

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
Civil Appellate Jurisdiction**

Thursday, the First day of June Two Thousand and Twenty Three

PRESENT

The Hon`ble Mrs.Justice S.SRIMATHY

**SUB A(MD) . No.36 of 2022
in
Cont.P(MD)No.1596 of 2016**

T. Caroline Sara, ... Appellant/ Petitioner

Vs

- 1 Elangovan,
The Director of Elementary Education
Dpi Campus , College Road, Chennai - 600 006.
- 2 Renganathan,
District Elementary Educational Officer
(Presently District Educational Officer)
Thanjavur District , Thanjavur.
- 3 v. Ruth violet
w/o.W.E.M. Rajkumar,
Head Master , In charge,
TELC Middle School
Manambuchavady
Thanjavur District
- 4 R. Jacintha
W/O. A.Jeyaseelan
Secondary Grade Teacher,
TELC Middle School
Manambuchavady
Thanjavur District

... Respondents/Respondents

R3 &R4 IMPEADED VIDE COURT ORDER DT 01/06/2023 IN SUB A (MD)
71/2022 IN SUB A(MD) 36/2022 IN CONT P(MD) 1596/2016.

Prayer in SUB A(MD) 36/2022:-

This petition filed under section 151 of CPC, To reopen the Contempt Petition in Cont.P(MD). No. 1596 of 2016 dated 11.01.2018 and to pass such other further order or orders as this Honourable Court.

Prayer CONT P(MD) 1596/2016 ; -

This petition filed under section 11 of the Contempt of Courts To punish the CONTEMNORS for the willful disobedience to the order in W.P.(MD)No.17162 of 2015 dated 22.09.2015 by this Honourable Court.

ORDER:-

This Petition coming on for orders on this day and upon perusing the petition and the affidavit filed in support thereof and upon hearing the arguments of Ms. G. Sankaran, Senior Council for F.Deepak Advocate for the Petitioner and Ms. S. Kameshwaran For R1 & R2, and H.MohammedImran Advocate for the 3rd & 4th Respondent (s), this Court made the following order:

This Sub Application has been filed to reopen the contempt petition in Cont.P.(MD)No.1596 of 2016, which was closed on 11.01.2018. The contempt petition in Cont.P.(MD)No.1596 of 2016 was filed alleging disobedience of the orders passed by this Court in W.P.(MD)No.17162 of 2015 dated 22.09.2015.

2. The Writ Petition in W.P.(MD)No.17162 of 2015 is filed by one T.Caroline Sara for Writ of Mandamus, directing the first respondent therein to consider the representation of the petitioner dated 06.04.2015 for approval of transfer of the petitioner to the post of Secondary Grade Assistant in the third respondent school therein, with effect from 12.06.2014, as per the ratio laid down by this Court in S.Vigila's case reported in 2006 (5) CTC 385 with reference to promotion of incumbent as BT Assistant with all consequential and other attendant benefits including arrears of salary along with interest. The writ petition in W.P.(MD)No. 17176 of 2015 is filed by one R.Jacintha for the similar relief and therefore, a common order was passed by this Court. However, only the said T.Caroline Sara has filed the contempt petition.

3. The contention of the petitioner is that the petitioner is qualified with Diploma in Teachers Education and was appointed as Secondary Grade Teacher in TELC Primary School, M.Kallupatti, Madurai District, vide order dated 06.08.2008 with effect from 07.08.2008. When a vacancy in TELC Middle School at Thanjavur to the post of BT Assistant (Tamil) arose on 01.06.2014, due to retirement of incumbent, R. Chokalingam, one R. Jacintha, who is the fourth respondent, working as Secondary Grade Assistant in the same school was given promotion as BT Assistant with effect from 02.06.2014, vide order dated 21.05.2014 passed in Order No.22 of 2014. In the resultant vacancy, the petitioner was transferred and posted as a Secondary Grade Assistant vide order passed by the Chairman, Education Board, TELC, in C.R.No.57 of 2014 dated 06.06.2014 and the petitioner joined the said post on 12.06.2014.

