



W.P.(MD).No.10780 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 02.02.2023

CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P.(MD).No.10780 of 2019

and

W.M.P.(MD).Nos.8225 and 8226 of 2019

A.Selvavalli

... Petitioner

Vs.

1.The District Elementary Educational Officer,
Tirunelveli District.

2.The Assistant Elementary Educational Officer,
Ambasamudram, Tirunelveli District.

3.The Secretary,
Perumal Thevar Memorial Primary School,
Kakanallur, Ambasamudram Taluk,
Tirunelveli District.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, to call for the impugned order passed by the first respondent in Na.Ka.No.3803/A3/2014, dated 26.12.2016 and the order passed by the second respondent in Aa.Thi.Mu.No.79/A1/2017, dated 30.03.2017 and to quash the same as illegal and consequently directing the respondents to approve the appointment of the petitioner as Headmaster of the petitioner school as on 02.08.2012 with all monetary benefits.



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For Petitioner : Mr.K.R.Laxman

For R-1 and R-2 : Mr.S.Kameswaran,
Government Advocate.

ORDER

This Writ Petition is filed challenging the impugned order dated 26.12.2016 passed by the first respondent and order dated 30.03.2017 passed by the second respondent with a consequential direction to direct the respondents to approve the appointment of the petitioner as Headmaster of the petitioner school as on 02.08.2012 with all monetary benefits.

2. The brief facts as stated in the affidavit are that the educational qualification of the petitioner is that she has completed SSLC in March 1995, HSCC in March 1997, B.Sc., Zoology in April 2001, B.Ed., in April 2008 and has completed the course of Certificate in Montessori Program in May 2010. The contention of the petitioner is that she has served in few Institutions as teaching faculty, one such is that she has served in Chithra Nursery and Primary School, Cheranmahadevi, Tirunelveli District in two spells and in A.U.P.E.T. Chinmaya Vidyalaya Matriculation Higher Secondary School for two years and nine months. Totally, her period of work is 5 years and 4 months.



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3. The petitioner claims that she had applied for the post of Headmistress after seeing the Newspaper advertisement in Dailythanthi dated 16.07.2012 issued by the third respondent Institution. The third respondent Institution also called for list of eligible candidates from the Employment Exchange. The petitioner appeared for the interview and selected for the post of Headmistress.

4. The said post fell vacant due to the retirement of the incumbent on 31.08.2017 and the third respondent had recruited directly from open market stating that the in-house candidates namely Juliet Jothimani and K.Geetha had submitted letters declining to accept the promotion post. The School is in need of Headmistress from 01.09.2007 and further delay would affect the administration of the school. The third respondent has complied all the required formalities before commencing the recruitment process and thereafter appointed the petitioner on 01.08.2012. Thereafter, the School has forwarded the petitioner's appointment for approval. Since the appointment of the petitioner was not approved, the third respondent filed W.P.(MD).No.20687 of 2016 to consider the representation and pass orders on merits and this Court vide order dated 26.10.2016 directed the respondents to consider the representation and pass orders on merits. Pursuance to the order passed by the



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Court, the respondents passed the impugned orders. The contention of the petitioner is that the approval application was dismissed arbitrarily. The respondents have rejected on various grounds. One such condition is that the appointment was made directly without promoting the eligible candidates. The selection process was conducted without obtaining any prior approval. The selected candidate is not having any certificate of Diploma in teaching Education and further she is not having 5 years teaching experience, hence her appointment cannot be approved. Aggrieved over the rejection order, the present Writ Petition is filed.

5. The first respondent has filed a counter stating that since the third respondent in a non-minority aided school, but has not obtained any prior approval from the official respondents, hence the said appointment cannot be approved. Further, the in-house candidates are available within the school and they are eligible for promotion. The 3rd respondent states that the said in-house candidates are not willing to get promotion and has submitted a representation to this effect and have cited their family circumstances for not accepting the Headmaster post. The respondents further state if the family circumstance is not conducive to hold the post, the same family circumstances would exist and the said two teachers could not work as a Secondary Grade Teacher as well.



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Moreover, the Certificate issued by other Schools cannot be counted for the purpose, since the petitioner has not passed the Secondary Grade Teacher Training and is not having any certificate to this effect. The petitioner is not possessing five years teaching experience as Secondary Grade Teacher and as on the appointment as Headmaster the petitioner is an unqualified candidate. Moreover, the petitioner has obtained certificate from the Montessori Kinder Garden Training Certificate, which is not relevant to the post of Primary School Headmaster. Therefore, for all these reasons the candidature of the petitioner to the post of Elementary School Headmaster cannot be considered and the petitioner has no right to claim any approval. Therefore, the respondents prayed to dismiss this Writ Petition.

6. Heard Mr.K.R.Laxman, learned counsel for the petitioner and Mr.S.Kameswaran, learned Government Advocate appearing for the first and second respondents and perused the records.

7. The learned counsel appearing for the petitioner relied on the judgment in W.P.No.10265 of 2016 dated 30.03.2022, wherein, the learned Single Judge has held prior permission is not necessary when a sanctioned post is available in the School to fill up the same. The said judgment is not applicable to the



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facts of the present case. The Private School Regulations Rules specifically states that the School is empowered to go for direct recruitment only after exhausting the other method of recruitment. In the present case, there are two in-house candidates. Even though the third respondent claims that those two in-house candidates had submitted unwillingness letter to the promotion post, the said letter ought to be verified by the official respondents. Since the first and second respondents are empowered to conduct an enquiry whether the said in-house candidates are willing or not. By appointing the petitioner, the third respondent has usurped the power granted to the first and second respondents to conduct an enquiry. Exactly for this reason only, the prior permission should be obtained from the authorities. If the prior permission is sought, the official respondents would have conducted an enquiry whether the in-house candidate is willing or not.

8. The second ground that was raised by the petitioner is that she is qualified to be appointed in the said post and has served in 3 Primary Schools and Montessori School. The contention of the respondent is that the Montessori service cannot be considered. If the petitioner had served in the Secondary Grade post, then only the petitioner's candidature can be considered. The Montessori service cannot be considered at all. The Rule specifically



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states that the candidate should possess the teaching experience in the post of Secondary Grade Teacher, because the Primary School Headmaster post can be filled up by the candidates who have experience in the Secondary Grade Teachers with the appropriate educational qualification. Since the petitioner is not having the Secondary Grade Teacher experience, the petitioner's candidature cannot be considered. Moreover, the qualification of the petitioner is B.Sc., Zoology and B.Ed. As rightly pointed out by the respondents that the petitioner is not having Secondary Grade teaching certificate. Therefore, the petitioner's candidature cannot be considered.

9. For reasons stated above, the petitioner's appointment to the post of Primary School Headmaster is not in accordance to rules and regulations. Hence, approval cannot be granted.

10. The learned counsel appearing for the petitioner prays for remitting the matter back to the respondents for reconsidering the issue. This Court is of the considered opinion that remitting back to the authority would not serve the purpose, since this Court has held supra the petitioner is not having qualification to the said post. If there is any future vacancy, the petitioner's candidature can be considered in accordance to law and not otherwise.



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11. With the above observation, this Writ Petition stands dismissed.

There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

02.02.2023

NCC : Yes/No
Index : Yes / No
Internet : Yes/ No
Nsr

To

- 1.The District Elementary Educational Officer,
Tirunelveli District.
- 2.The Assistant Elementary Educational Officer,
Ambasamudram, Tirunelveli District.



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S.SRIMATHY, J.

Nsr

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