



W.P.No.14074 of 2011

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.12.2023

CORAM

THE HONOURABLE MR.JUSTICE K.KUMARESH BABU

W.P.No.14074 of 2011

G.Anna Malkiya

... Petitioner

Vs

- 1.The Government of Tamil Nadu,
Represented through its Secretarty,
Department of School Education,
Chennai.
- 2.The Director,
Teachers Recruitment Board,
4th floor, E.N.K.Sampath Building,
College Road, Chennai.
- 3.The Director,
Directorate of School Education,
Chennai – 6.
- 4.The Chief Educational Officer,
Chief Educational Office,
Krishnagiri District, Krishnagiri.
- 5.The Head Master,
Govt. Girls Higher Secondary School,

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Mathur,
Pochampalli Taluk,
Krishnagiri District.

... Respondents

PRAYER:- Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus to call for the records connected with the Order passed by the 2nd respondent herein in his proceedings in O.Mu.No.1692/A2/2011 dated 19.04.2011 and quash the same and further direct the respondents herein to give retrospective effect to the petitioner's appointment with effect from 30.12.2008 with all monetary benefits and pass such further orders.

For Petitioner : Mr.A.R.Balaji
for Mr.V.Meenakshisundaram

For RR1, 3, 4 & 5 : Mr.R.Neethi Perumal
Government Advocate

For R2 : Mr.C.Kathiravan
Standing Counsel for TRB

ORDER

The prayer in the Writ Petition is to quash the order of 2nd respondent dated 19.04.2011 and to direct the 1st respondent to give retrospective effect to the petitioner's appointment with effect from

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30.12.2008.

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2. Heard Mr.A.R.Balaji, learned counsel, for M/s.V.Meenakshisundaram, learned counsel for the petitioner, Mr.R.Neethi Perumal, learned Government Advocate appearing for the respondents 1, 3, 4 & 5 and Mr.C.Kathiravan, learned Standing Counsel appearing for the 2nd respondent.

3. Mr.A.R.Balaji, learned counsel for the petitioner would submit that the petitioner's name was sponsored by the Employment Exchange under the reserved category of dependent of ex-servicemen. The Selection Board did not to consider the petitioner under the category of dependents of ex-servicemen on the ground that the petitioner was married and that the Government order prescribing such priority would be only applicable to unmarried daughters of the ex-

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servicemen. Therefore, the petitioner had approached this Court in *W.P.(MD).No.11457 of 2008* and by order dated 22.12.2008, this Court allowed the Writ Petition with a direction to the respondent to consider the petitioner's case under the priority earmarked for wards of ex-servicemen subject to the petitioner satisfying the other qualifications and to issue order of appointment to her. On 26.12.2008, a list of eligible candidates were published and the petitioner's name was found in S.No.550. The petitioner had appeared before the 2nd respondent on 30.12.2008 along with the copy of the order made by this Court. In spite of production of the copy of the order of the 2nd respondent has refused to issue an order of appointment and aggrieved over the same, the petitioner had also initiated a Contempt before this Court. As the respondent had failed to appear, pursuant to the statutory notice, a non-bailable warrant was also issued by this Court on 01.04.2009. Immediately, thereafter, on 03.04.2009, the petitioner was issued with a provisional appointment order and the petitioner had also joined the duty.

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4. The learned counsel for the petitioner would submit that the persons who have been selected under the selection list dated 26.12.2008 were granted appointment on 30.12.2008. The petitioner was also eligible to be appointed on the same date. But, was issued with an order of appointment much belatedly, that too only after a non-bailable warrant was issued by this Court in the Contempt initiated by the petitioner. This affects the right of the petitioner to have the benefit of the VIth Pay Commission which was implemented from June 2009. Therefore, she had made a representation to the respondents seeking to grant an order of appointment with retrospective effect. The said request was rejected by the 2nd respondent that since her appointment was withheld as she would not fall under the category. He would further submit that only pursuant to the order of this Court dated 03.04.2009, the petitioner was issued with an order of appointment.

