

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Orders Reserved on : 07.01.2020

Pronouncing orders on : 13.01.2020

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THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

W.P.No.22668 of 2019
W.M.P.Nos.22146 & 22148 of 2019

L.Innacentia

...Petitioner

vs.

1. The Director of Elementary Education,
DPI Campus,
Chennai - 600 006.
2. The Chief Educational Officer,
Coimbatore District,
Coimbatore.
3. The District Educational Officer,
Perur Educational District,
Coimbatore District,
Coimbatore.
4. Mrs.Banumathi
Block Educational Officer,
Gopichettipalaiyam,
Erode.

Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, calling for the records of the 1st respondent in Na.Ka.No.2367-1/2019 dated 28.06.2019 and the consequential proceedings of the 3rd respondent in Na.Ka.No.2775/A2/2019 dated 03.07.2019, quash the same and consequently direct the respondents 1 to 3 to appoint the petitioner as B.T. Assistant with effect from 03.07.2019 with all service and monetary benefits.

Prayer amended as per Court order dated 07.01.2020 in WMP.No.29320 of 2019 in W.P.No.22668 of 2019

For Petitioner : Ms.Dakshayani Reddy

For Respondents: Mrs.V.Annalakshmi
Government Advocate for R1 to R3

: Mr.L.Chandrakumar for R4

O R D E R

This writ petition has been filed challenging the impugned order passed by the 3rd respondent dated 03.07.2019.

2.The case of the petitioner is that she was appointed as a Secondary Grade Teacher in the year 2006 and her probation was also declared and subsequently she was promoted as B.T. Assistant and she was working in Panchayat Union Middle School, Samathuvapuram, Madukarai Block, Coimbatore District.

3.The petitioner received a communication from the 2nd and 3rd respondents and she was informed that she is being depromoted as a Secondary Grade Teacher and she is going to be transferred to some other school. The petitioner was informed that the 4th respondent is attaining superannuation on 10.07.2019 and for getting an extension of service, the 4th respondent had given a representation agreeing to get herself depromoted as Headmistress in order to continue till the end of the academic year i.e., up to 30.05.2020. As a consequence of such a request made by the 4th respondent, the impugned order came to be passed wherein the petitioner who was working as a B.T. Assistant in Panchayat Union Middle School, Samathuvapuram, was depromoted as a Secondary Grade Teacher and was sent to the Panchayat Union Elementary School, Appachigounderpathi, Coimbatore District. This order has been put to challenge in the present writ petition.

4.Ms.Dakshayani Reddy, learned counsel appearing on behalf of the petitioner submitted that the order of depromotion and transfer has been passed in total violation of the principles of natural justice. The learned counsel further submitted that the 4th respondent was working as Block Educational officer and she was not entitled for extension of service till the end of the academic year. Therefore, in order to get over the same, she made a representation for depromotion as Headmistress and thereby get extension of service till the end of the academic year. The learned counsel submitted that this request made by the 4th respondent ought not to have been considered and as a result of passing an order in favor of the 4th respondent, the

petitioner has now been depromoted and transferred. Therefore, the learned counsel submitted that the impugned order passed by the 3rd respondent requires interference. The learned counsel in order to substantiate her submissions relied upon the judgment of the Division Bench in W.A.No.2611 of 2019, dated 20.09.2019.

5.Per contra, Mrs.V.Annalaksmi, learned Government Advocate appearing on behalf of the official respondents submitted that for the academic year 2017-18, there was no vacancy to provide placement to the post of Middle School Head Master at Madukarai and therefore, one Mrs.Radhamani had to be reverted as B.T. Assistant. As a consequence, the junior most B.T. Assistant should be reverted as a Secondary Grade Assistant and since the petitioner was the junior most in the Block, she has been reverted as a Secondary Grade Assistant. The learned counsel submitted that the order of reversion is a usual procedure that is passed whenever there is a want of vacancy. The learned counsel submitted that the impugned order passed by the 3rd respondent is legal and there are no grounds to interfere with the same.

