

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 31.07.2020

CORAM

THE HONOURABLE MR. JUSTICE M.DHANDAPANI

W.P. NO. 26906 OF 2013

and

M.P.No.1 of 2013

S. Kalai Selvi

.. Petitioner

- Vs -

- 1.The District Educational Officer
and Additional Chief Educational Officer(I/C)
(Education for All scheme) Thiruvarur,
Thiruvarur District.
- 2.The District Rehabilitation Officer,
Thiruvarur.
- 3.The Supervisor,
Block Resource Centre,
Koradacheri-613 703
Thiruvarur district.
- 4.Bharathmatha,
Family Welfare Foundation
SSA_IED Thiruvarur.
- 5.The Government of Tamilnadu
rep. by its Secretary,
School Education Department
Fort St. George,
Chennai 600009.

.. Respondents

Writ petition filed under Article 226 of the Constitution of India praying this Court to issue a writ of certiorarified Mandamus, calling for the entire records pertaining to impugned orders viz. Na.Ka.No.1459/Makuka/Ake/2012 dated 31.07.2012 on the file of the first respondent and Na.Ka.No.334/Pa.Vi.AA/A.Ka.E/2012 dated 31.7.2012 on the file of the third respondent and to quash the same and consequently to direct the respondents to reinstate the petitioner in service with all consequential service, pay and arrears therefore from the date of relief till the date of Re-joining and further to direct the respondents to treat the petitioner as regular employee with

regular time scale of pay from the date of her initial appointment and consistently to revise the pay from time to time and pay arrears that from the date of initial appointment, October-2003.

For Petitioner : M/S.G.Mutharasu

For Respondents: Mr. S.Suresh Kumar, G.A.

ORDER

It is the case of the petitioner is that she had completed 12th standard and Diploma course in Care Giver (Multiple ability) in the year of 2003. Based on the aforesaid education qualification, the petitioner was given appointment by the the 4th respondent namely the Brathamatha Family Welfare Foundation, Koradacheri, on 01.07.2003 and thereafter the petitioner underwent the training programs conducted by the said association and other associations and after successfully completing the training programmes, she was given appointment by the Supervisor, Block Resource Centre, Koradacheri/ 4th respondent herein, on 1.6.2011 and the said communication was sent to one P. Murugaiyan, the founder of the Manolayam Health Care Trust. However her services were terminated by the 3rd respondent on the ground that the petitioner had not qualified herself in teaching Elementary School Students and that she is eligible only to teach students in pre-school, based on the letter given by the Directorate of School Education/ the 1st respondent herein, dated 31.7.2012. As against the termination order, the petitioner filed this writ petition with the above said prayer.

2.Learned Counsel appearing for the petitioner while reiterating the submissions as raised in the grounds in support of his plea, submitted that the petitioner is fully qualified to be appointed as Elementary School Teacher, and though appointment was given to the petitioner after following a selection process, however, curiously, without giving any notice to the petitioner, she was terminated from service, which is wholly unsustainable and warrants interference at the hands of this Court.

3.Learned Government Advocate appearing for the respondents submitted that Bharathmata Family Welfare Foundation, a Non-Governmental Organisation, had appointed the writ petitioner to work as SSA-IED Special Teacher/Special Educator at Muthupettai Block of Thiruvarur District, during October-2018, for a period of one year, which was purely on temporary basis, vide letter No.298, dated 1.7.2003. In the appointment order issued by the NGO it was clearly mentioned that it is a purely temporary and that her services can be terminated as and when found not

suitable. The petitioner, accepting the condition had joined duty at the Bharathamatha Family Welfare Foundation, the Non-Governmental Organisation and she was not employed by the Education Department of the Government and that her salary is being paid by the NGO. Based on the letter from the Rehabilitation Council of India, certificate verification was conducted by the SSA on 28.6.2012 and that it was found that the writ petitioner is not qualified to handle the classes for the differently abled students, who were studying in the Government School. Based on the certificate verification, the petitioner was relieved by the 3rd respondent herein based on the recommendation of the 1st respondent, vide letter dated 31.7.2012. The minutes of the meeting held on 6.6.2003, it was mentioned about the appointment of NGO for the Welfare of the students of the schools with an intention that studies should not be interrupted because of long leave by a teacher or lack of teachers in a primary and upper primary schools and it is purely a temporary and welfare measure and it does not confer any rights on the persons who were appointed by the outsourcing agency. The appointment of the petitioner being only by the NGO and not by the Government, the claim for regularisation of services of the petitioner in time scale of pay from the date of her appointment is wholly unsustainable.

4. This Court heard the submissions advanced by the learned counsel for the petitioner as well as the learned Government Advocate for the respondent and perused the materials available on record.

5. The facts are not in dispute in the present case. On perusal of the records, it reveals that initially the petitioner was appointed by the 4th respondent, the 4th respondent/NGO and her engagement was extended periodically. The appointment of the petitioner by the 4th respondent was ratified by the 3rd respondent by internal communication between 3rd and 4th respondents dated 01.06.2011. However, it reveals from the counter that the minimum qualification has been prescribed in letter No.7-91/RCI-2011 dated 11.01.2012. Further it transpires from the records that the petitioner did not satisfy the qualification, when the certificates were verified, which led to the petitioner's service being terminated.

6. In the present case, the appointment was given by the NGO and not by the Government, which is evident from the materials available on record. When such being the case, the petitioner cannot seek a mandamus as against the Government. In the above backdrop of the facts and circumstances of the case, this Court is of the considered view that no mandamus, as sought for could be issued.

7. Accordingly this writ petition is dismissed. However there shall be no order as to costs. Consequently, connected miscellaneous petition is closed. However this order will not stand in the way on the petitioner to participate in the future recruitment process and getting selected, if she is found eligible.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

jrs

To

- 1.The District Educational Officer
and Additional Chief Educational Officer(I/C)
(Education for All scheme) Thiruvavarur,
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rep. by its Secretary,
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Fort St. George, Chennai 600009.
- +1 cc to Mr.G.Mutharasu, Advocate Sr.No. 25708

SKS (CO)
RMP (31/08/2020)

W.P. NO.26906 OF 2013