



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.01.2023

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THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

W.P No.19275 of 2020

and

WMP Nos.23864 and 23865 of 2020

A.S.Mujeebur Rahyman

Petitioner

vs.

1. The Directorate of School Education
College Road, Chennai 600 006.
2. The Chief Educational Officer
Nagapattinam.
3. The District Educational Officer
Nagapattinam District, Nagapattinam.
4. The Correspondent
Ghouthiya Higher Secondary School
Nagore – 611 002
Nagapattinam Taluk & District.

.... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned order of the 2nd respondent dated 06.11.2020 in Mu.Mu.No.4158/A2/2020 and Quash the same and consequently direct the respondents to convert the post of B.T.Assistant (History) into one of B.T.Assistant (Science) and approve the appointment of the petitioner from 01.06.2005 and confer all the consequential benefits.



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For Petitioner : Mr.A.M.D.Mohamed Salih Hussain

For Respondents : Mr.Stalin Abhimanyu
Additional Government Pleader
for R1 to R3

ORDER

This writ petition has been filed challenging the impugned proceedings of the 2nd respondent dated 06.11.2020 and for a consequential direction to the respondents to convert the post of B.T. Assistant (History) into one of B.T.Assistant (Science) and approve the appointment of the petitioner from 01.06.2005.

2.The case of the petitioner is that he joined the 4th respondent School on 11.03.1998 as a Secondary Grade Assistant and he was promoted as a B.T. Assistant on 01.06.2005. The 4th respondent promoted the petitioner as a B.T.Assistant (Science) instead of promoting him in the vacancy caused for B.T. Assistant (History).

3.A representation was made to the respondents to convert the post of B.T.Assistant (History) into one of B.T.Assistant (Science) and to approve the promotion given to the petitioner and confer with all the consequential benefits.

The said representation was rejected by the 2nd respondent through the



impugned proceedings dt.06.11.2020 and aggrieved by the same, the present writ petition has been filed before this Court.

4.The 2nd respondent has filed a counter affidavit. For proper appreciation, the relevant portions in the counter affidavit are extracted hereunder:

8. Regarding the averments in para 5 of the affidavit of the petitioner, it is submitted that 3 posts were already converted as B.T. Assistant (Science) after the initial appointment of the petitioner. But the 4th respondent has not chosen to promote the petitioner in the said vacancies. But contrary to the guidelines, issued by the Government, the petitioner was promoted as B.T.Assistant (science) in the vacancy caused for B.T.Assistant (History). Even as per the a parametres for the subject wise appointment of B.T. Assistants with reference to the No. of students and the period of teaching in each subject, there was no need for B.T.Assistant (Science) as on the date of promotion of the petitioner. Hence this contention of the petitioner has no merit.

9. Regarding the averments in para 6 of the affidavit of the petitioner it is submitted that the 4th respondent School Management has to follow the guidelines issued by the Government then and there as per TamilNadu Private Schools (Payment of grants in aid) rules. The 4th respondent has no absolute power to make promotion appointments according to whims and fancies. The promotion of the petitioner to the post of B.T. Assistant (Science) in the vacancy of



B.T.Assistant (History) is against the guidelines issued in G.O.Ms.No.244. School Education Department dated 22.9.2007 and G.O.Ms.No.144. School Education Department dated 4.7.2008 and hence the proposal seeking approval of the promotion of the petitioner was rightly rejected vide Lr.No.1559/a4/2015 Dated 19.6.2015. Aggrieved by the above orders, the petitioner has filed this writ petition 31841 of 2015 and this Hon'ble Court passed orders with the following directions.

"8. By taking note of the above said submission of the parties concerned the writ petition is disposed of with the following directions:-

i) The petitioner shall make fresh representation to the third respondent School within two weeks from the date of receipt of a copy of this order.

ii) if the petitioner is found eligible, the 3rd respondent shall consider the representation of the petitioner for conversion of the subject from B.T.Assistant (History) to B.T.Assistant I(Science) and submit a proposal to the authorities concerned as expeditiously as possible.

10. Regarding the averments in para 7 of the affidavit of the petitioner, it is submitted that the proposal seeking approval of the promotion of the petitioner to the post of B.T. Assistant (science) was examined with reference to the guidelines issued by the Government. It is submitted that the status prevailing in 4th respondent School is as follows:-

11. Regarding the averments in ground 'A' of the affidavit of the petitioner, it is submitted that as already stated above, the petitioner ought been promoted as B.T.Assistant (Science) whenever



B.T.Assistant (Science) post was created in 4th respondent School. Instead the petitioner was promoted as B.T.Assistant (science) in the vacancy caused for B.T.Assistant (History). It is further submitted that as per the syllabus prescribed in the proceedings of the Director of School Education Rc.151138/ K.1. 89 dated 11.9.1989 and as per the working formula mentioned in para 10 above, only 5B.T.Assistant(Science) is required in 4th respondent School, but six (5+1) B.T.Assistant (Science) are working as at present. Hence the promotion of the petitioner, as B.T.Assistant (Science) is against the norms and the petitioner has no legitimate claim.

5.Heard Mr.A.M.D.Mohamed Salih Hussain, learned counsel for the petitioner and Mr.Stalin Abhimanyu, learned counsel for the respondents 1 to 3.

6.There is no dispute with regard to the fact that the petitioner who ought to have been promoted as a B.T.Assistant (History) in the vacancy that was available, was promoted as a B.T.Assistant (Science) by the 4th respondent School even without there being any vacancy. This irregularity is sought to be regularized by the 4th respondent School through the petitioner by converting the post of B.T.Assistant (History) into one of B.T.Assistant (Science). The actual dispute is between the petitioner and the 4th respondent School and the 4th respondent School in order to get away from their irregularity, have filed this writ petition through the petitioner to regularize that irregularity.



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7.It is clear from the impugned proceedings of the 2nd respondent dated 06.11.2020 as well as from the counter affidavit filed by the 2nd respondent, that there are no sufficient number of students to create one more post of B.T.Assistant (Science). In the 4th respondent School, the total number of B.T.Assistants, who are required to teach science is 5 and a total number of 140 periods can be taught with the present strength of students for 28 periods in a week. All these 5 posts are intact and there is no scope for creating one more post of B.T.Assistant (Science) by converting from B.T.Assistant (History).

8.The 2nd respondent has given cogent reasons as to why the request made by the petitioner and the 4th respondent School cannot be complied with and there is absolutely no infirmity in the said decision taken by the 2nd respondent. Hence, there is no ground to interfere with the impugned proceedings of the 2nd respondent dated 06.11.2020. If in case any vacancy arises in future in the post of B.T.Assistant (Science) in the 4th respondent School and there are sufficient students, it will be left open to the 4th respondent School to accommodate the petitioner, provided that the petitioner possess the necessary qualification.



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9. In the result, this writ petition stands dismissed. No Costs.

Consequently, connected miscellaneous petitions are closed.

23.01.2023

Index : Yes/No
Internet : Yes/No
Speaking Order/Non-Speaking Order
Neutral Citation Case : Yes/No
KP

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N. ANAND VENKATESH, J.

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