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WP.No.32815/2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 17.07.2023

CORAM

THE HONOURABLE MR. JUSTICE C.V.KARTHIKEYAN

WP.No.32815/2017 & WMP.Nos.36162 & 36163/2017 & 16028/2018

R.Joyce

... Petitioner

Versus

1. Director of School Education,
College Road, Chennai-6.

2. The District Education Officer
Chennai [Centra], Chennai – 15.

3. Correspondent and Secretary
The Besant Theosophical Higher
Secondary School [A Unit of
Kalakshetra Foundation], No.2,
Arundale Beach Road, Arundale Nagar
Chennai 600 090.

... Respondents

Prayer :- Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of certiorarified mandamus calling for the entire records relating to the proceedings in Na.Ka.No.1463/A2/2017 dated 21.07.2017 on the file of the 2nd respondent herein and quash the same and consequently, direct the respondents 1 and 2 herein to forthwith



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approve the promotion of the petitioner herein in the post of B.T.Assistant [Social Science] without insisting letter of relinquishment from the teachers acquired qualification subsequent to 01.06.2010.

For Petitioner : Mr.R.Venkatajalapathy
For Respondents : Mr.T.K.Saravanan, GA

ORDER

- (1) This writ petition has been filed in the nature of certiorarified mandamus seeking records relating to the proceedings in Na.Ka.No.1463/A2/2017 dated 21.07.2017 by the 2nd respondent, District Educational Officer, Chennai [Central], and quash the same and direct the respondents 1 and 2 to promote the petitioner herein to the post of B.T.Assistant [Social Science] without insisting on letter of relinquishment from the teachers who had acquired qualification subsequent to 01.06.2010.
- (2) This writ petition which could have been very easily avoided, had only the 3rd respondent, particularly acted promptly on the date when a vacancy fell in their School for B.T.Assistant teacher post.



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(3) This vacancy fell on 01.06.2010 consequent to the retirement by superannuation of Mrs.Vanni Bhagavathi, whom the learned counsel for the petitioner states is actually Mrs.Vanni Thiyagarajan. She retired on 31.05.2010. On 01.06.2010, when the vacancy arose, the petitioner claimed that she was eligible and qualified. She had studied Diploma in Teacher Education [D.T.E]. She is also a Post Graduate in M.A.[Social Science] and also had B.Ed qualification which makes her eligible for appointment as a B.T.Teacher. The 3rd respondent had also recognised her qualification and her eligibility for the said post and therefore, they had passed a Resolution as early as in July 2010. As a matter of fact, the entire proceedings of the School Management can be reduced for better understanding:-

PROCEEDINGS OF THE SCHOOL MANAGEMENT
COMMITTEE RESOLUTION OBTAINED IN
CIRCULATION

Subject-Filling up the post: B.T.Assistant [Social Science] in the scale of pay PB-2 Rs.9300-34800 + 4600 GP.

The vacant post is on the teaching side of the school. It is proposed to fill up this vacant post as per guidelines given under rule 15[4][i] of Tamil Nadu



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Recognized Private Schools [Regulations] Rules, 1973 and 1974 by giving promotion among the qualified Teachers in the School. The requisite educational qualification for this post is B.A [History], B.Ed.

Consequent on the regular retirement of Smt.S.Vanni Thiagarajan, B.t.Asst. in Social Science, M.A [History], B.Ed., with effect from 31.05.2010, the post of B.T.Asst. in Social Science has fallen vacant with effect from 01.06.2010. Orders were issued to Smt.B.Mekala promoting as B.T.Asst.[Social Science]. Since she is not willing to take up this promotion vide her letter dated 24.06.2010, it is proposed to fill up the vacancy by promoting the next senior most teacher, Smt.R.Joyce, Secondary Grade Asst., as B.T.Asst., in Social Science in the scale of Pay PB-2 Rs.9300-34,800+GP Rs.4600+allowance w.e.f.04.07.2010.

Smt.R.Joyce has put in 8 years of service as Secondary Grade Ass., with M.A[History], B.Ed as educational qualification as on 2002. She has been handling all subjects in 6th standard to 8th standard. Her character and conduct are satisfactory.



