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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on
16.03.2022

Delivered on
30.03.2022

CORAM:

THE HONOURABLE MR.JUSTICE V.PARTHIBAN

W.P. No.7839 of 2016

Shanmugakani

... Petitioner

Vs

- 1 The Principal Secretary to Government of Tamil Nadu
Education Department
Fort St. George Chennai-9.
- 2 The Director of School Education
College Road Chennai.
- 3 The Chief Educational Officer
Thoothukudi District. ... Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for a Writ of Certiorarified Mandamus calling for the records of the 2nd respondent in its Na.Ka.No.999/C1/E1/2014 dated 31.10.2014 and Na.Ka.No. 7964/C1/E1/2015 dated 24.3.2015 quash both the orders and consequently direct the respondents to consider the petitioner for posting in any of the vacancies in Government High School in Tuticorin District.

For Petitioner ... Mr.V.Vijay Sankar

For Respondents ... Mr.L.S.M.Hasan Fizal,
Additional Government Pleader
for Respondents 1 to 3

O R D E R

The petitioner was appointed as B.T. Assistant (Social Science) at Government High School, Sathanur, Sivagangai District, in 1994. She was a physically disabled person, affected by polio in her leg. Subsequently, she was transferred



to Kayalpattinam Government High School, and after 15 years of her service, she came under the zone of consideration for promotion to the post of High School Headmistress. In the promotion counselling that took place in 2010, she was not able to participate, as at that time, she had delivered twin children. However, orders were issued posting her as Headmistress at Mappillai Kuppam, Thiruavur District and the petitioner had to relinquish the promotion in view of above fact of twin children being born at that time.

2. Subsequently, the petitioner had completed her P.G. Degree and was promoted as Post Graduate Assistant and posted at Government Higher Secondary School, Veppaldai. She was thereafter transferred to Senthil Murugan Government Girls Higher Secondary School, Tiruchendur where she was working at the relevant point of time. In 2014, the petitioner once again came within the zone of consideration for promotion to the post of High School Headmistress and the counselling was held on 22.06.2014 in Chennai. The petitioner was placed at serial number 66 among the candidates who participated in the counselling in the year 2014.

3. In the promotion counselling, unfortunately, no vacancy was shown in the post of Headmaster in the Thoothukudi District, despite the existence of vacancy in the district, forcing the petitioner to relinquish her promotion once again, as she being a person suffering from polio disability, was not willing to be posted outside the Thoothukudi District.

4. But subsequently, it turned out that there was a clear vacancy available at Government High School, Kasilingapuram, in Thoothukudi District at the time when counselling was held for the year 2014, but the authority concerned failed to notify the vacancy for reasons unknown. According to the petitioner, if only the vacancy had been notified, she would not have relinquished her promotion at all, as she had participated in the counselling only with the hope that she would get posted within the Thoothukudi District.

5. While matter stood thus, shockingly, one Mrs.Mallika, who is admittedly junior to the petitioner 300 placed below in the seniority rank, was posted as Headmistress in the Government High School, Kasilingapuram, vide proceedings dated 31.10.2014. The said Mrs.Mallika did not even attend the promotional counselling and she was absent on that day. Therefore, it was clear that the authorities concerned at that point of time had played fraud by accommodating the said Mrs.Mallika in the said



vacancy at Government High School, Kasilingapuram, Thoothukudi District and forced the petitioner to relinquish her promotion, which relinquishment was to be in operation for a period of three years in terms of the rule position.

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6. On coming to know of the above development, the petitioner appeared to have made representation to the second respondent dated 31.12.2014. However, the said representation was rejected vide proceedings dated 24.03.2012 on the ground that petitioner having relinquished her right to promotion, her claim could not be considered. The rejection order by the second respondent did not take into consideration the fraud played by the authorities concerned in not notifying the vacancy at the time of counselling held on 22.06.2014. The petitioner therefore submitted an appeal to the first respondent on 21.04.2015. As the next promotion counselling was to be held in subsequent year, the petitioner was constrained to approach this Court challenging the proceedings dated 31.10.2014, namely temporary relinquishment by the petitioner for promotion to the post of Headmaster High school for a period of three years, and the rejection proceedings dated 24.03.2015 of the second respondent.

