



W.P.(MD)No.1708 of 2017

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on	:	20.02.2023
Pronounced on	:	30.10.2023

CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P(MD)No.1708 of 2017
and
W.M.P.(MD)No.11594 of 2017

G.Rani

... Petitioner

Vs

1.The State Commissioner for Differently Abled,
The State Commission Department for Differently Abled,
Jawaharlal Nehru, Inner Ring Road,
K.K. Nagar, Chennai 600 078

2.The District Differently Abled Welfare Officer,
The District Differently Abled Welfare office,
Marudhupandiyar Nagar,
Collector Office Campus,
Sivagangai District 630 562.

3.The Chairman,
Elementary Education,
Education Board,
The Tamil Evangelical Lutheran Church (TELC)
No.86, Tranqunabar House,
Trichirappalli District 620001.



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4.The Correspondent,
The Tamil Evangelical Lutheran Church (TELC)
Middle School for Blind,
No.28/77, S.M.Hospital Campus,
Thiuppathur Taluk, Sivagangai District.

5.The Administrator,
The Tamil Evangelical Lutheran Church (TELC),
ELM School (Camp Office),
Purasaiwalkam, Chennai 600 007.

6.The President/Bishop of Tranquebar,
The Tamil Nadu Evangelical Lutheran Church (TELC),
P.B.No.86, Tranquebar House,
Trichirappalli District 620 001.

7.The Secretary,
Representing the Church Council of
Tamil Nadu Evangelical Lutheran Church (TELC),
Post Box No.86, TELC, Central Office,
Tranquebar House, Melaputhur
Tiruchirappalli District.

... Respondents

(R6 is impleaded, vide Court order dated 08.11.2022 in W.M.P.(MD)No.12812 of 2021 in W.P.(MD).No.1708 of 2017 by SSYJ.)

(R7 is impleaded, vide Court order dated 15.11.2022 in W.M.P.(MD)No.19682 of 2022 in W.P.(MD).No.1708 of 2017 by SSYJ.)

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus to call for the records relating to impugned order dated 21.09.2016 in Na.Ka.No.549/2016 of the second respondent and consequential impugned proceeding dated 13.01.2017 of the fifth



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respondent confirming the impugned order of the second respondent dated 21.09.2016 and quash the same as illegal and against the provisions of the Tamil Nadu private Schools (Regulation) Act, 1973 and Rules, 1974 and consequently directing the second respondent to forward petitioner's appointment order dated 18.04.2016 vide Cr.No.52/317/2016 passed by the third respondent to the first respondent for regularization of her service with back wages from the date of appointment.

For Petitioners : Mr.J.Priscilla Pandian

For R1 & R2 : Mr.S.Kameswaran
Government Advocate

For R3 to R7 : No appearance

ORDER

The writ petition is filed to quash the impugned order, dated 21.09.2016 and the consequential order, dated 13.01.2017 and to direct the second respondent to forward the petitioner's appointment order, dated 18.04.2016 for regularizing the petitioner's service with back wages from the date of appointment.



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2. The brief facts as stated in the affidavit are that the petitioner has passed in Bachelor of Arts in English in April 2005, Bachelor of Education (General) in December 2009, Bachelor of Education in Special Visual Impairment in April 2014 and Master of Arts in English in December 2014. The petitioner has possessed the prescribed qualification for the post of Secondary Grade Teacher as well as the Graduate Assistant in the Special School for Blind. The petitioner is eligible to be appointed to the said post both in the Government Special Schools for Blind and also in the Government Aided Special Schools including the Minority Educational Institutions.

3. The petitioner has registered her B.Ed. Special Visual Impairment in the Rehabilitation Council of India and issued with the Registration Certificate by the Council. The petitioner presented an appeal before the first respondent seeking information under the Right to Information Act, on 06.02.2015. The first respondent has issued six information, out of which, the first respondent has stated that the person who have completed the B.Ed. in Special Visual Impairment is fully eligible and qualified to be appointed in the post of teacher in Special School for blind. Considering the petitioner's qualification, the third respondent



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who is the educational agency has appointed the petitioner as a Secondary Grade Teacher on 18.04.2016 in the fourth respondent's school with effect from 20.04.2016 for a period of two years of probation. The petitioner was appointed to the said post in the resignation vacancy created due to resignation of one P.Thirumurugan, who was working as Secondary Grade Teacher and resigned his job on 03.03.2016.

