



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 27.04.2022

DELIVERED ON : 14.06.2022

CORAM :

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P(MD).No.7958 of 2018

and

W.M.P(MD).No.7562 of 2018

E.Tamilarasi

... Petitioner

Vs.

1.The Government of Tamil Nadu,
represented by the Secretary to Government,
Education Department,
Fort St.George,
Chennai - 600 009.

2.The Chief Educational Officer,
Karur District, Karur.

3.The District Elementary Education Officer,
Karur District, Karur.

... Respondents

Prayer: Writ Petition filed under Article 226 of Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for records relating to the order, dated 04.01.2016, passed by the third respondent vide Na.Ka.No.3571/A3/2015 and quash the same and direct the first respondent to appoint the petitioner to the post of Secondary Grade Teacher with effect from 03.01.2002, the date on which her junior, Mr.Sheik Allaudin was appointed, with notional seniority, arrears of pay and allowances and all other consequential benefits.

For Petitioner : Mr.K.K.Udhayakumar

For Respondents : Mr.V.Omprakash
Government Advocate (Civil Side)

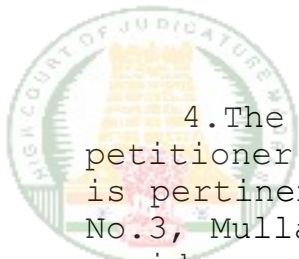
O R D E R

The Writ Petition has been filed in the nature of Certiorarified Mandamus, seeking to quash the impugned order, dated 04.01.2016 and direct the first respondent to appoint the petitioner to the post of Secondary Grade Teacher with effect from 03.01.2002, the date on which, the petitioner's Junior one Sheik Allaudin was appointed with notional seniority, arrears of pay, allowances and all other consequential benefits.



2. The brief facts of the case are that the petitioner had completed Diploma in Teacher Training in the year 1990 and completed B.Lit. degree in the year 2003 and acquired B.Ed. in May 2015. The petitioner was fully qualified for the post of Secondary Grade Teacher. The petitioner is permanently residing at Karur and had been issued with residence certificate, dated 22.03.1999. She registered her name in the Employment Exchange at Karur, on 08.11.1990.

3. The contention of the petitioner is that earlier, Karur was a part of Trichy District. However, there are two employment exchanges, one is situated at Karur and another one is at Trichy. As the petitioner is permanently residing at Karur, the registration at Karur Employment Exchange Office was renewed during the year 1993. While so, during the year 1995 Trichy District was bifurcated into two districts, namely, Trichy District and Karur District. In the year 1998, the respondents took steps to fill up the vacancies in the post of Secondary Grade Teacher. Since the petitioner's name was not sponsored by the Employment Exchange, the petitioner was not called for interview. Thereafter, the petitioner had verified with the Employment Exchange, Karur and the petitioner was informed that her registration with the Employment Exchange is transferred to Trichy. Immediately, the petitioner had submitted a representation, seeking to transfer her Employment Exchange registration from Trichy to Karur District, where the petitioner is residing since 1990. Subsequently, by communication, dated 15.07.1999, the Revenue Divisional Officer, Karur, directed the petitioner to appear for enquiry on 22.07.1999 with the relevant documents. The petitioner had attended the enquiry on 22.07.1999 and established the genuineness of her residence at Karur. In the meantime, steps had been taken to fill up the vacancy in the Government and Panchayat Union Schools, in the year 2000-2001. By communication, dated 26.02.2001, she had been sponsored by the Employment Exchange, Karur for the post of Secondary Grade Teacher. Again by communication, dated 01.03.2001, the petitioner was direction to attend certificate verification on 07.03.2001. Subsequently, by communication, dated 23.03.2001, the petitioner was directed to attend certificate verification on 27.03.2001. Then, the petitioner attended the certificate verification on 27.03.2001 and the respondents expressed satisfaction over the genuinity of the petitioner's certificates. Subsequently, vide communication, dated 28.08.2001, the petitioner was provisionally selected for the post of Secondary Grade Teacher and directed to attend counselling on 31.08.2001. However, the counselling was not conducted as scheduled. Thereafter, the District Collector, vide communication dated 30.11.2001, informed that the petitioner's residence at No.3, Mulla Saibu Street, Karur is not correct and directed the petitioner to attend enquiry on 12.12.2001. Therefore, the petitioner attended the enquiry with all relevant documents.

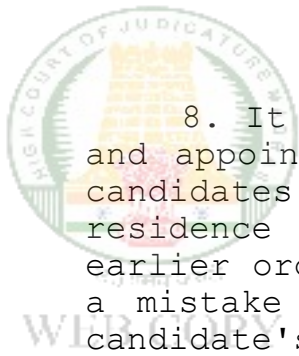


4.The further contention of the petitioner is that the petitioner had attended enquiry with all relevant documents and it is pertinent to state that initially the petitioner was residing at No.3, Mulla Saibu Street, Karur and the petitioner was issued with a residence certificate, dated 22.03.1999 with that address. However, during the month of February 2000, the petitioner shifted from No.3, Mulla Saibu Street, Karur to No.80/69, Gendha Podikara Street, Karur, which is 150 meters away from her earlier residence. The petitioner took earnest effort to alter residential address, which had been given in the original application, but the District Collector vide order dated 24.12.2001, had held that the petitioner's residence certificate is not genuine.

