



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 03.09.2021

CORAM:

THE HONOURABLE MR.JUSTICE **S.S.SUNDAR**

W.P. (MD)No.2136 of 2013

V.Amutha

... Petitioner

vs.

1.State of Tamil Nadu

represented by the Secretary to the Government,
Department of Education, Secretariat,
Fort St.George, Chennai - 9.

2.The Director,

Tamil Nadu Teachers Recruitment Board,
Fourth Floor, E.V.K.Sampath Maligai,
College Road, Chennai - 6.

3.The Director of Elementary Education,
Directorate of Elementary Education,
DPI, Complex, College Road,
Chennai - 6.

4.The Joint Director of Elementary Education,
Directorate of Elementary Education,
DPI, Complex, College Road,
Chennai - 6.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Mandamus, to direct the respondents to fix the petitioner's seniority on par with the persons of priority category of ex-servicemen who are appointed through the counselling conducted by the second respondent on 30.12.2008 and consequently re-fix the petitioner's salary on the basis of such seniority and pay the arrears of salary.

For Petitioner	:Mr.B.Rajesh Saravanan
For R-1, R-3 & R-4	:Mr.M.Linga Durai
	Government Advocate
For R-2	:Mr.V.R.Shanmuganathan

O R D E R

This Writ Petition is filed for issuance of a Writ of Mandamus, to direct the respondents to fix the petitioner's seniority on par with the persons under priority category of Ex-Servicemen, who are appointed through the counselling conducted by the second respondent on 30.12.2008 and consequently, to re-fix the petitioner's salary on the basis of such seniority and pay the arrears.



2.Heard Mr.B.Rajesh Saravanan, learned Counsel for the petitioner, Mr.M.Linga Durai, learned Government Advocate appearing for R1, R3 and R4 and Mr.V.R.Shanmuganathan, learned Counsel appearing for the second respondent.

3.The petitioner admittedly satisfied the eligibility criteria and qualification for the post of B.T.Assistant in Middle School and High School in the State of Tamil Nadu. Pursuant to a process of selection initiated by the Teacher Recruitment Board, namely, the second respondent, the petitioner participated as a candidate under the priority category being a daughter of Ex-serviceman. A list was published and the petitioner was placed in the list, but, with a specific mark against her name indicating that her name was being withheld. The petitioner came to know that her name was withheld by the respondents on the ground that she was not entitled to get employment on priority basis, as a daughter of Ex-Serviceman, since the petitioner was married.

4.The petitioner earlier filed a Writ Petition in W.P.(MD) No.373 of 2009 for issuance of Writ of Mandamus directing the respondents therein to issue an appointment order in favour of the petitioner as Graduate Teacher pursuant to the counselling held on 30.12.2008. The Writ Petition was disposed of with the direction to the respondents to consider the petitioner's representation, dated 01.01.2009, in the light of the law laid down by this Court with regard to married daughter of Ex-serviceman. Earlier this Court found that the petitioner cannot be denied employment under priority category merely because she is married.

5.Even after the disposal of the Writ Petition, it is seen that the petitioner was forced to give several representations to implement the direction of this Court in W.P.(MD)No.373 of 2009. Finally, the petitioner was appointed by the second respondent by order dated 12.06.2009. Stating that the petitioner was entitled to get appointment on par with the other candidates, who are also appointed under priority category, as married daughter of Ex-servicemen, the learned Counsel appearing for the petitioner also relied upon a judgment of this Court in W.P.(MD).No.9246 of 2006 in the case of **M.V.Radha vs Secretary to Government and others**, dated 19.12.2007. In the said case, the question arose was whether a married woman loses her status from her birth family and ceases to be dependent of Ex-serviceman. This Court allowed the Writ Petition by holding that getting marriage is not a criteria to deny the priority in employment. Since the same yardstick is not applied in the case of son. Since the learned Single Judge specifically held that it will be discriminatory, if a married daughter is denied the dependent status.