4. When the School Management has forwarded the proposal of transfer of the petitioner herein and promotion of the fourth respondent, the second respondent returned the transfer proposal on 23.02.2015 on the ground that the promotion granted in favour of the said Jacintha was not approved by the Department, since BT Assistant post is stated to be surplus, as per the staff fixation order and thereby the consequent transfer to the resultant vacancy to the post of Secondary Grade Assistant cannot be approved. Hence, the petitioner herein has filed the writ petition with the aforesaid prayer.

5. This Court, after considering the claim of the fourth respondent and the petitioner herein, had passed a common order dated 22.09.2015 directing the respondents to consider the proposal afresh, in the light of the Government Order in G.O.Ms.No.524, dated 29.12.1997 and in the light of the order of this Court in S.Vigila's case. The said order copy was communicated to the respondents. In spite of the same, the respondents have not approved the promotion granted in favour of the fourth respondent and the consequent transfer of the petitioner herein.

6. When the contempt petition was taken up for hearing on 11.01.2018, the learned Additional Government Pleader appearing for the respondents submitted that the order of this Court dated 22.09.2015 passed in W.P.(MD)No. 17162 of 2015 has been complied with and nothing survives for adjudication in the contempt petition and hence, the contempt petition was closed on 11.01.2018. However, the contention of the petitioner is that the same is factually incorrect and the said order was not complied with in letter and spirit.

7. The further contention of the petitioner is that she is working in the post of Secondary Grade Teacher at TELC School at Thanjavur, with effect from 12.06.2014 without payment of salary. The fact remains that the Judge Administrator, namely, the Hon'ble Mr.Justice.J.Kanakaraj, (former Judge of this High Court), considering the plight of not drawing the salary from 2014 onwards, was pleased to promote the petitioner to the post of Headmistress with effect from 07.04.2017 in the vacancy arose, due to the retirement of one Mr.Stephen Immanuel Robinson, Headmaster vide order dated 07.04.2017. Further, a proposal was also submitted to the Department for approval without prejudice to her rights to draw salary from 2014 to 2017. Even this proposal was not considered by the Department on the ground that the fourth respondent wrote a letter to the Department claiming promotion to the said post. Hence, the petitioner contended that the order passed by this Court in W.P.(MD)No.17162 of 2015 dated 22.09.2015 has not been complied with. Hence, Sub Application (MD)No.36 of 2022 has been filed to reopen the contempt petition.

8. Pending this Sub Application, one V. Ruth Violet along with R. Jacintha filed another Sub Application (MD) No.71 of 2022 to implead themselves in the contempt petition to contest the contempt petition. The contention of the said V. Ruth Violet and R. Jacintha, who have been impleaded as the third and fourth respondents is that after a period of four years, the present Sub Application has been filed to reopen the contempt petition and the same is hit by limitation prescribed under the Contempt of Courts Act, 1971.

9. The further contention of the said Ruth Violet and Jacintha is that the appointment of the petitioner to the post of Headmistress is not the subject matter of the writ petition and as such, the present Sub Application to reopen the contempt petition is not maintainable. Initially, the third respondent Ruth Violet was appointed as BT Assistant on 07.01.2004 on consolidated pay and was brought under regular time scale of pay with effect from 01.06.2006 and she has been working all along and she is the senior most teacher in the institution in the cadre of BT Assistant. The fourth respondent Jacintha was appointed and approved as early as on 06.03.1996 and she is the senior most teacher in the institution in the cadre of Secondary Grade Teacher.

10. The Ruth Violet and Jacintha further contended that by taking into consideration of the seniority of Ruth Violet, she was given promotion as Headmistress (in-charge) by the Department on 01.04.2020. The prayer in the writ petition filed by the petitioner herein was to direct the first respondent therein to consider the representation of the petitioner for approval of transfer of the petitioner to the post of Secondary Grade Assistant only. Therefore, the petitioner herein is not having any right to claim the post of Headmistress, since her transfer to the post of Secondary Grade Teacher has not even been approved by the authorities. The proposal for approval of transfer of the petitioner herein was returned on 23.02.2015 itself and the same was not challenged by the petitioner herein. Therefore, the claim of the petitioner herein that the promotion order of the petitioner as Headmistress in the vacancy arose due to the retirement of one Stephen Immanuel Robinson vide order dated 07.04.2017 issued by the Judge Administrator cannot be entertained.