4. The contention of the petitioner is that the original impugned order dated 21.09.2016 was not served to the petitioner but was sent to 4th respondent and a copy was served to the petitioner on 04.11.2016 through the 4th respondent. Before passing the impugned order dated 21.09.2016, the second respondent has failed to grant any opportunity to the petitioner or to the school to put forth their explanation and no opportunity was given by the 2nd respondent and no enquiry was conducted by the 2nd respondent and hence there is clear violation of principles of natural justice thereby infringed the fundamental rights of the petitioner. If opportunity was granted, the petitioner would have submitted his explanation based on the relevant documents and would have substantiated why



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the petitioner appointment ought to have sent for approval. Without considering the educational qualification of the petitioner, the present impugned order came to be passed mechanically and the observations cited in the impugned order are baseless and invalid. Moreover, the petitioner was appointed in the Minority Aided Middle School and there is no need for the third respondent to get consent from the Appointment Committee.

5. The further contention of the petitioner is that the petitioner is fully qualified in Bachelor of Education in Special Visual Impairment than the qualifications fixed by the respondents 2 and 5. The 2nd respondent had not mentioned the required education qualification in the impugned order. The government has banned the course of Diploma in Teaching for Blind both in Junior Level and Senior Level from 2013. One Roobavathi who possess the same qualification was appointed and approved but the petitioner's appointment was not approved. As per the proceedings dated 09.10.2015 the qualified teachers shall be appointed within a year. The said Thirumurgan was appointed on 01.12.2015 and resigned on 03.03.2016, the total strength of the students was 59



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i.e. beyond 1:8 ratio and it should be 56 (7*8) as per the ratio. When the petitioner joined on 20.04.2016 the strength of students was 59. The 4th respondent had sent the petitioner appointment order with qualification certificates to the 2nd respondent for getting approval from the 1st respondent. But the 2nd respondent without forwarding the same to the 1st respondent had returned the order and the 2nd respondent has no right and no authority under the Act to return the appointment order. On 05.12.2016 the petitioner had submitted explanation but without affording any opportunity had declined to approve, which is malafide total discrimination. Thereafter the 5th respondent had passed the impugned proceeding dated 13.01.2017 terminating the petitioner's service. Hence, the first and second respondents acted in a *malafide* manner and there is a total discrimination in granting the appointment orders to other teachers and not to the petitioner. Hence, the petitioner is before this Court.

6. The first respondent has filed a counter stating that the petitioner was appointed as the Secondary Grade Teacher in the fourth respondent school on 18.04.2016 with effect from 20.04.2016 in the vacant place. The fourth



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respondent institution is a minority institution. The State Government cannot interfere with the day-to-day affairs of the school with regard to the administration and functions, but only monitor the proper utilization of grants given to the institutions. The State Government is the competent authority with regard to the service matters of teaching and non-teaching staff, if the said posts are sanctioned by the Government and the salary is paid out of the Government Exchequer. The petitioner's post is the sanctioned post and the salary is being paid by the Government. Hence, the post comes under the purview of the State Government rules and regulations. However, the service matter of the staff who are appointed in the Government sanctioned posts i.e., their appointment, regularization, declaration of probation, sanction of periodical increments, promotion, suspension and even termination from service, have to be approved by the Competent Authority/the State Commissioner for the Differently Abled. The proposal for approval of appointment carried out by the school management should be submitted to the District Differently Abled Welfare Officer, who will verify all the records and if satisfied, will forward and recommend the same to the first respondent for approval. In the present case, the petitioner was appointed by the School Management and the proposal was submitted to the second respondent



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seeking approval of the first respondent, vide letter, dated 26.07.2016. The second respondent has perused the proposal of the fourth respondent in detail and conducted a direct inspection in the school on 20.09.2016 and rejected the proposal for approval stating various reasons. Citing all those reasons, the appointment of the writ petitioner was rejected by the second respondent. Even though the fourth respondent is a minority institution, they can select and appoint candidates on their own, but certain procedures and rules are ought to be strictly followed. The first respondent has already issued a Circular in Rc.No.2222/S.S. 1 /2012 dated 27.03.2012 directing the institution to follow the procedures. The circular has already been issued to all the Government Aided Schools. In the present case, the fourth respondent has not issued any advertisements in the newspapers calling for eligible candidates. The interview ought to have been conducted for appointment to the posts sanctioned by the Government, but no interview has been conducted by the School Management. However, when the petitioner is possessing B.T. Assistant qualification and she was proposed to be appointed as a Secondary Grade Teacher, then the proper procedures ought to have been followed. If any vacancy arises in Secondary Grade post and the same ought to be upgraded as B.T. Assistant, if the post is designated to teach VI, VII &



