



W.P.(MD)No.19335 of 2016

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 24.04.2023

CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

**W.P.(MD)No.19335 of 2016**

**and**

**W.M.P.(MD)Nos.13940 and 13941 of 2016**

D.Valarmathy Florence

... Petitioner

vs.

- 1.The State of Tamil Nadu,  
represented by its Secretary,  
Department of School Education,  
Fort St. George, Chennai- 9.
- 2.The Director of School Education,  
DPI Campus, College Road,  
Chennai- 6.
- 3.The Chief Educational Officer,  
Tirunelveli District,  
Tirunelveli.



W.P.(MD)No.19335 of 2016

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4.The District Educational Officer,  
Office of the District Educational Officer,  
Cheranmahadevi,  
Tirunelveli District

5.The Concordia Higher Secondary School,  
represented by its Correspondent,  
Vadakangulam,  
Tirunelveli District.

6.The Concordia Higher Secondary School,  
represented by its Correspondent,  
Valliyoor,  
Tirunelveli District.

7.J.Elizabeth Paulin

8.The Secretary,  
Baliah Marthandam Higher Secondary School,  
Avaraikulam-627 133,  
Radhapuram Taluk,  
Tirunelveli District.

... Respondents

***(R8 is impleaded, vide Court order, dated  
18.04.2023, in W.M.P.(MD)No.14308 of  
2022 in W.P.(MD)No.19335 of 2016)***

**PRAYER:** Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, to call for records pertaining to the impugned order in Mu.Mu.No.101105/T2/E3/2014,



W.P.(MD)No.19335 of 2016

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dated 06.09.2016, on the file of the Respondent No.2 in so far approving the promotion issued to the Respondent No.7 and to quash the same as illegal and consequently, for a direction to direct the respondents to transfer the petitioner to the post of B.T. Assistant in Mathematics at the 6<sup>th</sup> respondent School with consequential benefits within the time period stipulated by this Court.

|                |                                                      |
|----------------|------------------------------------------------------|
| For Petitioner | : Mr.G.Karthik<br>for M/s.Lajapathi Roy & Associates |
| For R1 to 4    | : Mr.V.Om Prakash<br>Government Advocate             |
| For R5, 6 & 8  | : No appearance                                      |
| For R7         | : Mr.G.Prabhu Rajadurai                              |
| *****          |                                                      |

### **ORDER**

This writ petition is filed for writ of Certiorarified Mandamus, to quash the impugned order, dated 06.09.2016 of 2<sup>nd</sup> Respondent in so far approving the promotion issued to the 7<sup>th</sup> Respondent J.Elizabeth Paulin and consequently to direct the respondents to transfer the petitioner to the post of B.T. Assistant in Mathematics at the 6<sup>th</sup> respondent School



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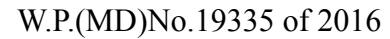


W.P.(MD)No.19335 of 2016

with consequential benefits within the time period stipulated by this Court.

2. The petitioner was appointed as B.T. Assistant (Maths) on 05.03.1996 in the 5<sup>th</sup> respondent school, Concordia Vadakankulam. The 5<sup>th</sup> respondent School informed the petitioner that because of the surplus teachers, the official respondents are about to pass orders to deploy the Teachers. Objecting to the same, the petitioner submitted a representation, dated 22.02.2011. In the meanwhile, three Teachers namely Navaretna Vasantha, J.D.Mercy Beula and J.Jesu Durai were called to attend counseling at the Office of the 3<sup>rd</sup> respondent on 22.02.2011. Later the 3<sup>rd</sup> respondent has sent the individual orders of deployment. During the year 2011, there were 254 students in the 5<sup>th</sup> respondent School,

- i. 34 students in 6<sup>th</sup> Standard,
- ii. 32 students in 7<sup>th</sup> Standard,
- iii. 24 students in 8<sup>th</sup> Standard,



- Further there were 17 teachers including the Headmaster, excluding the special teachers like drawing, sewing, physical education and craft teachers comprising 1 Head master, 7. P.G. Teachers, 1 Vocational Teacher, 2 B.T. Assistants, 1 B.T. Language Teacher (Tamil) and 5 Secondary Grade Teachers.

3. Thereafter, the 3<sup>rd</sup> respondent has issued an order of deployment, dated 22.02.2011 and deployed to the petitioner to Baliah School (impleaded 8<sup>th</sup> respondent). Out of the above said 17 teachers, 2 PG Teachers were appointed only on 24.02.2011 and not even approved by the competent authority at that point of time. But for the purpose of retaining the PG Teachers, the 3<sup>rd</sup> respondent has issued order of



W.P.(MD)No.19335 of 2016

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deployment to the petitioner who was serving as B.T. Assistant. Challenging the deployment order, the petitioner filed W.P.(MD) No. 2445 of 2011 and an interim order was passed as under:

*"Considering the circumstances, the respondents are directed to maintain status quo as on today (02.03.2011)."*

Despite the order of this Court, the petitioner was not permitted to continue in the 5<sup>th</sup> respondent School.

