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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.01.2020

CORAM:

THE HONOURABLE MR.JUSTICE D. KRISHNAKUMAR

W.P.No.1908 of 2017 and
M.P.No.1928 of 2017

A. Mary Lithiya Nithilakumari

...Petitioner

Vs

1.The Joint Director of School Education,
(Higher Secondary),
Chennai - 600 006.

2.The District Educational Officer,
Vellore District, Vellore.

3.The Correspondent,
V.R.V. Girls Higher Secondary School,
Ranipet, Vellore District.

...Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Mandamus, directing the respondents to approve the appointment of the petitioner as B.T. Assistant (Science) from the date of appointment and confer all the consequential benefits by considering the representation dated 08.07.2016.

For Petitioner : Mr.P. Ganesan

For Respondents : Mrs.P. Kavitha
Government Advocate

ORDER

This writ petition has been filed by the petitioner seeking for a direction to the respondents to approve the appointment of the petitioner as B.T. Assistant (Science) from the date of appointment and confer all the consequential benefits by considering the representation dated 08.07.2016.

2. According to the petitioner, she was appointed as B.T. Assistant (Science) in the V.R.V. Girls Higher Secondary School, Ranipet, Vellore District on 6.09.2012. The aforesaid post has



become vacant due to the promotion given to one Mrs.D.Evelyn Anita as P.G. Assistant (English). Thereafter, the third respondent school has forwarded the proposal for approving the appointment of the petitioner on 06.11.2012 and the said proposal was returned by the second respondent on 26.11.2012 on the ground that the promotion of Mrs.D.Evelyn Anita to the post of P.G. Assistant was not approved and informed that as and when her appointment is approved, the approval sought for by the respondent school for approving the appointment of the petitioner will be considered. On 14.02.2013, the respondent school sent the proposal to the second respondent/District Educational Officer for approving the appointment of the said Mrs.D.Evelyn Anita. In the meantime, one Mrs.Suguna, B.T. Assistant has preferred an appeal before the first respondent/Joint Director of School Education, Chennai-600 006, challenging the appointment of the Mrs.D.Evelyn Anita as B.T. Assistant. The aforesaid appeal filed by one Mrs.Suguna, as P.G. Assistant was allowed by the first respondent and pursuant to the aforesaid appeal, the first respondent directed the third respondent school to appoint Mrs.Suguna, as P.G. Assistant, since she is the senior to Mrs.D.Evelyn Anita and the third respondent school implemented the order of the first respondent and the said Mrs.D.Evelyn Anita was reverted as B.T. Assistant. Subsequently, the said Mrs.D.Evelyn Anita filed W.P.No.34379 of 2014 and got status quo, by order dated 23.12.2014.

3. According to the petitioner, the petitioner was appointed in the place of the said Mrs.D.Evelyn Anita, who was promoted as P.G. Assistant from Secondary Grade Teacher. As the said post of Secondary Grade Teacher was upgraded as B.T. Assistant (Science), the petitioner was appointed as B.T. Assistant (Science). Now, there is no impediment for approving the appointment of the petitioner, inasmuch as there are two vacancies, one held by the said Mrs.Suguna and another held by the said Mrs.D.Evelyn Anita. Therefore, the petitioner has sent a representation to the second respondent/District Educational Officer, Vellore District, on 08.07.2016, requesting to approve her appointment from 07.09.2012 and to pay salary from the date of appointment as B.T. Assistant (Science). However, the third respondent school has not passed any order on the petitioner's representation dated 08.07.2016. Hence, the petitioner has come forward with the present writ petition before this Court.

4. Counter affidavit has been filed by the second respondent/District Educational Officer by stating that the petitioner was appointed as B.T. Assistant (Science) on 06.09.2012 in the place of Mrs.D.Evelyn Anita, who was promoted as P.G. Assistant (English) and for ratifying such promotion given to the petitioner, the third respondent school has sent a proposal on 08.11.2012 and it is true that such proposals have



