

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.12.2020

Coram:

THE HONOURABLE MR.JUSTICE R.SUBBIAH
and
THE HONOURABLE MR.JUSTICE C.SARAVANAN

Writ Appeal No.3088 of 2019
and
C.M.P.No.19647 of 2019

1. The State of Tamil Nadu,
Rep. by its Principal Secretary to Government,
School Education Department,
Secretariat, Fort St.George,
Chennai-600 009.
 2. The Director of School Education,
DPI Campus, College Road,
Chennai-600 006. .. Appellants
- Vs.
1. Lakshmi, W/o Ramasamy,
P.G. Assistant (Economics),
Chennai Higher Secondary School,
Nesapakkam, Chennai-600 078.
 2. The Commissioner,
Chennai Corporation,
Ripon Building, Chennai-600 003.
 3. The Deputy Commissioner (Education),
Chennai Corporation,
Ripon Building, Chennai-600 003. .. Respondents

Writ Appeal filed under Clause 15 of the Letters Patent against the order dated 24.07.2018 passed by the learned Single Judge in W.P.No.28641 of 2016 on the file of this Court.

PRAYER IN W.P.NOS.28641 & 28642 OF 2016 : Petitions filed under Article 226 of the Constitution of India, praying to issue a Writ of Mandamus, to direct the respondents to pass orders for transfer/restore the petitioner in Tamil Nadu Higher Secondary Education Service in School Education Department as PG Assistant in Government Higher Secondary School based on the selection conducted by Teachers Recruitment Board as per Notification/Advertisement No.3 of 2012 dated 28.02.2012 without any loss of seniority, in the light of the orders passed by

State Government in similar cases in G.O.Ms.No.7, School Education (HSC) Department, dated 17.01.2002 and orders passed in G.O.Ms.No.147, School Education Department, dated 16.09.2002 with all consequential and other attendant benefits, within a time frame.

For appellants : Mr.C.Munusamy, Spl.G.P.

For respondents: Mr.G.Sankaran for R-1

JUDGMENT

(The Judgment of the Court was delivered by R.Subbiah, J)

The appeal is heard through video-conferencing.

2. The present Writ Appeal has been filed challenging the order dated 24.07.2018 passed by the learned Single Judge, allowing the Writ Petition No.28641 of 2016 filed by the first respondent herein, praying for issuance of a Writ of Mandamus to direct the appellants and respondents 2 and 3 herein to pass orders for transfer/restore the writ petitioner in the Tamil Nadu Higher Secondary Education Service in School Education Department as P.G. Assistant in Government Higher Secondary School based on the selection conducted by the Teachers Recruitment Board as per Notification/Advertisement No.3 of 2012, dated 28.02.2012 without any loss of seniority, in the light of the orders passed by the State Government in similar cases in G.O.Ms.No.7, School Education (HSC) Department, dated 17.01.2002 and orders passed in G.O.Ms.No.147, School Education Department, dated 16.09.2002 with all consequential and other attendant benefits, within a time frame.

3. The case of the first respondent-writ petitioner is that she applied to the post of P.G. Assistant (Economics), pursuant to the Notification/Advertisement inviting the applications for direct recruitment to the post of P.G. Assistants in Tamil Nadu Higher Secondary Education Service coming under the School Education Department, notifying the vacancies to the post of P.G. Assistants in various subjects. After completion of selection process, she was selected as P.G. Assistant (Economics), but she was allotted in the School coming under the domain of the Corporation and accordingly, she was issued with an order of appointment dated 04.02.2013 along with others and she had also joined in the School in the said post of P.G. Assistant (Economics).

4. The Writ Petition had been filed by the first respondent/writ petitioner raising various contentions with a prayer to direct the appellants and the respondents 2 and 3 herein to restore her back to the Tamil Nadu Higher Secondary Education Service in School Education Department as P.G.

Assistant in the Government Higher Secondary School based on the selection conducted by the TRB.

5. The learned Single Judge allowed the Writ Petition in W.P.No.28641 of 2016 with a direction to the appellants and respondents 2 and 3 herein to transfer the first respondent/writ petitioner to the Tamil Nadu Higher Secondary Educational Services of the School Education Department as P.G. Assistant in the vacancy available in the Government Higher Secondary Schools on the basis of the selection pursuant to the Notification dated 28.02.2012, with all attendant benefits like seniority, etc. It was further directed that the transfer as prayed for in the Writ Petition shall be granted by the appellants and respondents 2 and 3 herein/competent authorities, within a period of eight weeks from the date of receipt of a copy of the order. The third appellant before the Writ Court was also directed to pass appropriate orders in order to enable the Government to effect transfer as prayed for in the Writ Petition. Aggrieved by the same, the present Writ Appeal is filed by the appellants/State.

6. The learned Special Government Pleader appearing for the appellants, on instructions, submitted that if any vacancy arises in the schools under the School Education Department and if the teachers seeking transfer from Corporation Schools are willing to forego their seniority in the transferred department, their request will be considered individually based on merits and in extraneous circumstances provided both the departments give their explicit consent.

7. The learned counsel appearing for the first respondent/writ petitioner submitted that the writ petitioner is ready to forego her seniority in the transferred Department. To that effect, the first respondent/writ petitioner had also filed an affidavit dated 21.12.2020 before this Court, relevant portion of the same reads as follows:

"7. I submit that there are number of vacancies available to the post of P.G. Assistant (Economics) in Virudhunagar District including the vacancies in the following schools:

(i) Government Higher Secondary School, Sivaliangapuram.

(ii) Government Girls Higher Secondary School, Chatrapatti.

Accordingly, I hereby undertake to forego my seniority in the post of P.G. Assistant (Economics) to get transfer back to School Education Department by Unit transfer to the post of P.G. Assistant (Economics) in either of the existing vacancies in Virudhunagar District stated above."

8. In view of the above submission made by the learned Special Government Pleader, to which, the writ petitioner had filed the above affidavit as extracted above, foregoing her

seniority, this Court allows the Writ Appeal to the extent that the first respondent/writ petitioner be posted in any one of the vacancy available in any Government Higher Secondary School in and around Virudhunagar District, as requested by the first respondent/writ petitioner in her above affidavit. No costs. Consequently, C.M.P. is closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1. The Principal Secretary to Government,
The State of Tamil Nadu,
School Education Department,
Secretariat, Fort St.George,
Chennai-600 009.
2. The Director of School Education,
DPI Campus, College Road,
Chennai-600 006.
3. The Commissioner,
Chennai Corporation,
Ripon Building, Chennai-600 003.
4. The Deputy Commissioner (Education),
Chennai Corporation,
Ripon Building, Chennai-600 003.

+lcc to Mr.G.Sankaran, Advocate, S.R.No. 42857
+lcc to the Government Pleader, S.R.No. 43137

GP(CO)
GN(07/01/2021)

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