



W.P.No.12353 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.11.2024

CORAM :

THE HONOURABLE MR. JUSTICE J.SATHYA NARAYANA PRASAD

Writ Petition No.12353 of 2020
and W.M.P.Nos.16957, 15199 & 15200 of 2020

P.S.Shahila Alias Eswari

... Petitioner

Vs.

1.The Director of Elementary Education,
DPI Campus, College Road,
Chennai – 600 006.

2.The Chief Educational Officer,
Thiruvallur District,
Thiruvallur.

3.The District Educational Officer,
Ponneri Educational District,
Thiruvallur District.

4.The Block Educational Officer,
Chozhavaram Block,
Thiruvallur District.

5.The Correspondent,
Kalaimagal Aided Middle School,
Pondavakkam, (Via) Arani,
Tiruvallur District – 601 101.

... Respondents

PRAYER: Writ Petition filed under Article 226 of Constitution of India,

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praying for issuance of Writ of Certiorarified Mandamus calling for the records relating to the impugned proceedings issued by the third respondent bearing Na.Ka.No.529/Aa2/A4/2019 dated 26.08.2020 and to quash the same and consequently directing the third respondent to restore the order dated 04.12.2018 for granting permission to fill up the post of B.T.Assistant (Science) in General Turn (GT) as per the Roster prescribed under G.O.Ms.No.55 Personnel and Administrative Reforms (S) Department dated 08.04.2010 and approving the appointment of the petitioner as B.T.Assistant (Science) teacher in the 5th respondent school from 18.01.2019 vide proceedings of third respondent dated 20.03.2019 with all consequential and other attendant benefits along with interest for delay in payment of salary at the reasonable rate of interest, including payment of incentive increment for acquiring higher qualification.

For Petitioner : Mr.S.Nedunchezhiyan

For Respondents : Mr.T.M.Rajangam,
Government Advocate

ORDER

The petitioner has filed this petition seeking to call for the records relating to the impugned proceedings issued by the third respondent bearing

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Na.Ka.No.529/Aa2/A4/2019 dated 26.08.2020 and to quash the same and consequently directing the third respondent to restore the order dated 04.12.2018 for granting permission to fill up the post of B.T.Assistant (Science) in General Turn (GT) as per the Roster prescribed under G.O.Ms.No.55 Personnel and Administrative Reforms (S) Department dated 08.04.2010 and approving the appointment of Tmt.P.S.Shahila alias Eswari, as B.T.Assistant (Science) teacher in the fifth respondent school from 18.01.2019 vide proceedings of third respondent dated 20.03.2019 with all consequential and other attendant benefits along with interest for delay in payment of salary at the reasonable rate of interest, including payment of incentive increment for acquiring higher qualification.

2. The case of the petitioner is that the petitioner belongs to Backward Class (BC) Community and qualified with B.Sc., (Physics), B.Ed., M.Sc., (Physics) M.Ed., and cleared TNTET-2013 and eligible for selection and appointment to the post of B.T.Assistant (Science). The fifth respondent school is a Government Aided School governed by the provisions of Tamil Nadu Recognized Private Schools (Regulation) Act, 1972. Since, a vacancy was arose to the post of B.T.Assistant (Science), the fifth respondent/school



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submitted an application to the department seeking permission to fill up the said post and subsequently, the third respondent vide its order dated 04.12.2018, granted permission to fill up the post of B.T.Assistant (Science) in General Turn as per the Roster prescribed under G.O.Ms.No.55 Personnel and Administrative Reforms (S) Department, dated 08.04.2010.

2.1. Accordingly, the fifth respondent/school appointed the petitioner to the post of B.T.Assistant (Science) and issued with an appointment order dated 14.01.2019 and she has also joined the fifth respondent/school on 18.01.2019. Thereafter, the third respondent issued an order dated 20.03.2019 vide Na.Ka.No.592/Aa2/2019 approving the appointment of the petitioner in the Roster point of General Turn with effect from the date of appointment on 18.01.2019.

