



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.08.2021

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CORAM:

THE HON'BLE MR.JUSTICE M.GOVINDARAJ

WP NO.15808 OF 2008

M.Alamelu, M.A., M.A., B.Ed.,
Secondary Grade Assistant (Spl. Grade)
Sri Ekambarapuram Aided Middle School
Kancheepuram.

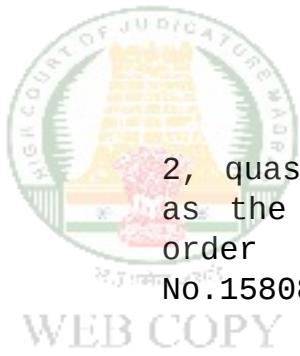
...Petitioner

Vs.

1. Director of Elementary Education
College Road, Chennai - 600 006.
2. The Joint Director of Elementary Education
Directorate of Elementary Education
College Road, Chennai - 600 006.
3. District Elementary Educational Officer
Kancheepuram, Kancheepuram District.
4. The Secretary cum Correspondent
Sri Ekambarapuram Aided Middle School
Kancheepuram - 2.
5. Ms.Suryakala
Graduate Assistant
Sri Ekambarapuram Aided Middle School
Kancheepuram.

...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus, to call for the records of the order dated 02.04.2008 passed by the 4th respondent - The Secretary and Correspondent, Sri Ekambaram Aided Middle School, Kancheepuram-



2, quash the same and further the 4th respondent to promote him as the B.T. Assistant, w.e.f. 29.11.2007 (Prayer amended vide order dated 06.01.2021 made in WMP No.34216/2016 in WP No.15808/2008)

For Petitioner : Mr.S.Giridharan

For Respondents : Mr.C.Selvaraj
***1 to 3** Government Advocate(CivilSide)

For Respondent ***4**: Mr.P.Ganesan
for M/s.C.S.Associates
***Mr.S.Balasubramanian**
for Respondent 5

O R D E R

The petitioner was appointed as a Secondary Grade Assistant on 25.01.1988 in the fourth respondent school. She passed B.Lit., in the year 1990; B.Ed., in 1992; M.A. (Tamil) in 1996; and M.A. (History) in 2002 and thus, she is fully eligible to be appointed as B.T. Assistant.

2.In G.O.Ms.No.240, School Education Department, dated 22.09.2007, the Government has issued directions to fill up the vacancies of Graduate Assistant (Tamil) by promotion instead of adopting direct recruitment method. Therefore, according to the petitioner, she is fully eligible to be appointed as Graduate Assistant.

3.While the matters stood thus, on 29.11.2007, due to the resignation of one A.Baskar, Secondary Grade Assistant, a vacancy arose in the fourth respondent school. It has to be upgraded and filled up with a Graduate Assistant. The Assistant Elementary Educational Officer, Kancheepuram, has recommended for making appointment to the post, which was concurred by the respondents nos.1 and 3. However, the fourth respondent school appointed the fifth respondent, who is a Science Graduate, on 01.04.2008 and he joined as such on 02.04.2008. The petitioner made a representation on 17.04.2008 to promote her as Graduate



Assistant followed by a reminder dated 22.04.2008. However, the petitioner's request was not considered. In the meantime, the petitioner sent representations on 03.04.2008 and 18.04.2008 with a request to cancel the appointment of the fifth respondent and to appoint her in the vacancy that arose on 29.11.2007. Since no action was taken, the petitioner has preferred the above writ petition seeking to set aside the order of appointment of the fifth respondent made by the fourth respondent and for a consequential direction to promote her as B.T. Assistant with effect from 29.11.2007.

4.The learned Government Advocate (Civil Side) appearing on behalf of the respondents *1 to 3 denied the allegations made by the petitioner stating that when promotion was made, the petitioner was not at all eligible to be appointed to that post, as the post was identified as Graduate Assistant (Science). Since the petitioner is a Tamil Pandit, she is not entitled to be appointed in that post. However, she was appointed as B.T. Assistant, pursuant to the vacancy that arose on 01.09.2008 due to the promotion of one Sankar as Headmaster. Further, the petitioner was promoted as Graduate Assistant (Tamil) by virtue of the proceedings in Mu.Mu.No.4961/B4/2011 dated 28.11.2011 and the same was approved. Therefore, the request for promoting the petitioner with effect from 29.11.2007 to the post of Graduate Assistant (Science) was not acceded to and the same was rejected on 24.03.2008.

5.The learned counsel for the petitioner would contend that the order passed by the third respondent is violative of G.O.Ms.No.240, School Education Department, dated 22.09.2007, wherein, clear instructions were given to promote the eligible Graduate Teachers (Tamil) for the vacancies which arise in future. Further, as per Rule 15(4), the senior most Teacher, who is eligible to be appointed as Graduate Assistant, shall be promoted and if no qualified Teacher is available, direct recruitment method shall be resorted. He would submit that the Hon'ble First Bench of this Court in THE SECRETARY, SALIAR MAHAJANA HIGHER SECONDARY SCHOOLS, ARUPPUKOTTAI VS. G.SUBBURAJ AND OTHERS [2005 (1) CTC 8] has upheld the legal position. Therefore, according to the learned counsel for the petitioner, the petitioner should be appointed as B.T. Assistant from the date on which the vacancy.



