



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 27.01.2020

CORAM:

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

W.P.(MD) No.6558 of 2011

and

M.P(MD).No.1 of 2011

WEB COPY

A.Vimala Devi

... Petitioner

vs.

1.The District Educational Officer

Palani Educational District

Palani, Dindigul District

2.The Correspondent

Mr.Mema Cherian

Shanthinikethan Higher Secondary School

Ambilikkai Village, Ottanchatram Taluk

Dindigul District

3.Ms.V.Pushpa Theras

P.G.Tamil Teacher

Shanthinikethan Higher Secondary School

Ambilikkai Village, Ottanchatram Taluk

Dindigul District

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of writ of Mandamus, directing the second respondent to promote the petitioner to the post of Post Graduate Teacher in Shanthinikethan Higher Secondary School, Ambilikkai Village, Ottanchatram Taluk, Dindigul District, without approving the appointment of third respondent in that post.

For Petitioner

: Mr.M.V.Venkatesesan

For R1

: Mr.N.Shanmugaselvan

Special Government Pleader

For R2

: Mr.K.Sekar

For R3

: Fr.A.Xavier Arulraj

O R D E R

The above Writ petition has been filed for a direction to the second respondent to promote the petitioner to the post of Post Graduate Teacher in Shanthinikethan Higher Secondary School, Ambilikkai Village, Ottanchatram Taluk, Dindigul District, without approving the appointment of third respondent in that post.

2.According to the petitioner, she possessed B.A. Degree in Tamil as the main subject. Then, she obtained Post Graduate Degree (M.A.) with Tamil as main subject and has also obtained B.Ed. qualification. Based on the said qualifications, the second respondent by proceedings dated 21.11.2001 appointed the petitioner



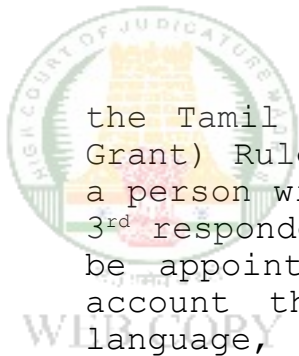
as Tamil Teacher in the second respondent institution. In the meanwhile, the petitioner has obtained M.Phil Degree in Tamil. Therefore, according to her, she is fully eligible to be promoted as Post Graduate Teacher for teaching Tamil to 11th and 12th students of the second respondent School. In these circumstance, one Tmt.Rajalakshmi, who was working as Post Graduate Tamil Teacher has attained the age of superannuation on 31.05.2011. According to the petitioner, as a candidate having Tamil as the basic subject in B.A., she is the only eligible person for promotion to the post of Post Graduate Tamil Teacher. But the second respondent without considering the petitioner for promotion to the post of Tamil Teacher, has appointed the third respondent to the post of P.G.Tamil Teacher on 15.06.2011. Against which, the petitioner made several representations to the respondents. But no action has been taken by the respondents so far. Hence, the petitioner is before this Court.

3.The learned counsel for the third respondent would submit that the second respondent School is a minority School and is entitled for protection under Article 30(1) of the Constitution of India. Due to the retirement of one Tmt.Rajalakshmi, P.G.Assistant (Tamil) on 31.05.2011, the third respondent who was working in the second respondent School as B.T.Assistant(Maths) from 03.06.1996, qualified to be appointed as P.G.Assistant(Tamil). The petitioner, who is also qualified for the said post is also working in the same School as B.T.Assistant (Tamil) from 21.11.2001, but junior to the third respondent by more than five years. Though the petitioner is claiming promotion as P.G.Assistant (Tamil), without prejudice to the other contentions raised by the petitioner, the learned counsel for the respondents in unison would state that the petitioner had not also challenged the promotion order. Hence, he prayed for dismissal of this Writ petition.

4.The learned Special Government Pleader appearing for the first respondent and the learned counsel appearing for the respondents 2 and 3 would submit that the petitioner has not challenged the promotion order and would also state that the third respondent is also qualified to be appointed as P.G.Assistant.

5.Heard the learned counsel for the petitioner; learned Special Government Pleader appearing for the first respondent and the learned counsel appearing for the second respondent as well as the third respondent.

