



WEB COPY

W.P.(MD)No.18735 of 2017

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 09.02.2022

DELIVERED ON : 22.03.2022

CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P. (MD)No.18735 of 2017

and

W.M.P. (MD)Nos.3817 of 2021 & 15112,15113 & 17485 of 2017

C.Bavani

... Petitioner

vs

1. The District Educational Officer,
O/o. the District Educational Officer,
Devakkottai,
Sivagangai District.

2. The Correspondent,
RM.M.Girls High School,
Pallathur - 630 107,
Sivagangai District.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, to call for the records relating to impugned order passed by the first respondent in his proceedings in O.M.No.5057/A1/2017 dated 11.07.2017 and the consequential impugned proceedings passed by the first respondent vide his proceedings O.M.N.5668/A1/2017, dated 31.07.2017 and quash the same as illegal and consequentially direct the first respondent to approve the petitioner's appointment as Music Teacher with effect from 22.12.2014 within the period that may be stipulated by this Court.

For Petitioner : Mr.M.Ajmalkhan Senior Counsel
for M/S.Ajmal Associates

For Respondents : Mr.N.Ramesh Arumugam for R1
Government Advocate (Civil side)

Mr.P.Ganapathi Subramian for R2



O R D E R

The petitioner is seeking to quash the impugned order, dated 11.07.2017 and the consequential order, dated 31.07.2017 and consequently, direct the first respondent to approve the petitioner's appointment as Music Teacher with effect from 22.12.2014.

2. The brief facts of the case are that the petitioner belongs to B.C. category and has qualified as B.A., (Music) and Diploma in Music Teacher Training. The second respondent is a private aided non-minority Institution and governed by the Tamil Nadu Recognized Private Schools (Regulation) Act 1973. The petitioner was appointed on 02.03.2012 on consolidated pay. A sanctioned vacancy fell vacant in the cadre of Music Teacher on 01.11.2013 on account of the voluntary retirement of the incumbent, namely, Saranya. The second respondent submitted a proposal seeking prior permission to fill up the said vacancy and the first respondent granted permission on 17.11.2014. Accordingly, a list of candidates from Employment Exchange were called for and five names were sponsored. The School Committee has passed a resolution on 04.12.2014 to conduct selection process. On 20.12.2014, an interview was conducted and the petitioner was selected and thereafter the petitioner was appointed on 22.12.2014. The second respondent submitted a proposal, dated 20.01.2015 seeking approval of the appointment. The first respondent sought further clarification of particulars through proceedings, dated 19.03.2015. The second respondent vide proceedings, dated 27.03.2015 clarified the queries raised by the Department and resubmitted the proposal on 21.04.2015. Again the first respondent returned the proposal vide letter, dated 20.08.2015 directing to submit equivalency certificate for a Diploma in Music Teacher Training done in the University.

3. The petitioner has submitted G.O.Ms.No.43, Tamil Nadu Development and Information Department, dated 15.03.2017, where it has held that the Diploma in Music Teacher Training University is valid for an appointment to the post of Music Teacher in the School Education Department. Therefore, the second respondent again submitted a proposal on 31.03.2017, but vide proceedings, dated 13.05.2017 returned the proposal stating that the appointment was not made by following proper communal rotation. The petitioner was appointed under O.C. category on 22.12.2014 and after three years the respondent is raising such a query of following communal rotation. The reservation of appointment is governed by 200 points roster system which was implanted through G.O. Ms. No. 65 Personnel and Administrative Reforms Department dated 27.05.2009 and G.O. Ms. No. 55 Personnel and Administrative Reforms Department dated 08.04.2010. Therefore, the claim of the petitioner is that the second respondent has rightly followed the 200-points roster system as per G.O.Ms.No.55 and G.O.Ms.No.65 and has appointed the



petitioner. Hence the impugned order is liable to be quashed.

