



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.02.2022

Coram:

THE HONOURABLE MR.JUSTICE V.PARTHIBAN

W.P.No.25559 of 2016

S.Vijayachitra

... Petitioner

Vs.

1.The Secretary to the Government,
School Education Department,
Fort St.George,
Chennai - 600009.

2.The Director of School Education,
College Road,
Chennai - 600006.

3.The Chief Educational Officer,
Thiruvarur,
Thiruvarur District.

4.The District Educational Officer,
Thiruvarur,
Thiruvarur Taluk and District.

5.The Correspondent,
Veludayar Higher Secondary School,
Thiruvarur,
Thiruvarur Taluk and District.

... Respondents

PRAYER : Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, to call for the records relates to the Impugned order passed by the second respondent in Na.Ka.No.6966/D1/E1/2016 dated 03.06.2016 and quash the same and consequently direct the respondents to approve the appointment of the petitioner as BT Assistant Tamil from the date of appointment from 09.12.2011 based on the proposal of the fifth respondent in Na.Ka.No.15/2010-11 dated 15.07.2013 along with all attendant and monetary benefits.



WEB COPY

For petitioner : Mr.V.Prakash, Senior Counsel for
Mr.S.N.Ravi Chandran

For Respondents : Mr.Abishek Murthy,
Government Advocate for R1 to R4
: Ms.R.Sangavi for
Mr.S.Conscious Elango for R5

ORDER

This Writ Petition has been filed to call for the records relating to the impugned order passed by the second respondent in Na.Ka.No.6966/D1/E1/2016 dated 03.06.2016 and quash the same and consequently direct the respondents to approve the appointment of the petitioner as B.T.Assistant(Tamil) from the date of appointment from 09.12.2011 based on the proposal of the fifth respondent in Na.Ka.No.15/2010-11 dated 15.07.2013 along with all attendant and monetary benefits.

2. The petitioner was appointed as B.T.Assistant (Tamil) in the 5th respondent School. According to her, while appointing her, the School followed all the mandatory procedures and the appointment was regular in nature and joined the post on 08.12.2011. Prior to her appointment, one Mr.Parthiban, working as B.T.Assistant (Science) was relieved from service on 15.09.2010. After relieving the said Science Teacher, the 5th respondent School sought conversion of the said post into B.T.Assistant (Tamil). In response to the request made by the 5th respondent School, vide proceedings dated 19.08.2011, the Joint Director of School Education approved the conversion followed by the permission given by the Chief Education Officer vide his proceedings issued in the month of September 2011. Only thereafter, the School published the vacancy.

3. Thereafter, selection was conducted and the petitioner was ultimately appointed on 08.12.2011. As per the communal roster, the vacancy for which the petitioner was selected, has to be filled up by the SC candidate. However, when the selection was done, no SC candidate had applied. Therefore, the petitioner came to be appointed and according to her, an undertaking was also obtained that in the next roster, appointment would be reserved for the SC candidate and such deferment in consideration is also permissible under Rule 15(9) (ii) of the Tamil Nadu Private School Regulation Act. Such exchange of candidates is also permissible as envisaged in G.O.Ms.No.1371, Education Department dated 22.07.1980.



4. Thereafter, the 5th respondent School forwarded a proposal in Na.Ka.No.15/2010-11 on 15.07.2013, seeking approval of the petitioner's appointment. As there was no immediate response forthcoming from the authorities concerned, the petitioner was constrained to approach this Court in W.P.No.36293 of 2015, seeking approval of her appointment from 09.12.2011, based on the proposal of the 5th respondent School dated 15.07.2013. This Court passed final Order on 17.11.2015, directing the 2nd respondent to consider the proposal of the 5th respondent School, in accordance with law. The 2nd respondent however passed an order on 03.06.2016, rejecting the proposal. According to the rejection letter that the slot in which the petitioner was accommodated ought to have been reserved for SC (Arunthathiyar) candidate. Since the petitioner was belonging to OC category, she ought not to have been accommodated in the slot meant for SC (Arunthathiyar) candidate. On the basis of the said reasons, the approval was rejected. Challenging the same, the petitioner is before this Court.

