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W.P.No.18714

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.11.2023

CORAM:

THE HON'BLE MR. JUSTICE K.KUMARESH BABU

W.P.No.18714 of 2011

K.Nirmala

...Petitioner

Vs.

- 1.The Chief Educational Officer,
O/o.Chief Education Officer,
Coimbatore.
- 2.The Commissioner,
O/o.Coimbatore Corporation,
Coimbatore.
- 3.The Corporation Educational Officer,
The Higher Secondary Education,
Coimbatore.
- 4.District Educational Officer,
O/o.District Educational Officer,
Coimbatore.
- 5.Mr.B.Samuel,
Tamil Pandit,
Kamalanathan Memorial High School,
Venkatapuram, Coimbatore Corporation.
- 6.Mr.B.Hariharan,
Graduate Teacher,
Higher Secondary School, (Co-Education)
Rasapuram, Corporation Coimbatore.

...

Respondents

<https://www.mhc.tn.gov.in/judis>



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Prayer: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Manadamus to call for the entire records of the impugned Notification of the 2nd and 3rd respondents relating to the Final Panel of List of Seniority, consisting List No.I & II under Ref.No.Na.Ka.No.10868/2010/K7, dated 06.07.2011 inducting the names of 5th & 6th respondents in the List No.I & II respectively and quash the same in so far as placing the 5th and 6th respondent as senior to the petitioner in the Final Panel of List of Seniority, List No.I & II for the Post of Postgraduate Assistant Teacher (Commerce) in the Higher Secondary School of the 2nd and 3rd respondents and consequently direct the respondents 2 & 3 to include the name of the petitioner in the Final Panel of list of Seniority, dated 06.07.2011 instead of the 5th & 6th respondents drawn for promotion in the Final Seniority List of impugned Notification under Ref.No.Na.Ka.No.10868/2010/K7, dated 06.07.2011 to the post of Post Graduate Assistant (Commerce) in Higher Secondary Schools of the respondents 2 and 3 above the respondents 5 & 6 in Final Panel of List of Seniority by taking into consideration of the petitioner's Post Graduate qualification from the date of completion of the Masters Degree in Commerce in 2009.

For Petitioner	: Mr.Mubeen for Mr.S.Xavier Felix
For Respondents	: Mr.A.M.Ayyadurai for R1 & R4 Government Advocate Mr.Magesh for R2 & R3 R5 & R6 – served – No appearance



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ORDER

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The petitioner had challenged the drawal of final panel wherein the names of the respondents 5 & 6 had been included for promotion to the post of Post Graduate Assistant Teacher in Commerce and to redraw the panel of list of seniority by taking the petitioner's Post Graduate qualification from the date of completion of Master degree in Commerce in the year 2009.

2.Heard Mr.Mubeen, learned counsel appearing for Mr.S.Xavier Felix, counsel on record for the petitioner and Mr.A.M.Ayyadurai, learned Government Advocate appearing for the respondents 1 & 4 and Mr.K.Magesh, learned counsel appearing for the respondents 2 & 3.

3.The case of the petitioner is that the petitioner had completed 10th standard in the year 1983 - 1984 and completed her Higher Secondary education in the year 1986. She had also completed a Diploma Course in Teacher Education in the year 1990. Thereafter, she had also completed Bachelor of Literature in the year 2000. She had also obtained a Post Graduate degree in Commerce through Tamil Nadu Open University in the year 2007 and completed her Bachelor of Education degree from Indira Gandhi Open University in the year 2010.

4.Learned counsel for the petitioner would submit that the petitioner had joined

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as a Secondary Grade Teacher in the Union Elementary School. In the year 1996, the petitioner was transferred to Coimbatore Girls High School at Puliyanikulam.

Thereafter, she was transferred to the Corporation Higher Secondary School for taking classes in the Tamil language for the students studying in 9th and 10th standards. Having a Post Graduate degree in Commerce, the petitioner was also required to take Commerce classes for 11th and 12th standards students from 2009 to 2011 apart from taking classes in the Tamil language.

5.By proceedings in December 2010, the Corporation Educational Officer, Coimbatore had recommended the name of the petitioner for promotion to the post of Post Graduate Teacher in Commerce. But, however, by impugned proceedings dated 06.07.2011, the second respondent herein had rejected the claim of the petitioner by holding that the petitioner had completed the Post Graduate course in Commerce through Open University which is a non-regular stream and rejected her request for promotion to the post of Post Graduate Assistant in Commerce.

6.Learned counsel appearing for the petitioner would submit that such a conclusion arrived at by the second respondent rejecting the claim of the petitioner is wholly without any basis and therefore is liable to be interfered with.

7.Mr.K.Magesh, learned counsel appearing for the respondents 2 & 3 would



contend that the petitioner had completed Undergraduate degree in Tamil and only Post Graduate in Commerce through Open University. He would submit that such a person cannot claim to have completed a Master of Commerce degree as the petitioner does not have an Under Graduate in Commerce to even get an admission for a Post Graduate degree in Commerce. Therefore, he would submit that there is no infirmity in the order impugned in this Writ Petition.

8.I have heard arguments of the respective counsel appearing on either side and perused the materials available on record.

9.Under the impugned order, the name of the petitioner had been deleted from the tentative seniority list and the name of the fifth respondent had been directed to be included in the same by holding that the fifth respondent was eligible than the petitioner, in the list of teachers eligible to be promoted to the post of Post Graduate Assistant on the ground that the petitioner does not have a regular Postgraduate degree in Commerce and that the Postgraduate has been obtained through the Tamil Nadu Open University apart from holding that the petitioner does not hold a Bachelor degree in Commerce.



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10.It is to be noted that the Government by G.O.Ms.No.217 Personnel and Administrative Reforms Department dated 08.09.2007 had held that the Diploma/Under Graduate/Post Graduate Degree Courses offered by the Tamil Nadu Open University shall be treated as equivalent to the corresponding awards of other universities in the State under regular stream for the purpose of employment in public service. It is not a disputed case that the petitioner had obtained a M.Com degree from the Tamil Nadu Open University. Further, while issuing the order impugned in this Writ Petition, the petitioner had not been admittedly put on notice. The petitioner had sent a representation to the respondents immediately on the issue of the impugned order, the same has not been considered by the second respondent.

11.Learned counsel appearing for the second respondent had contended that the fifth respondent has got both Undergraduate & Postgraduate degree in Commerce whereas the petitioner has got an Undergraduate degree in Tamil but a Postgraduate degree in Commerce. The Higher Secondary Leaving Certificate issued to the petitioner also indicates that the petitioner had not chosen Commerce as a main subject.

12.In such circumstances, I do not find any infirmity in the impugned order passed by the respondents. Be that as it may, the order impugned had been passed



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without giving any opportunity to the petitioner and her representation given immediately after passing the impugned order has also not been considered.

Therefore, I am inclined to direct the petitioner to make a fresh representation to the second respondent and the second respondent shall consider the same and pass orders within a period of six weeks from the date of receipt of a copy of this order.

13.In fine, the Writ Petition is dismissed with the aforesaid directions. There shall be no order as to costs.

27.11.2023

Index: Yes/No

Speaking Order/Non-Speaking Order

Neutral Citation: Yes/No

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K.KUMARESH BABU, J.

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