6.Mr.L.Chandrakumar, learned counsel appearing on behalf of the 4th respondent submitted that the 4th respondent never intended to affect the rights of the petitioner or any one else. The learned counsel submitted that a request was made in the year 2018 by the petitioner to consider transferring her to Coimbatore purely on personal grounds. The 4th respondent was to retire in July 2019 and therefore, this request was made in the year 2018. The learned counsel submitted that the 4th respondent is not responsible for any of the consequences that was faced by the petitioner or any other persons and only four months is left for the 4th respondent to retire from service.

7.This Court has carefully considered the submissions made on either side and also the materials available on record.

8.Before going into the issues involved in the present writ petition, it will be beneficial to take note of the judgment of the Division Bench that was cited by the learned counsel for the petitioner. This judgment itself provides an answer for the main issue that has been raised in the present writ petition. The relevant portions are extracted hereunder:

7. Writ petitioner though vide letter dated 29.06.2019 expressed his willingness for consideration to the post of Middle School Head Master, but filed the writ petition immediately, without affording reasonable opportunity to the appellants to dispose of his representation.

8. As the writ petitioner was holding the post of Block Educational Officer, at the time of retirement, re-employment beyond the date of superannuation is not permissible.

9. It is a pre requisite condition that the post of Middle School Headmaster, where the writ petitioners sought for reversion, has to be filled up only by reverting the junior most person holding the post of B.T. Assistant and since, at Pallipattu Union, surplus B.T. Assistants are available, writ petitioner cannot be accommodated.

10. Contending that if the order of reversion of the writ petitioner is issued, it would set a bad precedent and it would open flood gates for similarly placed persons and would lead to endless, appellants have prayed to set aside the order of the writ Court dated 11.07.2019 made in WP No. 18983 of 2019.

11. Per contra, to sustain the order impugned before us, Mr.G.Sankaran, learned counsel for the respondent submitted that prior to the issuance to G.O.(Rt) No.19, School Education (E.E.1 C1) Department, dated 07.02.2019, the posts of Assistant Educational Officer as Middle School Headmaster, were interchangeable. Post of Assistant Educational Officer, is administrative, whereas the posts of Middle School Head Master is academic. Both carried the same scale of pay. Only from 07.02.2019, post of Block Educational Officer, become a promotional post and therefore, before the said date the respondent ought to have been posted as Middle School Head Master, so as to enable him to continue till the end of the academic year.

12. Inviting the attention of this Court to the orders passed by the Director of Elementary Education, dated 28.06.2019, learned counsel for the respondent submitted that no sooner, instructions dated 28.06.2019, were issued, the respondent made a representation on 29.06.2019, and since there was no response, he moved this Court on 29.06.2019, before his retirement on superannuation.

13. Referring to the order of reversion and continuation of services, dated 03.07.2019, issued to (i) Thirumathi.K.Banumathi, Block Educational Officer, Gobichettipalayam, Erode (ii)

Thirumathi.K.P.Radhamani, Head Master, Panchayat Union Middle School, Chinna Navakkarai, Coimbatore and Thirumathi.L.Innachensiya, B.T. Teacher (English), Panchyat Union Middle School, Samathuvapuram, Coimbatore, by Perur District Educational Officer(i), Coimbatore District and the order dated 03.07.2019 issued to concerned Head Master by the Ambatore District Educational Officer, Chennai, respectively, learned counsel for the respondent submitted that there cannot be discrimination, in the case of respondent alone. For the abovesaid reasons, he prayed to sustain the order of the Writ Court.

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20. On the basis of the then existing Government orders and instructions followed, that is interchangeability of posts, an Assistant Educational Officer, holding an academic post, can seek for the post of Middle School Head Master, and consequently, continuation of services till the end of the academic year. But once the post of Block Educational Officers, has become a promotional post for the post of Middle School Head Master, by virtue of G.O.Ms.No.19, School Education Department, dated 07.02.2019, the Director of Elementary Education, Chennai or any other Subordinate Offices, ought not have issued orders, permitting reversion of such Block Educational Officers to the post of Middle School Head Master, so as to enable him to continue till the end of academic year. May be the G.O.Ms.No.19, School Education Department, dated 07.02.2019 issued is in School Education Department. But perusal of the same shows that the said G.O.Ms.No.19, School Education Department, dated 07.02.2019, has been issued by considering the representation of the Association of Assistant Elementary Educational Officers, and the recommendation of the Director of Elementary Education, Chennai. Having recommended that Block Educational Officers, be a promotional posts for Head Masters, which has resulted in the said G.O. Such exercise, would result in unseating many Middle School Head Masters in the school, and every case of reversion of a Block Educational Officer to the post of Headmaster in a school, there would be consequential change of a senior most B.T. Teacher, functioning as Headmaster in a school, to be B.T. Assistant and that there would be a further reversion

of a junior most B.T. Assistant, to accommodate the reverted Block Educational Officer. A person holding a higher office, in a department should ordinarily step out of his office on attaining the age of superannuation, but should not aspire cling on to a post, in service.

