

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 13.06.2019

Delivered on: 26.06.2019

Coram

The Hon'ble Mr. Justice V. PARTHIBAN

W.P.No.14096 of 2019

and

W.M.P.No.14154 and 14155 of 2019

R.Raja

..... Petitioner

vs.

1.The Chief Educational Officer,
Salem District,
Salem.

2.The District Educational Officer,
Salem Rural,
Salem District

3.The Secretary,
Velasamy Chettiar Higher Secondary School,
Omalur-636 401
Salem District

.... Respondents

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 orders issued by the first respondent in Na.Ka.No.18677/B3/2018 dated 11.02.2019 and the consequential impugned order issued by the second respondent in Na.Ka.No.330/Aa2/2019, dated 11.02.2019 and further impugned order issued by the 3rd respondent in Na.Ka.No.7/2019, dated 22.04.2019 and to quash the same and consequently direct the respondents to allow the petitioner to continue to work in the post of BT Assistant (Science) in the 3rd respondent school with all consequential and other attendant benefits.

For Petitioner	..	Mr.G.Sankaran
For Respondents	..	Mr.K.Karthikeyan, Govt. Advocate for R1 and R2 Mr.P.Godson Swaminath for R3

ORDER

The petitioner is qualified with B.Sc., Physics and B.Ed. He was selected and appointed to the post of B.T. Assistant (Science) in the third respondent School on 09.07.2008. The third respondent School is a Government aided institution and the appointment of the petitioner as BT Assistant (Science) was approved by the Department. The petitioner has also acquired M.Sc., (Physics) and therefore, he became eligible for promotion to the post of P.G. Assistant in his subject.

2. According to the petitioner, the third respondent school has 10 posts of P.G. Assistant sanctioned in various subjects, of which, P.G. Assistant (Physics) is also one of them. The staff pattern was also approved by the Government Department. One P.G. Assistant became vacant due to retirement of an incumbent on 31.05.2018. In that vacancy, the petitioner is entitled to be considered, as he is fully eligible with P.G. qualification in Physics. According to the petitioner, out of 10 posts of P.G. Assistants, only two P.G. Assistants were working and 8 remaining P.G. Assistant posts are lying vacant as on date.

3. The third respondent school was under direct payment from 06.02.2013. Subsequently, the order of direct payment came to be revoked and the Management has been restored with the administration of the school with effect from 01.03.2019. Although the School Management has taken over the administration of the school from 01.03.2019, the Management has not considered the claim of the petitioner for his promotion to the post of P.G. Assistant (Physics) in the existing vacancy, as per Rule 15 (4) of Tamil Nadu Recognised Private Schools (Regulation) Rules.

4. While the petitioner was anticipating his promotion to the post of P.G. Assistant (Physics), he was issued with an order of deployment, vide proceedings of the first respondent dated 18.01.2019, deploying him to Nirmala Aided Higher Secondary School, Kolathur, Salem District. But his deployment was not accepted by the said school, as the school was a minority institution. As per relevant Government orders, unless

a minority institution expresses its willingness, the deployment in such institution cannot take effect.

5. Thereafter, it appears that another order was issued by the first respondent on 08.02.2019 for deployment of the petitioner in St. Mary's Higher Secondary School, A.N. Mangalam, Ayothiyapattinam Union, Salem District, which again was a minority institution and he was also not accepted to be deployed there. In the said circumstances, the petitioner continued to be working in the third respondent school since 2008 and in fact he had worked till 12.04.2019, the last working day of the school for the academic year 2018-19.

6. While so, the school management had issued a communication dated 22.04.2019 enclosing the orders passed by the first and second respondents, dated 11.02.2019, by which the petitioner was once again sought to be redeployed to Thippu Islamiya High School, Salem. The said communication was sent to the petitioner in Registered post on 26.04.2019. The petitioner was disappointed and shocked to know as to why he was being repeatedly deployed and redeployed when he was entitled to be promoted as P.G. Assistant in the same school in which he was employed, wherein a clear vacancy is available in his subject Physics.

