

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.2090 of 2019
and
C.M.P.No.14198 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.
 3. The Director of Adi Dravidar Welfare,
Ezhilagam, Chepauk,
Chennai-600 005.
- .. Appellants/Respondents

Vs.

D.Shantha, W/o Thiru.S.Sankara Narayanan,
PG Assistant (Mathematics),
Government Adi Dravidar Welfare Girls
Higher Secondary School,
Nallammapuram, Tirunelveli.

.. Respondent/Petitioner

Writ Appeal filed under Clause 15 of the Letters Patent
against the order dated 14.12.2018 passed by the learned Single
Judge in W.P.No.40585 of 2016 on the file of this Court.

W.P.40585/2014

To issue a writ of certiorarified mandamus relating to the
proceedings of the second respondent in
Na.Ka.No.020840/W2/E1/2016, dated 11/08/2016 and to quash the
same and consequently directing the respondents to restore the
petitioner back to Tamil Nadu Higher Secondary Education
Services in School Education Department as PG Assistant in
Government Higher Secondary School based on the selection
conducted by Teacher 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 to be fixed by this Court.

For appellants : Mr.C.Munusamy, Spl.G.P.
For respondents : Mr.L.Chandrakumar for
Mr.M.R.Jothimaniyan

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 14.12.2018 passed by the learned Single Judge, allowing the Writ Petition No.40585 of 2016 filed by the respondent herein, praying for issuance of a Writ of Certiorarified Mandamus relating to the proceedings of the second appellant in Na.Ka.No.020840/W2/E1/2016, dated 11.08.2016 and quash the same and consequently direct the appellants to restore the respondent/writ petitioner back to the Tamil Nadu Higher Secondary Education Services in School Education Department as P.G. Assistant in the Government Higher Secondary School based on the selection conducted by the Teacher Recruitment Board (TRB) as per the 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 to be fixed by this Court.

3. The case of the respondent-writ petitioner is that she applied to the post of P.G. Assistant (Mathematics) pursuant to the said Notification/Advertisement inviting the applications for direct recruitment to the post of P.G. Assistant in Tamil Nadu Higher Secondary Education Service coming under the School Education Department, notifying 315 vacancies to the post of P.G. Assistant (Mathematics). After completion of selection process, she was selected as P.G. Assistant (Mathematics), but she was allotted in the School coming under the Adi Dravidar Welfare Department and accordingly, she was issued with an order by the third appellant as per the proceedings dated 11.02.2013 appointing her as P.G. Assistant in the Government Higher Secondary School, Nallammapuram, Tirunelveli, as per the proceedings dated 22.02.2013 and she had also joined in the said

School in the said post of P.G. Assistant (Mathematics).

4. The Writ Petition had been filed by the respondent/writ petitioner raising various contentions with a prayer to direct the appellants 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, while quoting the similar issue having been considered by this Court in a batch of Writ Petitions in W.P.No.28641, 28642 and 28223 of 2016, by order dated 24.07.2018, allowed the present Writ Petition on 14.12.2018 on the same terms with the same directions as issued in the said batch of Writ Petitions. Aggrieved by the same, the present Writ Appeal is filed by the appellants/State.

6. The first appellant had filed an affidavit 31.07.2019, relevant portion of the same reads as follows:

"7. It is further submitted that if any vacancy arises in the schools under the School Education Department and if the teachers seeking transfer from Adi Dravidar Welfare 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 respondent/writ petitioner submitted that the writ petitioner is ready to forego her seniority in the transferred Department. To that effect, the respondent/writ petitioner had also filed an affidavit dated 21.12.2020 before this Court, relevant portion of the same reads as follows:

"4. I respectfully submit that on 31.07.2019, the 1st appellant filed an affidavit before this Hon'ble by stating that if any vacancies arise, my claim would be considered without seniority benefits, which is clearly stated in 7 of the affidavit filed by the 1st appellant. Therefore, I undertake to forego my seniority and also the 3rd appellant has issued no objection letter on 05.04.2019 to relieve me from the ADW Department. Now there are several vacancies available in School Education Department and therefore my claim would be considered based on the affidavit of the 1st Appellant."

8. In view of the above affidavits of the respective parties and the foregoing of seniority by the writ petitioner, this Court allows the Writ Appeal to the extent as indicated in the above extracted paragraph 4 of the affidavit filed by the writ petitioner. 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 Director of Adi Dravidar Welfare,
Ezhilagam, Chepauk, Chennai-600 005.

+1 cc to The Government Pleader, Sr.No. 43137

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Writ Appeal No.2090 of 2019

KJ (CO)
RMP (20/01/2021)

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