5. The further contention of the petitioner is that one Balagangadharan, whose residence certificate was also held to be not genuine, filed W.P.No.9 of 2002, challenging the order dated 24.12.2001, passed by the District Collector. By order dated 03.01.2002 this Court stayed the order, dated 24.12.2001. However, the respondents proceeded with making appointments to the post of Secondary Grade Teachers. Accordingly, one Sheik Allaudin, who is much junior in the Employment Exchange seniority with Registration No.4233/2000, dated 04.10.2000, was appointed to the post of Secondary Grade Teacher. Aggrieved over, the petitioner had submitted several representations, seeking employment through the impugned order. Subsequently, the petitioner was appointed as Junior Grade Secondary Grade Teacher in the year 2004. However, the petitioner's claim is that the petitioner had participated in the year 2002 selection. Therefore, she should be granted appointment in the Secondary Grade post on par with their juniors in the seniority list i.e., maintained under Karur and grant appointment to the post of Secondary Grade Teacher with effect from 03.01.2002 with notional seniority, arrears of pay and allowances.

6. The respondents had filed counter stating that the petitioner had registered her qualification before the Employment Exchange, Trichy on 08.11.1990. Then, Trichy District was bifurcated in the year 1995 and Karur District was formed, but the petitioner's registration was continued in Trichy District. On 04.11.1999, the petitioner's registration was transferred from Trichy District to Karur District. During the year 2001, the list of employment seniority was called for by the second respondent to fill up 128 Secondary Grade Teacher post. Since the petitioner's name is not in Karur District, one sheik Allaudin, who is junior to the petitioner was appointed. However, without challenging the date of enrolment in the Employment Exchange at Karur, the petitioner has filed the present Writ Petition in W.P.(MD) No.7958 of 2018.

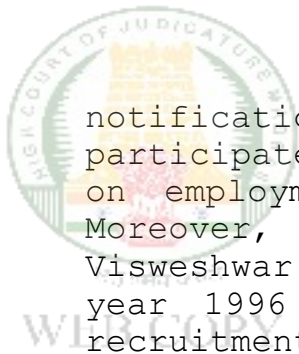
7. Heard Mr.K.K.Udhayakumar, the learned Counsel for the petitioner and Mr.V.Omprakash, the learned Government Advocate (Civil Side) for the respondents and perused the records



8. It is seen from the records that the petitioner was selected and appointed as Secondary Grade Teacher, who were in the list of candidates in Trichy District Employment Exchange, even though their residence in Karur District. The said issue was considered by earlier orders of this Court, wherein, it has been stated that it is a mistake on the part of the respondents for not sponsoring the candidate's name. Even though the petitioner's name was not in the Karur list at the time of calling for recruitment, the claim of the petitioner is that she should be granted with notional appointment from the date of recruitment process i.e., from the year 2002. There is no concept called "Notional Appointment" from the date of selection process. During the selection process, it is one of the conditions that the petitioner should have completed higher education and her name should be registered in the Employment Exchange. In the present case, the petitioner's residence is at Karur, however, the first respondent by order dated 24.12.2001, held that the petitioner's residence certificate is not genuine. The petitioner was appointed to the post of Junior Grade Secondary Grade Teacher with effect from 16.07.2004. However, similarly placed persons like that of the petitioner, were appointed as Secondary Grade Teacher with effect from 03.01.2002. The contention of the petitioner is that though she was appointed in the year 2004, her juniors were appointed in the year 2002 itself. Since there was confusion whether the petitioner's name should be in the Karur Employment Exchange or Trichy Employment Exchange, the petitioner was not granted appointment in the year 2002 but finally the petitioner was granted employment in the year 2004. However there is no possibility of granting notional appointment, which is alien to the recruitment process, the claim of the petitioner cannot be granted.

9. Therefore, this Court is of the considered opinion that the claim of the petitioner to grant notional appointment, arrears of pay, allowances, consequential monetary and service benefits will lead to serious repercussions in the further recruitment process. Hence, this Court is not inclined to grant appointment order from the date of recruitment i.e., in the year 2002. It is seen from the records that the petitioner was appointed in the year 2004. Therefore, the petitioner is not entitled to deemed appointment from the year 2002.

10. The recruitment process followed by the respondents by calling for names only from the Employment Exchange is against the order passed by the Hon'ble Supreme Court in Excise Superintendent Malkapatanam Vs Visweshwar Rao & others reported in 1996 (6) SCC 216 and Union of India and others vs N. Hargopal and others, reported in 1987 [3] SCC 308, where it has been stated that in any recruitment process, the eligible candidates should be called for from an Employment Exchange and also should issue paper publication and also should affix notice at prominent places, so that even though if any body has not registered in the Employment Exchange, by other



notifications, the eligible candidates will have an opportunity to participate in the recruitment process. Appointing a candidate based on employment seniority alone will lead to such complications. Moreover, the appointment will not be on merits. Even though the Visweshwar Rao case was passed by the Hon'ble Supreme Court in the year 1996 itself, the respondents have not followed the proper recruitment process at all. Therefore, the respondents are liable to pay cost to the petitioner. Hence the respondents are directed to pay a sum of Rs.5,000/- to the petitioner.

11. With the above direction, the Writ Petition is dismissed. Consequently, the connected miscellaneous petition is also closed.

Sd/-

Assistant Registrar (CO)

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/06/2022

Sub Assistant Registrar (CS)

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To:

1.The Secretary to Government,
Education Department,
Fort St.George,
Chennai - 600 009.

2.The Chief Educational Officer,
Karur District, Karur.

3.The District Elementary Education Officer,
Karur District, Karur.

+1 CC to M/s.SPL.GP (SR-25811[F] dated 15/06/2022)

+1 CC to M/s.K.K. UDAYAKUMAR, Advocate (SR-25985[F] dated 15/06/2022)

W.P (MD) No. 7958 of 2018
14.06.2022

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