



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 18.07.2019

CORAM:

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THE HONOURABLE MR.JUSTICE K.RAVICHANDRABAABU

and

THE HONOURABLE MR.JUSTICE SENTHILKUMAR RAMAMOORTHY

W.A. (MD) No.750 of 2018

and

CMP (MD) No.4471 of 2018

1. The Director of School Education,
College Road, Chennai - 600 006.
2. The Chief Educational Officer,
Thanjavur District, Thanjavur.
3. The District Educational Officer,
Thanjavur District, Thanjavur. : Appellants/Respondents

Vs.

Uma Maheswar Higher Secondary
School Committee,
Rep. by its Secretary,
S.Ramanathan,
Karandahi Tamil Sangam,
Kurunthittaikudi,
Thanjavur - 613 002.

: Respondent/ Petitioner

PRAYER: Writ Appeal is filed under Clause 15 of the Letters Patent, against the order dated 26.05.2017, made in W.P.(MD)No.10019 of 2014.

Prayer in WP(MD). 10019/ 2014 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a writ of Certiorarified Mandamus to call for the records on the file of the respondents 3 and 1 in connection with the orders passed by them in their proc.in O.Mu.No.2016/A3/2011 dated 4.5.11, Na.Ka.No.2016/A3/2011 dated 2.6.11 and Na.Ka.No.69516/D1/E4/2011 dated 12.06.2014 respectively, to quash the same and direct the respondents to accord formal approval to the appointment of Tmt. S. Kavitha as B.T. Assistant (English) and R. Gopalakrishnan as B.T. Assistatn (History) with effect from the date of their joining the said post on 1.5.10.

For Appellants

: Mr.N.Shanmugaselvam

Additional Government Pleader

For Respondent

: Mr.D.Selvanayagam

**J U D G M E N T**

[Order of the Court was made by SENTHILKUMAR RAMAMOORTHY, J.]

This writ appeal is filed in order to challenge the order made in W.P.(MD)No.10019 of 2014, dated 26.05.2017, whereby the writ petition filed by the respondent herein was allowed and consequently, the respondents/appellants herein were directed to accord approval for the appointment of S.Kavitha as B.T.Assistant (English) and R.Gopalakrishnan, as B.T.Assistant (History) with effect from the date of their joining in the said post on 01.05.2010.

2.The respondents in the writ petition are the appellants herein and have challenged the order of the Writ Court primarily on the basis that approval was granted for the appointment of the said Kavitha to the post of B.T.Assistant (Social Science) by order, dated 15.04.2019 of the second appellant herein. After obtaining the approval of the appointment of the said Kavitha as B.T.Assistant, the respondent's school unauthorisedly transferred the said Kavitha to the post of B.T.Assistant (English) on 01.05.2010. According to the appellants, as far as the post of B.T.Assistant (English) is concerned, by order dated 09.04.2010, of the second appellant herein, the said post was to be filled up through direct recruitment from the Arunthathiyar Community. Consequently, the appellants submitted that the transfer of the said Kavitha from the post of B.T.Assistant (Social Science), to the post of B.T.Assistant (English) is invalid. In addition, the respondent's school promoted one Gopalakrishnan whose appointment had been approved by the appellants in the post of Record Clerk to the post of B.T.Assistant (Social Science), after transferring Kavitha to the post of B.T.Assistant (English). Accordingly, the appellants submitted that neither Kavitha in the post of B.T.Assistant (English) nor Gopalakrishnan in the post of B.T.Assistant (Social Science) are entitled for approval and that therefore, the rejection of the said request is in order.

3.On the contrary, the case of the respondent's school is that the appointment of Kavitha to the post of B.T.Assistant (Social Science) was duly approved by the appellants and that she has all the necessary qualifications to be appointed as B.T.Assistant (English). In addition, it is submitted that she was internally transferred to the post of B.T.Assistant (English) and that such internal transfer does not require the approval of the appellants herein. As regards Gopalakrishnan, it is the case of the respondent that the said Gopalakrishnan was already serving as a Record Clerk in the school and that he was promoted as B.T.Assistant (Social Science), in view of the fact that there is a vacancy in the sanctioned post and he has the requisite qualification for the said post.



