



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 16.03.2022

(Reserved on 09.03.2022)

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

and

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

W.A(MD)No.896 of 2016

and

CMP(MD)No.5386 of 2016

The Secretary,
Chittal Achi Memorial Elementary School,
Kandanoor,
Karaikudi Taluk,
Sivagangai District.

... Appellant/4th Respondent
vs.

1.Tmt.V.Manimegalai,
6-7/20(B), Bharathi Street
Sri Ram Nagar,
Kottaiyur Post,
Karaikudi Taluk,
Sivagangai District.

... Respondent/Petitioner in W.P

2.The District Elementary Educational Officer,
Sivagangai,
Sivagangai District.

3.The District Educational Officer,
Devakottai,
Sivagangai District.

4.The Assistant Elementary Educational Officer,
Sakkottai Union,
Kailasanathapuram, Karaikudi,
Sivagangai District.

... Respondents/Respondents

Appeal filed under Clause 15 of Letters Patent, against the order dated 26.04.2016 in W.P(MD)No.4134 of 2008.

Prayer in WP(MD). 4134/ 2008 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a writ of certiorarified mandamus in the natrue of writ calling for the records pertaining to the notification published by the fourth respodndent in Dinamalar newspaper dated 23.3.2008 in so far as one post of Secondary Grade Teacher meant for Most Backward Class community and quash the same and direct the respondents to appoint



the petitioner as Secondary Grade teacher as per Rule 15(4) of the Tamil Nadu Recognized Private Schools (Regulation) act.

For Appellant : Mr.AR.L.Sundaresan, Senior Counsel for
Mrs.A.L.Gandhimathi

For R1 : Mr.V.Paneer Selvam

For R2 to R4 : Mr.A.Kannan, Additional Government Pleader

JUDGMENT

R.SUBRAMANIAN, J.
AND
N.SATHISH KUMAR, J.

The 4th respondent in W.P(MD)No.4134 of 2008 is on appeal, aggrieved by the order passed in the said writ petition, quashing the publication made in Dinamalar Newspaper dated 23.03.2008, calling for applications from candidates belonging to Most Backward Class community for appointment as a Secondary Grade Teacher in the 4th respondent school and the direction to appoint the writ petitioner as a Secondary Grade Teacher under Section 15(4) of the Tamil Nadu Recognised Private Schools (Regulations) Act, 1973.

2. The writ petition came to be filed seeking a Writ of Certiorarified Mandamus, to quash the publication made by the 4th respondent in the writ petition on 23.03.2008, calling for applications from candidates belonging to Most Backward Class community for being appointed as Secondary Grade Teacher in the school and for a direction to appoint the writ petitioner in the said post.

3. The parties will be referred to by their rank in the writ petition.

4. The case of the petitioner is that she was appointed as a Secondary Grade Teacher in the available vacancy on 07.09.1990 with the prior approval of the 2nd respondent dated 18.06.1990. While so, the 2nd respondent stopped payment of salary to her on 13.12.1990. It is stated that her appointment was recorded in the service register opened by the 4th respondent which was also attested by the 3rd respondent on 07.11.1990. It is the claim of the petitioner that even though she was not paid salary, the Management assured that they will pursue the matter with the authorities and ensure that she is paid salary. She therefore continued in service. It is also stated that she was offered employment as a Secondary Grade Teacher in the Panchayat Union Middle School, Warapur, on 05.12.1990. She would claim that she could not join duty, since the 4th respondent school failed to relieve her. Subsequently, one Tmt.Saroja, a Secondary Grade Teacher, working in the 4th respondent school, retired by superannuation on 31.03.1992 and the petitioner was appointed in her place on 01.04.1992.



5. It is stated that the petitioner went on maternity leave on 08.10.1992. When she wanted to join back, she was not allowed to join duty. It was stated that she could join duty only after obtaining approval from the 2nd respondent. It appears that the approval sought for was rejected by the authorities on 11.03.1994. The petitioner however chose to file a writ petition in W.P(MD) No.16946 of 1994, seeking a direction to allow her to report for duty as per the proceedings of the 3rd respondent dated 18.11.1993. The said writ petition came to be dismissed on 27.06.2001. The fact that the approval was refused even on 11.03.1994 appears to have not been brought to the notice of this Court when W.P(MD)No.16946 of 1994 was dismissed. This Court, however, granted permission to the petitioner to approach the 2nd respondent therein, for approval of her appointment. Pursuant to the said observation of this Court, it appears that the petitioner had applied to the authorities for approval.