4. The first respondent has filed a counter affidavit stating that, on 18.11.1982 a person, namely, S. Anandavalli was appointed as Music Teacher in the second respondent School. Since she was promoted as Tamil Teacher, her post fell vacant from 01.12.2008. Hence the approval was granted by the Chief Education Officer, following G.O.Ms.No.65, dated 27.05.2009. In the said place, the School has appointed a person, namely, A.Saranya on 05.07.2010. Her appointment was approved, vide respondent's proceedings, dated 11.10.2010. The said Saranya has submitted the voluntary retirement on **(*)31.10.2013** and the post fell vacant from 01.11.2013. In order to fill the said vacancy, the roster system ought to be followed as mentioned in Sl.No.2 SCA under G.O. Ms. No. 65, Personnel and Administrative Reforms Department, dated 27.05.2009. The respondents, vide proceedings, dated 17.11.2014 had granted prior permission to the second respondent to fill up the vacant post of Music Teacher with certain conditions. The second respondent herein called for the names from the Employment Exchange in 1:5 ratio, conducted interview and selected the petitioner and appointed her on **(*)22.12.2014**. The second respondent sought for approval and submitted a proposal on 21.01.2015. Since the petitioner's appointment was not in accordance to law, this respondent vide his proceedings, dated 19.03.2015 mentioned the irregularities and sought some particulars including the equivalency certificate of the petitioner's Diploma in Music Teacher Training.

5. The second respondent submitted a reply on 27.03.2015, since the reply was not satisfactory, the proposal was returned. Again the proposal was returned on 21.04.2015. The second respondent clarified the qualification of the petitioner by producing G.O.Ms.No.43 (Tamil Development and Information Department) dated 15.03.2017. Thereafter, it was found that the petitioner was not coming under SCA roster system. Hence the first respondent returned the proposal. The second respondent replied stating that the said Saranya was appointed as per G.O. Ms. No. 241 (Personnel and Administrative Reforms Department) dated 29.10.2007 and she voluntarily retired from service. Thereafter, the petitioner was appointed by following the G.O. Ms. NO. 65 (Personnel and Administrative Reforms Department) dated 27.05.2009. Since the qualification of the second respondent was incorrect, the proposal was returned and vide proceedings, dated 31.07.2017 and again the proposal was returned stating that the communal rotation was not followed. Hence the appointment of the petitioner is not tenable and prayed to dismiss the writ petition.

6. Heard Mr.M.Ajmalkhan, Learned Senior Counsel appearing for the petitioner, Mr.N.Ramesh Arumugam, learned Government Advocate appearing for the first respondent and Mr.P.Ganapathi Subramian, learned Counsel appearing for the second respondent.



7. This Court while admitting this writ petition has granted interim injunction in W.M.P.(MD)No.15113 of 2013, dated 09.10.2017. Based on the interim injunction, the petitioner is continuing her service. The first respondent has raised two issues in this writ petition. The first issue is that the qualification of the petitioner is not equivalent. The petitioner produced G.O.Ms.No.43 (Tamil Development and Information Department). dated 15.03.2017, where it has been declared that the Diploma Music Teacher Training certificate awarded by the Tanjai Tamil University is equivalent to the certificate of Music Teacher Training in School Education Department. Therefore, by following G.O.Ms.No.43 (Tamil Development and Information Department) dated 15.03.2017, this Court is of the considered opinion that the petitioner's certificate of Diploma in Music Teacher Training is equivalent to Music Teacher Training in School Education Department.

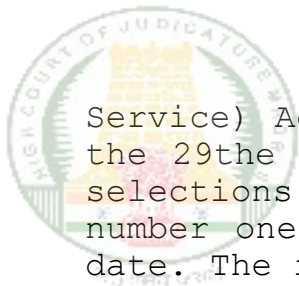
8. The second issue that was raised is that the second respondent ought to follow the roster of SC Arunthathiyar. But instead of that, the second respondent has followed General Turn. The contention of the respondent is that the earlier incumbent, namely, Saranya was appointed under General Turn by following 200-points roster under G.O.Ms.No.65. Therefore, the subsequent vacancy ought to be filled by Sl.No.2, SC Arundhathiyar. Since the School has appointed again by following Sl.No.1 General Turn, the appointment of the petitioner is against the roster.

