

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 09.03.2020

PRONOUNCED ON : 03.06.2020

CORAM

THE HON'BLE MR. JUSTICE **V.PARTHIBAN**

Writ Petition No.23373 of 2019

M.Karunya

...

Petitioner

Vs.

1.The State of Tamil Nadu,
Represented by its Secretary,
Department of School Education,
Fort St.George, Chennai – 600 009.

2.The Director of Elementary Education,
College Road, Chennai – 600 006.

3.The Chief Educational Officer,
Presidency Girls Higher Secondary
School Campus,
Egmore, Chennai – 600 008.

4.The District Educational Officer,
Dr.Ambedkar Government Higher
Secondary School Campus,
Ground Floor,
Egmore, Chennai – 600 008.

5.The Block Educational Officer,
Block Educational Office,
DPI Campus,
Nungambakkam,
Chennai – 600 006.

6.The President & Correspondent,
Dhanakoti Middle School,
6, Lafond Street,
Chintadripet,
Chennai – 600 002.

... Respondents

Writ Petition filed under Article 226 of Constitution of India, for issuance of writ of certiorarified mandamus, to call for the records relating to the impugned proceedings issued by order of the 4th respondent District Educational Officer in O.Mu.No.2921/A2/2018 dated 31.12.2018 and quash the same, and further direct the respondents 1 to 5 to approve the petitioner's appointment with effect from 26.09.2011 (her original date of appointment) with continuity of service and release salary and other attended benefits from the said date.

For Petitioner : Ms.H.Mary Sowmi Rexi
for M/s.Isaac Chambers

For RR 1 to 5 : Mr.P.Raja,
Government Advocate

For R6 : No Appearance

ORDER

The petitioner has filed this writ petition for the following prayer:-

“To call for the records relating to the impugned proceedings issued by order of the 4th respondent District Educational Officer in O.Mu.No.2921/A2/2018 dated 31.12.2018 and quash the same, and further direct the respondents 1 to 5 to approve the petitioner's appointment with effect from 26.09.2011 (her original date of appointment) with continuity of service and release salary and other attended benefits from the said date.”

2.The writ petitioner is presently working as a Secondary Grade Teacher in the 6th respondent/school. The 6th respondent/school, which is the Government aided Institution, invited applications for filling up the post of three Secondary Grade Teachers. The petitioner applied for consideration for appointment as Secondary Grade Teacher against the quota reserved for Scheduled Caste. The petitioner after being subjected to the regular selection, was appointed as Secondary Grade Teacher on 22.09.2011. The appointment of the petitioner was against the vacancy, which arose due to

the retirement of the previous incumbent one P.Vijayalakshmi, who took voluntary retirement on 22.09.2011. In pursuance of the appointment letter, the petitioner joined the post of Secondary Grade Teacher on 26.09.2011 and has been continuously working ever since.

3. On 17.01.2013, the 6th respondent/school in which the petitioner was appointed as the Secondary Grade Teacher, submitted a proposal to the District Elementary Education Officer through an Assistant Elementary Education Officer. However, the District Elementary Education Officer informed the Assistant Elementary Education Officer *vide* proceedings dated 17.01.2013 that the approval of the petitioner's appointment as the Secondary Grade Teacher would be considered only after she passing the Teachers Eligibility Test (TET). The Teachers Recruitment Board (TRB) a Nodal Agency conducted TET examination on 12.07.2012 and 14.10.2012. In the said examination, less than 4% of the candidates only passed. Therefore, as far as the petitioner is concerned, she having not passed the examination, her approval did not come through.

4.The petitioner, in the above circumstances, approached this Court in W.P.No.22525 of 2013, challenging the refusal of the District Elementary Education Officer approving her appointment and for a direction to approve her appointment as Secondary Grade Teacher. This Court, on 16.08.2013, directed the District Elementary Education Officer to give temporary approval to her appointment as Secondary Grade Teacher in the 6th respondent/school.

5.Finally, the petitioner passed TET conducted by the TRB on 17.08.2013. Thereafter, the petitioner approached the District Elementary Education Officer to grant approval of her appointment as Secondary Grade Teacher. At that juncture, she was informed that unless she withdrew the writ petition filed by her, no action could be taken in the matter. By the force of circumstances, the petitioner withdrew her writ petition in W.P.No.22525 of 2013 on 11.12.2014. After withdrawal of the writ petition, the District Elementary Education Officer *vide* his proceedings dated 17.10.2014, approved the appointment of the petitioner, but, with effect from 17.08.2013, the date on which, the petitioner passed TET.

6. Thereafter, the petitioner has submitted a representation on 10.08.2018 requesting the 6th respondent/school to forward a proposal with regard to the approval from the date of her original appointment viz., 26.09.2011. The 6th respondent/school, in response to her request, submitted a proposal on 13.08.2018 to the District Elementary Education Officer. The 5th respondent herein, who is presently the designated authority, recommended to the District Elementary Education Officer on 27.08.2018 to give approval to the petitioner from the date of her original appointment i.e., on 26.09.2011, with reference to the approval granted for similarly placed Teacher. However, the 4th respondent by his proceedings dated 31.12.2018, rejected the request of the petitioner for grant of approval from the date of her original appointment on 26.09.2011. The approval was refused on the ground that the order of the other Teacher, who was granted such approval had obtained an order from this Court and not the present petitioner. Therefore, the petitioner is before this Court challenging the order of the 4th respondent dated 31.12.2018.

