



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On	19.08.2021
Pronounced On	02.11.2021

CORAM

THE HON'BLE MR.JUSTICE C.SARAVANAN

W.P.No.32371 of 2019

(Through Video Conferencing)

T.Jayaprakasam ... Petitioner

Vs.

1.The Chief Educational Officer,
Tiruvarur District, Thiruvarur.

2.The District Educational Officer, IC
Tiruvarur District, Thiruvarur.

3.The Correspondent,
Needamangalam Higher Secondary School,
Needamangalam,
Tiruvarur District.

4.Head Master,
Needamangalam Higher Secondary School,
Needamangalam,
Tiruvarur District.

... Respondents

Writ Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorarified Mandamus, to call for the records relating to the impugned order of the second respondent in Na.Ka.No.537/Aa3/2018 dated 29.08.2019 and quash the same and consequently direct the respondents to approve the promotion of the petitioner as B.T. Assistant Tamil from the date of promotion on 20.03.2014.

For Petitioner : Mr.L.Chandrakumar
for Mr.T.Elumalai

For R1 & R2 : Mr.L.S.M.Hasan Fizal, Govt. Adv.

For R3 & R4 : Mr.J.Nedunchezhiyan

ORDER

The petitioner has challenged the impugned order dated 29.08.2019 passed by the second respondent rejecting the proposal of the third respondent to appoint the petitioner as a B.T. Assistant (Tamil) in the fourth respondent school.



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2. It is the case of the petitioner that the petitioner started working with the fourth respondent school as a Library Attendant with effect from 23.10.2000 and thereafter the petitioner was promoted as a Lab Assistant in the fourth respondent school on 01.06.2006.

3. It is the further case of the petitioner that the petitioner subsequently obtained higher qualification in B.A. (Tamil) and since a vacancy arose on 31.05.2011 on account of the retirement of one Tmt.K.Thalthagai Yazhini, a B.T. Assistant (Tamil), it was decided by the School Committee to appoint the petitioner to the post of B.T. Assistant (Tamil). The third respondent therefore sent a representation dated 10.05.2016 to the second respondent to approve the appointment of the petitioner as a B.T. Assistant (Tamil) from the date of appointment. Since the said representation did not evoke any response, the petitioner filed W.P.Nos.41365 & 41366 of 2019.

4. By an order dated 18.12.2018, this Court directed the third respondent, namely, the Correspondent, Needamangalam Higher Secondary School, Needamangalam, Thiruvarur District, to send a fresh proposal to the second respondent, namely, the District Educational Officer, Thiruvarur District for approval of the promotion of the petitioner as B.T. Assistant (Tamil) and on receipt of the same, the second respondent was directed to consider and dispose of the same on merits and in accordance with law.

5. Pursuant to the aforesaid directions of this Court, the second respondent has now passed the impugned order dated 29.08.2019. The impugned order has been challenged in this Writ Petition primarily on the ground that the second respondent had wrongly concluded that at the time of retirement of Tmt.K.Thalthagai Yazhini, B.T. Assistant (Tamil) there was a surplus vacancy and there was no scope for regualrising the appointment of the petitioner by promotion.

6. In this connection, the learned counsel for the petitioner has placed the reliance on a recent decision of this Court in W.A.No.1022 of 2020 rendered on 07.01.2021, wherein, in paragraph 9, it was held as under:-

9. In the present case, the order impugned cannot be faulted, since there was no mechanism of either kind as referred to above. It is irrelevant that the vacancy arose in 2014 and the attempt to fill the vacancy was undertaken in 2018. Since there was no Rule to seek prior permission from the District Educational Officer before the appointment procedure was undertaken, the School cannot be blamed. The appointment cannot be denied

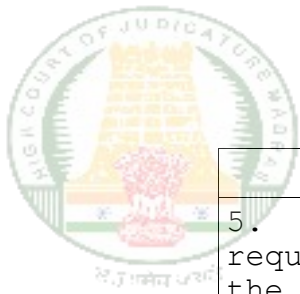


merely because there was surplus staff which the school was not made aware of before the School undertook the appointment procedure.