7. As per the staffing pattern issued for the year 2018-19, 4 posts of B.T. Assistants were declared as surplus for the third respondent school. But, 8 vacancies in the category of P.G. Assistant are to be filled up with eligible B.T. Assistants working in the school. In the said scenario, the petitioner was unable to understand as to why he needed to be declared as surplus and redeployed. If the petitioner is redeployed in other school, he would lose his valuable right to be promoted as P.G. Assistant in the third respondent school. Since the action of deploying the petitioner in another school, after being declared as surplus, as B.T. Assistant, is per se illegal, arbitrary and therefore, the petitioner is before this Court challenging the order of deployment.

8. Mr. G. Sankaran, the learned counsel appearing for the petitioner would vehemently contend that once the petitioner is admittedly eligible to be considered for appointment to the post of P.G. Assistant (Physics), he ought to have been promoted first, before declaring him as surplus in the category of B.T. Assistant. After the Management has taken over the administration in March 2019, the Management ought to have submitted a proposal to the concerned education authority for grant of approval to the promotion for the petitioner as P.G. Assistant (Physics) under Rule 15(4) of the Tamil Nadu Recognised Private Schools (Regulation) Rules. Unfortunately,

the Management failed to forward any proposal despite the fact that clear vacancy is available in Physics subject apart from seven other posts available in the PG Assistant post.

9. On behalf of the respondents 1 and 2, learned Government Advocate appeared. He would submit that as regards Respondents 1 and 2 are concerned, they cannot be blamed for deploying the petitioner to another school, since there was no proposal from the third respondent school about the promotion of the petitioner as P.G. Assistant. In the absence of any such proposal, the petitioner is rightly declared as surplus in the B.T. Assistant category in the third respondent school and he was rightly sought to be redeployed in another school. It is entirely between the petitioner and the third respondent school to sort out the issue and the impugned orders passed by the official respondents cannot be assailed when the fault actually lies with the third respondent in not taking any prompt action in regard to the grievance of the petitioner.

10. On behalf of the third respondent school Mr. Godson Swaminath, learned counsel appeared and he would show the staffing pattern as approved by the Government and submit that there are 4 surplus B.T. Assistants and the petitioner, being one of the surplus B.T. Assistants, came to be redeployed. Therefore, he would tacitly support the action taken by the Government.

11. However, when the counsel is confronted by this Court about the vacancy available in the post of P.G. Assistant (Physics), he would not deny the same. Therefore, it becomes an admitted fact that there indeed a clear vacancy in the post of P.G. Assistant (Physics) and the qualification of the petitioner and his eligibility is also not in dispute. Therefore, as rightly contended by the learned counsel for the petitioner, the third respondent management ought to have initiated action for promoting the petitioner as P.G. Assistant (Physics) in terms of the Tamil Nadu Recognised Private Schools (Regulation) Rules, as indicated above and ought to have sought approval from the Government for such action.

12. Failure on the part of the third respondent has unnecessarily resulted in the petitioner being shunted to another school as B.T. Assistant. By such action taken by the Government, the petitioner is made to suffer irreparable loss and injury, as he would lose his valuable right to be promoted as P.G. Assistant in the third respondent school despite existence of clear vacancy and despite the eligibility of the petitioner to be promoted as P.G. Assistant.

13.From the pleadings and the materials placed on record, this Court is of the view that the shunting of the petitioner by way of redeployment could have been avoided had the third respondent Management taken prompt action in considering the claim of the petitioner for promotion as P.G.Assistant (Physics). Such inaction on the part of the third respondent school has unnecessarily resulted in the petitioner being redeployed and also resulted in the petitioner losing his valuable right to be promoted as P.G.Assistant.

14.In any event, it is not too late to consider the claim of the petitioner for promotion to the post of P.G.Assistant (Physics) in the existing vacancy, since this Court is of the view that the petitioner is entitled to the grant of relief.