7.The learned counsel for the petitioner would submit that a similar claim by an another Secondary Grade Teacher was allowed and she was granted approval from the date of her original appointment. In that regard, the learned counsel would draw the attention of this Court that one Surya has filed a writ petition in W.P.No.5414 of 2016 before this Court. The learned Judge, who heard the matter disposed of the writ petition on 23.02.2016 by directing the Competent Authority therein to consider the representation of the petitioner therein and dispose of the same on merits and in accordance with law, within the time stipulated by the Court. Thereafter, the Competent Authority *vide* proceedings dated 11.11.2017 has modified the earlier order granting approval from the date of passing of TET and anti-dated her approval from the date of her initial appointment. Since, the petitioner herein is identically placed, she is also entitled for grant of approval from the date of her initial appointment. According to the learned counsel for the petitioner, this is more particularly so that the petitioner has passed TET within the time stipulated by the authorities and therefore, there is absolutely no legal impediment to grant approval from the

date of her initial appointment. The reason as set out in the order impugned that the order of the Court would apply only to the petitioner therein, cannot stand the judicial scrutiny, since the petitioner herein is also entitled to the same treatment as given to the other similarly placed Teacher in the matter of grant of approval from the date of her initial appointment.

8.The above narrative has not been disputed at all by Mr.P.Raja, learned Government Advocate appearing for the respondents 1 to 5. The learned Government Advocate would only submit that, the case where the comparison is drawn the said decision would apply only to the petitioner therein. The petitioner herein cannot seek parity in treatment on the basis of an order of this Court at the instance of another Teacher. Therefore, he would submit that this case has to be dealt with separately on its merits.

9.Considered the submissions of the learned counsel for the petitioner as well as the learned Government Advocate. Indisputably, the claim of the petitioner herein for grant of approval from the date of her initial appointment on 26.09.2011 is exactly the same as that of the claim of one

Surya (Teacher), who has been granted approval from the date of her initial appointment and not from the date of passing of TET. In fact, the decision of this Court, which prompted the Competent Authority to pass orders in favour of said Surya (Teacher) was mere a direction by the learned Judge of this Court on 23.02.2016 to dispose of her representation. When the authority was directed to dispose of her representation, the authority has found merits in the claim of the petitioner therein and passed a positive order granting the relief to the said Teacher. Whereas, in so far as the present petitioner is concerned, unfortunately, the authority has refused to grant such relief, though her claim is also within the frame work of the relief granted to the said Surya (Teacher). No doubt, the disposal of the writ petition in W.P.No.5414 of 2016 is not a judgment *in rem*, nevertheless, when the authority takes a decision in respect of one Teacher, when the claim of the other Teacher also falls within the purview of the said decision, it is fair and just that the authority ought to allow such claim without driving the petitioner to knock at the doors of this Court.

10.As rightly contended by the learned counsel for the petitioner, when the petitioner herself has qualified in TET within the time stipulated, the grant of approval must date back to her original date of her appointment and not from the date of qualifying in TET. The approval cannot be linked to the date of qualifying in TET in the present circumstances of the case. When an identically placed Teacher can be given approval from the date of her original appointment, treating the petitioner differently amounts to hostile discrimination and the same is in violation of Articles 14 and 16 of the Constitution of India.

11.In these circumstances, this Court is of the considered view that the communication which is impugned in this writ petition dated 31.12.2018 rejecting the request of the petitioner for grant of approval from the date of her original appointment on 26.09.2011 cannot stand the test of judicial scrutiny and therefore, the same is liable to be set aside.

WEB COPY

12.In the result, the writ petition is allowed and the proceedings of the 4th respondent dated 31.12.2018 in O.Mu.No.2921/A2/2018 is hereby set

aside and he is directed to pass appropriate orders granting approval to the petitioner as Secondary Grade Teacher with effect from 26.09.2011 with all attendant benefits, within a period of six weeks from the date of receipt of a copy of this order. No costs.

03.06.2020

jbm/nsd

Index: Yes/No
Speaking order/Non speaking order



WEB COPY

To

1.The State of Tamil Nadu,
Represented by its Secretary,
Department of School Education,
Fort St.George, Chennai – 600 009.

2.The Director of Elementary Education,
College Road, Chennai – 600 006.

3.The Chief Educational Officer,
Presidency Girls Higher Secondary
School Campus,
Egmore, Chennai – 600 008.

4.The District Educational Officer,
Dr.Ambedkar Government Higher
Secondary School Campus,
Ground Floor,
Egmore, Chennai – 600 008.

5.The Block Educational Officer,
Block Educational Office,
DPI Campus,
Nungambakkam,
Chennai – 600 006.

6.The President & Correspondent,
Dhanakoti Middle School,
6, Lafond Street,
Chintadripet,
Chennai – 600 002.

W.P.No.23373 of 2019

V.PARTHIBAN, J.

jbm



Pre Delivery Order made in
W.P.No.23373 of 2019

03.06.2020

WEB COPY