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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 05.01.2022
CORAM
THE HONOURABLE MRS.JUSTICE **S.SRIMATHY**
W.P.(MD)Nos.18477 and 22612 of 2015
and
M.P.(MD)Nos.1 and 1 of 2015

W.P.(MD)Nos.18477 of 2015:

S.Murugan ... Petitioner

vs.

1.The State of Tamilnadu,
represented by its Principal Secretary
to Government,
School Education Department,
Secretariat, Fort St.George,
Chennai - 600 009.

2.The Director of School Education,
DPI Campus, College Road,
Chennai - 600 006.

3.The Chairman,
The Teachers Recruitment Board,
4th Floor, EVK Sampth Maligai,
DPI Campus, College Road,
Chennai - 600 006.

4.The Director,
Rashtriya Madhyamik Shiksha Abhiyan
(RMSA),
DPI Campus, College Road,
Chennai - 600 006.

5.The Headmaster,
Pasumalai Higher Secondary School,
Pasumalai, Madurai - 625 004.

6.The Government of India,
represented by its Secretary to Government,
Ministry of Human Resources Development,
No.302-C, Shastri Bhawan,
New Delhi. ... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Mandamus, to direct the first respondent to forthwith absorb the petitioner on a time scale of pay

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on par with other Government teachers in accordance with the proposal contained in G.O.Ms.No.28, dated 30.01.2015, before recruiting new teachers as per G.O.Ms.No.28, dated 30.01.2015.

W.P.(MD)Nos.22612 of 2015:

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A.Fathima ... Petitioner

vs.

1.The State of Tamilnadu,
represented by its Principal Secretary
to Government,
School Education Department,
Secretariat, Fort St.George,
Chennai - 600 009.

2.The Director of School Education,
DPI Campus, College Road,
Chennai - 600 006.

3.The Chairman,
The Teachers Recruitment Board,
4th Floor, EVK Sampth Maligai,
DPI Campus, College Road,
Chennai - 600 006.

4.The Director,
Rashtriya Madhyamik Shiksha Abhiyan
(RMSA),
DPI Campus, College Road,
Chennai - 600 006.

5.The Headmaster,
St.Joseph's Girl's Higher Secondary School,
Vadgarpet Lalgudi Taluk,
Trichy District.

6.The Government of India,
represented by its Secretary to Government,
Ministry of Human Resources Development,
No.302-C, Shastri Bhawan,
New Delhi. ... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Mandamus, to direct the first respondent to forthwith regularize the services of the petitioner on a time scale of pay on par with other Government teachers in accordance with the proposal contained in G.O.Ms.No.28, School Education Department, dated 30.01.2015, before recruiting new teachers as per G.O.Ms.No.28, School Education Department, dated 30.01.2015.

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In both cases:

For Petitioner : Mr.A.Thiyagarajan

For R1 and R2 : Mr.J.K.Jayaselan
Government Advocate (Civil Side)

For R3 to R6 : No appearance

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COMMON ORDER

The Writ Petition in W.P.(MD)No.18477 of 2015 is filed for issuance of a Writ of Mandamus, to direct the first respondent to forthwith absorb the petitioner on a time scale of pay on par with other Government teachers in accordance with the proposal contained in G.O.Ms.No.28, dated 30.01.2015, before recruiting new teachers as per G.O.Ms.No.28, dated 30.01.2015.

2.The Writ Petition is W.P.(MD)No.22612 of 2015 is filed for issuance of a Writ of Mandamus, to direct the first respondent to forthwith regularize the services of the petitioner on a time scale of pay on par with other Government teachers in accordance with the proposal contained in G.O.Ms.No.28, School Education Department, dated 30.01.2015, before recruiting new teachers as per G.O.Ms.No.28, School Education Department, dated 30.01.2015.

3.The petitioner in W.P.(MD)No.22612 of 2015 is possessing Associate Degree in Special Education (Hearing impaired and visually impaired) and the petitioner was appointed as Special Education Teacher on 30.06.2001 in St.Joseph's Girls Higher Secondary School at Vadgarpet Lalgudi Taluk, Trichy District. The petitioner has acquired B.Litt.(Tamil), in the year 2009 then, B.Ed. (Special Education), in the year 2012 and M.A.(Tamil), in the year 2014 and has put in 14 years of service as Special Education Teacher.