6.Per contra, the learned Government Advocate (Civil Side) would submit that as per the Government Order in G.O.Ms.No.240, whenever vacancies arises to the post of Graduate Assistant (Tamil), promotion shall be given to the Secondary Grade Teachers, who are possessing the qualification for the post of Graduate Assistant (Tamil). Likewise, for the Graduate Assistant in other subjects, the qualified Teachers in that particular subject shall be promoted. If no qualified Teacher is available, with an approval of the Government, the post can be filled up by direct recruitment. For the vacancy that arise in the category of Secondary Grade Teacher, the Graduate Assistant will be appointed by direct recruitment. Preference for promotion should be given to the B.Ed., Teachers in respect of all subjects instead of restricting it to English, Science and Maths alone. Therefore, as per G.O.Ms.No.240, the post of Graduate Assistant (Tamil) should be filled up by promotion from the eligible Tamil Pandits with B.Ed., qualification. But, whereas the vacancy arose for B.T. Assistant due to the resignation of one A.Baskar was upgraded as Graduate Assistant (Science) as per the Resolution passed by the fourth respondent School Committee. Therefore, the post could be filled up only by a Science Graduate. Since no Science Graduate was available in that school, direct recruitment was adopted with the concurrence of the Government and the fifth respondent was appointed. Therefore, the petitioner cannot have any grievance against the appointment and her request for the same cannot be acceded to.

7.I have considered the rival submissions.

8.From the perusal of the records placed before this Court, it could be inferred that the petitioner was appointed as a Secondary Grade Teacher on 25.01.1988 and qualified to become Graduate Assistant by acquiring B.Ed., in the year 1992. It is no doubt that the petitioner is qualified to become a Graduate Assistant (Tamil). However, by way of a Resolution passed by the School Committee on 02.01.2008 of the fourth respondent, it was decided to seek approval of the Government to upgrade the post of Secondary Grade Teacher to Graduate Assistant (Science). In the Resolution of the School Committee, the petitioner had also



signed as one of the senior most Teachers of the school. Pursuant to the request, the District Elementary Educational Officer, has granted approval to fill up the post of Graduate Assistant (Science) by direct recruitment. Accordingly, the fourth respondent has sent a letter on 13.02.2008 to the District Employment Office, Kancheepuram, to sponsor a Science Graduate with B.Ed., from among O.C. Category and newspaper publication was also made on 16.02.2008 calling for Science Graduate under O.C. Category.

9.It is relevant to note that as per G.O.Ms.No.241, Personnel and Administrative Reforms (K) Department, dated 29.10.2007, directions were given to fill up the posts as per the revised 200 point roster with effect from 15.09.2007 and the selection shall be started afresh from serial number one of the 200 point roster with effect and from the said date.

10.In the instant case, the selection to the post of Graduate Assistant to the fourth respondent school commenced from February 2008 and as per the 200 point roster, the first turn belongs to General Turn. Therefore, the publication was made calling candidates under O.C. Category in the Science discipline. On 05.03.2008, an interview was conducted and on 27.03.2008, the School Committee resolved to appoint the fifth respondent as B.T. Assistant. As such, the fifth respondent joined as B.T. Assistant (Science) on 02.04.2008. In the meanwhile, the request of the petitioner to promote her as B.T. Assistant was rejected by the third respondent on 24.03.2008. She made further representation on 03.04.2008 for cancelling the appointment of the fifth respondent. Since there is no response to her representation, she has filed the present writ petition.

11.Thus, the fact remains that the fifth respondent was promoted to the post of Graduate Assistant (Science) whereas the petitioner is only a Tamil Pandit qualified to be appointed as Graduate Assistant (Tamil). Even though G.O.Ms.No.400, Education Science and Technology Department, dated 25.05.1995 directed filling up of senior most Teacher in the school, as Graduate Assistant, the subsequent Government Order in G.O.Ms.No.240, School Education Department, dated 22.09.2007 specifically



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14. In the result, the writ petition stands dismissed. No costs.

Sd/-
Assistant Registrar(CO)
Dated: 27/09/2021

*** Corrected as per order of this Court,
dated 28/09/2021 made in W.P.No.15808 of 2008**

Sd/-
Assistant Registrar(CO)
Dated : 04/10/2021

//True Copy//

Sub Assistant Registrar

To

1. Director of Elementary Education
College Road, Chennai - 600 006.
2. The Joint Director of Elementary Education
Directorate of Elementary Education
College Road, Chennai - 600 006.
3. District Elementary Educational Officer
Kancheepuram, Kancheepuram District.
4. The Secretary cum Correspondent
Sri Ekambarapuram Aided Middle School
Kancheepuram - 2.

*** To be substituted
to the order
already
despatched on
27/09/2021**

+1cc to Mr.S.Gridharan, Advocate, S.R.No.42575
+1cc to M/s.S.Balasubramanian, Advocate, S.R.No.42507
*** +1cc to M/s.C.S.Associates, Advocate, S.R.No.50173**

WP NO.15808 OF 2008

PMK(CO)
RGA(27/09/2021)
RLP(04/10/2021)