.

12. The third respondent is directed to send the proposal as afore mentioned within a period of two weeks from the date of receipt of a copy of this order and on such proposal being forwarded, the first and second respondents shall pass appropriate orders granting approval within a period of four weeks thereafter, if the appointment of the petitioner is otherwise in order.

13.The writ petition stands disposed of accordingly.
No costs. Connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

msk

To

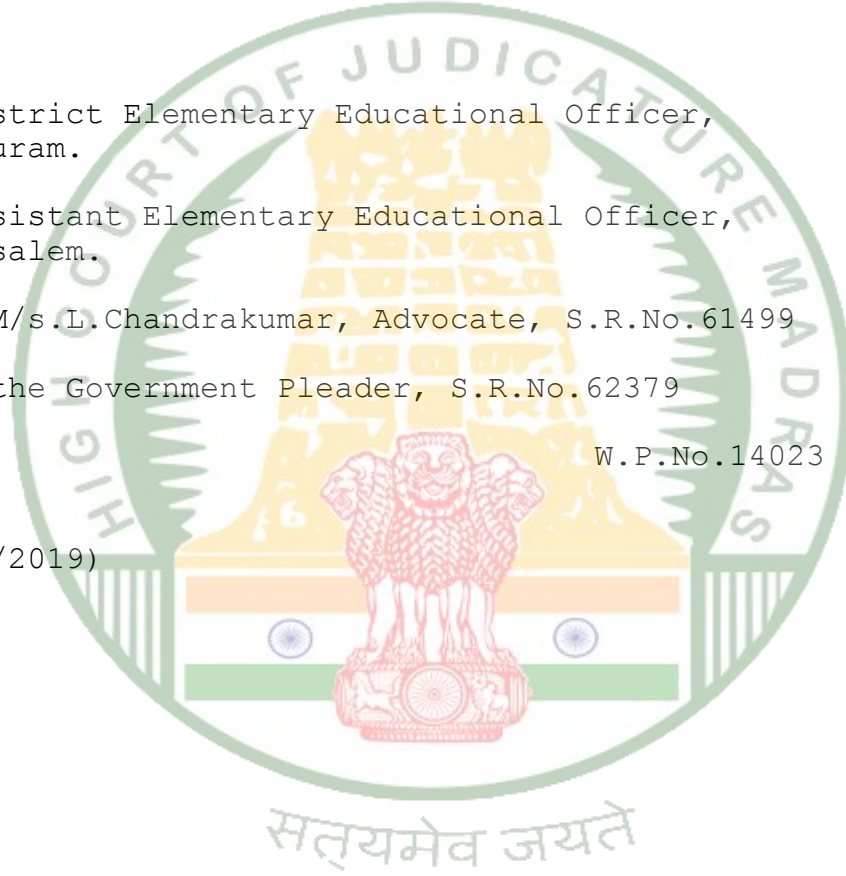
1. The District Elementary Educational Officer,
Villupuram.
2. The Assistant Elementary Educational Officer,
Chinnasalem.

+1 cc to M/s.L.Chandrakumar, Advocate, S.R.No.61499

+1 cc to the Government Pleader, S.R.No.62379

W.P.No.14023 of 2018

RK(CO)
SSM(25/07/2019)



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