



W.P.(MD).No.9765 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 18.08.2023

CORAM:

THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

W.P.(MD)No.9765 of 2023

and

W.M.P(MD)Nos.8599 & 8600 of 2023

V.Geetha

... Petitioner

Vs.

1.The State of Tamil Nadu,
Represented by its Secretary,
Department of School Education,
Fort St. George,
Chennai – 600 009.

2.The Commissioner of School Education,
College Road,
Chennai – 600 006.

3.The Chief Educational Officer,
Thoothukudi,
Thoothukudi District.

4.The District Educational Officer,
Tiruchendur – 628 215,
Thoothukudi District.

5.The Secretary,
Hindu Higher Secondary School,
Alwarthirunagari – 628 612,
Thoothukudi District.

... Respondents



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PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, calling for the records relating to the impugned proceedings issued by the fourth respondent/District Educational Officer in O.Mu.No.4823/Aa2/2022 dated 23.02.2023, quash the same and further direct the third respondent/Chief Educational Officer to approve forthwith the promotion of V.Geetha as P.G Assistant (Tamil) in the fifth respondent School with effect from 25.06.2018 with salary and all attendant benefits.

For Petitioner : Mr.K.Ragatheesh Kumar
For Respondents : Mr.M.Prakash
Additional Government Pleader

ORDER

The prayer of the Writ Petition is as follows:-

The present Writ Petition has been filed for issuance of a Writ of Certiorarified Mandamus, to quash the impugned proceedings issued by the fourth respondent/District Educational Officer, dated 23.02.2023 and further direct the third respondent/Chief Educational Officer to approve forthwith the promotion of V.Geetha as P.G Assistant (Tamil) in the fifth respondent School with effect from 25.06.2018 with salary and all attendant benefits.



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2.Heard Mr.K.Ragatheesh Kumar, learned counsel appearing for the petitioner and Mr.N.Ramesh Arumugam, learned Government Advocate appearing for the respondents and perused the materials available on record.

3.The petitioner is working as a PG Assistant (Tamil) in the fifth respondent School and the fifth respondent School is a recognized aided non-minority Educational Institution. The petitioner was initially appointed as a Secondary Grade Teacher in the fifth respondent School on 08.08.1990 as against the sanctioned vacancy. After joining the post of Secondary Grade Teacher, the petitioner passed B.Ed in the year 1992 and M.A (Tamil) in the year 1995, with prior permission of the fifth respondent School respectively. The Department sanctioned incentive increments for the petitioner's B.Ed Degree with effect from 19.08.1992. While so, the petitioner was promoted to the post of B.T Assistant (Tamil) in the fifth respondent School, which fell vacant on 04.06.1996 due to the promotion of the then incumbent A.Thothadri. Only after considering B.Ed qualification of the petitioner, she was promoted to the post of B.T Assistant (Tamil). The fourth respondent/District Educational Officer approved the appointment of

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the petitioner as B.T Assistant (Tamil) vide proceedings, dated 11.10.1996. Thereafter, in the year 2018, a P.G Assistant (Tamil) post in the fifth respondent School fell vacant on 01.06.2018 due to the retirement of the then incumbent V.Elizabeth. The fifth respondent School promoted the petitioner as P.G Assistant (Tamil) with effect from 25.06.2018 and thereafter, the petitioner is continuing service in the said School. Immediately, after her promotion as P.G Assistant (Tamil), the fifth respondent School submitted the necessary proposal to the second respondent/District Educational Officer on 27.05.2019 seeking to approve the petitioner's promotion as P.G Assistant (Tamil). However, the same was returned by the impugned order, dated 23.02.2023. Assailing the same, this Writ Petition came to be filed.

4.The learned Government Advocate appearing for the respondents categorically submitted that the petitioner acquired B.Ed Degree in the year 1992 and M.A (Tamil) Degree in the year 1995 without prior permission from the Education Department. The post of P.G Assistant (Tamil) is sanctioned only to the fifth respondent School and hence, the petitioner is not entitled to challenge the impugned order and it is only the fifth respondent, who is the competent authority, to challenge the said order.



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5.A perusal of the impugned order would reveal that the proposal of the fifth respondent School has been returned vide impugned order not only for two grounds raised by the learned Government Advocate, but also for the purpose of enclosing the complaint dated 10.06.2019 made by one T.Venkadachari and the copy of the withdrawal of the said complaint by the said T.Venkadachari.