5. The learned Senior Counsel Mr.V.Prakash, appearing for the petitioner would submit that the rejection by the 2nd respondent on the stated ground is misconceived and cannot be countenanced in law. According to the learned Senior Counsel, the 2nd respondent as early as on 19.08.2011, has passed an order, approving the conversion of the post of the B.T.Assistant (Science) into B.T.Assistant (Tamil). Thereafter, permission was also granted by the 3rd respondent in the month of September 2011, to fill up the post of B.T.Assistant (Tamil). According to the learned Senior Counsel, in terms of the relevant regulations that the qualified and suitable candidate belonging to any of the SC or ST category was not available for appointment in the turn, the turn should be allotted to other classes and the same shall be filled up in the next turn in the order of rotation. The regulation was further clarified by G.O.Ms.No.1371, Education Department dated 22.07.1980. According to the learned Senior Counsel, the petitioner being appointed through regular selection, has been working without salary for several years as on date.

6. Apart from the above submission, the learned Senior counsel would draw the attention of this Court to the Order passed by this Court in W.P.No.28058 of 2017 dated 29.01.2019. The issue of appointment of candidates other than the candidates from the reserved category, was a subject matter of consideration in the above said writ petition. The learned Judge after adverting to various Government Orders, has finally held that the filling up of the post of the B.T.Assistant therein from the



general category, was in order. Reference is made to the observations and the reasoning of the learned Judge from paragraph Nos.6 to 10, which are extracted hereunder:-

"6. A separate detailed counter affidavit has been filed by the respondents 1 and 2.

7. Learned Additional Government Pleader appearing for the respondents 1 and 2 submitted that one Mr.R.Mathivanan was appointed as B.T.Assistant (Science) in the 3rd respondent school w.e.f. 6.4.2009 who was appointed in General Turn (OC) and therefore, the next appointment should be made only from out of Scheduled Caste (Arunthathiar) as per the communal roster prescribed in Government Order in G.O.241 P&AR Department, dated 29.10.2007 and G.O.Ms.No.55, P&AR Department dated 8.4.2010. Since the 3rd respondent school has not followed neither G.O.Ms.No.241 nor G.O.Ms.No.55, the impugned order rightly passed shall not be interfered with.

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 from the last turn up to which the selection was already made. But in this case, when the vacancy arose on 31.05.2010, 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



WEB COPY

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.

10. In the result, the Writ Petition is allowed and the impugned order of the 1st respondent dated 01.08.2017 is set aside. The respondents 1 and 2 are directed to pay the salary of the petitioner continuously as per the interim order passed by this Court dated 02.11.2017. No costs. Consequently, connected Miscellaneous Petitions are closed."

According to the learned Senior Counsel that the above decision may have to be squarely applied to the factual matrix of the present case.

7. Upon notice, Mr.Abishek Murthy, learned Government Advocate entered appearance on behalf of the respondents 1 to 4 and Ms.R.Sangavi, learned counsel appeared on behalf of the 5th respondent.

8. On behalf of the 5th respondent, a detailed counter affidavit has been filed. In the counter affidavit, the issues have been clarified with reference to two Government Orders and the proceedings of the educational authorities. It is very crucial to refer to the paragraph Nos.5 & 6, which are extracted



hereunder:-

"5. I submit that, the school submitted the proposal for approval of appointment of the petitioner on 10.01.2012 to the 4th respondent. The 4th respondent by letter dated nil 5.2012, returned the proposal on the ground that the school has failed to follow the communal roster and the said post falls S.C (Arunthathiyar). The school rectified the defects and resubmitted the proposal on 15.07.2013, to the 4th respondent, contending that as per G.O.Ms.No.55, dated 08.04.2010, the said post falls under the General Turn. Since, there was no response for the same, the Writ Petitioner filed Writ Petition in W.P.No.36293 of 2015, for Direction. By an order dated 17.11.2015, the Hon'ble Court was pleased to dispose of the Writ Petition with a direction, directing the 2nd respondent to consider the proposal submitted by the School, dated 15.07.2013, in accordance with law, within a period of eight weeks from the date of receipt of copy of the order.

