



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31.01.2024

CORAM:

THE HONOURABLE MS.JUSTICE R.N.MANJULA

W.P.No.5001 of 2021

N.M.Santhi

...

Petitioner

versus

1.The District Educational Officer,
Erode District, Erode - 638 001.

2.The Chief Educational Officer,
Erode District, Erode - 638 001.

3.The Secretary,
Kasturbagram High School,
Kasturbagram, Erode - 638 001.

4.R.Periasamy

...

Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Mandamus, directing the respondents 1 to 3 to promote the petitioner notionally as Headmistress of the 3rd respondent School from 01.02.2013 and as regular Headmistress of the 3rd respondent School 25.10.2018 with all attendant benefits.

For Petitioner

:

Mr.K.Sivasubramanian

For Respondent Nos.1 & 2

:

Mr.R.Neethiperumal
Government Advocate



For Respondent No.3 : Mr.K.Sathishkumar
For Respondent No.4 : Mr.S.Nedunchezhiyan

WEB COPY

ORDER

The petitioner has filed this petition seeking a writ of mandamus, directing the respondents 1 to 3 to promote her notionally as Headmistress of the 3rd respondent School from 01.02.2013 and also as regular Headmistress of the 3rd respondent School from 25.10.2018 with all attendant benefits.

2. Heard Mr.K.Sivasubramanian, learned counsel for the petitioner, Mr.R.Neethiperumal, learned Government Advocate for the respondents 1 and 2, Mr.K.Sathishkumar, learned counsel for the 3rd respondent, Mr.S.Nedunchezhiyan, learned counsel for the 4th respondent and perused the materials available on record.

3. The petitioner is the Headmistress in-charge of the 3rd respondent School. She has originally joined as B.T.Assistant in the year 2005. On 01.12.2013, when the post of Headmistress became vacant, in view of the petitioner's seniority, the opportunity knocked at the doors of the petitioner for promotion. But the petitioner waived her promotion and hence



WEB COPY

the 4th respondent was appointed to the post of Headmaster through direct recruitment on 10.01.2014. However on the allegations of the mismanagement and delinquency, the 4th respondent was placed under suspension from 22.10.2018. In view of the same, the petitioner was placed in-charge to the post of Headmistress from 25.10.2018 onwards.

4. It is learnt that the disciplinary proceedings initiated against the 4th respondent has been completed and he was found guilty. Subsequently, the 3rd respondent sent a proposal to the 2nd respondent for removing the 4th respondent from service and the same is pending. In view of change of circumstances that had arisen after the appointment of the 4th respondent as the Headmaster, once again the petitioner wished to get promoted to the post of Headmistress. In fact, the petitioner is the person in-charge of Headmistress on and from 25.10.2018 and hence she filed this petition seeking a writ of mandamus to direct the respondents 1 to 3 to consider her promotion with notional effect from 01.02.2013, on which date she was found eligible for promotion as Headmistress originally.



WEB COPY

5. Having waived the opportunity of promotion and allowed the 4th respondent to get appointed as the Headmaster and taking into consideration of the subsequent changes and developments, the petitioner has sought direction to consider her promotion on and from 01.02.2013. On facts, the petitioner did not discharge the functions of Headmistress from 01.02.2013 either as a regular Headmistress or as an in-charge Headmistress.

6. In fact, the 4th respondent was very much available in the post of Headmaster and his suspension came into effect only from 22.10.2018. When a post is already occupied by a person and for whom the salary is being drawn an another person cannot claim to have occupied the same post either actually or notionally, with or without monetary benefits.

7. However the petitioner's claim should be considered on and from 25.10.2018. Because from the said date the 4th respondent was kept under suspension and it was the petitioner, who was discharging the functions of the Headmistress. Despite the petitioner performed the functions of the Headmistress, she was not paid with the salary of Headmistress.



WEB COPY

8. In the context of the above facts, I feel it is appropriate to direct the respondents 1 to 3 to consider the promotion of the petitioner to the post of Headmistress atleast from 25.10.2018 on which date she assumed the charge of the Headmistress. Even though the 4th respondent who was under suspension was said to have been paid with subsistence allowance, I feel that the same is paid by the Management. Hence there may not be double financial burden on the Government.

9. The proposal sent by the 3rd respondent was not positively considered by the 1st respondent and it is stated that there is no post like the Headmistress in-charge. But the post of the Headmistress is very much available and the role of Headmistress has to be performed by someone without the above post, no School can function.

10. The delay on the part of the authorities to conclude the disciplinary proceedings by passing orders to confirm / reject the proposal to remove the 4th respondent cannot put to the disadvantage of the petitioner, who is actually executing the functions of the Headmistress.



WEB COPY

11. It is learnt that the 3rd respondent submitted the proposal once again. Hence the 1st respondent shall consider the same in the light of the above discussion and pass appropriate orders for approving the proposal of promotion of the petitioner to the post of Headmistress immediately, after passing an order by accepting / rejecting the proposal of removal from service of the 4th respondent. In that event, it will be fair on the 1st respondent to approve the petitioner's promotion with effect from the date on which she was executing the functions of the Headmistress i.e. from 25.10.2018.

In the result, this Writ Petition is **disposed** and the 1st respondent is directed to consider the promotion of the petitioner as Headmistress of the 3rd respondent School with effect from 25.10.2018 with all attendant benefits and pass orders to that effect immediately after passing an order in respect of the recommendation of removal of the 4th respondent. No costs.

31.01.2024

Speaking order / Non-speaking order

Index : Yes / No

Neutral Citation : Yes / No

sri



To

WEB COPY

- 1.The District Educational Officer,
Erode District, Erode - 638 001.
- 2.The Chief Educational Officer,
Erode District, Erode - 638 001.



WEB COPY

W.P.No.5001 of



R.N.MANJULA, J.

sri

W.P.No.5001 of 2021

31.01.2024