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VIII standards. As per G.O.Ms.No.100, the School Education Department, dated 27.06.2003, the post ought to be upgraded as B.T. Assistant post thereafter the post ought to be filled up with B.T. Assistant candidate. Thereafter, necessary proposal had to be submitted by the fourth respondent to the first and second respondents for approving the upgradation. Then the respondents ought to have conducted interview for the post of B.T. Assistant. In the present case, the respondent school had not carried out any such process. Moreover, the petitioner is not possessing TET qualification. Even though it is a minority institution, the qualification of TET is necessary. For all the reasons, the respondents rejected the approval for the petitioner's appointment. Based on the rejection of the approval, the third respondent has already terminated the service of the petitioner vide impugned order, dated 13.01.2017. Hence, there is no need to interfere with the impugned order and the same may be dismissed.

7. Heard Mr.J.Priscilla Pandian, the learned counsel appearing for the petitioner and Mr.S.Kameswaran, the Learned Counsel appearing for the respondents and perused the materials available on record.



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8. The respondents have rejected the approval citing ten reasons and they are extracted hereunder:

(i) Even though the institution is a Minority Institution, which would select the candidate for appointment on their own, but paper advertisement ought to have been given calling for applications from all eligible candidates. But in this case no proper advertisement has been given.

(ii) The list of candidates who have applied for the said post was not submitted to the second respondent.

(iii) Direct Interview was not conducted for the candidates who have applied for the said post.

(iv) A specific form has been prescribed by the first respondent by which the Direct Interview should have been conducted.

(v) The petitioner Tmt.G.Rani was not selected by carrying out the above said Interview procedures.

(vi) Even though the Correspondent has the power to appoint any staff in the school, the selection for the said post ought to have been done by an Appointment Committee. In the instant case, the school management did not even constitute such a committee.

(vii) G.O.Ms.No.100, School Education Department, dated 27.06.2003 stipulates that hereafter



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for Std.VI, VII & VIII who teach English, Maths, Science, History and Geography should be filled up with B.T. Assistants and not with Secondary Grade Teachers. Hence, the Secondary Grade Teacher Posts who take classes for VI, VII and VIII which become permanently vacant in future should be filled up only with B.T. Assistants.

(viii) Hence, ThiruP.Thirumurugan who was holding the post earlier has resigned on 03.03.2016 and this post should first be upgraded as B.T. Assistant and the post cannot be filled up as Secondary Grade Teacher, for the reason that the school being a Middle School.

(ix) As per Government order the student teacher ratio is 1:10, but the number of students in the school is less.

(x) As per Government rules, 3 percent employment should be given to differently abled persons in the institution, which has not been followed.

9. The categorical submission made by the 1st and 2nd respondents is that the 3rd respondent has not issued any paper publication to call for applications from the candidates through open market. Also, interview was not conducted. Even though the third respondent is a minority institution, the rules and regulations categorically stated that the selection process ought to have been



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carried out before appointment, in order to select meritorious candidates. The minority institution is having right to choose the candidate and at the same breath the official respondents have power and authority to issue direction to select only meritorious candidates. If the selection process is not followed transparently then the selected candidate is not having any right to claim for approval of appointment. In the present case, the third respondent has not conducted such selection process, but appointed the petitioner without conducting any interview, without assessing the merit and ability of the petitioner. Also, without calling for application from the open market the school management had selected the petitioner. Therefore, the petitioner cannot claim that she is possessing educational qualification and she is a meritorious candidate, when there was no competition among the meritorious candidates.

