

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 13.02.2020
CORAM
THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH
W.P.No.3537 of 2020
and
W.M.P.No.4140 of 2020

J. Mariya Selvi Sowbagyam

... Petitioner

Vs.

1.The District Educational Officer,
DPI Campus, College Road,
Chennai - 600 006.

2.The Chief Educational Officer,
Chennai District,
Egmore, Chennai - 600 008.

3.The District Educational Officer,
Chennai East Education District,
Lady Willingdon College Campus,
Kamaraj Salai, Chennai - 600 005.

4.The Secretary,
NKT National Girls Higher Secondary School,
No.41, Dr. Besant Road, Triplicane,
Chennai - 600 005.

... Respondents

Prayer: Writ petition filed under Article 226 of the Constitution of India, praying for the issuance of writ of mandamus, directing the respondents to grant approval of appointment to the petitioner in the post of B.T.Assistant (Social Science) from the date of initial appointment on 01.06.2009 in the fourth respondent school with all consequential and attendant benefits including payment of arrears of salary and other service benefits and not to insist passing of Teacher Eligibility Test (TET) against the petitioner, within a time frame to be fixed by this Court.

For Petitioner : Mr. G. Sankaran

For Respondents: Mrs. V. Annalakshmi,
Government Advocate.

O R D E R

This writ petition has been filed for the issue of writ of mandamus directing the respondents to grant approval for the appointment of the petitioner in the fourth respondent school as a B.T., Assistant (Social Science) from the date of initial appointment on 01.06.2009 and to pay her all the other attendant benefits.

2. The case of the petitioner is that the fourth respondent school is an aided school and it has been sanctioned the post of secondary Grade teacher (Social Science). It is the further case of the petitioner that the second respondent has also issued orders by his proceedings dated 12.03.2009 granting permission to fill up the post of B.T., Assistant. This post fell vacant due to the promotion of the incumbent.

3. The fourth respondent school conducted a selection process and the petitioner was selected and appointed to the post of B.T., Assistant (Social Science) in the year 2009. The fourth respondent school had also forwarded the proposal to the second respondent seeking for approval of the appointment of the petitioner with effect from the date of appointment. The same was returned with some queries and it was again re-submitted by the fourth respondent school.

4. The grievance of the petitioner is that she has been working from 01.06.2009 onwards and third respondent has only issued orders granting approval for the appointment with effect from 09.05.2012. According to the petitioner, the approval must have been granted with effect from 01.06.2009.

5. The further grievance of the petitioner is that she had given birth to a child on 04.10.2019 and submitted an application for Maternity Leave and according to the petitioner even the Maternity Leave has not been made available to the petitioner. Aggrieved by the same, the present writ petition has been filed before this Court.

6. Mr.G.Shankaran, learned counsel for the petitioner submitted that the petitioner had joined the post on 01.06.2009. The learned counsel brought to the notice of this Court in G.O.Ms.No.181, dated 15.11.2011 which insisted for the conduct of Teacher Eligibility Test (hereinafter referred as TET) in order to consider the appointment to the post of secondary grade teacher.

7. The learned counsel also brought to the notice of this Court GO.Ms.No.90 dated 28.03.2012 which insisted that the appointment to the post of teachers will be based only on the TET marks. The learned counsel submitted that the passing of the TET cannot be insisted for the petitioner since she has been appointed in the year 2009 itself as B.T., Assistant. Therefore, the learned counsel submitted that the approval ought to have been granted by the third respondent from the date of appointment on 01.06.2009. Consequently, the petitioner is also eligible for service benefits and other monetary benefits. The learned counsel submitted that even the maternity leave has not been made applicable to the petitioner.

8. Per contra, the learned Government Advocate appearing on behalf of the respondents submitted that the respondents will consider the claim made by the petitioner on its own merits and in accordance with the Government orders. The learned counsel further submitted that the petitioner can make a representation in this regard through the fourth respondent school and the same will be considered.

9. The only grievance that has been expressed by the petitioner is that the approval for the appointment of the petitioner should have been given with effect from 01.06.2009 onwards and the same should not have been restricted from 09.05.2012. For the said purpose, the petitioner is relying upon certain Government orders which will not apply to the petitioner. TET was not a requirement at the time of appointment of the petitioner during 2009 and it requires consideration by the second and third respondents. In any case, maternity leave is something the petitioner is entitled for since she has delivered a child on 04.10.2019 and it will be too harsh to deny maternity leave to the petitioner. In a welfare state, the Government and its instrumentalities must take into consideration the welfare of the mother and child. It will be inhuman to deny maternity leave to a teacher. This does not require any law and it should have been granted on humanitarian consideration. The petitioner should not have been driven to claim for this before this Court.

10. In the result, the petitioner is directed to make a fresh representation through the fourth respondent school to the second and third respondents seeking for her approval of appointment with effect from 01.06.2009 and the respondents are directed to consider the same in line with the Government orders and pass appropriate orders within a period of four weeks from

the date of receipt of copy of this order. It goes without saying that the petitioner is entitled for maternity leave like all other Government servants.

11. This writ petition is disposed of with the above directions. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Asst.Registrar (CS I)

/true copy/
Sub Asst. Registrar

at

To

- 1.The District Educational Officer,
DPI Campus, College Road,
Chennai - 600 006.
- 2.The Chief Educational Officer,
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Chennai - 600 005.

+1 cc to Mr.G.Sankaran Advocate sr12141
+1 cc to the Government Pleader sr12438

W.P.No.3537 of 2020

mr(co)
aa11/03/2020

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