9. On perusal of the of the affidavit, counter affidavit and documents, it is seen that, on 18.11.1982, the person, namely, S.Anandavalli was appointed as Music Teacher in the second respondent School and she was promoted Tamil Teacher on 01.12.2008. After the post fell vacant on 01.12.2008 the school took steps to fill up the vacancy. The issue is whether G.O.Ms.No.241 is applicable or G.O.Ms.No.65 is applicable. The Learned Counsel for the petitioner relied on Tamil Nadu Sub-ordinate Service Rules, Rule 22 under Sub-clause 'c', wherein it is stated that the

"selection for appointment under this rule shall be made in the order of rotation specified Schedule III to this part
*Explanation: The vacancies arising **on and from 06.05.2000***
shall be filled up as per Schedule III and all selections for appointment shall be started afresh from serial number one in the said schedule III with effect on and from the said date."

It is seen from the records that the post was vacant on 01.12.2008 and the School has appointed the said Saranya on 05.07.2010. Since the post was vacant on 01.12.2008, then the G.O.Ms.No.241 is applicable. Therefore, the said Saranya was appointed under General Turn by following G.O.Ms.No.241.

10. The said Saranya voluntarily retired on 31.10.2013 and the post fell vacant on 31.10.2013. In G.O. Ms. No. 65 and Section 27 Sub Clause (e) of the Tamil Nadu Government Servants (Conditions of



Service) Act 2016 has stated that the vacancies arising on and from the 29th April 2009 shall be filled up as per Schedule -V and all selections for appointment shall be started afresh from serial number one in the said Schedule-V with effect on and from the said date. The relevant portion is extracted hereunder:

WEB CUP Section 27 ...

(e) Selection for appointment under this section shall be made in the order of rotation specified in Schedule-V

Explanation.- The vacancies arising on and from the 29th April 2009 shall be filled up as per Schedule -V and all selections for appointment shall be started afresh from serial number one in the said Schedule-V with effect on and from the said date.

Since the explanation categorically stated that any vacancy arises on or from 29.04.2009 then the 200-points roster ought to be followed again starting afresh.

11. Admittedly the promotion vacancy of S. Anandavalli arose on 01.12.2008, which is on and from 06.05.2000 but prior to 29.04.2009, then the G.O. 241 is applicable. Therefore the said Saranya was appointed following G.O. 241.

12. The voluntary retirement vacancy of Saranya arose on 31.10.2013. The said vacancy arose on and from 29.04.2009. Then G.O.Ms.No.65, dated 27.05.2009 read with Section 27 Sub Clause (e) of the Tamil Nadu Government Servants (Conditions of Service) Act 2016 ought to be followed. Then the School is bound to start roster from Sl.No.1 and not from Sl.No.2. Therefore, the petitioner's appointment is legally valid.

13. The 2nd respondent has also circulated the photo copy of the register maintained by the second respondent wherein, it has been clearly stated that G.O.Ms.No.241 was invoked while appointing Saranya and it has been clearly stated that the vacancy arose on 01.12.2008.

14. Therefore, this Court is of the considered opinion that the impugned order is erroneous and incorrect and it is liable to be set aside. Hence, this Court quashes the impugned order and the appointment of the petitioner is upheld. The respondents are directed to grant approval from the date of original appointment i.e. 22.12.2014. Since the petitioner's appointment was cancelled on 20.12.2014 the petitioner is not entitled to any monetary benefits from 20.12.2014 but entitled to continuity of service from 20.12.2014. This order shall be implemented within a period of four weeks from the date of receipt of a copy of this order.



15. With the above direction, the Writ Petition is allowed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-II)

(*) Corrected as per the order of this Court dated 04/04/2022 made in WP(MD) .No.18735 of 2017

// True Copy //

/ /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.

To

1. The District Educational Officer,
O/o. The District Educational Officer,
Devakkottai,
Sivagangai District.

2. The Correspondent,
RM.M.Girls High School,
Pallathur - 630 107,
Sivagangai District.

+1 CC to M/S.AJMAL ASSOCIATES, Advocate SR-13680 dated 22/03/2022

+1 CC to M/S.THE SPL GP, SR-13871 dated 23/03/2022

+1 CC to M/S.P.GANAPATHI SUBRAMANIAN, Advocate SR-13680 dated 22/03/2022

W.P. (MD) No.18735 of 2017

22.03.2022

RK(21/04/2022) 6P 6C