2.2. Since the appointment being made, no salary was disbursed to the petitioner, however, she has been continuously working without payment of salary for more than a year. Hence, the fifth respondent/school submitted a representation for assessment of salary grant to the B.T.Teacher (Science). This being so, the third respondent sent a notice dated 10.08.2020, seeking



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explanation in regard to the appointment of the petitioner as B.T.Assistant (Science) in General Turn Category and for the same, the fifth respondent/school has also submitted a reply dated 17.08.2020. However, without considering the same, the third respondent issued an impugned order dated 26.08.2020 by cancelling the order of permission dated 04.12.2018 and subsequent order of approval of appointment of the petitioner in the post of B.T.Assistant (Science) dated 20.03.2019 stating that the fifth respondent/school has not followed the rules prescribed under the G.O.Ms.No.55, Personnel and Administrative Reforms Department, dated 08.04.2010. Aggrieved over the same, the petitioner has come forward with the present writ petition.

3. Learned counsel for the petitioner submitted that initially the District Educational Officer, Ponneri/third respondent vide proceedings Na.Ka.No.2999/A4/2018 dated 04.12.2018, granted permission to fill up the post of B.T.Assistant (Science) in the fifth respondent/school and pursuant to the permission granted by the third respondent, the fifth respondent/school appointed the petitioner as B.T. Assistant (Science) on 14.01.2019 under General Turn Category and the same was approved by the third respondent



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vide his proceedings in Na.Ka.No.592/Aa2/2019 dated 20.03.2019 subject to certain conditions stipulated in G.O.Ms.No.55 Personnel and Administrative Reforms (S) Department, dated 08.04.2010. However, the above appointment was cancelled by the third respondent vide proceeding in Na.Ka.No.529/Aa2/A4/2019, dated 26.08.2020.

4. Learned counsel for the petitioner further submitted that the approval for appointment dated 20.03.2019 as well as the cancellation of appointment of the petitioner, dated 26.08.2020 has been passed by the same authority viz., District Educational Officer, Ponneri/third respondent. As per the G.O.Ms.No.55 Personnel and Administrative Reforms Department dated 08.04.2010, it is clearly stated that the vacancy arising on and from the 29.04.2009 shall be filled up as per Schedule III and all selections for appointment shall be started afresh from serial number one in the said Schedule III with effect on and from the said date.

5. Learned counsel for the petitioner would further submit that the appointment of the petitioner was after the cut off date i.e., on 29.04.2009, which was mentioned in the G.O.Ms.No.55 Personnel and Administrative



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Reforms Department, dated 08.04.2010. Hence, the appointment is the first case and it should be under the General Turn Category and not in the Scheduled Caste Arunthathiyar Category.

6. Learned counsel for the petitioner also submitted that at the time of admission, there is an order of interim stay granted by this Court dated 08.09.2020 and the same is in operation, till date.

7. Learned counsel for the petitioner has also relied upon the order passed by the learned Single Judge of this Court in W.P.No.28058 of 2017 dated 29.01.2019 which was subsequently confirmed by the Division Bench of this Court in W.A.No.2239 of 2019 dated 17.07.2019.

8. Learned Government Advocate appearing for the respondents submitted that as per the G.O.Ms.No.55 Personnel and Administrative Reforms Department dated 08.04.2010 wherein amendments were made to Rule 2 of Preliminary And Rule 22, Schedule III, III-B and IV of the General Rules of the Tamil Nadu State and Subordinate Services and they have clearly submitted that the next appointment has to be made under Scheduled Caste



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Arunthathiyar Category and not under General Turn Category. Since, the appointment is not made under Schedule Caste Arunthathiyar Category, the same is rightly cancelled by the third respondent.

9. Heard the learned counsel on either side and perused the materials available on record.

10. In the case on hand, the petitioner was appointed as B.T.Assistant (Science) teacher in the fifth respondent/school, after getting permission from the third respondent on 04.12.2018 and subsequently she was appointed on 14.01.2019 and thereafter approval was also granted by the third respondent on 20.03.2019.

11. The main contention of the petitioner is that according to G.O.Ms.No.55 Personnel and Administrative Reforms Department dated 08.04.2010, vacancy which arose after 29.04.2009 has to be filled as per Schedule III of the aforesaid Government Order. In the instant case, the vacancy arose only in the year 2015, which was subsequent to the issuance of Government Order and therefore, the appointment of the petitioner under



General Turn Category was in accordance with the said Government Order.