15.For the above said reasons, the writ petition is allowed and the impugned orders issued by the first respondent in Na.Ka.No.18677/B3/2018, dated 11.02.2019, and the consequential impugned order issued by the second respondent in Na.Ka.No.330/Aa2/2019, dated 11.02.2019, and the further impugned order issued by the 3rd respondent in Na.Ka.No.7/2019, dated 22.04.2019, are set aside. There shall be a direction to the third respondent school to consider and promote the petitioner as P.G.Assistant (Physics) in the existing vacancy, if the petitioner is found fit in all respects, by following necessary formalities as provided under the the Tamil Nadu Recognised Private Schools (Regulation) Rules. The first and second respondents are also directed to accord approval for such promotion, in case the promotion is otherwise in order.

The writ petition stands allowed as indicated above. No costs. Connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CCC)

//True copy//

Sub Assistant Registrar

msk

To

1.The Chief Educational Officer,
Salem District,
Salem.

2.The District Educational Officer,
Salem Rural,
Salem District

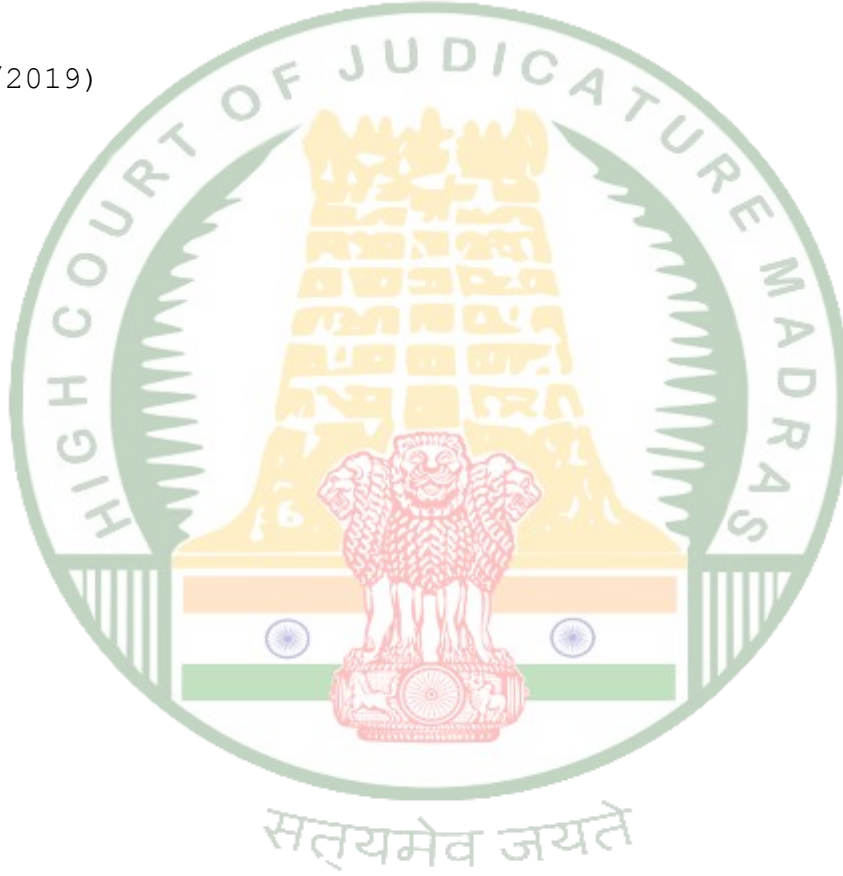
+1cc to Mr.G.Sankaran, Advocate SR.No.53263

+1cc to Mr.P.Godson Swaminath, Advocate SR.No.53230

+1cc to Government Pleader SR.No.54499

W.P.No.14096 of 2019

SV (CO)
GMY (30/07/2019)



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