

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.01.2019

CORAM

THE HONOURABLE MR. JUSTICE T.RAJA

W.P.No.28058 of 2017 and
WMP.Nos.30134 and 30135/2017

S.Shanmugapriya

vs

...Petitioner

1. The District Elementary Educational Officer,
Nagapattinam District,
Nagapattinam.
 2. The Additional Assistant Elementary
Educational Officer,
Kuthalam, Nagapattinam District.
 3. The Secretary,
Ganapathi Thesiya Middle School,
Kuthalam, Nagapattinam District.
- ... Respondents

Prayer: Writ petition is 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.2615/A2/2016 dated 01.08.2017 and to quash the same and consequently, directing the respondents 1 and 2 to approve the appointment of the petitioner in the post of B.T. Assistant (Maths) in 3rd respondent School w.e.f. 30.5.2011 with all consequential benefits including payment of arrears of salary.

For Petitioner : Mr.G.Sankaran

For Respondents : Mr.P.Raja, G.A.,
1 and 2

R3 : N.A.

O R D E R

This Writ Petition has been filed challenging the correctness of the impugned Proceedings issued by the 1st respondent in Na.Ka.No.2615/A2/2016 dated 01.08.2017, thereby

refusing to approve the appointment of the petitioner as B.T. Assistant (Maths) in 3rd respondent School w.e.f. 30.5.2011 and to quash the same with a consequential direction, directing the respondents 1 and 2 to approve the appointment of the petitioner in the post of B.T. Assistant (Maths) in 3rd respondent School w.e.f. 30.5.2011 with all consequential benefits including payment of arrears of salary.

2. Learned Counsel appearing for the petitioner submitted that the 3rd respondent school is an aided school governed by the provisions of the Tamil Nadu Recognized Private Schools (Regulations) Act. While so, in the 3rd respondent school, a vacancy arose to the post of Secondary Grade Teacher due to the retirement of one incumbent on 31.05.2010. As per G.O.Ms.No.241, Personnel and Administrative Reforms (K) Department dated 29.10.2007, the vacancy which has arisen in the post of Secondary Grade Teacher for taking classes VI to VIII Standard, the same to be upgraded as B.T. Assistant post automatically. Accordingly, as and when a vacancy arose in the 3rd respondent school for the post of B.T. Assistant, the school has forwarded a proposal to the 1st respondent seeking for up gradation of Selection Grade Teacher as B.T. Assistant and to fill up the post with qualified person. Accepting the proposal made by the 3rd respondent school, the District Elementary Educational Officer, Nagapattinam District, the 1st respondent herein in his Proceedings in Mu.Mu.No.1532/B2/2011 dated 17.5.2011 upgraded the post of Secondary Grade Teacher as B.T. Assistant and granted permission to fill up the same with qualified person for the academic year 2010-2011.

3. The learned Counsel for the petitioner further submitted that by virtue of the Proceedings dated 17.5.2011 issued by the 1st respondent, the 3rd respondent has conducted an interview and finally, the petitioner was selected and she was also issued with an appointment order bearing Proceedings No.Na.Ka.No.12/2011 dated 30.5.2011. The petitioner also joined duty on the same date as B.T. Assistant (Maths) and she has been continuing to work in the 3rd respondent school till date. Thereafter, a proposal has been forwarded to the 1st respondent through the 2nd respondent by the 3rd respondent seeking approval of her appointment w.e.f. 01.06.2011. The said proposal was returned by the 2nd respondent, namely, Additional Assistant Elementary Educational Officer, Kuthalam, Nagapattinam District, calling upon the 3rd respondent school to submit records relating to roster in order to ascertain the compliance of rule of reservation for appointment as per G.O.Ms.No.55, P&AR Department dated 08.04.2010. The said impugned order returning the proposal of the 3rd respondent school refusing to grant approval for the appointment of the petitioner as B.T. Assistant (Maths) has been questioned, since the petitioner has already followed

the 200 point roster prescribed in G.O.Ms.No.241, Personnel and Administrative Reforms (K) Department dated 29.10.2007. Therefore, according to the learned Counsel for the petitioner, the case of the petitioner is also covered under Explanation provided under G.O.Ms.No.55 dated 08.04.2010.

4. Explaining how the case of the petitioner and the 3rd respondent has been covered under Explanation provided under G.O.Ms.No.55 dated 08.04.2010, the learned Counsel for the petitioner also submitted that as per the amendment to General Rules, it is mandatory to fill up the vacancy arising on and from 29.04.2009 only as per Schedule III by starting roster point from Serial Number one. Proviso to Explanation relate to the fact that in the event of any appointment is made following roster as per G.O.Ms.No.241 dated 29.10.2007 and subsequent Government Orders in respect of vacancies arising even after the cut off date i.e. 29.4.2009, the same should not be re-opened and the revised roster prescribed in Schedule III shall be continued from the last turn up to which the selection was already made.