4. In the meanwhile, in the 6<sup>th</sup> respondent School one B.T. Assistant (Maths) became vacant, since it is coming under the same Corporate Management of India Evangelical Lutheran Church (in short IELC), the petitioner requested to accommodate in the said post, but the same was not considered. But the 6<sup>th</sup> respondent school had granted promotion to the 7<sup>th</sup> respondent J. Elizabeth Paulin from Secondary



W.P.(MD)No.19335 of 2016

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Grade Teacher to B.T. Assistant (Maths) with retrospective effect from 19.09.2007. Subsequently, the 2<sup>nd</sup> respondent issued an impugned order, dated 06.09.2016, ratifying the promotion. The contention of the petitioner is that when the petitioner was not accommodated in the transferred post as well as in the original School, the Secondary Grade Teacher ought not to have been promoted to the B.T. Assistant post. Aggrieved over the same, the present writ petition is filed.

5. The 4<sup>th</sup> respondent DEO had filed counter stating that the petitioner was rendered as surplus and deployment order was issued on 22.02.2011 to Baliah School and the petitioner was relieved on 28.02.2011. The petitioner has not challenged the staff fixation order. The 2<sup>nd</sup> respondent vide impugned order dated 06.09.2016 had passed an order converting the subject of B.T. Assistant (Maths) to B.T. Assistant (Science) in 6<sup>th</sup> respondent Concordia School Valliyur in order to grant



W.P.(MD)No.19335 of 2016

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promotion to 7<sup>th</sup> respondent Elizabeth Paulin. Transfer between 5<sup>th</sup> and 6<sup>th</sup> respondents could be made by their respective Correspondents. The petitioner did not attend the deployment counselling along with other teachers. Since the petitioner was relieved from service on 25.02.2011 i.e. prior to Status Quo order dated 02.03.2011, the interim order could not be implemented. Since the petitioner was not in service of Concordia as on the date of interim order the petitioner could not be allowed to rejoin the duty. It is fault of the petitioner not to join the deployed place of Baliah School. There is no order to accommodate to the petitioner in Concordia Valliyur and there is no requirement of additional post of B.T. Assistant (Maths) to accommodate the petitioner. The Concordia Valliyur had filled up the B.T. Assistant (Maths) post by promoting the 7<sup>th</sup> respondent who was serving as Secondary Grade Teacher as B.T. Assistant (Science) as early as 19.09.2007, but without getting prior order from the second respondent for converting the post of B.T.



W.P.(MD)No.19335 of 2016

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Assistant (Maths) to B.T. Assistant (Science). The petitioner willfully remained out of employment by not accepting the protection of job granted to her vide deployment order. Infact the Baliah School is just 13 kilometers from the petitioner's place. The petitioner's disobedience would attract disciplinary action.

6. The 7<sup>th</sup> respondent has filed a counter affidavit stating that the petitioner has not come with clean hands. The petitioner was working as B.T. Assistant and was deployed on 02.02.2011 and relived from duty on 28.02.2011 itself. After a lapse of six years, the petitioner had woken up suddenly and filed this writ petition with ill-motive and with deliberate intension. The 6<sup>th</sup> respondent School has appointed the 7<sup>th</sup> respondent in the year 1997 and was promoted by an order, dated 19.09.2007 in the sanctioned vacancy. The conversion of the post from B.T. Assistant (Maths) to B.T. Assistant (Science) was granted only on 06.09.2016.



W.P.(MD)No.19335 of 2016

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Hence, there is no impediment in granting promotion, hence there is no illegality in the promotion and prayed to dismiss the writ petition.

7. Heard Mr.G.Karthik, learned Counsel appearing for the petitioner, Mr.V.Om Prakash, learned Government Advocate appearing for respondents 1 to 4 and Mr.G.Prabhu Rajadurai, learned Counsel appearing for 7<sup>th</sup> respondent and perused the records.

8. It is seen from the records that the petitioner was deployed to 8<sup>th</sup> respondent School, since the 5<sup>th</sup> respondent School was having surplus Teachers and 8<sup>th</sup> respondent School had a needy place of vacancy. The 8<sup>th</sup> respondent School had vacancy only for the post of Secondary Grade Teacher. Since the petitioner is a qualified B.T. Assistant, the 8<sup>th</sup> respondent School refused to accommodate the petitioner in the vacancy of Secondary Grade Teacher. In the process, the petitioner was neither in



W.P.(MD)No.19335 of 2016

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Concordia School, Vadakangulam, 5<sup>th</sup> respondent nor in Baliah School, 8<sup>th</sup> respondent. But the DEO in his counter has not stated that the 8<sup>th</sup> respondent denied to accommodate the petitioner, in fact the DEO has stated that the 8<sup>th</sup> respondent school is only 13 kms from the petitioner's place and the petitioner out of her own will is out of employment. Moreover, the contention of the petitioner cannot be accepted even though it is Secondary Grade Post there is provision to upgrade as B.T. Assistant and it is the duty of the official respondents look out and the petitioner cannot have any grievance about the same. It is a lame excuse not to join the deployed post.