11. The further contention of the Ruth Violet and Jacintha is that infact, the petitioner was initially appointed as Secondary Grade Teacher in TELC Primary School, M.Kallupatti, Madurai District, vide order dated 06.08.2008 with effect from 07.08.2008 and her appointment was also approved on 03.09.2008. She was transferred to the post of Secondary Grade Teacher, TELC School at Thanjavur in the vacancy arose due to the promotion of the said Jacintha to the post of BT Assistant. The proposal for promotion of Jacintha was not approved since the said Jacintha was appointed in post declared as surplus and therefore, the consequential transfer

of the petitioner herein was also not approved. Since the approval of promotion of the said Jacintha was returned, she was reverted to the post of Secondary Grade Teacher and drawing salary in the cadre of the Secondary Grade Teacher. Moreover, the order of the Judge Administrator was also not approved by the Department as on date. Therefore, the petitioner herein cannot straight away be promoted as Headmistress overlooking the seniority, merit and ability.

12. The said Ruth Violet and Jacintha further contended that since the petitioner's claim for approval to the post of Headmistress was not the subject matter of the writ petition, the petitioner herein cannot reopen the contempt petition and cannot adjudicate the issue to grant promotion to the post of Headmistress. Hence, the learned counsel appearing for the said Ruth Violet and Jacintha prayed for dismissal of this sub application and to allow the respondents to consider the entire issue comprehensively including the issue of surplus.

13. Heard Mr.E.Deepak, learned counsel appearing for the petitioner, Mr.V.Om Prakash, learned Government Advocate appearing for the first and second respondents and Mr.H.Mohammed Imran, learned counsel appearing for the third and fourth newly impleaded respondents i.e. V. Ruth Violet and R. Jacintha.

14. The second respondent District Educational Officer has filed a status report, in which, it is stated that the TELC Middle School at Thanjavur is having 1st to 8th standards and there are 39 students only. The students' strength in the year 2022 is as under:

CLASS	NO. OF STUDENTS
I	3
II	3
III	4
IV	4
V	6
VI	8
VII	4
VIII	7
TOTAL	39

As on the latest staff fixation for the academic year 2022-2023 the school is not having students' strength to accommodate the petitioner.

15. The fourth respondent Jacintha was promoted to the post of BT Assistant on 02.06.2014, due to the vacancy arose on 31.05.2014. In the resultant vacancy, the petitioner herein was transferred to the

said post from TELC School at T.Kallupatti to TELC School at Thanjavur. The fourth respondent's promotion was approved by the Judge Administrator. However, the said proposal was not rejected by the official respondents since the said post of B.T. Assistant was already declared as surplus and the management has promoted the said Jacintha in the post declared as surplus. Due to lack of students' strength in TELC School at Thanjavur, the said Jacintha was not accommodated and consequently, the said Jacintha is still working as Secondary Grade Teacher as on date. In the status report, it is also stated that due to aforesaid reason, the transfer of the petitioner herein was also not approved.

16. Subsequently, one J.Santhi Kirubakaran, who was working as BT Assistant (Maths) acquired eligibility for the post of Headmistress. Based on eligibility and based on the seniority, a proposal was sent for approval of J. Shanthi Kirubakaran's promotion to the post of Headmistress and subsequently, it was approved on 07.04.2017. Thereafter she was retired from service on 31.03.2020, due to which, the Department had posted the Ruth Violet the third respondent herein, being a senior most candidate, for the post of Acting Headmaster and she is working till date and the R. Jacintha fourth respondent is working as Secondary Grade Teacher for the past 27 years. One J.Nagonin Rosilin has been working as Secondary Grade Teacher for the past 21 years and one S.Reginabai was working as Prevocational Vocational Instructor. The petitioner herein, who was promoted as Headmistress on 07.04.2017 by the Judge Administrator, was not approved. The petitioner's transfer was not approved and hence the petitioner's promotion also was not approved, in fact the petitioner is not working in TELC Middle School at Thanjavur at all. When the employees who are working in the TELC Thanjavur itself could not be accommodated, there is no possibility to accommodate the petitioner in TELC Thanjavur. Based on the aforesaid facts and circumstances of the case, the official respondents prayed to accept the status report and close this Sub Application.