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RESOLUTION

The Managing Committee of the Besant Theosophical Higher Secondary School may, kindly therefore, pass the following Resolution for onward transmission to the District Educational Officer of the Tamil Nadu State Government for favour of consideration and approval.

RESOLUTION

The Managing Committee of the Besant Theosophical Higher Secondary School unanimously resolves that Smt.R.Joyce, Secondary Grade Assistant possessing M.A [History] B.Ed., qualification and working from 11.07.2002 as Secondary Grade Assistant of the Besant Theosophical Higher Secondary School be on promotion and appointed as B.T.Assistant [Social Science] in the time scale of Rs.pB9300-34,800+4600 GP with effect from 01.07.2010 forenoon in the existing vacancy caused due to the retirement of Smt.S.Vanni Thiyagarajan on 31.05.2010.

-Sd-

Secretary & Correspondent

Chairman



(4) A reading of the same shows that the 3rd respondent was conscious of the fact that there was a vacant post on the teaching side of the School. They had then proposed to fill the proposed post in accordance with the guidelines as provided under Rule 15[4][i] of the Tamil Nadu Recognized Private Schools [Regulations] Rules, 1973 and 1974. They had taken a decision to give promotion among the qualified teachers in the School. They had then found that the petitioner herein was qualified. She had also put in eight years of service as Secondary Grade Assistant. She also had M.A [History] qualification and with B.Ed also. She had qualified in those Degrees as early as in 2002. They also stated that she has been taking classes from 6th to 8th standards. They further stated that her character and conduct are satisfactory. Consequent to all those qualities, they had passed a Resolution that the petitioner should be promoted and appointed as B.T.Assistant [Social Science] with effect from 01.07.2010 Forenoon in the existing vacancy consequent to the retirement of the previous teacher on 31.05.2010. This Resolution



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was signed by the Secretary and Correspondent and there is also a place for the signature of the Chairman.

- (5) It is the grievance of the petitioner which is voiced by the learned counsel for the petitioner that the 3rd respondent, however did not take this particular Resolution forward. They never did anything. They did not appoint the petitioner as B.T.Assistant. They did not appoint anybody else as B.T.Assistant. Thereafter, quite strangely, they had passed another Resolution in the year 2016.
- (6) Learned counsel for the petitioner states that even though the petitioner was the only one who was eligible for promotion as B.T.Assistant, after five further years or at least after six years from the date on which the post fell vacant, they again reconvened on 29.08.2016 and examined those who were eligible for promotion as B.T.Assistant and found that in the interregnum period, two other teachers, namely, Smt.M.G.Sagayam and Smt.R.M.Meenakshi had also obtained M.A[History] and B.Ed qualifications. Smt.M.G.Sagayam, completed her B.Ed in the year 2014 and her M.A [History] in the year 2016. Both those qualifications were obtained



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after the date when the post fell vacant. Smt.R.M.Meenakshi had completed her M.A.[History] in the year 2005, but did her B.Ed., only in 2011, again, after the date when the post fell vacant. Thereafter, the name of the petitioner was proposed by the 3rd respondent. They passed necessary Resolution. They had noted that both the other two prospective promotees had qualified after the date when the post fell vacant.

- (7) They then forwarded this particular promotion order dated 29.08.2016 to the respondents. The respondents took a stand that the other two candidates had been appointed earlier as teachers. It was found that Mrs.M.G.Sagayam, had been appointed on 17.08.1992 and Mrs.R.M.Meenakshi had been appointed on 23.08.1991 whereas, the petitioner had been appointed on 11.07.2002 and therefore, the petitioner was junior and hence, proceeded to reject proposal of the 3rd respondent to appoint the petitioner herein. Questioning that particular order, the present writ petition has been filed.
- (8) It had been urged on behalf of respondents 1 and 2, placing reliance on Rule 15[4][i] of the Tamil Nadu Private Schools [Regulations]



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Act, 1973, that the petitioner being junior-most among the three candidates who were eligible as on the date when the list was forwarded to the respondents, the petitioner stood disqualified. The reason given by the respondents 1 and 2 cannot be disputed. On the date when the application was forwarded by the 3rd respondent including the promotion of the petitioner herein, naturally the other eligible candidates were also examined by the respondents 1 and 2. They had examined the date of initial appointment and applying aforementioned Rule, had passed the impugned order disqualifying the petitioner from being promoted. But, it is a moot question whether they had been informed that the petitioner had requisite qualifications on the date when the post fell vacant and the other two candidates did not have such qualifications on the date when the post fell vacant.