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been returned by the office of the second respondent on 26.11.2012 for rectifying certain defects and to re-submit the proposal. The learned Government Advocate further submitted that the said proposal for approving the appointment of the petitioner was not accorded, inasmuch as the petitioner did not complete the TET examination, a mandatory condition prescribed for ratifying the appointment of teaching staff. The said proposal sent by the third respondent school on 14.02.2014 to approve the appointment of Mrs.D.Evelyn Anita, was kept in abeyance, inasmuch as one Mrs.Suguna as B.T. Assistant, has preferred an appeal before the first respondent questioning the appointment as Mrs.D.Evelyn Anita. It is further submitted that the first respondent directed the third respondent school to give promotion to one Mrs.Suguna as P.G. Assistant, as she is senior to Mrs.Evelyn Anita. The learned Government Advocate further submitted that Mrs.Suguna, was holding the post of P.G. Assistant till the date of retirement on 30.11.2014. The learned counsel further submitted that challenging the promotion was given to one Mrs.Suguna, as P.G. Assistant, Mrs.Evelyn Anita has filed W.P.No.34379 of 2014 before this Court and the same is pending. Therefore, the correctness of the promotion given to Mrs.Suguna, is the subject matter of the writ petition before this Court and the petitioner may not be aware of the fact that Mrs.Suguna, has also filed a writ petition in W.P.No.11814 of 2014 before this Court, in which notice was ordered on 25.04.2014. In fact, as on date, Mrs.Evelyn Anita is working only as B.T. Assistant (English). The petitioner is also working as B.T. Assistant and she was appointed to the said post on the promotion given to one Mrs.Evelyn Anita as P.G. Assistant, which was subsequently cancelled and Mrs.Evelyn Anita is working as B.T. Assistant. Since W.P.Nos.34379 and 11814 of 2014 are pending before this Court, and the petitioner has to await for adjudication of the writ petitions. It cannot be said that there is no embargo for the respondent to ratify and approve her appointment. As far as the promotion given to one Mrs.Evelyn Anita to the post of P.G. Assistant is concerned, it largely depends on the orders to be passed by this Court in the above two writ petitions. Therefore, when two writ petitions are pending for adjudication before this Court, which will have a bearing and impact on the ratification of the appointment of the petitioner, the relief claimed by the petitioner in this writ petition cannot be considered. Further, the learned Government Advocate further submitted that the representation dated 08.07.2016 made by the petitioner as well as the third respondent school for approving the appointment of the petitioner, cannot be considered by the respondents. Hence, the respondents pray to dismiss the writ petition filed by the petitioner.



5. Heard Mr.P. Ganesh, learned counsel appearing for the petitioner and Mrs.P. Kavitha, learned Government Advocate appearing for the respondents and perused the materials available on record.

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6. During the course of arguments, the learned counsel appearing for the petitioner submitted that a proposal was submitted by the third respondent school on 08.07.2016 to approve the appointment of the petitioner as B.T. Assistant in the third respondent school.

7. The learned counsel appearing for the petitioner submitted that challenging the reversion order passed by the Educational Authorities against one Mrs.Suguna, W.P.No.34379 of 2014 was filed and the same is pending before this Court. Further, the learned counsel for the petitioner submitted that there are two vacancies available in the post of B.T. Assistant in the third respondent school. Therefore, there is no legal embargo for the respondents to consider the petitioner's representation dated 08.07.2016 in accordance with the Rules.

8. Mrs.P. Kavitha, learned Government Advocate appearing for the respondents submitted that the aforesaid Mrs.Suguna, retired from service on 30.11.2014 and she obtained an order of interim status-quo, dated 23.01.2017. The aforesaid dispute between the said Mrs.Suguna and Mrs.D.Evelyn Anita, is pending for further adjudication before this Court. So far, the respondents 1&2 are not in a position to consider the proposal submitted by the third respondent-school for approving the appointment of the petitioner.

9. By considering the aforesaid facts and circumstances of the case, as two vacancies are still available in the third respondent school to the post of B.T. Assistant, there is no embargo to consider the request of the petitioner for approving the post of B.T. Assistant, based on her representation dated 08.07.2016 submitted by the petitioner.

10. Hence, the third respondent/Correspondent of the school is directed to consider the petitioner's representation dated 08.07.2016 and pass appropriate orders on merits and in accordance with law, as expeditiously as possible within a period of twelve weeks (12) from the date of receipt of a copy of this order.



11. With the above directions, the writ petition is disposed of. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

To

1.The Joint Director of School Education,
(Higher Secondary),
Chennai - 600 006.

2.The District Educational Officer,
Vellore District, Vellore.

3.The Correspondent,
V.R.V. Girls Higher Secondary School,
Ranipet, Vellore District.

+1cc to Mr.C.S.Associates, Advocate Sr.197
+1cc to the Government Pleader Sr.458

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