



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 09.12.2019

CORAM :

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

W.P(MD)No.7822 of 2013

and

M.P.(MD).No.1 of 2013

E.Vinolin Isabella

... Petitioner

Vs.

1.The Director of Elementary Education,
Chennai.

2.The District Elementary Educational officer,
Trichy.

3.The Assistant Elementary Educational Officer,
Trichy - Urban,
Trichy.

4.VOC Middle School,
rep. by its Manager & Correspondent,
Pathuvai Nagar,
East Chinthamani,
Trichy - 620 002.

... Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned order passed by the 2nd respondent in Na.Ka.No.7001/Aa2/2012, dated 04.03.2013 and quash the same and direct the respondents 2 & 3 to approve the petitioner's appointment as Headmaster in the 4th respondent school with effect from 05.04.2010.

For petitioner : Mr.K.Ragutheesh Kumar

For respondents 1 to 3 : Mr.N.Shanmugaselvam,
Addl. Government Pleader

For 4th respondent : No appearance

ORDER

This writ petition has been filed challenging the order passed by the 2nd respondent, dated 04.03.2013, rejecting the approval of



appointment of the petitioner as Headmistress in the 4th respondent school and for a direction to the respondents 2 and 3 to approve the appointment of the petitioner as Headmistress in the 4th respondent school with effect from 05.04.2010.

2. It is the case of the petitioner that the petitioner has passed B.Ed. and after following the procedures, by order dated 05.04.2010, the 4th respondent aided minority school directly appointed her as Headmistress and sent a proposal for approval to the 2nd respondent through the 3rd respondent. On 04.09.2012, the 2nd respondent returned the proposal stating that the recognition for 6th to 8th standard were expired and the application has to be submitted for temporary recognition and the petitioner should be completed five years as Secondary Grade Teacher. According to the petitioner, this Court has time and again held that a teacher who appointed without five years of experience is also entitled for B.T. Assistant Grade salary. The 4th respondent school has permanent recognition for standards 1 to 5. Though an application for extension of recognition for standards 6 to 8 was filed on 04.08.2011 along with relevant documents, it was kept pending by the official respondents and the subsequent extension application was also kept pending by the official respondents. While so, on 04.03.2013, the 2nd respondent has passed the impugned order stating that the proposal for appointment of the petitioner will be considered only after extension of the recognition. Questioning the said order, the petitioner has come up with this writ petition.

3. Heard the learned counsel for the petitioner as well as the learned Additional Government Pleader appearing for the respondents 1 to 3.

4. It is not in dispute that the 4th respondent school is an aided minority school and it has permanent recognition for the standards 1 to 5 and temporary recognition for the standards 6 to 8. The petitioner was directly appointed as Headmistress in the post of Headmistress on 05.04.2010 by the 4th respondent. According to the respondents 1 to 3, she did not possess five years teaching experience as per the Tamil Nadu Minority Schools (Recognition and Payment of Grant) Rules, 1977 and therefore, her appointment cannot be approved. When the similar issue arises for consideration, a Division Bench of this Court, wherein myself acted as one of the parties, in an unreported decision in **W.A. (MD). No.1159 of 2011 (The Secretary, Sri Thirukudaraja primary School, Tenkasi Vs. State of Tamil Nadu) dated 18.01.2017** has held in paragraph Nos.7 to 9 as follows:

7. In the judgment rendered in W.A(MD)No.1119 of 2014, dated 29.04.2015, in an identical situation, the Division Bench of this Court, had directed to approve the appointment made by the respondent therein, subject to the requirement



under law. The relevant portion of the said judgment is extracted hereunder:

13. When the matter came up for hearing, Mr.V.R.Shanmuganathan learned Special Government Pleader appearing for the appellants/respondents conceded that the respondent/writ petitioner may work in the post of B.T.Assistant, but, however, shall not claim salary for the post of Headmaster, until she acquired five years of teaching experience, as B.T.Assistant.

14. Learned counsel for the respondent/petitioner submitted that on completion of five years of teaching experience, a direction can be issued to the Management, to consider the case of the petitioner for promotion to the post of Headmaster, as per the provisions of the Tamil Nadu Recognised Private School (Regulation) Act, 1973 and the rules made thereunder.