7. The learned counsel for the petitioner, Mr.Vijay Shankar, would submit that after the expiry of three year period, the petitioner was indeed promoted as Headmistress in the year 2018. Unfortunately, she was prevented from being promoted to the post of Headmistress in 2014 itself by not notifying the vacancy in the post of Headmaster at Government High School, Kasilingapuram, in Thoothukudi District. It was most unfortunate that one Mrs.Mallika, who was admittedly 300 places below in the seniority rank than the petitioner, had been accommodated in the post on the same day on 31.10.2014 when the relinquishment order was issued by the second respondent. The said Mrs.Mallika did not even attend the counselling and she was absent, as reflected in the communication obtained by the petitioner under the Right to Information Act.

8. The learned counsel would also draw the attention of this Court to the two communications dated 31.10.2014 and 22.01.2015 demonstrating the fact that the said Mrs.Mallika was promoted during the promotional counselling of the year 2014-15 and was posted at the Government High School, Kasilingapuram, Thoothukudi District, vide proceedings dated 31.10.2014. These two communications are indisputably reflective of the fact that the vacancy had not been openly notified during the time when the petitioner participated in the counselling and forced her to relinquish her promotion, particularly because of her



disability, being affected by polio in her leg. The learned counsel would also, in this regard, refer to a communication dated 30.11.2015 of the second respondent in which it was admitted that the vacancy at Government High School, Kasilingapuram, being not notified at the time of promotional counselling, action had been initiated against the officials concerned and they were transferred to different district on that account.

9. He would hence submit that the factum of availability of vacancy and the action taken against those officials who have not notified the vacancy had been admitted and recorded in the proceedings of the second respondent himself. Therefore, the petitioner is entitled to be compensated by granting her deemed promotion as Headmistress, notionally, in the panel year 2014-15 with all consequential benefits. According to the learned counsel, the petitioner, in the circumstances of the case, is constrained to challenge the relinquishment order dated 31.10.2014 as such relinquishment was not on her own volition but on the basis of the fraud being played upon her, not notifying the vacancy. Therefore, the learned counsel would submit that the relinquishment order passed by the second respondent needed to be set aside and the petitioner is entitled to be promoted as Headmistress in the promotional counselling held on 22.06.2014, rectifying and reversing the adverse effect of the fraud committed by the officials, infringing upon her rights.

10. For the respondents, Mr.L.S.M.Hasan Fizal, Additional Government Pleader, has entered appearance. A counter-affidavit has also been filed. The counter-affidavit is rather sketchy and bereft of any detailed averments as answers to the case of the petitioner herein. In fact, in the entire counter-affidavit, nothing has been stated about the accommodation of the said Mrs.Mallika as Headmistress of Government High School, Kasilingapuram vide proceedings of the second respondent dated 31.10.2014. The counter-affidavit has conveniently skipped and omitted to mention those details which obviously would be uncomfortable facts staring at the respondents.

11. However, in the counter-affidavit it is stated that because of the relinquishment of the petitioner herself, she was not promoted. Her relinquishment was immediately recorded in the service register and there was no fraud committed in this case. In the counter-affidavit, one other statement has been made



saying that the vacancy had arisen after 31.05.2014 and therefore, the same could not have been notified in the promotional counselling, as vacancies that were available up to 31.05.2014 alone could have been notified. The statement has not been supported by any material as such, in the course of the oral submissions made by the learned Additional Government Pleader.