6. The petitioner again filed W.P(MD)No.14351 of 2003, seeking a direction to the authorities to approve her appointment. This Court by order dated 29.12.2003, dismissed the said writ petition concluding that she cannot seek a Mandamus without challenging the order rejecting approval dated 11.03.1994. The petitioner sought for a review of the said order along with an application to condone the delay in Review Application SR.No.101585 of 2005. It is during the pendency of the said review, the publication that is impugned in W.P(MD)No.4134 of 2008, came to be made. This Court dismissed the application for condonation of delay in filing the review on 21.12.2012. In the interregnum, this Court had granted stay of further proceedings pursuant to the publication in W.P(MD)No.4134 of 2008 on 29.04.2008. The said stay order was vacated by this Court on 13.08.2008. It is also seen that the petitioner had filed an appeal in W.A(MD)No.1333 of 2013, against the order dismissing the application seeking condonation of delay in filing review dated 21.12.2012. The said writ appeal came to be dismissed by a Division Bench of this Court on 07.12.2018, on the sole ground that the order refusing to grant approval to the appointment of the petitioner dated 11.03.1994 remained unchallenged. It is in this backdrop, the learned single Judge by the order impugned in this appeal, allowed the writ petition, quashed the publication made and directed the appointment of the petitioner as a Secondary Grade Teacher.

7. Aggrieved, the 4th respondent Management is on appeal.

8. We have heard Mr.AR.L.Sundaresan, learned Senior Counsel appearing for Mrs.A.L.Gandhimathi, learned counsel for the appellant, Mr.V.Paneer Selvam, learned counsel appearing for the 1st respondent and Mr.A.Kannan, learned Additional Government Pleader appearing for the respondents 2 to 4 in this appeal.



9. Mr.AR.L.Sundaresan, learned Senior Counsel appearing for the appellant would vehemently contend that the petitioner having not challenged the order refusing approval of her appointment dated 11.03.1994, cannot challenge the publication made inviting applications for appointment to the vacancies that arose subsequently. According to the learned Senior Counsel, once the petitioner had allowed the order refusing approval to become final, the liberty granted to her to move the authorities for approval by this Court in W.P(MD)No.16946 of 1994, cannot be misused by her to re-open the matter which has already been closed.

10. The learned Senior Counsel would further submit that the reliance placed by the Writ Court on the internal communication dated 07.09.1990 between two officers of the Education Department, is erroneous and the same cannot form a basis for allowing the writ petition and directing appointment of the petitioner. The learned Senior Counsel would also point out the fact that W.P(MD)No.14351 of 2003 filed by the petitioner was dismissed by this Court and the said order has become final, since the attempted review was also rejected. The appeal against the order refusing to condone the delay in filing review, was also dismissed by a Division Bench of this Court.

11. Relying heavily upon the judgment of the Division Bench in W.A(MD)No.1333 of 2013, dated 7.12.2018, Mr.AR.L.Sundaresan would submit that the Division Bench has very clearly held that the order dated 11.03.1994 having become final, the petitioner cannot seek a Mandamus to approve her appointment. Therefore, the present writ petition challenging the publication made should not have been allowed. The sum and substance of the contention of the learned Senior Counsel is that the petitioner has no vested right of appointment, merely because she worked as a Secondary Grade Teacher in the 4th respondent school for a short period.

12. Contending contra, Mr.V.Paneer Selvam, learned counsel appearing for the 1st respondent/writ petitioner would submit that the denial of approval for the appointment of the petitioner itself, is erroneous. According to him, she was originally appointed in an approved post with the prior approval. The fact that the promotion of the Secondary Grade Teacher as Headmaster was found to be irregular and the Teacher was reverted from the post of Headmaster to the post of Secondary Grade Teacher, as a consequence of which, the petitioner's appointment became an excess appointment, the approval granted to the appointment of the petitioner was revised and therefore the petitioner ought to have been accommodated in the subsequent vacancies. Mr.V.Paneer Selvam, would submit that the mistake is on the part of the authorities and therefore, the petitioner should not be made to suffer.

13. Mr.A.Kannan, learned Additional Government Pleader would submit that the order refusing approval having become final, the petitioner has no vested interest and therefore, she cannot seek appointment in priority.



