



W.P. No. 5996 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.04.2024

CORAM

THE HON'BLE MR. JUSTICE D.BHARATHA CHAKRAVARTHY

W.P. No. 5996 of 2022

and

W.M.P. Nos. 6080, 6082 and 6083 of 2022

Kannagi

... Petitioner

-VS-

1. The Chief Educational Officer
Coimbatore - 641001.

2. The District Educational Officer
Sarkarsamakulam @ Ondipudur
Coimbatore - 641016.

3. The Secretary
P.S.G.R.Krsihnammal
Higher Secondary School
Peelamedu, Coimbatore - 4.

... Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India, 1950, praying to issue a Writ of Certiorarified Mandamus, calling for the records relating to the order of the first respondent made in Na.Ka. No. 9926/A-4/2021 dated 29.01.2022 had addressed the same to the second respondent which came to be communicated to the third respondent in O.Mu.No.2606/A-1/2022 dated 21.02.2022, to quash the same and to consequently direct the respondents to approve the appointment of the petitioner in the post of B.T.Assistant (Mathematics) w.e.f. 24.01.2015 with all service and monetary



W.P. No. 5996 of 2022

benefits arising thereto.

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For Petitioner : Mr. L.Chandrakumar

For Respondents : Mrs. S.Mythreye Chandru, SGP (RR1 & 2)
Mr. R.Bharath Kumar (R3)

ORDER

The writ petition is filed challenging the impugned order dated 21.02.2022 in and by which the respondents 1 and 2 had refused to approve the proposal in respect of the petitioner's promotion to the post of Post Graduate Assistant (Mathematics) with effect from 01.07.2021.

2. The brief facts relevant to the disposal of the writ petitions are, that the petitioner was appointed in the third respondent, which is a private aided school as Secondary Grade Teacher with effect from 09.06.2003. While so, in the year 2014, the petitioner filed a writ petition in W.P. No. 31814 of 2014 for a mandamus directing the first and second respondents to promote the petitioner as P.G. Assistant from the year 2013 placing her above one Thamaraiselvi and Prema Kumari with effect from 27.06.2003 by treating her as B.T. Assistant from the year 2003. Pending the above writ petition, on 24.01.2015 she was also posted as B.T. Assistant (Mathematics) and was working in the said post.



W.P. No. 5996 of 2022

3. In that back drop, when the writ petition came up for hearing, it was found that since subsequently the petitioner has been posted as B.T. Assistant, and that there is no impediment to consider her case for promotion, this Court directed the respondents 1 and 2 to consider the claim of the petitioner and pass appropriate orders. It is essential to extract paragraphs 3 and 4 of the said judgment, which reads as follows:-

“3. The first respondent has filed a counter affidavit stating that the fourth respondent due to her personal reasons relinquished the promotion as P.G.Assistant (Maths) and hence she was reverted back to B.T.Assistant and the post was kept vacant from 24.01.2015. It is further stated that the fifth respondent is not having the qualification eligible for P.G.Assistant (Maths) and the petitioner is the only person next to be promoted as P.G.Assistant (Maths), however, the second respondent is not in a position to take further action to fill up the post, as the petitioner has filed this writ petition.

4. In view of the averment so made in the counter affidavit filed by the first respondent, this Court is of the opinion that the respondents 1 and 2 have no other impediment to consider



W.P. No. 5996 of 2022

the claim of the petitioner. Hence, this Court directs the respondents 1 and 2 to consider the claim of the petitioner and pass appropriate orders, purely on merits and in accordance with law, within a period of eight weeks from the date of receipt of a copy of this order.”

Thereafter, in respect of the very same vacancy, a fresh proposal was sent on 01.07.2021 by the third respondent. When the proposal was considered for approval, the same was refused by the impugned order, and therefore, the petitioner has filed the present writ petition.

4. The writ petition is resisted by the respondents. It is essential to quote the relevant portion of the counter-affidavit, which reads as follows:-

“ I submit that in order to implement the judgment of Hon'ble High Court, Madras the School Committee of the third respondent passed a resolution on 30.06.2021 to promote the petitioner as P.G. Assistant (Mathematics). Accordingly the petitioner was promoted as P.G. Assistant (Maths) and she joined as P.G. Assistant (Mathematics) on 01.07.2021. The petitioner also submitted her joining report dated 01.07.2021 stating that she has joined as P.G. Assistant



W.P. No. 5996 of 2022

(Mathematics) on 01.07.2021. The third respondent sent a proposal to the first respondent through the second respondent for the approval of the promotion given to the petitioner as P.G. Assistant (Mathematics) with effect from 01.07.2021.

8. I submit that the Government of Tamil Nadu has issued an order in G.O. Ms. No. 165 School Education dated 17.09.2019 , based on the judgment in W.A. (MD) 76 of 2018 dated 09.04.2019. The Government strictly ordered that no new appointments should be made until the surplus teachers are deployed to the needy schools. ...”

Thus, according to the respondents, there is a district surplus, and the petitioner could not be considered for promotion to the said vacancy.

5. Heard Mr. L.Chandrakumar, learned counsel appearing on behalf of the petitioner and Mrs. S.Mythreye Chandru, learned Special Government Pleader appearing on behalf of the first and second respondents and Mr. R.Barath Kumar, learned counsel appearing on behalf of the third respondent.