21. Submission of the learned counsel for the respondent by placing reference to the orders issued to the Block Educational Officers by reverting them to the post of Middle School Head Master, so as to enable them to continue till the end of academic and further submission of the learned counsel for the respondent that by not applying the same yardstick to the respondent, would amount to violation of Article 14 of the Constitution of India, cannot be accepted, as it would be not only contrary to G.O.(Ms.) No.19, School Education Department, dated 07.02.2019, but would be a perpetuation of negative equality.

22. As rightly submitted by the learned counsel for the appellants, if this practice is allowed, then it would only open flood gates, but deprive a Middle School Head Master of his position, but favour only those holding higher position, on the administrative side to continue service.

9. It is clear from the above judgment of the Division Bench that the impugned order that is the subject matter of challenge in the present writ petition, was also cited as a precedent and it was submitted that this was the usual practice that is followed by the Department. The Division Bench has come down heavily on this practice and it has held that Block Educational officer should never be permitted to get themselves depromoted as Middle School Headmistress, only for the purpose of enabling them to continue till the end of the academic year. The Division Bench has held that if such practice is followed, it would result in unseating many Middle School Headmistress and consequently the B.T. Assistants would have to be necessarily reverted to accommodate the Block Educational Officers. The Division Bench deprecated the practice of a person holding a high office trying to cling on to the post by not stepping out gracefully after attaining the age of superannuation. The Division Bench has categorically held that permitting the Block Educational Officers by reverting as a Middle School Headmaster and enabling them to continue till the end of the academic year, is clearly in violation of Article 14 and 16 of the Constitution

of India. The Division Bench has held that if this practice is allowed, it will open flood gates and will deprive many persons of their valuable rights.

10. In the present case, the consequence of entertaining a representation made by the 4th respondent who was a Block Education Officer and who wanted her to be reverted as a Headmistress just to continue till the end of the academic year, has resulted in two reversions and transfers. One Mrs. Radhamani who was holding the post of Headmistress was reverted as a B.T. Assistant and as consequence, the petitioner who was holding the post of B.T. Assistant was reverted as a Secondary Grade Teacher and she was also transferred from the existing school. Just to accommodate the 4th respondent and to permit her to continue beyond her superannuation, two teachers have been adversely affected and as a result of the same, the petitioner has been reverted, transferred and she also suffered monetary loss due to reduction in salary. The practice that was deprecated by the Division Bench has actually happened in the present case.

11. The impugned order passed by the 3rd respondent is totally illegal and accordingly the impugned order dated 03.07.2019 passed by the 3rd respondent is hereby set aside. The 3rd respondent is directed to pass necessary orders by restoring the position of the petitioner as a B.T. Assistant at Panchayat Union Middle School, Samathuvapuram, Madukarai Block, Coimbatore District and extend all the attendant benefits to the petitioner. This process shall be completed within a period of four weeks from the date of receipt of copy of this order.

12. In the result, this writ petition is allowed with the above directions. Consequently, connected miscellaneous petitions are closed. No Costs.

Sd/-
Assistant Registrar (CS III)

//True Copy//

Sub Assistant Registrar

To

1. The Director of Elementary Education,
DPI Campus, Chennai - 600 006.

2. The Chief Educational Officer,
Coimbatore District, Coimbatore.

3. The District Educational Officer,
Perur Educational District,
Coimbatore District, Coimbatore.

4. The Public Prosecutor,
High Court, Madras.

+1cc to Mr.L.Chandrakumar, Advocate sr.3054

+2cc to Ms.Dakshayani Reddy, Advocate sr.2971, 1565

+1cc to Government Pleader SR.NO. 2760

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nr 29/01/2019