



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 03.10.2019

CORAM:

**THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM
and
THE HONOURABLE MRS.JUSTICE R.THARANI**

W.A. (MD) No.1337 of 2017

- 1.The Joint Director of Aided Elementary Education,
College Road, Chennai - 6.
- 2.The District Elementary Educational Officer,
R.M.S. Road, Madurai.
- 3.The Assistant Elementary Educational Officer,
Madurai East, Madurai. ... Appellants/Respondents

-vs-

K.Koori ... Respondent/Writ Petitioner

Writ Appeal filed under Clause 15 of Letters Patent against the order dated 28.03.2017, made in W.P.(MD) No.5181 of 2013, on the file of this Court.

Prayer in WP(MD). 5181/ 2013 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a WRIT OF CERTIORARIFIED MANDAMUS or any other appropriate writ or order or direction in the nature of writ to call for the records in Moou.Moou.No. 5781/AA4/2012 dated 04.7.2012 on the file of the 2nd respondent, quash the same and further direct the 2nd respondent to approve the appointment of K.Koori as a primary school teacher in the Hindu Aided Primary School, Mangulam, Madurai with effect from 01.06.12.

For Appellants : Mrs.S.Srimathy
Special Government Pleader

For Respondent : Mr.S.Vellaichammy

J U D G M E N T

[Judgment of the Court was delivered by T.S.SIVAGNANAM, J.]

Heard Mrs.S.Srimathy, learned Special Government Pleader appearing for the appellants and Mr.S.Vellaichamy, learned counsel appearing for the respondent/Writ Petitioner.



2.The Writ Appeal is directed against the order of this Court dated 28.03.2017, made in W.P.(MD) No.5181 of 2013.

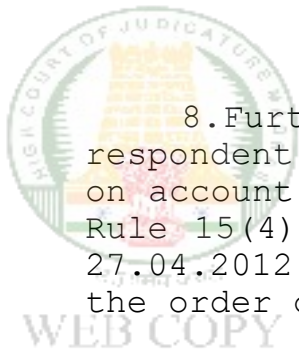
3.The Writ Petition was filed challenging the order passed by the second appellant dated 04.07.2012, by which, the order of appointment issued to the first respondent/writ petitioner was canceled on the ground that the appointment of respondent violates the roster point.

4.It is submission of the learned counsel appearing for the respondent that the Assistant Elementary Educational Officer, Madurai East, Madurai granted permission to fill up the vacancy arises on account of the retirement of one Mrs.Indira Gandhi with a O.C. candidate. Based on such approval by the Assistant Elementary Educational Officer, the selection process was conducted, in which five candidates attended the interview and four were found not eligible and the respondent/writ petitioner, who was a B.C. candidate, was found eligible and was appointed to the said vacancy. Therefore, the appointment of the respondent should have been approved.

5.Further, it is submitted by the learned counsel for the respondent that assuming that the order impugned in the Writ Petition is justified, then the first respondent/writ petitioner should have been accommodated in the vacancy, which has been caused on account of the transfer of one Gurusamy. When the said person was working, the post was declared as surplus by the second appellant by order dated 24.11.1998. This was challenged by the Management in W.P.No.19073 of 1998 and the Writ Petition has been allowed. Therefore, it is the submission of the learned counsel for the respondent/writ petitioner that the respondent should have been accommodated in the said vacancy as the post existed as on that date.

6.The learned Special Government Pleader appearing for the appellants would submit that the first respondent/writ petitioner is not qualified as he has not passed Teachers Eligibility Test.

7.One interesting fact, which we have to mention here is that the first respondent/writ petitioner is the Secretary of the School and it is based on the request of the management approval was granted to fill up the vacancy by an O.C. candidate. It was not complied with and the first respondent/writ petitioner by acting as a Secretary/Correspondent appointed himself, for which, he is not entitled because as per roster rule the vacancy has to be filled up with a candidate belonging to O.C. community. This having not been done, the second respondent is justified in canceling his appointment and the learned Single Judge has committed an error in allowing the Writ Petition.



8.Further, we find from the typed set of papers that the respondent is already working in the school in the vacancy existed on account of transfer, for which, permission has been granted under Rule 15(4) of the Tamil Nadu Private Schools (Regulation) Rules on 27.04.2012. Therefore, he is not the person aggrieved on account of the order dated 04.07.2012, which was impugned in the Writ Petition.

9.Thus for all the reasons, the order and direction issued in the Writ Petition has to be set aside. Accordingly, the Writ Appeal is allowed and the order and direction issued in W.P.(MD) No.5181 of 2013 dated 28.03.2009 is set aside. It is open to the first respondent/writ petitioner to pursue his claim before the appellants to get his appointment approved in the vacancy, which has occurred on account of transfer of Gurusamy and the same shall be dealt with by the appellants in accordance with law. No costs.

Sd/-
Assistant Registrar

/TRUE COPY/

Sub Assistant Registrar

sj

To

1.The Joint Director of Aided Elementary Education,
College Road, Chennai - 6.

2.The District Elementary Educational Officer,
R.M.S. Road, Madurai.

3.The Assistant Elementary Educational Officer,
Madurai East, Madurai.

+1 CC to M/s.M.V.VENKATASESHAN, Advocate (SR-91307[F] dated
04/10/2019)

+1 CC to M/s.GP (SR-91573[F] dated 04/10/2019)

W.A. (MD) No.1337 of 2017
03.10.2019

JM/30.10.2019/3P/6C