W.P. No. 5996 of 2022

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6. Mr. L.Chandrakumar, learned counsel appearing on behalf of the petitioner would submit that there was a dispute as to whether the petitioner would be entitled to be promoted as P.G. Assistant with effect from 2013 or 2015 only. From the year 2015, there is no other rival claim or issue in respect of the petitioner's appointment as P.G. Assistant. As a matter of fact, the petitioner is rendering her services in the said post right from the year 2015 until now. Only considering all the attendant circumstances, this Court in the earlier order dated 22.01.2021 directed the respondents to consider the claim as and when any fresh proposal is made. The undertaking of the respondent that there is no other impediment to consider the claim of the petitioner is recorded in paragraph 4 of the said judgment. In view thereof, the respondent cannot deny approval on fresh grounds now.

7. He would further submit that even in the impugned order, the reason of the district surplus is not mentioned. In any event, when an order has been passed directing the respondents to consider the case of the petitioner, in the teeth of the said order the respondents are not entitled to raise the new grounds while considering the approval afresh.

8. *Per contra*, the learned Special Government Pleader appearing on



W.P. No. 5996 of 2022

behalf of the first and second respondents would submit that firstly, the counter categorically states that the proposal is now made with effect from 01.07.2021.

Therefore, the petitioner's entitlement has to be considered as on 01.07.2021.

While considering her entitlement, it is seen that there is a district surplus as on the said date and hence, the third respondent /management will not be entitled to fill up the vacancy. As per G.O. Ms. No. 165, School Education dated 17.09.2019 when there is a district surplus, the third respondent management is not entitled to fill up the vacancy and the petitioner's appointment cannot be approved.

9. It is not the respondents' undertaking, which is recorded in the earlier order and it is only the directions of the Court. When the court has ultimately directed to consider the claim, the respondents are entitled to take into account all the relevant factors while granting or refusing approval. Therefore, the impugned order is passed in accordance with law.

10. Mr. R.Bharath Kumar, learned counsel appearing on behalf of the third respondent /management though not filed counter would submit that the third respondent has made attempt to promote the petitioner. Since the petitioner's promotion is not accepted and now there is also no vacancy in the third respondent school, the case of the petitioner cannot be countenanced at



W.P. No. 5996 of 2022

this stage.

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11. I have considered the rival submissions made on either side and perused the materials placed on record.

12. It can be seen that there was a regular grant-in-aid vacancy, which arose in the third respondent school in the post of PG Assistant (Mathematics) in the year 2015 itself.

13. The fact that there is no dispute that one vacancy arose in the year 2015 and that the petitioner herein was posted as P.G. Assistant (Mathematics) and was working in the said post from the year 2015. It is only in this background earlier when the petitioner filed writ petition in W.P. No. 31814 of 2014, the above orders were passed. The operative portion of the Order was extracted above.

14. On a perusal of the same, it can be seen that firstly, the court has concluded that there is no other impediment to consider the claim of the petitioner, and secondly, it has directed the respondents to pass orders accordingly. Therefore, it is not a mere case of remitting the matter to the respondents 1 and 2 alone. When there is a finding that there is no other



W.P. No. 5996 of 2022

impediment to consider the claim of the petitioner, firstly, the respondents 1 and

2 ought to have raised the issue of surplus teachers at that point of time. Now

when the rights inter parties is governed by the judgment, belatedly, they cannot

raise any fresh ground. Secondly, even in respect of the district surplus the

Division Bench of this Court in ***Secretary to Government -vs- Iruthaya Amali***

(Order dated 31.03.2021 in W.A. (MD) No. 76 of 2019 etc., batch) has while

upholding the right of the respondent to refuse approval in the case of district

surplus, given a time schedule and as per which the respondents have to

consider the approval and redeploy the teachers at the relevant time. The

respondents did not do the same. No other teacher has been deployed. The

petitioner was not relieved from the post. The petitioner has been consistently

working in the post of P.G. Assistant, right from the year 2015. Only because it

is found that prospectively the case of the petitioner can be considered, her case

for promotion retrospectively was not considered. A finding is recorded that

there is no impediment for considering her case prospectively. Now, it would

not be open for the respondents 1 and 2 to raise the issue of district surplus in

the specific facts and circumstances of the present case. In view thereof, the writ

petition deserves to be allowed on the following terms:-

- (i) the impugned order dated 21.02.2022 shall stand set aside;
- (ii) the respondents are directed to approve the appointment of the



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W.P. No. 5996 of 2022

petitioner with effect from 1.7.2021 as PG Assistant (Mathematics)

and pay her all attendant of arrears of pay;

- (iii) such exercise shall be carried out within a period of 3 months from the date of receipt of a copy of this order.

No costs. Consequently, connected miscellaneous petitions are closed.

16.04.2024

Index: Yes/No

NCS: Yes/No

Speaking order /Non-speaking order

Maya

To

1. The District Adi Dravidar and Tribal Welfare Officer
Perambalur, Perambalur District.
2. The Head Master
Government Adi Dravidar Welfare High School
Ladapuram, Perambalur Taluk
Perambalur District - 621101.



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W.P. No. 5996 of 2022

D.BHARATHA CHAKRAVARTHY, J.

Maya

W.P. No. 5996 of 2022

16.04.2024