



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 17.12.2019

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THE HONOURABLE MRS.JUSTICE J.NISHA BANU

W.P (MD)No.20746 of 2013

and

M.P (MD)No.1 of 2013

M.Mariammal,
B.T.Assistant (Science),
T.V.S.Higher Secondary School,
Lakshmipuram,
Madurai - 625 011.

.. Petitioner

Vs.

1.The Director of School Education,
College Road, Chennai - 600 006.

2.The Joint Director (Personnel),
Directorate of School Education,
College Road, Chennai - 600 006.

3.The Chief Educational Officer,
Thallakulam, Madurai - 625 002.

4.The District Educational Officer,
Thallakulam, Madurai - 625 002.

5.The Secretary,
T.V.S. Higher Secondary School,
Lakshmipuram,
Madurai - 625 011.

.. Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus calling for the records relating to the impugned order passed by the 4th respondent in his proceedings in D.Dis.No.10103/B4/2009, dated 17.07.2011 and quash the same as illegal insofar as approval of the petitioner as B.T. Assistant (Science) with effect from 16.03.2011 is concerned and consequentially direct the 4th respondent to approve the appointment of the petitioner as B.T. Assistant (Science) in the 5th respondent school w.e.f. 21.07.2009 and pay from the said date all the monetary benefits thereon considering the proposal sent by the 5th respondent school dated 03.08.2010 within the time that may be stipulated by this Court and pass such further or other orders.



For Petitioner : Mr.K.Ponnaiah
for M/s.Ajmal Associates.
For Respondents 1 to 4 : Mr.N.Shanmugaselvam,
Additional Government Pleader.
For Respondent No.5 : Mr.V.S.Karthi
for M/s.V.S.Karthi Associates

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ORDER

This writ petition has been filed for issuance of a Writ of Certiorarified Mandamus calling for the records relating to the impugned order passed by the 4th respondent in his proceedings in D.Dis.No.10103/B4/2009, dated 17.07.2011 and quash the same as illegal insofar as the approval of the petitioner as B.T. Assistant (Science) with effect from 16.03.2011 is concerned and consequently direct the 4th respondent to approve the appointment of the petitioner as B.T. Assistant (Science) in the 5th respondent school w.e.f. 21.07.2009 and pay all the monetary benefits thereon from the said date, considering the proposal sent by the 5th respondent school, dated 03.08.2010.

2.The case of the petitioner is that the 3rd respondent accorded approval to the 5th respondent school to fill up the vacancy caused by the retirement of one Mrs.S.Jayalakshmi as B.T. Assistant (Science). In pursuance of the same, the 5th respondent school resorted to the procedure of recruitment to the said post and accordingly, in the recruitment process, the petitioner was selected for appointment as B.T. Assistant (Science) and the same was approved by the School Committee with effect from 21.07.2009 and the petitioner was issued with the appointment order. The 5th respondent school also sent proposal for the approval of appointment of the petitioner, to the 4th respondent. The 4th respondent has passed the impugned order, dated 17.07.2011, approving the appointment of the petitioner only from 26.03.2011, instead of 21.07.2009. Therefore, the petitioner has come up with the present writ petition.

3.The learned counsel for the petitioner submitted that the 5th respondent school called for application for recruitment to the post of B.T. Assistant (Science) as well as B.T. Assistant (English) based on the approval accorded by the 3rd respondent to fill up the vacancies caused by retirement of erstwhile incumbents. The petitioner was selected and appointed as B.T. Assistant (Science) and the said appointment was also approved by the School Committee with effect from 21.07.2009. The 5th respondent school had sent a proposal dated 03.08.2010 to approve her appointment with effect from 21.07.2009, to the 4th respondent and the 4th respondent, returned the proposal stating that the vacancy of B.T. Assistant (English) ought to have been filled up as against S.C.(Arunthadiyar) preferential quota. Thereafter, the 5th respondent recruited one M.Indira as B.T. Assistant (English) and the same was approved by the 4th respondent with effect from 16.03.2011 and simultaneously, the petitioner's appointment was approved with effect from



16.03.2011. The petitioner has been working right from the date of her appointment, i.e., 21.07.2009 as against the vacancy in Most Backward Class. The petitioner's appointment was made following the due process and there was no flaw either in the roaster or in the rule of reservation. The appointment of M.Indira as B.T. Assistant (English) is on a different footing and the same has nothing to do with her appointment. The 4th respondent ought to have approved the appointment of the petitioner with effect from 21.07.2009. Thus, he prayed to allow the writ petition.

4.The learned Additional Government Pleader appearing for the respondents 1 to 4 drawing the attention of this Court to paragraph Nos.3 and 4 of the counter affidavit, submitted that there are two vacancies of B.T. Assistants in the 5th respondent school with effect from 01.06.2009 and the same have to be filled up under Roaster 2 - Scheduled Caste Arunthathiyar and Roaster 3 - Most Backward Class and hence, Sl.No.3 is to be filled up after filling up the post under Sl.No.2. The 5th respondent appointed one candidate against S.No.2 only on 16.03.2011 by a suitable candidate and therefore, the appointment of the petitioner was approved with effect from 16.03.2011 as per rules. There is no question of approving the appointment of the petitioner on an earlier date as the entire procedure on communal roaster will collapse.

5.Heard the learned counsel appearing for the petitioner, learned Additional Government Pleader appearing for the respondents 1 to 4 and the learned counsel appearing for the 5th respondent and perused the materials available on record.

6.It is not in dispute that the petitioner was appointed as B.T. Assistant (Science) on 21.07.2009 as per the resolution passed by the School Committee and the 5th respondent school sent proposal to the 4th respondent seeking approval of the appointment. The appointment in the post of B.T. Assistant (English) is for the preferential category and the said appointment has nothing to do with the petitioner's appointment. Rule 15(9)(ii) of the Tamil Nadu Private Schools Regulations Rules, 1974 says that if there is no qualified and suitable candidate available for selection of appointment on the turn allotted to Scheduled Caste and Scheduled Tribe category, the unfilled vacancy shall be carried over to the next recruitment. It is not the case of the respondents that the petitioner was appointed in the vacancy earmarked for the Reserved Category. Therefore, the 4th respondent ought to have approved the appointment of the petitioner as B.T. Assistant (Science) from the date of her appointment. Accordingly, the impugned order dated 17.07.2011 passed by the 4th respondent is quashed insofar as the approval of appointment of the petitioner as B.T. Assistant (Science) with effect from 16.03.2011 is concerned and the 4th respondent is directed to approve the appointment of the petitioner with effect from 21.07.2009, on the basis of the proposal sent by



the 5th respondent school, dated 03.08.2010 and pay the monetary benefits from the said date, within a period of twelve weeks from the date of receipt of a copy of this order. The writ petition is allowed accordingly. No costs. Consequently, connected Miscellaneous Petition is closed.

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Sd/-

Assistant Registrar (Cr1.side)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

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To

1.The Director of School Education,
College Road, Chennai - 600 006.

2.The Joint Director (Personnel),
Directorate of School Education,
College Road, Chennai - 600 006.

3.The Chief Educational Officer,
Thallakulam, Madurai - 625 002.

4.The District Educational Officer,
Thallakulam, Madurai - 625 002.

+1 CC to M/s.AJMAL ASSOCIATES, Advocate (SR-105398[F]

+1 CC to M/s.SPL.GP (SR-105580[F] dated 18/12/2019)

ORDER MADE IN
W.P (MD) No.20746 of 2013
17.12.2019

SMA/10/01/2020/4P/7C