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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 04.04.2022

CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P. (MD)No.6912 of 2015

and

M.P. (MD)No.1 of 2015

Vidhya Gopan G.S

... Petitioner

VS

1. The State of Tamil Nadu,
represented by its Secretary,
School Education Department,
Fort St. George, Chennai - 9.
2. The Director of School Education,
College Road, Chennai.
3. The Teachers Recruitment Board,
represented by its Member Secretary.
D.P.I Compound, College Road, Chennai-600006,
4. The Commissionr of Employment and Training,
Thiru.Vi.Ka. Industrial Estate,
Guindy, Chennai - 32.
5. The District Employment
Officer, Kanyakumari District at Nagercoil.
6. Sobha T.S.
7. Anchu

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Mandamus, to to direct the respondents 1 to 5 to select and appoint the petitioner as Graduate Assistant in English with the appropriate seniority in appointment vis-a-vis respondents 6 and 7.

For Petitioner : Mr.K.N.Thambi

For Respondents : Mr.V.Omprakash for R1,2,4 & 5
Government Advocate (Civil side)
Mr.V.R.Shanmuganathan for R3
Mr.J.Anandhavalli for R6 & R7

O R D E R

This Writ Petition is filed for issuance of a Writ of Mandamus, to direct the respondents 1 to 5 to select and appoint the petitioner as Graduate Assistant in English with the appropriate seniority in appointment vis-a-vis respondents 6 and 7.

2. The brief facts of the case are that the petitioner is qualified as B.A., English in First Class from the Manomaniam Sundaranar University, Tirunelveli and B.Ed., with English Papers I and II in First Class with Distinction and taken the degree from the Tamil Nadu Teachers Education University. The petitioner has passed M.A. in Manomaniam Sundaranar University, Tirunelveli and Diploma in M.S. Office. The petitioner registered with the fifth respondent in Registration No. NGD2004F00005703, dated 17.06.2004. The petitioner also qualified as B.Ed., and also registered B.Ed., qualification with the fifth respondent on 25.11.2010. The petitioner belongs to Scheduled Tribe Community and she married one Praveen belonging to another Community, in an inter-caste marriage and have a daughter. Based on M.A., and B.Ed., qualifications the petitioner registered with the Professional and Executive Employment Branch Office, Madurai, under Registration No. MDP2014F00005688, dated 11.03.2014. The respondents called for a list of candidates from Graduate Teachers to be appointed in the Government Schools for different languages and subjects. The District Employment Officers furnished to the fourth respondent their respective lists of candidates, who are registered with them. The said lists are drawn on the basis of seniority in registration with the respective District Employment Offices. The sixth respondent belongs to the same community with B.A., and B.Ed. And has registered from 09.03.2011 and the seventh respondent with a qualification of B.A., and B.Ed., registered in the year 2011. The contention of the petitioner is that his junior in the Employment Exchange who have registered in the year 2011 were sent by the fifth respondent to the third respondent and based on the seniority the junior were give employment. Aggrieved over the same, the present writ petition is filed.

3. The fifth respondent has filed a counter affidavit, in para 8, it has been stated as under:

"As regards the submissions made in para 9 to 14 of the affidavit, it is submitted, that the name of the petitioner had been omitted inadvertently in the list of eligible candidates and this was not done with any malafide intentions. Having failed in her responsibility to follow up the details regarding sponsoring of her name against



the notified vacancy, she had also not tried to contact the Employment Office, based on press release. It is submitted that if the petitioner had done either of these she could have been nominated for B.T. Assistant post. Having not taking any such evasive steps, she has now filed the said writ petition seeking placement as B.T.Assistant, after a lapse of almost four years. As the very procedure of appointment of teacher has changed and fully rests with the Teacher's Recruitment Board, this Department cannot provide an employment, as requested in the prayer of the petitioner".

It is specifically admitted in the counter that the fifth respondent has left the petitioner's name inadvertently.

4. Heard Mr.K.N.Thambi learned Counsel appearing for the petitioner, Mr.V.Omprakash, learned Government Advocate appearing for the respondent Nos.1,2,4 & 5, Mr.V.R.Shanmuganathan, learned Counsel appearing for the third respondent and Mrs.J.Anandhavalli, learned Counsel appearing for the sixth and seventh respondent.

5. The learned Government Pleader was directed to take instructions whether any post is vacant in order to accommodate the petitioner. However, the learned Government Pleader was not in a position to state whether any post is vacant.

6. The learned Counsel appearing for the Teachers Recruitment Board (TRB) submitted that the selection was in the year 2010 and the petitioner has filed in the year 2015. Therefore, the writ petition is hit by laches. The second contention of the learned Counsel of the TRB is that the selection process for the Teachers have been changed after 2010 onwards. From 2010 onwards the candidate should possess Teacher Eligibility Test (TET) qualification. Since there is change in the recruitment process, the petitioner has no right to agitate about the selection which was made in the year 2010.

7. It is seen from the records that it is purely a mistake of the fifth respondent by not sending the name of the petitioner.

8. This Court is of the considered opinion that the recruitment process which was carried out based on the seniority list in the Employment Exchange itself is erroneous. The Supreme Court has held in Excise Superintendent Malkapatanam VS KBN



Visweshwar Rao & others reported in 1996 (6) SCC 216 that the recruitment ought to be conducted apart from calling the list from the Employment Exchange, Paper publication ought to be issued in newspapers and should affix notification in prominent places. In the present case neither any Paper publication was issued nor and notification was affixed. Therefore, the respondents cannot take a shelter under the method followed by the respondents and it is absolutely an erroneous method.

9. The petitioner was seriously affected due to the lapse of the respondents. However, the learned Counsel for TRB submitted that during the year 2010, the process of recruitments was only by calling from Employment Exchange, thereafter, the selection method was changed.

10. This Court is of the considered opinion that the petitioner is entitled to the relief. Therefore, the first and second respondents are directed to confer the post to the petitioner. The said exercise shall be completed within a period of six weeks from the date of receipt of a copy of this order.

11. With the above direction, the Writ Petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS III)

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/ /2022
Sub Assistant Registrar(CS)

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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.



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Guindy, Chennai - 32.
 5. The District Employment Officer,
Kanyakumari District at Nagercoil.
- +1 CC to M/s.K.N.THAMPI, Advocate
(SR-16280[F] dated 04/04/2022)
- +1 CC to M/s.SPL.GOVERNMENT PLEADER
(SR-16712[F] dated 05/04/2022)
- +1 CC to M/s.J.ANANDHAVALLI, Advocate
(SR-16544[F] dated 05/04/2022)

Order made in
W.P. (MD) No.6912 of 2015
and
M.P. (MD) No.1 of 2015
04.04.2022

SP/10/06/2022/5P/9C