5. The learned counsel for the petitioner would submit that the

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respondent had purposefully issued this order by indicating that the order of this Court is dated 03.04.2009. He would submit that the order of this Court was on 22.12.2008 much before the order of appointment issued to other selected candidates on 30.12.2008. In spite of production of the copy of the order, the respondent had failed to obey the order which had forced this petitioner to file a contempt, in which also a lethargic attitude was shown pursuant to which a non-bailable warrant was issued on 01.04.2009 and the order of appointment was issued only on 03.04.2009. Therefore, he would submit that the order impugned will have to be set aside and the respondents should be directed to issue an order of appointment, appointing the petitioner retrospectively from 30.12.2008 and then grant her all attendant benefits as other persons who have been appointed on 30.12.2008 would be entitled to.

6. Countering his arguments, Mr.R.Neethi Perumal, learned Government Advocate for the respondents 1, 3, 4 & 5 would submit

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that the appointment of the petitioner was with held for the reason that she would not be eligible for priority quota available to the wards of the ex-servicemen. Only on receipt of the orders passed by this Court an order of appointment was given, for which there is no fault on the side of the respondents. The petitioner had been only rightly granted appointment in the year 2009 pursuant to the orders passed by this Court in a Writ Petition filed by her and therefore, the reasons assigned by the respondents in rejecting the claim of the petitioner does not require any interference by this Court.

7. I have considered the submission made by the learned counsels appearing on either side and perused the materials available on record before this Court.

8. The petitioner had made an application under the priority quota for the wards of ex-servicemen. Even before the publication of the results, since her claim was not considered, the petitioner had

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approached this Court in filing *W.P.(MD).No.11457 of 2008*. This Court by its order dated 22.12.2008 had held that the petitioner is entitled for priority quota of wards of the ex-servicemen and had the respondents to grant the petitioner appointment if she is otherwise fully qualified. The selection list had been published on 26.12.2008. It is not disputed by the respondents that the petitioner had not produced the copy of the order. Further a perusal of the order passed by this Court would also suggest that the respondents were being represented by a Government Advocate and therefore, they cannot feign ignorance with the order passed by this Court. It is also not their case that they were not aware of the order. Their statement is that the eligibility of the petitioner was under doubt for which they had with held the order of appointment. The said reasoning assigned by them is trying to make mockery of this Court for simple reason that even before the publication of the result this Court has held positively that the petitioner was entitled for claiming priority under the wards of ex-servicemen and a direction had been issued by this Court to grant the petitioner with an

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order of appointment if she is otherwise qualified.

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9. It is very surprising to note that the 2nd respondent in the order impugned had stated that pursuant to the order passed by this Court on 03.04.2009, the order of appointment was issued. As rightly pointed out by the learned counsel for the petitioner that the issuance of the non-bailable warrant against the 2nd respondent has not been disputed by the respondents. It could be seen that only after the issuance of a non-bailable warrant on 01.04.2009, the petitioner had been issued with an order of appointment on 03.04.2009. This itself would show that the officials of the Government do not intend to obey the orders passed by this Court unless and until they are wield the damocles sword of contempt.

10. I have already found that even on the day of publication of result, the petitioner was eligible to be appointed in view of the order passed by this Court on 22.12.2008, therefore, there was no question of

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with holding the appointment of the petitioner on the question of her being eligible to claim the priority. When that being the position, the petitioner is entitled to be appointed on 30.12.2008, similarly to that of selected candidates in the list published on 26.12.2008. Therefore, I am of the considered view that the order passed by the 2nd respondent is not only on reasons which were not available on record but arbitrary and an absolute illegality committed by the respondents.

11. In fine, this Writ Petition is allowed and the order impugned in this Writ Petition is liable to be interfered with and there shall be an positive direction to the respondent to treat the petitioner as having been appointed as on 30.12.2008, similar to the persons who were appointed pursuant to the selection list dated 26.12.2008. However, there shall be no order as to costs.

12.12.2023

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Index : Yes/No
Speaking order : Yes/No
Neutral Citations : Yes/No

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To

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- 1.The Secretary,
for The Government of Tamil Nadu ,
Department of School Education, Chennai.
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Teachers Recruitment Board,
4th floor, E.N.K.Sampath Building,
College Road, Chennai.
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K.KUMARESH BABU,J.

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