6.As far as the first limb of argument putforth by the learned Government Advocate as to the petitioner not getting prior permission for obtaining additional qualification, the Hon'ble Division Bench of this Court has dealt with a similar issue in the case of ***W.A(MD)No.1124 of 2023, dated 24.07.2023 [The Joint Director of School Education and others Vs. S.Vasugi and another]***, wherein a favourable order has been passed to the petitioner therein and the relevant portion of which is extracted as follows:-

"3.This Court find that the issue is no-more res integra in view of the several judgments on this issue holding that the claim of teachers for incentive increment cannot be rejected on the ground that the concerned teacher had not obtained prior permission of



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the authorities for undergoing higher education. Since the issue has been settled by precedents, this Court is unable to countenance the arguments advanced by the learned counsel for the appellants. It is true that there are several Government Order which have insisted the requirement of permission of the educational authorities for a teacher to undergo higher education. It is to be noted that the payment of incentive increment for acquiring higher qualification is to encourage the teachers to acquire higher qualification so that the quality of education will be higher. It may be true that the teacher while in service will have to obtain prior permission as per the Government Orders . Further it is to be noted that acquiring higher qualification while in service is not prohibited and it is only regulated. In such circumstances, acquiring higher qualification while in service without the permission is only an irregularity and that will not entitle the respondents to reject the benefit to the teachers.

4.Considering the overall policy of the Government,there is no reason to take a different view as expressed by the learned Single Judge. The decision relied upon by the learned Single Judge in the subject-matter in issue has been subsequently affirmed by the learned Division Bench of this Court. Hence this Court finds no merit in the Writ Appeal and the same is liable to be dismissed.”



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7.I am fully in acceptance to the aforesaid Division Bench Judgment and hereby observe that the fourth respondent ought not to have returned the proposal of the fifth respondent School on the ground that the Teacher had not obtained prior permission from the authorities for undergoing higher qualification.

8.It is pertinent to mention here that the petitioner was qualified in B.Ed Degree as early as in the year 1992 after being appointed as Secondary Grade Teacher and only on the basis of the said qualification, she was promoted to the post of B.T Assistant (Tamil) on 04.06.1996. However, this kind of objection was not raised by the fourth respondent at the time of her promotion to the post of B.T Assistant and hence, raising an objection that the petitioner did not obtain prior permission to obtain an additional qualification in her later period of time when the fifth respondent School has submitted a proposal to approve the promotion of the petitioner as P.G Assistant is not sustainable.



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9.The second limb of objection raised by the learned Government Advocate is that it is only the fifth respondent School, who is the competent authority, to file a Writ Petition and the petitioner is not entitled to file a Writ Petition. This issue is also no more *res integra* and this Court in a similar case of **W.P(MD)Nos.21334 to 21343 of 2018, dated 27.01.2022 [A.Arul Dhasan Vs. the Secretary, Department of School Education, Fort St. George, Chennai and others]** has passed a favourable order to the petitioner therein and the relevant portion of which is extracted as follows:-

"11.The objection on maintainability advanced by the State is also misconceived. They would argue that the petitioners have no locus standi to seek the benefits that they do now, and it is only the school that could have sought enforcement of the orders. This is also rejected as I am of the categoric view that there could none more interested in service benefits than the concerned employee himself or herself. Thus, it is certainly open to the concerned employee to move this Court for appropriate relief."



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10. Adopting the said order, I categorically reject the contention which has been raised by the learned Government Advocate appearing for the respondents.

11. As far as the third point which has been raised in the impugned order itself is with respect to the direction made by the fourth respondent to the fifth respondent School to enclose the complaint dated 10.06.2019 and withdrawal of the complaint made by one T.Venkadachari as against the petitioner. I am of the view that the complaint made by the said T.Venkadachari and his withdrawal of complaint is no way connected with the proposal of approving the promotion of the petitioner to the post of P.G Assistant and moreover, the learned counsel appearing for the petitioner drew my attention to the communication dated 06.07.2023 made by the fourth respondent to the third respondent, in which reference Nos.3 and 4 will make it clear that the complaint made by one T.Venkadachari dated 10.06.2019 and his withdrawal letter, dated 05.07.2019 are very well available in the office of the fourth respondent. Having a copy of both documents in the office of the fourth respondent, the fourth respondent is not justified in raising a query to enclose the copy of those documents with the proposal of the petitioner's promotion to the



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post of P.G Assistant. In all three grounds, the case of the respondents miserably fails and this Court hereby quashes the impugned returned order dated 23.02.2023 passed by the fourth respondent and consequently, directs the fifth respondent School to resubmit the proposal before the fourth respondent within a period of two weeks from the date of receipt of a copy of this order and on receipt of the same, the fourth respondent is directed to forward the same to the third respondent and the third respondent is directed to approve the promotion of the petitioner to the post of P.G Assistant (Tamil) in the fifth respondent School within a period of eight weeks thereafter.

12. Accordingly, the Writ Petition is allowed. There shall be no order as to costs. Consequently, connected Miscellaneous Petitions are closed.

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NCC : Yes
Index : Yes
Internet : Yes
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Represented by the State of Tamil Nadu,
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- 2.The Commissioner of School Education,
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Chennai – 600 006.
- 3.The Chief Educational Officer,
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L.VICTORIA GOWRI, J.

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