



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.03.2022

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THE HONOURABLE MR.JUSTICE M.S.RAMESH

W.P.No.18011 of 2013

and

MP.Nos.2 & 3 of 2013

Tmt.M.Revathi
Secondary Grade Teacher
S.Muthukumarasamy Aided Middle School
Thenmagadevamandalam
Thiruvannamalai District.

... Petitioner

Vs.

1. The State of Tamil Nadu
Rep. by the Principal Secretary to Government,
School Education Department,
Fort St.George, Chennai - 600009.
2. The Director of Elementary Education,
College Road, Chennai - 6.
3. The District Elementary Education Officer,
Thiruvannamalai District.
4. The Assistant Elementary Education Officer,
Kalasapakkam.
5. S.Muthukumarasamy Aided Middle School
Rep. by its Secretary
Thenmagadevamangalam,
Thiruvannamalai District.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, to call for the entire records connected with the impugned proceedings of the third respondent passed in Na.Ka.No.5766/Aa4/2012 dated 02.01.2013 and quash the same and directing the third respondent to approve the appointment of the petitioner as Secondary Grade Teacher in the fifth respondent's School w.e.f. 16.05.2012 with all consequential benefits.



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For Petitioner : Mr.S.N.Ravichandran
For Respondents : M/s.Rajarajeswari
Government Advocate [R1 to R4]
No Appearance [for R5]

ORDER

The petitioner herein was appointed as a Secondary Grade Teacher on 16.05.2012 pursuant to the permission granted by the first respondent on 12.04.2012. Her appointment came to be cancelled through the impugned order dated 02.01.2013 on the ground that the appointment was not in accordance with G.O.Ms.No.241 dated 29.10.2007, which stipulates the communal roster and also that she has not passed the Teachers Eligibility Test.

2. The issue as to whether the appointment can be cancelled on the basis of non-compliance of the communal roster, came up for consideration before this Court in the case of 'S.Shanmugapriya Vs. The District Elementary Educational Officer & others' passed in WP.No.28058 of 2017 dated 29.01.2019 and this Court had held that when the vacancy arises after 29.04.2009 and is filled up, the 200 point roster prescribed in G.O.Ms.No.241, will not be applicable. The relevant portion of the order reads as follows:-

"8. This Court is unable to find any merits in the submissions of the learned Additional Government Pleader appearing for the respondents 1 and 2. The reason being that it is an admitted fact that when G.O.Ms.No.55, P&AR Department dated 8.4.2010 was issued giving retrospective effect from 29.04.2009, explanation given therein makes it clear that the vacancies arising on or from 29.04.2009 shall be filled up as per Schedule III. However, the proviso states that the Notifications, if any, already made by any of the recruiting agency on or after 15.09.2007 with reference to 200 point roster prescribed in G.O.Ms.No.241, Personnel and Administrative Reforms (K) Department dated 29.10.2007, G.O.Ms.No.101, Personnel and Administrative (K) Department, dated 30.5.2008 and in G.O.Ms.No.206, Personnel and Administrative Reforms (K) Department dated 06.11.2008 need not be reopened and for further recruitments, the revised roster prescribed in the Schedule III shall be continued



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from the last turn up to which the selection was already made. But, in this case, when the vacancy arose on 31.5.2010, the 3rd respondent school has forwarded a proposal to the 1st respondent seeking for up gradation of Selection Grade Teacher Post as B.T. Assistant Post in order to fill up the same with qualified person. Accordingly, the 1st respondent by Proceedings dated 17.5.2011 upgraded the post of Secondary Grade Teacher as B.T. Assistant and also granted permission to fill up the same with qualified person for the academic year 2010-2011. Subsequently, the petitioner was found eligible and issued with an appointment order on 30.5.2011.

9. It is pertinent to note that when the Tamil Nadu State and Subordinate Service Rules have been amended on 08.04.2010, Explanation to Rule 22(2)(c) is substituted stating that any vacancies arising on and from 29.04.2009 shall be filled up as per Schedule III and all selections for appointment shall be started afresh from serial number one in the said Schedule III. While so, in the present case, by virtue of the Explanation to Rule 22, as the post of B.T. Assistant has been rightly filled up following the General Category, nowhere the respondents 1 and 2 have found fault with the method adopted by the 3rd respondent for filling up the post of Secondary Grade Teacher that has been upgraded as B.T. Assistant. Therefore, when the counter affidavit filed by both the respondents 1 and 2 failed to pinpoint or indicate whether the method adopted by the 3rd respondent School is in anyway running contrary to Rule 22, the impugned order is liable to be set aside."

3. Insofar as the second reason cited in the impugned order that the petitioner has not passed the Teachers Eligibility Test is concerned, the learned counsel for the petitioner submitted that the petitioner herein had cleared the TET in 2013.

4. Section 23 of the Right of Children to Free and Compulsory Education Act, 2009, enables the teacher to qualify in TET, within a period of five years. Apparently, the TET cleared by the petitioner in 2013 after her appointment in 2012, is within the permissible time. Therefore, the second reason assigned by the first respondent in the impugned order also, cannot be sustained.

5. It is now brought to the notice of this Court that the petitioner herein has now been regularly appointed by the



District Elementary Education Department, Thiruvannamalai District from 25.09.2014 onwards and the petitioner was relieved from the fifth respondent/School on 26.09.2014. Hence, the respondents 1 & 2 shall pass appropriate orders by treating the petitioner's period from 16.05.2011 to 26.09.2014, as service period for all purposes and disburse the salary and other monetary benefits from 16.05.2011 to 26.09.2014, within a period of four weeks from the date of receipt of a copy of this order.

6. In the light of the above findings and directions, this Writ Petition stands allowed and the impugned proceedings dated 02.01.2013 is quashed. No costs. Connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar (CS-IV)

//True Copy//

Sub Assistant Registrar

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To

1. The Principal Secretary to Government,
State of Tamil Nadu
School Education Department,
Fort St.George, Chennai - 600009.
2. The Director of Elementary Education,
College Road, Chennai - 6.
3. The District Elementary Education Officer,
Thiruvannamalai District.
4. The Assistant Elementary Education Officer,
Kalasapakkam.

+1cc to Mr.S.N.Ravichandran, Advocate, S.R.No.15173

W.P.No.18011 of 2013

GPL (CO)
SU (25/03/2022)