9. The petitioner also filed a writ petition in W.P.(MD)No.2445 of 2011 wherein there is an interim order, dated 02.03.2011, directing the respondents to maintain status quo as on 02.03.2011. The contention of the respondents is that as on the date of interim order the petitioner was



W.P.(MD)No.19335 of 2016

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relieved and hence the status quo of reliving was maintained by the respondents. The said writ petition was dismissed as infructuous on 06.06.2019. The petitioner ought to have joined the 8<sup>th</sup> respondent impleaded school after relieving from the 5<sup>th</sup> respondent school, when the status quo could not be maintained because of belated interim order.

10. For one more reason the petitioner ought to have joined in the transferred place of Baliah school, after joining the school ought to have sought to retransfer next year. Without doing so the petitioner is out of employment for all these years i.e. from 2011 to 2023. Hence at this juncture if the petitioner is accommodated then the government would be seriously prejudice by granting grant-in-aid for non-employment period.

11. The Concordia School Valliyur, 6<sup>th</sup> respondent herein has passed the promotion order of the 7<sup>th</sup> respondent who was working in



W.P.(MD)No.19335 of 2016

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their own school as Secondary Grade Teacher to the existing vacancy of B.T. Assistant (Maths) as early as 19.09.2007. But was appointed as B.T. Assistant (Science) without obtaining prior permission from converting the post. The conversion was approved on 06.09.2016. The petitioner has taken this approval as cause of action and had filed the present writ petition. This Court is of the considered opinion that this approval is not giving any cause of action to the petitioner. The contention of the petitioner is that, if the 6<sup>th</sup> respondent school had continued the said post as B.T. Assistant (Maths) itself then the petitioner could be accommodated and hence the respondents ought not to have granted approval for subject conversion of the post. This contention of the petitioner could not be accepted since the 6<sup>th</sup> respondent school had already promoted the teacher who was working in the 6<sup>th</sup> respondent school in the post as early as 2007 itself. The petitioner's contention could be accepted, if the 7<sup>th</sup> respondent was directly appointed by the 6<sup>th</sup>



W.P.(MD)No.19335 of 2016

WEB COPY

respondent school as a new employee, then the petitioner has every right to seek transfer to the said post, since it is coming under the same corporate management. In the present case it is a promotion and hence there is no cause of action. Infact the petitioner is not having any privity to the said post at all and there is no right to the petitioner to maintain this itself.

12. As rightly pointed out by the DEO that the petitioner has willfully not joined the 8<sup>th</sup> respondent school. Even though a plea was taken by the petitioner that the 8<sup>th</sup> respondent school has declined to accommodate the petitioner, then the petitioner has a remedy to submit a petition immediately before the DEO seeking a direction to 8<sup>th</sup> respondent to accommodate the petitioner. Then the DEO has power to direct the 8<sup>th</sup> respondent to accommodate the petitioner. Even after such direction the 8<sup>th</sup> respondent did not accommodate the petitioner, then the



W.P.(MD)No.19335 of 2016

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DEO has power to accommodate the petitioner to any other school and take action against the 8<sup>th</sup> respondent for disobeying the orders of the DEO. In the present case no such complaint was submitted by the petitioner and no evidence was submitted by the petitioner to this effect and hence the plea of the petitioner cannot be considered.

13. The petitioner was 50 years at the time of filing the writ petition and as on date the petitioner is 57 years. The petitioner has not worked for the past 12 years. Hence the petitioner cannot be accommodated. As rightly pointed out by the DEO the petitioner has willfully stayed out of employment. Moreover, if any relief is granted it would be at the cost of the respondents' interest. Hence this Court is not inclined to grant any relief to the petitioner in the interest of overall justice.



W.P.(MD)No.19335 of 2016

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14. At this Juncture the Learned Senior Counsel appearing for the petitioner submitted even though the petitioner is 57 years, she has service for more than 3 years and she may be accommodated in the respondents' school. Therefore, the DEO is directed to accommodate the petitioner in Baliah School or any other needy school within a period of two weeks. However, the petitioner shall be appointed as fresh entrant and she shall be allowed to continue until her superannuation. Further the petitioner is not entitled to any backwages or continuity of service. The service of the petitioner from 05.03.1996 (the date on which the petitioner was appointed) to 28.02.2011 (the date on which the petitioner was relieved) shall be calculated and the terminal benefits and pensionary benefits shall be disbursed to the petitioner.

15. With the above said observation and directions, the writ petition is disposed of. No costs. Consequently, connected



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W.P.(MD)No.19335 of 2016

miscellaneous petitions are closed.

Index : Yes / No

**24.04.2023**

Internet : Yes

NCC : Yes / No

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To

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State of Tamil Nadu,  
Department of School Education,  
Fort St. George, Chennai- 9.
- 2.The Director of School Education,  
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W.P.(MD)No.19335 of 2016

**S.SRIMATHY, J**

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W.P.(MD)No.19335 of 2016

24.04.2023