4. We heard the learned Additional Government Pleader appearing for the appellants and the learned counsel appearing for the respondent.

5. The learned Additional Government Pleader invited the attention of this Court to the approval that was granted for the appointment of Kavitha as B.T. Assistant (Social Science). More particularly, the learned Additional Government Pleader referred to the order dated 09.04.2010, wherein appointment to the post of B.T. Assistant (English) was to be made subject to two conditions, viz., (i). direct recruitment and (ii). recruitment from the Arunthathiyar Community. On the said basis, he submitted that the transfer of Kavitha from the post of B.T. Assistant (Social Science) to the post of B.T. Assistant (English) without the approval of the appellants herein is in direct contravention of the said order dated 09.04.2010.

6. Similarly, with regard to the promotion of Gopalakrishnan from the post of Record Clerk to the post of B.T. Assistant (Social Science), the learned Additional Government Pleader submitted that there is no vacancy in the post of B.T. Assistant (Social Science) because as per the official records, Kavitha continues to be in the said post and she is drawing salary in the capacity of B.T. Assistant (Social Science). Therefore, the learned Additional Government Pleader submitted that the order refusing to approve the transfer of Kavitha or the promotion of Gopalakrishnan are perfectly in order and that the impugned order of the writ court is liable to be set aside.

7. In response, the learned counsel appearing for the respondent school reiterated that Kavitha possesses the necessary qualifications to be appointed as B.T. Assistant (English) and that such internal transfer does not require the approval of the appellants. As regards Gopalakrishnan, he submitted that he is an internal candidate, who was working in the post of Record Clerk and that he was promoted to the post of B.T. Assistant (Social Science) upon transfer of Kavitha, and has been actually working as B.T. Assistant (Social Science) from 01.05.2010 until he attained the age of superannuation on 30.06.2019. Accordingly, he submits that great prejudice would be caused unless the promotion of Gopalakrishnan to the post of B.T. Assistant (Social Science) is approved and that the order of the Writ Court is not liable to be interfered with.

8. We carefully considered the pleadings, relevant documents and oral submissions of both sides.

9. On perusal of the order, dated 09.04.2010, it is abundantly clear that appointments to the post of B.T. Assistant (English) were required to be made by direct recruitment and only from the Arunthathiyar Community. Therefore, it is clear that the transfer of Kavitha to the said post of B.T. Assistant (English), is in direct



conflict with the said order. Consequently, there is no vacancy in the post of B.T.Assistant (Social Science) and therefore, the appellants herein cannot be faulted for refusing to approve the promotion of Gopalakrishnan from the post of Record Clerk to the post of B.T.Assistant (Social Science).

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10. In view of the forgoing observations and analysis, we are of the view that the impugned order of the Writ Court cannot be sustained and is liable to be set aside. Consequently, the writ appeal is liable to be allowed. However, in view of the fact that the said Gopalakrishnan has been serving in the post of B.T.Assistant (Social Science) from the year 2010 until he attained superannuation on 30.06.2019, the difference in salary as between Record Clerk and B.T.Assistant (Social Science) would have to be borne by the respondent school, which is fully responsible for the current state of affairs.

11. In the result, the Writ Appeal is allowed with a direction to the respondent school to bear the difference in the salary of Gopalakrishnan as between the salary payable to the post of Record Clerk and that payable for B.T.Assistant (Social Science). The said Kavitha shall be reverted to the post of B.T.Assistant (Social Science) by the respondent school within a period of two weeks from the date of receipt of a copy of this order. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (AD-I)

// True Copy //

Sub Assistant Registrar (CS)

To

The Secretary,
Uma Maheswar Higher Secondary School Committee,
Karandahi Tamil Sangam,
Kurunthittaikudi,
Thanjavur - 613 002.

+1 CC to SPL GP (SR-76334[F] dated 19/07/2019)
+1 CC to Mr.D.SELVANAYAGAM, Advocate (SR-76171[F] dated
18/07/2019)

W.A. (MD) No.750 of 2018

18.07.2019

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