14. We have considered the submissions of the learned counsel on either side.

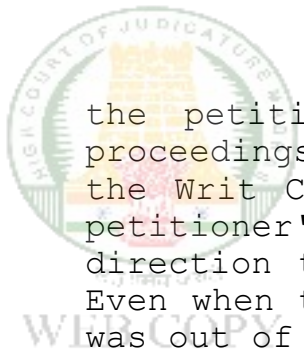
15. No doubt, the petitioner was appointed in an approved post, but unfortunately, her appointment became surplus in view of the reversal of the promotion of another Teacher as Headmaster. In fact, the grant made to the petitioner was stopped and it is her admitted case that salary was not paid to her from 13.12.1990 and she worked without salary till 07.10.1992. It is not her case that she has joined duty thereafter. In fact, it is the specific case in the affidavit filed in support of this writ petition that she was not allowed to join and the Headmaster informed her that she could join only after her appointment is approved by the Education Department. The claim of the appellant school seeking approval of the appointment of the petitioner in the place of one Saroja who was retired in 1992, was also not approved. Apart from the above, the petitioner has not chosen to challenge the order dated 11.03.1994 in and by which, the approval sought for was rejected.

16. No doubt, the fact that the approval sought for was rejected, was not brought to the notice of this Court when it disposed of W.P(MD)No.16946 of 1994 with liberty to the petitioner to approach the authorities. However, subsequently when the petitioner sought for a Mandamus in W.P(MD)No.14351 of 2003, this Court had recorded that the department has refused approval on 11.03.1994. Despite the said fact, the petitioner has not chosen to challenge the order dated 11.03.1994. She chose to seek review of the judgment in W.P(MD)No.14351 of 2003, after two years delay and the application seeking condonation of delay was also dismissed by this Court. We also find that a Division Bench of this Court had dismissed the appeal filed against the order refusing to condone the delay.

17. The Division Bench while disposing of the appeal had observed as follows:-

''3. We are of the view that the appeal is not maintainable, since no appeal has been preferred against the order dated 11.3.1994 not approving the appointment of the petitioner. Even otherwise, we do not find any error in the order passed by the learned Single Judge. It is not as if the appellant was not aware of the order dated 11.3.1994. Writ of mandamus would not lie when there was already an adverse order passed.''

18. In view of the above, we are unable to subscribe to the view of the learned single Judge that the petitioner has a vested right in appointment and the school cannot seek to appoint others from the open market. The fact that nearly 30 years have lapsed from the date on which the petitioner has left the services of the school is also a factor to be fathomed in deciding the rights of



the petitioner at this distant point of time. No doubt, the proceedings dated 21.12.2001 which have been heavily relied upon by the Writ Court, blames the Management for the non approval of the petitioner's appointment. The same alone cannot form a ground for a direction to appoint the petitioner at this distant point of time. Even when the writ petition was disposed of in 2016, the petitioner was out of service for almost 24 years.

19. The reliance placed by the Writ Court on an inter-office communication between the Additional Assistant Elementary Educational Officer and the District Elementary Educational Officer, cannot in our opinion form a basis for directing the petitioner to be appointed as a Secondary Grade Teacher, without calling for applications from the open market. It is also seen that the stay granted in W.P(MD)No.4134 of 2008 was vacated even in the year 2008. We are therefore unable to uphold the order of the learned single Judge, quashing the publication and directing appointment of the petitioner. May be, the petitioner had been treated unfairly, but the petitioner has put herself in such a position by having failed to challenge the order rejecting approval. We are therefore, unable to uphold the direction issued by the learned Single Judge. Even in the affidavit filed in support of this writ petition in the year 2008, the petitioner aged 36 years and she had crossed the maximum age limit for appointment as a Secondary Grade Teacher. Hence, no direction could be issued for appointing the petitioner as Secondary Grade Teacher.

20. In fine, the Writ Appeal is allowed and the order of the learned Single Judge is set aside and W.P(MD)No.4134 of 2008 will stand dismissed. Consequently, connected miscellaneous petition is closed. We direct the parties to bear their own costs in the appeal.

Sd/-

Assistant Registrar (CS I)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

bala

To

1.The District Elementary Educational Officer,
Sivagangai,
Sivagangai District.

2.The District Educational Officer,
Devakottai,
Sivagangai District.



3.The Assistant Elementary Educational Officer,
Sakkottai Union,
Kailasanathapuram, Karaikudi,
Sivagangai District.

+1 CC to M/s.AL.GANTHIMATHI, Advocate (SR-12653[F] dated
17/03/2022)

+1 CC to M/s.SPL GP (SR-12718[F] dated 17/03/2022)

PRE-DELIVERY JUDGMENT MADE IN
W.A(MD)No.896 of 2016
DATED : 16.03.2022

MGJ(28.03.2022) 7P 6C