4.The petitioner in W.P.(MD)No.18477 of 2015 is possessing B.A. in April 1987, B.Ed., in April 1994, M.Ed. (Special Education) in April 1995, M.A. in April 2003 and was appointed as Special Teacher under IEDC in Hans Rower Higher Secondary School, Peramanalur on 12.09.1995, on consolidated pay and has ten years experience.

5.The State Government issued G.O.Ms.No.28, School Education Department, dated 30.01.2015, for creation of 202 Special B.Ed., Graduation Teachers for effective implementation of Integrated Education for Disabled Children Scheme (IEDS) in Tamil Nadu. The Government has sanctioned regular time scale of pay and the post ought to be recruited through Teachers Recruitment Board (TRB), since no Service Rules have been framed for the post. The second respondent has directed to take steps to fill up the post on

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temporary basis by way of direct recruitment through TRB. However, there is confusion about the qualification prescribed for the said post. The petitioner and similarly placed persons are working on consolidated pay for several years and the respondents has proposals to terminate the petitioner and the similarly placed persons. The contention of the petitioner is that since she has put in service for more than 14 years and has experience. Therefore, the petitioner prayed she ought to be appointed in the post.

6.The respondents have filed a counter affidavit stating that the service of the Special Teachers like that of the petitioner, who are engaged by the NGOs in accordance with the guidelines prescribed by the Government of India is clearly in temporary post. The post of Special Teachers are merely temporary post and not full time post. No time scale of pay was fixed for the above said post. The petitioner engaged in the Integrated Education for the Disabled Children on a consolidated pay by a NGO to meet the situation. The respondents have stated that the qualifications prescribed by the Rehabilitation Council of India (RCI) are subject to special requirements of the State and the provisions of the Right of Children to Free and Compulsory Education Act, 2019. Therefore, the qualification prescribed under G.O.Ms.No.28, School Education (SE5 (2)) Department, dated 30.01.2015, is as per Rehabilitation Council of India. The respondents also stated that the petitioner ought to compete with the other candidates, who are waiting in the open market.

7.Heard Mr.A.Thiyagarajan, learned Counsel appearing for the petitioner and Mr.J.K.Jayaselan, learned Government Advocate appearing for the first and second respondents.

8.The petitioner is appointed by a NGO for the special need to tackle the disabled children and it is purely a temporary post and the post is also not sanctioned. Therefore, the petitioner has no right to claim that the petitioner ought to be appointed in the said post. The State Government has issued G.O.Ms.No.28, School Education Department, dated 30.01.2015, and prescribed certain qualifications and 202 posts were created. Therefore, the said G.O. cannot be put to question before this Court, since this is the G.O., where the permanent post is created. As rightly pointed out by the respondents, the petitioner can compete with the other candidates waiting in the open market. However, this Court cannot close its eyes on the experience the petitioners in both the Writ Petitions. The experience of the petitioner can be taken, especially when it is coming to education with the disabled children.

9.Therefore, this Court is of the considered opinion that the Government ought to give some weightage to the people like the petitioner in the Writ Petitions and similarly placed persons, who are having experience in the said field. Therefore, this Court is

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directing the respondents to grant some weightage to the petitioner in both the Writ Petitions and the similarly placed persons, while recruiting to the said 202 posts created through G.O.Ms.No.28, School Education Department, dated 30.01.2015.

10.With the above direction, the Writ Petitions are disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

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Sub Assistant Registrar(CS)

Tmg

Note:

In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the Advocate/litigant concerned.

To

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

2.The Director of School Education,
DPI Campus, College Road,
Chennai - 600 006.

3.The Chairman,
The Teachers Recruitment Board,
4th Floor, EVK Sampth Maligai,
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5.The Secretary to Government,
Government of India,
Ministry of Human Resources Development,
No.302-C, Shastri Bhawan,
New Delhi.

+2 CC to M/s.A.THIYAGARAJAN, Advocate (SR-515[F] dated 06/01/2022)

W.P.(MD)Nos.18477 and 22612 of 2015
05.01.2022

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