



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED:17.03.2021

CORAM

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THE HONOURABLE MR. JUSTICE M.DHANDAPANI

W.P(MD) .No.7224 of 2017

and

W.M.P. (MD) .Nos.5692, 5693 and 12175 of 2017

J.S.Rajam

.. Petitioner

Vs.

1.The Manager of R.C.Schools,
Bishop's House,
Thoothukudi - 628 001.

2.The Superintendent of R.C.Schools,
Bishop's House,
Thoothukudi-628 001.

3.St.Michael's High School,
rep. by its Correspondent,
Notchikulam,
Thoothukudi District-628 701

4.The Tuticorn Diocean Associaton,
(Reg. No.S1/37-38 dated 14.04.1937).
No.82, G.C.Road, Thoothukudi- 628 001.

5.The District Educational Officer,
Thoothukudi- 628 003.

6.Antony Sabin Arasi,
R.C.Street,
Thisaiyanvilai-627 657,
Tirunelveli District.

.. Respondents

PRAYER: Writ Petition is filed under Article 226 of Constitution of India for issuance of Writ of Mandamus, directing the respondents 1 to 4 to appoint/absorb the petitioner in the Post of B.T. Assistant (Mathematics) caused on the retirement of Mr.Sakthivel, B.T.Assistant (Mathematics) in the 3rd respondent school.



For Petitioner

: Mr.David Ganesan
M/s.J.Ashok

For Respondents 1 to 4

: Mr.V.John Kennedy

For Respondent No.5

: Mr.C.M.Marichelliah Prabhu
Additional Government Pleader

For Respondent No.6

: Mr.R.Balakrishnan

ORDER

This writ petition has been filed for a direction to the respondents 1 to 4 to appoint/absorb the petitioner in the Post of B.T.Assistant (Mathematics) caused on the retirement of Mr.Sakthivel, B.T.Assistant (Mathematics) in the 3rd respondent school.

2. The case of the petitioner is that the third respondent school was functioning as a Middle School and subsequently, in the year 1999, the school was upgraded into High School. By the time of upgrading the school, the government followed the policy of granting recognition without aid. However, the appointment of the qualified teachers to teach the respective subjects was compulsory. Accordingly, the school needed subject-wise teachers to work in the unaided posts. The petitioner was appointed as B.T.Assistant for teaching Mathematics on 18.08.1999 and the respondents 1 to 4 requested the petitioner to work without regular salary until a regular vacancy arises. While so, one Sakthivel, Headmaster incharge of school retired on 30.11.2006 and his approved B.T.Assistant (Mathematics) post became vacant. As per natural justice and on legal basis, the petitioner should have been absorbed in the said post. However, the petitioner understand that one Antony Sabin Arasi, the 6th respondent herien, a fresh candidate, from Thisayanvilai has been appointed in the said post. In this regard, the petitioner made representations on 10.11.2016, 11.03.2017 and 15.03.2017 to the respondents 1 to 5. Since no steps have been taken to absorb the petitioner in the vacant B.T.Assistant (Mathematics) post, the petitioner filed the present writ petition for the above said relief.

3. The learned counsel for the petitioner would submit that though the petitioner was working as B.T.Assistant(Mathematics) in the 3rd respondent school from 18.08.1999 without regular salary for more than 18 years, when the vacancy arose, the first respondent, by order, dated 15.12.2013, appointed the 6th respondent as B.T.Assistant(Mathematics) instead of considering the petitioner is not sustainable in law. He would further submit that the petitioner has also passed the Teachers Eligibility Test. Thus, the petitioner is entitled to be absorbed/appointed in the vacant post of



B.T.Assistant (Mathematics). Hence, he prays to issue a direction to the respondents to consider the petitioner's representations.

4. Per contra, the learned Additional Government Pleader appearing for the 5th respondent filed counter and submitted that the first respondent, by his order, dated 15.12.2016 appointed the 6th respondent as B.T.Assistant (Mathematics) in the 3rd respondent school from 19.12.2016 in the vacancy arose out of promotion of one Gunasekar, Secondary Grade Assistant Teacher, who was promoted as Graduate Assistant Teacher on 05.12.2016. He further submitted that the 6th respondent was not appointed in the vacancy arose out of one Sakthivel, B.T.Assistant(Mathematics) retired from service on 30.11.2016. Hence, he prays for dismissal of this writ petition.

5. Heard the learned counsel appearing on either side and perused the materials available on record.

6. The facts in the present case are not disputed. Admittedly, the petitioner was appointed as B.T.Assistant (Mathematics) on 18.08.1999 and the respondents 1 to 4 requested the petitioner to work without regular salary until a regular vacancy arises. While so, one Sakthivel, Headmaster incharge of school retired on 30.11.2006 and his approved B.T.Assistant(Mathematics) post became vacant. In the meanwhile, the first respondent, by his order, dated 15.12.2016 appointed the 6th respondent as B.T.Assistant (Mathematics) in the 3rd respondent school from 19.12.2016. The grievance of the petitioner is that though the petitioner has acquired necessary educational qualifications and also rendering services for more than 18 years in the third respondent school for meager salary, without absorbing the petitioner in the vacant post, appointing the 6th respondent is non-est in the eye of law. In view of the above, this Court, without going to the merits of the case, permits the petitioner to challenge the order of appointment of the 6th respondent.

7. Accordingly, this Writ Petition is disposed of with liberty to the petitioner to challenge the appointment of the 6th respondent. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS-II)

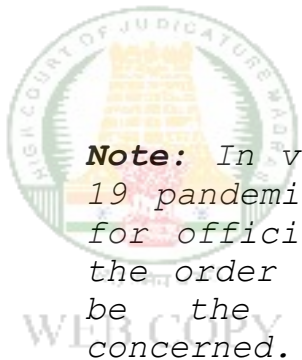
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/ /2021

Sub Assistant Registrar(CS)

PJL

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To
The District Educational Officer,
Thoothukudi- 628 003.

+1 CC to M/s.FATHER XAVIER ASSOCIATES, Advocate (SR-11970[F] dated 17/03/2021)

+1 CC to M/s.SPL GP (SR-12109[F] dated 18/03/2021)

+1 CC to M/s.R.BALAKRISHNAN, Advocate SR-12555[F] dated 19/03/2021

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srk(CO)
TR(23.06.2021) 4P 5C