6.Perusal of record shows that the petitioner knowing fully well that the 3rd respondent was already promoted and appointed as Post Graduate Assistant (Tamil), has not challenged her promotion. The 3rd respondent was duly promoted as Post Graduate Assistant (Tamil) on 04.06.2009 and subsequently the 3rd respondent also joined duty on 15.06.2011. It is also seen that the 3rd respondent is senior to the petitioner in the said School in B.T.Assistant cadre. Being a

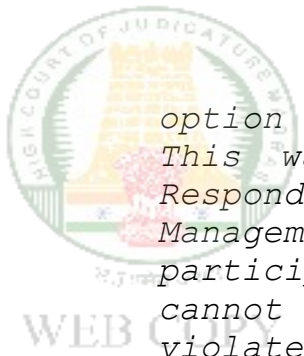


the Tamil Nadu Minority Aided Schools (Recognition and Payment of Grant) Rules 1977, which does not bar the management from promoting a person with cross-major to the Post Graduate Teacher post. The 3rd respondent is senior to the petitioner and she became eligible to be appointed to the said post as early as 2010 and taking into account the merit, seniority and her involvement in the Tamil language, she has been appointed as P.G.Assistant (Tamil). The 3rd respondent has also relied on the judgment reported in 2007-4-L.W. 617 where it has been observed as follows:

"14. As observed in TMA Pai Foundation's case, essential ingredients of the management including admission of students and recruitment of staff, cannot be regulated. It is of course true that the earlier decision of the single Judge in M. Chelladorai's case, which we have already noticed, also purported to rely upon the observations made in TMA Pai Foundation's case. However, now that the matter has been decided by the Supreme Court in (2007) 1 SCC 386 after referring to other earlier decisions, we do not think that the interpretation given earlier by different learned single Judges of this Court can hold good. The necessary conclusion, therefore, is that the discretion of the Management to appoint teacher of its own choice (of course a teacher who is otherwise qualified and eligible as per the prescribed regulations) cannot be curtailed through the process of rules, regulations or other executive instructions as such rules, regulations or executive instructions would violate the right of the minority institution under Article 30(1) of the Constitution.

15. Judged in light of the observations made by the Supreme Court in (2007) 1 SCC 386 (supra), the provisions which lay down qualification for appointment of teachers are obviously required to be followed; whereas the procedure contemplated in Rule 15(4) of the Rules severely constricting the scope of the discretion of the Management in appointment of teachers and confining the same to a particular source would be violative of Article 30(1). Therefore, such provisions are not required to be followed by the minority institutions. In view of the above, we cannot agree with the view expressed by the learned single Judge under the impugned judgment and such decision is liable to be over-turned.

16. Even assuming that Rule 15(4) of the Rules is applicable and therefore the Management had to follow such procedure, there is no requirement in the Rule nor there is any judicial pronouncement laying down that promotion has to be made only on the basis of seniority. As indicated in the Rule itself, only when a suitable candidate possess the qualification is available from the staff, his case can be considered. In the present case, the Management had given an



option to Respondent No.1 to participate in the interview. This was obviously with a view to assess the merit of Respondent No.1. It is no doubt true that simultaneously the Management had also given opportunity to outsiders to participate in the interview. But, merely because of that, it cannot be said that inservice candidates' right had been violated. It is quite possible to hold that the Management in order to avoid delay may think of simultaneously interviewing inservice candidates along with the outsiders and when inservice candidate is found meritorious, such candidate is required to be preferred where Rule 15(4) is applicable. However, merely because such candidate is being interviewed along with other outsiders may not be a factor to vitiate the selection.

17. In the present case, the learned single Judge has given a direction for appointment of Respondent No.1. Even assuming that Rule 15(4) of the Rules would have been applicable, in that case, the Management could have been directed to hold a fresh selection and under no circumstances a positive direction could have been issued for giving appointment to Respondent No.1 without assessment of her merit by the competent authority, namely, the Management. It is no doubt true that the learned single Judge has referred to the so called merit of Respondent No.1, but that was a matter which was required to be left to the Management to assess and the Court obviously should not have substituted its own wisdom".

7. Here, the petitioner has not even challenged the appointment order of the 3rd respondent and the above case is squarely applicable to the present facts and circumstances, where, it is held that it is for the management to appoint a teacher of its own choice and in this case, the management by considering the merit, seniority and all other qualifications had appointed the 3rd respondent as P.G.Assistant (Tamil) and the third respondent has also joined duty on 15.06.2011 and working till date. The appointment of the petitioner is also not challenged till date. Therefore, the Writ petition is devoid of merits.

8. Accordingly, the Writ petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-II)

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Sub Assistant Registrar (CS)



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To
The District Educational Officer
Palani Educational District
Palani, Dindigul District

+2 CC to M/s.V.JOHN KENNEDY, Advocate (SR-3213[F]
+1 CC to M/s.M.V.VENKATASESHAN, Advocate (SR-3427[F]
+1CC TO SPL.GOV.T.PLEADER, SR.NO.3127

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