15. Recording the above said submission, the Writ Appeal is allowed and the order, dated 15.04.2014 made in W.P(MD)No.14375 of 2012 is set aside. The respondent shall work as B.T. Assistant and she shall not claim salary for the post of Headmaster. Management also shall not claim salary for the post of Headmaster. After completion of five years in the Post of B.T.Assistant, a direction is issued to consider the case of the petitioner for promotion to the said Post, in accordance with the statutory provisions.

16. Perusal of the impugned order made in W.P (MD)No.14375 of 2012 shows that approval of appointment of Smt.Sujata by the respondent/petitioner, as Headmaster of the school has been declined only on the ground that the said Sujatha had not fulfilled the Statutory eligibility, namely, five years of teaching experience in the post of B.T.Assistant, for being appointed as Headmaster of Middle School. Excepting the above, there is no other reason for not approving the appointment of said Sujatha appointed by the respondent/petitioner. Thus, it is not the case of the appellant/official respondents that the said Sujatha appointed by the respondent/petitioner did not possess B.T Assistant qualification. It is not open to the appellants to contend that the said Sujatha has not even qualified to be appointed as B.T Assistant. The appellants are directed to approve the appointment of Sujatha appointed by the respondent/petitioner, as B.T. Assistant, subject to the requirement under



law. The said exercise shall be completed within a period of six weeks from the date of receipt of a copy of this order. No Costs. Consequently, M.P (MD)No.1 of 2014 is closed."

8. Therefore, we are of the opinion that following the said decision of this Court, the present writ appeal can be allowed. At this juncture, it is to be noted that the petitioner had already completed five years of experience as Secondary Grade Teacher on 29.04.2013.

9. In view of the same, the respondents are directed to approve the appointment of the petitioner as Secondary Grade from 30.04.2008 to 29.04.2003 and thereafter, as Headmaster. The said exercise shall be completed within a period of six weeks from the date of receipt of a copy of this order."

5. So far as the rejection of the approval of appointment of the petitioner on the ground of pendency of application for extension of recognition is concerned, admittedly, the application for extension was pending only with the respondents 2 and 3 for passing orders years together, for which the petitioner cannot be made to suffer. More over, now the recognition for standards 6 to 8 was extended till 31.05.2018 and the petitioner has also completed his five years teaching experience on 05.04.2015.

6. In the counter affidavit, dated 23.03.2016, at paragraph No.11 it is stated by the 2nd respondent as follows:

"11. It is submitted that even according to the Writ Petitioner, she was appointed on 05.04.2010 and the basic requirement of 5 years teaching experience has completed on 05.04.2015. At the time of filing the writ petition, the temporary recognition for the standards 6 to 8 was not extended. Presently, the circumstances are changed and by way of order dated 25.02.2016 temporary recognition has been granted till 31.05.2018. So, the plea of the petitioner of grant of approval will be considered in accordance with law by the competent authority."

7. In view of the above order passed by the Division Bench and considering paragraph No.11 of the counter affidavit filed by the 2nd respondent and the subsequent developments, the impugned order passed by the second respondent is set aside and the respondents 1 to 3 are directed to approve the appointment of the petitioner as B.T. Assistant from the date of her appointment till the date of completion of her five years teaching experience ie., from 05.04.2010 to 05.04.2015 and as Headmistress from 06.04.2015. The said exercise shall be completed within a period of six weeks



from the date of receipt of a copy of this order.

8. This writ petition stands disposed of accordingly. No costs. Consequently, connected miscellaneous petition is closed.

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Sd/-

Assistant Registrar (Records)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

gcg

To

1.The Director of Elementary Education,
Chennai.

2.The District Elementary Educational officer,
Trichy.

3.The Assistant Elementary Educational Officer,
Trichy - Urban,
Trichy.

+1 CC to M/s.M/S.ISAAC CHAMBERS, Advocate (SR-104156[F] dated
10/12/2019)

W.P (MD) No.7822 of 2013
09.12.2019

KK/SAR/08.01.2020/5P-5C/