12. The learned Additional Government Pleader reiterated the above facts and did not seriously dispute that the vacancy at Government High School, Kasilingapuram, was indeed available at the time when the promotional counselling took place on 22.06.2014. As a matter of fact, the records would disclose that the said Mrs.Malliga was accommodated as Headmistress in the school on the same day i.e. on 31.10.2014 when the relinquishment order was issued by the second respondent in respect of the petitioner. The said Mrs.Malliga is stated to have been accommodated in the said vacancy in pursuance of the counselling which took place in the panel year 2014-15 and strangely, as a matter of fact, the said Mrs.Malliga did not even attend the counselling. Therefore, there was something gravely amiss in the appointment of the said Mrs.Malliga first, second not notifying the vacancy, and third forcing the petitioner to relinquish her promotion temporarily, resulting in the second respondent passing an order of relinquishment dated 31.10.2014.

13. Moreover, the learned counsel for the petitioner has drawn the attention of the Court to the communication from the second respondent to the third respondent dated 30.11.2015 in which it was clearly admitted that the vacancy was indeed available at the relevant point of time and some officials were transferred out of the district for not declaring the vacancy at the time of counselling. At the same time, it was also recorded in the proceedings that in view of the relinquishment by the petitioner, her request for promotion cannot be considered for a period of three years.

14. This Court is unable to countenance the stand adopted by the second respondent in this regard for the simple reason that relinquishment by the petitioner was entirely due to the reason that no vacancy was notified in Thoothukudi District and the petitioner being a person with disability, affected by polio in her leg, was hopeful to get a promotional opportunity within the Thoothukudi District.



15. When the right of the petitioner stood negated as headmistress in the particular vacancy, which was actually available in Thoothukudi District on the relevant date, the higher authorities concerned ought to have initiated steps to salvage the injustice inflicted upon the petitioner by granting her promotion, immediately with effect from the date she was entitled to be promoted as headmistress, in response to her representation. But unfortunately, the authorities concerned have acted callously and apathetically and rejected her claim, as if the petitioner had relinquished her promotion on her own volition. In the said circumstances, the rejection of the petitioner's claim by the second respondent suffers from non-application of mind and the same smacked of arbitrariness and unreasonableness.

16. The authorities herein, instead of retrieving the situation and mitigating the wrong committed in the matter of promotion of the petitioner, have chosen to overlook the same by binding down the petitioner with relinquishment order. By denying promotion to the petitioner as Headmistress in the panel year 2014-15 on one hand, and on the other, granting promotion to a person who did not even choose to attend counselling and who was admittedly, 300 places below the petitioner in the seniority, and not willing to salvage the injustice caused to the petitioner is opposed to fair-play, good conscience and justice. For all the above stated reason, this Court is of the view that the petitioner has made out a clear case for grant of relief in the writ petition.

17. In the said circumstances, the impugned orders of the second respondent in Na.Ka.No.999/C1/E1/2014 dated 31.10.2014 and Na.Ka.No.7964/ C1/E1/2015 dated 24.03.2015 are hereby set aside as illegal and unjust.

18. The respondents are directed to grant promotion to the petitioner as Headmistress in the panel year 2014-15 and on such promotion, she is entitled to be granted all benefits on a notional basis like pay fixation, seniority and future promotion etc.

19. The respondents are directed to pass appropriate orders in this regard within a period of four weeks from the date of receipt of a copy of this order.



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20. The writ petition is allowed. There will be no order as to costs. Consequently, W.M.P.No.6986 of 2016 is closed.

SD/-
ASSISTANT REGISTRAR

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SUB ASSISTANT REGISTRAR

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To

- 1 The Principal Secretary to Government of Tamil Nadu,
Education Department,
Fort St. George Chennai-9.
- 2 The Director of School Education,
College Road Chennai.
- 3 The Chief Educational Officer,
Thoothukudi District.

+lcc to Mr.V.Vijay Shankar, Advocate Sr.22192
+lcc to the Government pleader Sr.21793

W.P. No.7839 of 2016

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srg 06/04/2022