

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 14.02.2019

CORAM

THE HONOURABLE DR.JUSTICE ANITA SUMANTH

Writ Petition No.32606 of 2017

D.Chitra

... Petitioner

-vs-

1.The State of Tamil Nadu,
Represented by the Secretary to Government
School Education Department,
Chennai - 600 009.

2.The Director of Elementary Education,
DPI Campus, Chennai.

3.The District Elementary Educational Officer,
Thiruvannamalai.

4.The Additional Assistant Elementary
Education Officer,
Thiruvannamalai.

5.R.Prasanna

...Respondents

PETITION filed under Article 226 of The Constitution of India praying for the issuance of Writ of Certiorarified Mandamus calling for the records on the file of the 3rd respondent relating to the impugned order dated 26.10.2017 bearing Ref. No.3275/A1/2017 and quash the same and consequently direct the respondents 1 to 4 promote the petitioner to the post of B.T.Assistant with effect from the date of promotion of the 5th respondent i.e. 01.06.2017, with all seniority, service, monetary benefits and back wages.

For Petitioner : Mr.D.Bharathachakravarthi for
M/s.Sai Bharath and Ilan

For Respondents : Mr.P.Raja,
Government Advocate for R1-R4
No Appearance for R5.

O R D E R

This Writ Petition seeks a Writ of Certiorarified Mandamus calling for the records of the third respondent viz., The

District Elementary Educational Officer, Thiruvannamalai dated 26.10.2017, and a quash the same and a consequent direction to respondents 1 & 2, the state of Tamil Nadu represented by the Secretary to the Government and Director of Elementary Education, Chennai to promote the petitioner to the post of B.T. Assistant with effect from the date of promotion of the 5th respondent i.e., on 01.06.2017, with all seniority, service, monetary benefits and backwages.

2. Heard Mr.D.Bharathachakravathy, learned counsel for the petitioner and Mr.P.Raja, learned Government Advocate for respondents 1 to 4. Notice has been issued to Mr.R.Prasanna who is arrayed as R5. Pursuant to service upon R5, her name is printed in the cause list. However, there has been no appearance by her or on her behalf when the matter was taken up for final hearing.

3. The petitioner holds a M.Sc. in Mathematics and has completed B.Ed., in the year 2010. A panel for promotion was drawn up for the year 2010 and the name of the petitioner was first in the promotion list. In the panel for promotion for the year 2011, the name of the petitioner stands at Sl.No.4 whereas the name of 5th respondent stands at Sl. No.5. There is no dispute on this position and the counter filed by the third respondent also admits the same at Paragraph No.5, extracted below:

"It is further submitted that during the promotional panel for the year 2010 the petitioner's name at Sl.No.1 and subsequently, during the promotional panel for the year of 2010 the petitioner's name at Sl.No.4th and 5th Respondent name at Sl.No.5. Subsequently, the 5th Respondent approached this Hon'ble Court had by order dated 02/11/2016, directed the respondents to consider the representation of the 5th respondent and after due consideration of the 5th alone have been promoted with effect from 01.06.2017."

4. While this is so, vacancies arose for the year 2010. As per G.O.Ms.No.174, School Education Department dated 15.09.2006 which provides the mode of recruitment of teachers as far as Government schools are concerned, paragraph No. 5 (iii) thereof provides that 50% of the vacancies to be filled by Direct recruitment shall be drawn from the general public, whereas, the balance 50% shall be filled in by way of promotions from within the school itself. The school in question, the Panchayat Union Middle School, Aradappttu, appears to have violated the method of recruitment as per the aforesaid Government Order, recruiting 100% of the teachers from the general public.

5. Representations were filed by eligible teachers from within the school that were kept pending by the authorities. The 5th respondent thus approached this Court seeking a disposal of her representation and this Court, by order in WP. No.37968 of 2016 dated 02.11.2016, directed the respondents to dispose her representation dated 12.09.2016 and pass appropriate orders taking into account G.O.MS.No.174 Education Department dated 15.09.2006 on merits and in accordance with law within a period of four (4) weeks. It is pursuant to the aforesaid order passed by this Court that the impugned order has been passed by the third respondent, appointing R5.

6. The present Writ Petitioner, aggrieved that she was not considered for the appointment on priority and bearing in mind her seniority, approached this Court vide WP. No.15939 of 2017. This Court, while disposing her writ petition on 23.06.2017, directed the official respondent to consider and pass orders on the petitioners' representation in the light of G.O. MS. No.174 dated 15.09.2006.

7. Pursuant to the order passed by this Court in the petitioners' case, the official respondents have passed orders dated 26.10.2017 in consideration of her representation, stating that no vacancy exists and the panel for promotion as on 01.01.2017 has been prepared and hence the petitioner cannot be accommodated as requested by her. It is as against the aforesaid order that the present Writ Petition has been filed.

8. The provisions of G.O.Ms.174 are crystal clear in the manner of recruitment that is to be followed. The counter filed by the 3rd respondent also mentions the seniority vis-a-vis the petitioner and the 5th respondent and there is thus no ambiguity or doubt that the petitioner is senior in rank to the 5th respondent. The only defence taken by the learned counsel for the 3rd respondent is that there is no vacancy as at present which was why the request of the petitioner was turned down. This can hardly be a proper manner of addressing the issue. The orders of this Court in relation to the petitioner as well as R5 are to be read cumulatively, in line with the prevailing and applicable Government Order, i.e. G.O.Ms.No.174 dated 15.09.2006 and bearing in mind the seniority of the two candidates, that is the petitioner and the 5th respondent. Moreover, Order of this Court dated 23.06.2017 itself states clearly that the request of the petitioner be considered and disposed of in accordance with law and G.O. Ms. No.174 dated 15.09.2006.

9. In such circumstances, it is incumbent upon the respondents to consider the request of the petitioner in the matter of appointment to the post of B.T. Assistant favourably since there is no doubt in regard to her seniority over the 5th respondent.

10. In the light of the aforesaid discussion, the impugned order is quashed and the official respondents are directed to consider the representation of the petitioner in the light of her seniority and pass appropriate orders granting appointment within a period of four (4) weeks from the date of receipt of the copy of this order. The Writ Petition is allowed. Consequent monetary benefits to be paid over within a period of two (2) weeks from the date of appointment. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

rkp

To

- 1.The State of Tamil Nadu,
Represented by the Secretary to Government
School Education Department,
Chennai - 600 009.
- 2.The Director of Elementary Education,
DPI Campus, Chennai.
- 3.The District Elementary Educational Officer,
Thiruvannamalai.
- 4.The Additional Assistant Elementary
Education Officer,
Thiruvannamalai.

+1cc to M/s.SaiBharath, Advocate, S.R.No.13667
+1cc to the Government Pleader, S.R.No.14117

सत्यमेव जयते

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rrs 12/03/2019

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