7. The learned counsel for the petitioner further submits that the second respondent has wrongly concluded that the third respondent school was not entitled to promote the petitioner, who was working as a Lab Assistant in that school, as a teacher in terms of Rule 15(4)(i) of the Tamil Nadu Recognised Private Schools (Regulation) Rules, 1974. He submits that a Lab Assistant could be appointed and promoted in the light of the fact that the petitioner had requisite qualifications. It is further submitted that the petitioner is not required to obtain any other Technical qualification and therefore the impugned order is liable to be interfered by allowing this Writ Petition.

8. The learned counsel for the petitioner has also filed a copy of an interim order dated 14.06.2019 of this Court in W.P.No.16599 of 2019. the learned counsel for the petitioner also referred to a RTI Clarification dated 16.07.2013 issued by the District Educational Officer, North Chennai to one Gopalakrishnan. It reads as under:-

Questions	Answer
1. The information is requested regarding grant of promotion to the Junior Assistant / Assistant of office employees working in the aided schools who are qualified for B.T.Assistant?	Promotion may be granted if they are qualified.
2. Whether the information is requested to require the TET examination or not the Junior Assistant/Assistant of office employees working in the aided schools those are qualified for B.T.Assistant?	Any Government Order did not received.
3. As per recent two percent reservation, the office workers of the Tamil Nadu Government school have been promoted as BT Assistants. Information is requested as to whether there is TET exam to them or not?	TET exam is not required
4. Whether the information is requested to require the TET exam to the office workers who have been working for many years in the aided schools are eligible for BT Assistant, information is requested as to whether there is TET exam to them or not?	Not necessary



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Questions	Answer
5. Whether the information is requested to require the TET exam to the office workers who have been working for many years in the aided schools are eligible for Tamil Pandit information is requested as to whether there is TET exam to them or not?	Not necessary

9. The learned Government Advocate for the first and second respondents submits that the Paragraph 9 of the above decision of this Court in W.A.No.1022 of 2020 was not applicable to the facts of the case. He submits that the said post for which the petitioner was appointed was a surplus post on account of the retirement of one Tmt.K.Thalthagai Yazhini on 31.05.2011 and in absence of any other teaching staff in her place, recruitment ought to have been made only by way of direct recruitment in terms of Rule 15(4)(ii)(i) of the aforesaid Rules. It is therefore submitted that the order passed by the second respondent was in accordance with law. It is further submitted that there is also no evidence to substantiate that the petitioner had discharged duties as a Tamil Teacher in the fourth respondent school. On the other hand, it is submitted that the petitioner has been discharging duty only as a Lab Assistant. It is therefore submitted that this writ petition is liable to be dismissed.

10. I have considered the arguments advanced by the learned counsel for the petitioner and the learned Government Advocate for the respondents.

11. The second respondent has rejected the proposal sent by the third respondent for approving the promotion of the petitioner to the post of B.T. Assistant (Tamil) from the post of Lab Assistant. The reasons given by the second respondent are that there are no records to substantiate that the petitioner had indeed as a B.T. Assistant (Tamil) from 20.03.2014, i.e. from the date on which the School Committee has appointed the petitioner as B.T. Assistant (Tamil) and that the petitioner does not possess requisite qualification in terms of G.O.Ms.No.181, School Education Department, dated 15.11.2011 and that the post of Junior Assistant and Assistant is not a feeder category for promoting the petitioner as B.T. Assistant. That apart, it has been stated that after Tmt.K.Thalthagai Yazhini retired from service on 31.05.2011, the aforesaid post was rendered surplus and therefore the question of appointing the petitioner even otherwise as B.T. Assistant did not arise.

12. Further, Rule 15(4) of the Tamil Nadu Recognised Private Schools (Regulation) Rules, 1974 reads as under:-



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Teachers and Other Persons:

- (1) The number of teachers and other persons employed in a private school shall not exceed the number of posts sanctioned by Director of School Education, from time to time, with reference to the academic requirements teacher-pupil ratio and overall financial considerations.
- (2) (i) The school committee of every private school shall enter into an agreement with the teacher or other person in Form VII-A or VII-B if the appointment is for a period exceeding three months."
(i-a) The school committee of every private school shall enter into an agreement with the person appointed as Junior Grade Teacher in Form VII-C.
- (3) In a regular vacancy, a fully qualified candidate shall be appointed only on a regular basis. However, in a temporary vacancy, i.e. Leave vacancy, deputation for training or suspension of the Teacher's certificate, a Teacher or other person may be appointed for a specified period. In such cases, the agreement to be executed shall be in Form VII-B.
- 4(i) Promotion shall be made on grounds of merit and ability, seniority being considered only when merit and ability are approximately equal.
- (ii) Appointments to the various categories of Teachers shall be made by the following methods:-
 - i. Promotion from among the qualified teachers in that school.; or
 - ii. Promotion from among the qualified Vocational Instructors in that School;
 - iii. If no qualified and suitable candidate is available by method (i) above,-
 - (a) Appointment of other persons employed in that school, provided they are fully qualified to hold the post of



- teachers;
(b) Appointment of teachers from any other school".
(c) Direct recruitment.

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In the case of appointment from any other school or by direct recruitment, the School Committee shall obtain prior permission of the District Educational Officer in respect of Pre-Primary, Primary and Middle School and that of the Chief Educational Officer in respect of High Schools and Higher Secondary Schools, Teachers' Institutions setting out the reasons for such appointment. In respect of Corporate body running more than one school, the schools under that body shall be treated as one unit for purpose of this Rule.)

(d)

(4-A)

(5)

13. From a reading of the above Rule, it is evident that there are different methods prescribed for appointing a person as a Teacher or promoting a person as a Teacher. Rule 15(4) (i) of the said Rules makes it clear that a promotion shall be made on the grounds of merit and ability, seniority being considered only when merit and ability are approximately equal.

14. In terms of Rule 15(4)(ii)(i) of the Rules, the petitioner cannot be promoted as the petitioner was not a qualified teacher. The petitioner also cannot be promoted as a Teacher as the petitioner was not a qualified Vocational Instructors of the said School in terms of Rule 15(4)(ii)(ii) of the Rules and therefore, the question of promoting the petitioner as B.T. Assistant (Tamil) also does not arise.

15. Only the avenue that is available is for appointment under Rule 15(4)(ii)(iii) of the Rules. However, such appointment would be again subject to the petitioner having requisite qualification to hold the post as a Teacher. Therefore, the appointment of the petitioner under Rule 15(4)(ii)(iii) read with sub-clause (a), (b) and (c) appears to be satisfied only partially if there were no other persons employed in that school provided who were fully qualified to hold the post of the Teachers.

16. Further, in the wake of G.O. (Ms) No.181, School Education (C2) Department, dated 15.11.2011, there are requirements of passing the "Teacher Eligibility Test" (TET). Therefore, it cannot be said that the petitioner was not qualified to be appointed as a teacher in terms of Rule 15(4)



(ii)(iii)(a) of the Rules. There are no records to show that the petitioner has qualified in the "Teacher Eligibility Test" (TET) as is required in terms of G.O. (Ms) No.181, School Education (C2) Department, dated 15.11.2011.

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17. Since no records have not been filed even before this Court to substantiate that the petitioner had obtained the requisite qualification in "Teacher Eligibility Test" (TET), the appointment of the petitioner as a B.T. Assistant (Tamil) cannot be countenanced.

18. Under these circumstances, I do not find any merits in this Writ Petition and therefore, this Writ Petition is liable to be dismissed. However, in case the petitioner has qualified "Teacher Eligibility Test" (TET) during the interregnum, the third and fourth respondents may send a suitable proposal for appointment of the petitioner as a B.T. Assistant (Tamil).

19. This Writ Petition is dismissed with the above observations. No cost.

Sd/-

Assistant Registrar (CS-VI)

//True Copy//

Sub Assistant Registrar

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To

- 1.The Chief Educational Officer,
Tiruvarur District, Thiruvarur.
- 2.The District Educational Officer, IC
Tiruvarur District, Thiruvarur.
- 3.The Correspondent,
Needamangalam Higher Secondary School,
Needamangalam, Tiruvarur District.
4. The Head Master,
Needamangalam Higher Secondary School,
Needamangalam,
Tiruvarur District.

+1cc to Mr.T.Elumalai, Advocate, S.R.No.57360

W.P.No.32371 of 2019

GPL (CO)

SB(26/11/2021)

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