17. The contention of the petitioner is that this Court has directed the official respondents to approve the transfer of the petitioner herein from TELC School at T.Kallupatti to TELC School at Thanjavur. However, the contention of the official respondents is that they could not approve the same, since there was no vacancy. The petitioner was posted in TELC Thanjavur was not available at all and this was not brought to the knowledge of the Court and the said order came to be passed and hence there is no contempt as such. It is clear from the aforesaid facts and circumstances that the petitioner herein was transferred only in the resultant vacancy, since the fourth respondent was promoted as BT Assistant. The Department could not approve the promotion of the fourth respondent, since the post of BT Assistant was already declared as surplus. This Court had directed the respondents to consider the proposal afresh, in the light of the Government Order in G.O.Ms.No.524, dated

29.12.1997 and in the light of the order of this Court in S.Vigila's case, by its order dated 22.09.2015. However, the official respondents had not brought to the knowledge of the Court the students' strength in TELC School at Thanjavur for I to VIII standards that there are totally 39 students and during that time also there was no students' strength to accommodate the petitioner. As per S.Vigila's case, for each standard, a teacher ought to have been allotted. Here in the case on hand, for I standard, only for three students. If the ratio of Vigila's case is applied then one teacher ought to have been allotted for three students. This fact of less students that too below 10 students was not considered by Vigila's case and this Court cannot shut its eyes and simply grant one teacher for three students, thereby burdening the public exchequer. It would be irresponsible to seek grant-in-aid when the students' strength is not adequate.

18. In S.Vigila's case, this Court has considered the case, wherein the students strength should be more than 30 or equal to 30 and has never ever considered the case, when the students strength are only 3 or 1 or below 10. Therefore, this Court is of the considered opinion that the official respondents could not approve the case, when there was a drastic reduction in students' strength is acceptable. Infact, the School is having one BT Assistant and two Secondary Grade Teachers and one Provisional Vocational Instructor. For four teachers, there is no enough work load and each teacher should atleast work for 28 periods. In the present case the respondent could not allot 28 periods for each teacher, while so granting more teacher would be illegal. In such circumstances, the petitioner cannot allege that there is a contempt against the official respondents. Moreover, the fourth respondent was not promoted to the post of BT Assistant and she was reverted back to the Secondary Grade Teacher post. And there is no vacant post to accommodate the petitioner.

19. When the petitioner herein was not accommodated to the resultant vacancy of the fourth respondent and when there is no such post, the transfer of the petitioner to the School in TELC at Thanjavur cannot be accommodated. The School in TELC at T.Kallupatti, Madurai ought to have accommodated the petitioner herein.

20. In the meanwhile, the Management, based on the seniority has accommodated the V. Ruth Violet in the Headmistress post. Instead of challenging the subsequent events, the petitioner herein is trying reopen and contest the promotion of the said Ruth Violet in the post of Headmistress and the same cannot be allowed.

21. In view of the above, this Court is of the considered opinion that there is no contempt as alleged in the Sub Application (MD) No.36 of 2022, hence the prayer to reopen the Cont.Pet.(MD)

No.1596 of 2016, which was closed on 11.01.2018 is not sustainable and accordingly, the Sub Application (MD) No.36 of 2022 is dismissed.

Sd/-

Assistant Registrar(CS-II)

// True Copy //

/07/2023

Sub Assistant Registrar(CS)

TO

1. The Director of Elementary Education Dpi
Campus College Road Chennai - 600 006.
2. District Elementary Educational Officer
(Presently District Educational Officer)
Thanjavur District Thanjavur.

Copy to:

The Section Officer,
Contempt Section,
Madurai Bench of Madras High Court, Madurai

+1CC Mr. F.Deepak, Advocate, SR.No.25660 dated 01.06.2023

ORDER DATED : 01/06/2023

=====

ORDER

=====

SUB A(MD). No.36 of 2022

in

Cont.P(MD)No.1596 of 2016
Giving direction and etc.
as stated within.

KB(05.07.2023) 8P 5C