6. I submit that, pursuant to the direction issued by the Hon'ble Court, on the basis of the report of the 3rd and the 4th respondent, the 2nd respondent by impugned order dated 03.06.2016, rejected the Proposal for approval of the petitioner on the ground that the School had already filled up the earlier post of B.T.Tamil under the General Turn and as per G.O.MS.No.241, Personnel and Administrative Reforms Department, dated 29.10.2007 and G.O.Ms.No.142, dated 14.10.2009, the present post in which the appointment of the petitioner falls under S.C.(Arunthathiyar) roaster. It is pertinent to note that the Government introduced 200 point communal roaster by making an amendment to the part I and part II of the then Tamil Nadu State sub-ordinate service Rules in Volume I of the Tamil Nadu service manual by G.O.Ms.No.55, Personnel and Administrative Reforms (S) dated 08.04.2010. As per the said amendment, the vacancy arising on and from the 29th April 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 with effect on and from the said date.

6. I submit that as per the said amendment, the newly converted post of B.T. Assistant (Tamil)



WEB COPY

falls in General Turn in the schedule III of the Tamil Nadu State sub-ordinate service Rules. However, without any application of mind based on the report of the 3 and 4th respondent, the 2nd respondent has quoted the G.O.Ms.No.141 and 242, which will not govern the appointment of the petitioner as on the date of vacancy and the order rejecting the approval of the petitioner is erroneous and unsustainable in law. Secondly, the post of B.T. Assistant (Science) was converted by the 2nd respondent as B.T. Assistant (Tamil) on 19.08.2011 and consequently, permission was granted by the 3rd respondent on 20.09.2011. Hence, it is abundantly clear that the newly created vacancy of B.T. Tamil fell vacant after the amendment made to the then T.N.State and Subordinate Service Rules introducing 200 point roster by way of G.O.Ms.No.55, dated 08.04.2010 and the vacancy can be filled only under General Turn."

9. In view of the averments contained in the counter affidavit, the rejection of the request of the 5th respondent School for approval of appointment of the petitioner herein is unsustainable. The 2nd respondent, obviously, has not taken into consideration the Government Orders, particularly, G.O.Ms.No.55, Personnel and Administrative Reforms (S) dated 08.04.2010 and relied upon the wrong Government Order which demonstrated that there was no proper application of mind on his part. As a matter of fact, the learned Judge of this Court in the aforesaid writ petition, has considered those Government Orders and eventually held that vacancies arising on or from 29.04.2009, shall be filled up as per schedule III which means that the appointment shall be started afresh from Serial No.I. In this case, admittedly, the petitioner was considered and selected in 2011, after the cut-off date and therefore, the question of reserving the post for SC (Aruthathiyar) did not arise at all.

10. For all the above said reasons, this Court is of the considered view that the petitioner has made out a case for grant of relief. Therefore, the writ petition is allowed and the impugned order in Na.Ka.No.6966/D1/E1/2016 dated 03.06.2016, is hereby set aside.

11. The 2nd respondent is directed to grant approval of appointment of the petitioner as B.T.Assistant (Tamil) from the date of her initial appointment based on the proposal forwarded



by the 5th respondent School dated 15.07.2013, if her appointment was otherwise in order. The 2nd respondent is directed to pass appropriate orders within a period of four weeks from the date of receipt of a copy of this order. No costs.

WEB COPY

Sd/-

Assistant Registrar(CS-VII)

// True Copy //

Sub Assistant Registrar

gsk/mdl

To

- 1.The Secretary to the Government,
School Education Department,
Fort St.George, Chennai - 600009.
- 2.The Director of School Education,
College Road, Chennai - 600006.
- 3.The Chief Educational Officer,
Thiruvarur,
Thiruvarur District.
- 4.The District Educational Officer,
Thiruvarur,
Thiruvarur Taluk and District.
- 5.The Correspondent,
Veludayar Higher Secondary School,
Thiruvarur,
Thiruvarur Taluk and District.

+1cc to Mr.S.N.Ravichandran, Advocate SR.No.8547

+1cc to the Government Pleader, SR.No.9195

W.P.No.25559 of 2016

JP-II(CO)
CB(25/03/2022)