- (9) The issue that the candidate should be qualified on the date when the post fell vacant, has been examined by the Division Bench of this Court in the judgment reported in **2003 [2] MLJ 4 [A.Ruckmani Vs. The Correspondent and Others]**. That is a case of what can be called



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'reverse osmosis'. The petitioner therein or the appellant therein had claimed that such a Rule was violated. But the Rule was upheld and the appellant was disqualified from being considered for promotion. The Rule laid down was that the crucial date on which the qualification should be examined is the date when the post fell vacant. Therefore, the claim of the appellant therein was rejected by the Division Bench. Paragraph No.7 would throw a little light on the ratio as laid down by the Division Bench, which reads thus:-

"6.....For the purpose of promotion, the relevant date would be only the date when the appellant has acquired or is in possession of the necessary qualification. Admittedly, the appellant did not have that qualification on 02.02.1994, inasmuch as she was not qualified successfully in her B.Ed., examination and it cannot be said that she was having the qualification of graduation with B.Ed degree. Under the circumstances, it will have to be reviewed that the appellant did not have the qualification on the date when the post fell vacant and sought to be filled in."



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(10) This ratio of the Division Bench had been subsequently followed by a learned Single Judge in a judgment in WP[MD].No.3480/2011 decided on 25.07.2014 ***[K.Venkatesh Prabhu Vs. The Joint Director [Higher Secondary], Directorate of School Education, DPI Campus, College Road, Chennai and Others]***. After considering a series of judgments, the learned Single Judge was very emphatic in his opinion wherein he stated as follows:-

"30. A scrupulous reading of the judgment relied upon by the 4th respondent would indicate that the said judgment is not applicable to the facts of the case. The issue therein was when the appointment 44 itself is subsequent to the date on which the post fell vacant, can seniority from the date of vacancy be claimed. In the instant case, the issue is the date of entitlement for a candidate to be appointed. The judgments relied upon by the Counsel for the petitioner squarely fit into four corners of this case. The Apex Case court and the Division Bench of this Court have clearly held that the crucial date for considering the eligibility would be the date on which the post fell vacant. In the instant case, the post fell vacant on 01.06.2010. Admittedly, only the



petitioner was eligible and the 5th respondent was not eligible. Without considering the relevant facts for determining the eligible candidates, the school committee comprising of the 4th respondent also, considered irrelevant facts and appointed the 5th respondent. In view of the fact that the 5th respondent was ineligible as on 01.06.2010, the appointment is invalid."

- (11) The ratio is clear. The ratio is straight forward. It is the date on which the post fell vacant which is the crucial one. On that particular day, the eligible teacher who has requisite qualification should be considered for promotion. Let me not enter into any discussion as to why the 3rd respondent did not move forward with the Resolution of the year 2010. But, I would appreciate that in fact when they actually forwarded the name of the petitioner in the year 2016, they had taken on requisite considerations and then after evaluating the eligibility of the other two candidates, had finally proposed the petitioner. The only aspect is that respondents 1 and 2 were probably not aware of the date on which the other two candidates had obtained the requisite qualification. It is clear that the other two candidates have obtained



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requisite qualification after the date on which the post fell vacant namely 01.06.2010. The petitioner is the only qualified candidate.

(12) The impugned order, is therefore set aside. A direction is given to the respondents 1 and 2 to act in furtherance to the order of appointment of the 3rd respondent dated 29.08.2016. Such order by the respondents 1 and 2 should be passed within a period of twelve weeks from the date of receipt of a copy of this order. If any clarification is required, they may issue a notice to the 3rd respondent who may clarify the issues.

(13) The writ petition stands **allowed**. No costs. Consequently, connected miscellaneous petitions are closed.

17.07.2023

AP

Internet : Yes

To

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