10. The next contention that was raised by the respondent is that admittedly, the vacant post is Secondary Grade Teacher. The school is having VI, VII and VIII Standards. Even though the Secondary Grade Teacher post in the Standards of VI, VII and VIII become vacant, then it has to be upgraded as BT Assistant post as per G.O.Ms.No.79 Education, dated 14.6.2002 and the said post



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has to be filled as per the directions given in G.O.Ms.No.100 by following subject roaster. In the present case, the school has not been upgraded the said posts as per G.O.Ms.No.79. As per the said G.O.Ms.No.79 the school ought to get approval for upgrading the said post, thereafter seek permission to fill up the said post. But there were several judgments wherein it is held that the school need not seek approval from the education department for upgrading the post and the school shall upgrade the post on its own. In the present case the school had not upgraded the post on its own by following the said judgments. Without upgrading the post, the school had appointed the petitioner as B.T. Assistant, which means without sanctioned post the school had appointed the petitioner. Hence the very basis of appointment itself has no legal sanctity and hence the petitioner is not entitled to approval of appointment.

11. The next contention of the respondent is that as per the Government Order, the student teacher ratio is 1:10 for the appointment in special schools but the number of the students is less. The school is having 17 boys and 13 girls, totally, 30 students and the school is having 5 teachers and 2 special educators totally 7. Based on the ratio of 1:10, only 3 teachers can be accommodated. Hence



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there are surplus teachers in the school. Hence on the issue of surplus also, the petitioner is entitled to any appointment.

12. The next contention of the official respondent is that as per Rules, 3% employment ought to have been given to Differently Abled Persons and in the present selection process the school has not followed the reservation for differently abled persons. As far as the reservation of SC, ST, OBC, BC is concerned, the said reservation may not be applicable to minority institution. But as far as reservation of differently abled person is concerned, the teacher is teaching for the differently abled persons and the school is not recruiting differently abled person under the guise of “reservation is not applicable to minority institution”, may be incorrect. Even if the reservation of SC, ST, OBC, BC is not applicable to the minority institutions, atleast the respondents ought to follow the reservation granted for differently abled persons. More so when the school is teaching the differently abled students.

13. The next contention of the official respondent is that the petitioner is not possessing TET qualification. The petitioner submitted that the third



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respondent school is minority school and hence TET qualification is not necessary for appointment in the minority institution and there are several cases to this effect. Especially, in the judgment rendered by the Hon'ble Supreme Court in Parmathi case, it has been held that TET is not necessary for the minority institution. It is seen in Parmathi case, it has been held that right to free education is not applicable to the minority institution, consequently, the Hon'ble Supreme Court has held that the said Act is not applicable to the minority institutions. Unfortunately, in the said Act, the qualification is prescribed and one such qualification is the possession of TET. Therefore, the petitioner's claim is TET is not necessary for minority institutions. However, in T.M.A. Pai Foundation Case it has been held even for minority institutions, which are receiving grant-in-aid the Government is empowered to fix qualification for the teachers. Therefore, this Court is of the considered opinion, following T.M.A. Pai Foundation case fixing qualification for teacher is applicable even to Minority Institution. Therefore, this Court is of the considered opinion, when the petitioner is not possessing TET qualification and coupled with the fact that the school has not conducted proper selection process, the appointment of the petitioner is bad in law. Hence, the petitioner is not entitled to any relief.



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14. At this juncture, the learned counsel appearing for the petitioner submitted that the petitioner is working in the said post for the past of six years and hence this Court is of the considered opinion that the petitioner is entitled to salary for the period she had worked.

For the reasons stated supra this Court is passing the following order:

- a. The petitioner is not entitled to any approval of appointment.
- b. Since the petitioner had worked for the past six years, the 1st and 2nd respondents are directed to pay salary for the period the petitioner had worked. However, the petitioner cannot continue her service in the said post.
- c. The 1st and 2nd respondents shall recover 50% of the salary paid to the petitioner from the school management.
- d. The 1st and 2nd respondents shall take action against the school for not conducting proper selection process.



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15. Accordingly, the present writ petition stands dismissed in above terms.

There shall be no order as to costs. Consequently, connected miscellaneous petition is also closed.

30.10.2023

NCC : Yes / No

Index : Yes / No

Internet : Yes / No

sbn

To

1.The State Commissioner for Differently Abled,
The State Commission Department for Differently Abled,
Jawaharlal Nehru,
Inner Ring Road, K.K.Nagar,
Chennai 600 078.

2.The District Differently Abled Welfare Officer,
The District Diifferently Abled Welfare office,
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3.The Chairman,
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No.86, Tranqunabar House,
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The Tamil Evangelical Lutheran Church (TELC)
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