6.A counter affidavit has been filed by the second respondent *inter alia* pointing out the whole selection process, that was
<https://hcservices.ecourts.gov.in/hcservices/>

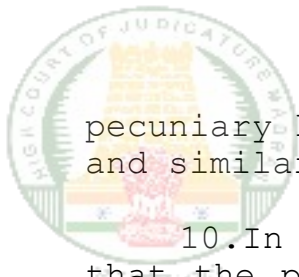


maintained and being followed by the second respondent. It is contended by the Teachers Recruitment Board that the second respondent, being a recruitment agency, has no role to play in the Writ Petition, as their job is to select/appoint the eligible candidates. Since the petitioner was selected by the second respondent, the role of second respondent is over by giving appointment order, which is done in this case. The learned Counsel appearing for the second respondent submitted that it is for the other respondents to decide whether the petitioner should be appointed with retrospective effect by treating her appointment on par with other candidates, who were also selected under priority category as daughters of Ex-serviceman.

7.The eligibility of the petitioner to get priority in employment as daughter of Ex-servicemen is considered by this Court in several cases. This Court categorically held that marriage cannot be a criteria to deny the priority in employment. Since the dependent status was denied only to a married woman, this Court further held that such denial will be violative of Article 14 of the Constitution of India, as being discriminatory.

8.The petitioner was selected on merits under priority category. The specific stand taken by the petitioner that her candidature was not considered only because she was married is not in dispute. It is to be noted that the respondents have considered the candidature of one Ms.Subalatha and appointed her under priority category even though said Ms.Subalatha was a daughter of Ex-serviceman. In the earlier Writ Petition filed by the petitioner in W.P.(MD)No.373 of 2009, the issue decided by this Court in earlier decisions was reiterated and there was a positive direction to give employment to the petitioner under priority category. However, the petitioner was appointed only after the order passed by this Court in W.P.(MD)No.373 of 2009, dated 09.01.2009. When the petitioner was provisionally selected and her selection was withheld only on the ground that she cannot be considered under the priority category, as she was a married daughter of Ex-serviceman, the petitioner is entitled to claim seniority on par with the persons, who are also appointed under priority category of Ex-serviceman through the counselling conducted by the second respondent on 30.12.2008.

9.In the counter affidavit filed by the second respondent, there is no whisper about the eligibility of the petitioner to be appointed to the post. However, the only issue, that was projected by the second respondent in the counter affidavit, is about the delay and the rights of other candidates. The petitioner is not seeking seniority above the persons, who were also considered, selected and appointed under the priority category. However, the petitioner, who is entitled to get employment under priority category along with others, is entitled to claim seniority and other



pecuniary benefits on par with other candidates, who were appointed and similarly placed.

10. In view of the discussion above, this Court is of the view that the petitioner is entitled to get seniority fixed on par with the persons, who were appointed under priority category of Ex-serviceman by the counselling conducted by the second respondent on 30.12.2008. The petitioner also entitled to get her seniority fixed, as if she was also appointed on 31.12.2008. The petitioner is also entitled to other consequential benefits by taking her appointment on par with other persons, who were appointed under priority category of Ex-servicemen through the counselling conducted by the second respondent on 30.12.2008. But the petitioner is not entitled to salary for the period before her date of appointment. The entire exercise shall be completed by the respondents within a period of twelve weeks from the date of receipt of a copy of this order.

11. This Writ Petition is disposed of accordingly. No costs.

Sd/-

Assistant Registrar (AS)

// True Copy //

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Sub Assistant Registrar (CS)

cmr/nsr

To

1. The Secretary to the Government,
State of Tamil Nadu,
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Chennai - 6.



+1 CC to M/s.B.RAJESH SARAVANAN, Advocate (SR-28146[F] dated 03/09/2021)

+1 CC to M/s.SPL GP (SR-28342[F] dated 07/09/2021)

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