5. The learned Counsel for the petitioner further submitted that in the present case, admittedly, the vacancy has arisen on 31.05.2010 due to the retirement of the previous incumbent. Pursuant to the same, the 3rd respondent school has also sought for permission by forwarding a proposal to the 1st respondent seeking up gradation of the Selection Grade Teacher as B.T. Assistant and fill up the same with qualified person. Accordingly, the 1st respondent considered the request of the 3rd respondent school and issued the proceedings dated 17.5.2011 upgrading the Secondary Grade Teacher as B.T. Assistant and granted permission to fill up the said post. Based on the orders issued by the 1st respondent following the G.O.Ms.No. 241, Personnel and Administrative Reforms (K) Department dated 29.10.2007, the petitioner was appointed as B.T. Assistant (Maths) by the 3rd respondent school. Therefore, since the impugned order has been passed by the 1st respondent without application of mind, the same is liable to be quashed, it is pleaded.

6. A separate detailed counter affidavit has been filed by the respondents 1 and 2.

7. Learned Additional Government Pleader appearing for the respondents 1 and 2 submitted that one Mr.R.Mathivanan was appointed as B.T. Assistant (Science) in the 3rd respondent school w.e.f. 6.4.2009 who was appointed in General Turn (OC) and therefore, the next appointment should be made only from out of Scheduled Caste (Arunthathiar) as per the communal roster prescribed in Government Order in G.O.241 P&AR Department, dated

29.10.2007 and G.O.Ms.No.55, P&AR Department dated 8.4.2010. Since the 3rd respondent school has not followed neither G.O.Ms.No.241 nor G.O.Ms.No.55, the impugned order rightly passed shall not be interfered with.

8. This Court is unable to find any merits in the submissions of the learned Additional Government Pleader appearing for the respondents 1 and 2. The reason being that it is an admitted fact that when G.O.Ms.No.55, P&AR Department dated 8.4.2010 was issued giving retrospective effect from 29.04.2009, explanation given therein makes it clear that the vacancies arising on or from 29.04.2009 shall be filled up as per Schedule III. However, the proviso states that the Notifications, if any, already made by any of the recruiting agency on or after 15.09.2007 with reference to 200 point roster prescribed in G.O.Ms.No.241, Personnel and Administrative Reforms (K) Department dated 29.10.2007, G.O.Ms.No.101, Personnel and Administrative (K) Department, dated 30.5.2008 and in G.O.Ms.No.206, Personnel and Administrative Reforms (K) Department dated 06.11.2008 need not be reopened and for further recruitments, the revised roster prescribed in the Schedule III shall be continued from the last turn up to which the selection was already made. But, in this case, when the vacancy arose on 31.5.2010, the 3rd respondent school has forwarded a proposal to the 1st respondent seeking for up gradation of Selection Grade Teacher Post as B.T. Assistant Post in order to fill up the same with qualified person. Accordingly, the 1st respondent by Proceedings dated 17.5.2011 upgraded the post of Secondary Grade Teacher as B.T. Assistant and also granted permission to fill up the same with qualified person for the academic year 2010-2011. Subsequently, the petitioner was found eligible and issued with an appointment order on 30.5.2011.

9. It is pertinent to note that when the Tamil Nadu State and Subordinate Service Rules have been amended on 08.04.2010, Explanation to Rule 22(2)(c) is substituted stating that any vacancies arising on and from 29.04.2009 shall be filled up as per Schedule III and all selections for appointment shall be started afresh from serial number one in the said Schedule III. While so, in the present case, by virtue of the Explanation to Rule 22, as the post of B.T. Assistant has been rightly filled up following the General Category, nowhere the respondents 1 and 2 have found fault with the method adopted by the 3rd respondent for filling up the post of Secondary Grade Teacher that has been upgraded as B.T. Assistant. Therefore, when the counter affidavit filed by both the respondents 1 and 2 failed to pinpoint or indicate whether the method adopted by the 3rd respondent School is in anyway running contrary to Rule 22, the impugned order is liable to be set aside.

10. In the result, the Writ Petition is allowed and the impugned order of the 1st respondent dated 01.08.2017 is set aside. The respondents 1 and 2 are directed to pay the salary of the petitioner continuously as per the interim order passed by this Court dated 02.11.2017. No costs. Consequently, connected Miscellaneous Petitions are closed.

tsi

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1. The District Elementary Educational Officer,
Nagapattinam District,
Nagapattinam.
2. The Additional Assistant Elementary
Educational Officer,
Kuthalam, Nagapattinam District.
3. The Secretary,
Ganapathi Thesiya Middle School,
Kuthalam, Nagapattinam District.

+1cc to Mr.G.Sankaran, Advocate, S.R.No.7363/19

सत्यमेव जयते

W.P.No.28058 of 2017

NA (CO)
KAK (27/02/2019)

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