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12. At this juncture, it is pertinent to extract the order passed by the learned Single Judge of this Court in W.P.No.28058 of 2017 dated 29.01.2019 and the same reads as follows:

“ 4. Explaining how the case of the petitioner and the 3rd respondent has been covered under Explanation provided under G.O.Ms.No.55 dated 08.04.2010, the learned Counsel for the petitioner also submitted that as per the amendment to General Rules, it is mandatory to fill up the vacancy arising on and from 29.04.2009 only as per Schedule III by starting roster point from Serial Number one. Proviso to Explanation relate to the fact that in the event of any appointment is made following roster as per G.O.Ms.No.241 dated 29.10.2007 and subsequent Government Orders in respect of vacancies arising even after the cut off date i.e. 29.4.2009, the same should not be re-opened and the revised roster prescribed in Schedule III shall be continued from the last turn up to which the selection was already made.

8. This Court is unable to find any merits in the submissions of the learned Additional Government Pleader appearing for the respondents 1 and 2: The reason being that it is an admitted fact that when G.O.Ms.No.55, P&AR Department dated 8.4.2010 was issued giving retrospective effect from 29.04.2009, explanation given therein makes it clear



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that the vacancies arising on or from 29.04.2009 shall be filled up as per Schedule III. However, the proviso states that the Notifications, if any, already made by any of the recruiting agency on or after 15.09.2007 with reference to 200 point roster prescribed in G.O.Ms.No.241/ Personnel and Administrative Reforms (K) Department dated 29.10.2007, G.O.Ms.No.101, Personnel and Administrative (K) Department, dated 30.5.2008 and in G.O.Ms.No.206, Personnel and Administrative Reforms (K) Department dated 06.11.2008 need not be reopened and for further recruitments, the revised roster prescribed in the Schedule III shall be continued from the last turn up to which the (But selection was already made. But, in this case, when the vacancy arose on 31.5.2010, the 3 respondent school has forwarded, a proposal to the 1st respondent seeking for up gradation of Selection Grade Teacher Post as B.T. Assistant Post in order to fill up the same with qualified person. Accordingly, the 1 respondent by Proceedings dated 17.5.2011 upgraded the post of Secondary Grade Teacher as B.T Assistant and also granted permission to fill up the same with qualified person for the academic year 2010-2011. Subsequently, the petitioner P was found eligible and issued with an appointment order on 30.5.2011.

9. It is pertinent to note that when the Tamil Nadu State and Subordinate Service Rules have been amended on 08.04.2010, Explanation to Rule 22(2)(c) is substituted stating that any vacancies arising on and from 29.04.2009 shall be filled up as per er Schedule III and all selections for appointment shall be started afresh from serial number one in



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the said Schedule III. While so, in the present case, by virtue of the Explanation to Rule 22, as the post of B.T. Assistant has been rightly filled up following the General Category, nowhere the respondents 1 and 2 have found fault with the method adopted by the 3rd respondent for filling up the post of Secondary Grade Teacher that has been upgraded as B.T. Assistant. Therefore, when the counter affidavit filed by both the respondents 1 and 2 failed to pinpoint or indicate whether the method adopted by the 3rd respondent School is in anyway running contrary to Rule 22, the impugned order is liable to be set aside.”

Challenging the aforesaid writ petition, Writ Appeal in W.A.No.2239 of 2019 has been filed and the same was dismissed on 17.07.2019. For better appreciation and understanding, the relevant portion of the judgment is extracted hereunder:

“2. When the appeal is taken up for admission, the learned Government Advocate appearing on behalf of the appellants and the learned counsel appearing for the first respondent, who is on caveat, jointly submitted that the order has already been complied with. In fact, a copy of the order dated 04.07.2019 is also produced before us to substantiate the contention that nothing further survives for adjudication in this appeal.

3. The intra Court Appeal is dismissed as infructuous taking into account the subsequent order dated 04.07.2019



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regularising the services of the first respondent. No costs. Consequently, connected Miscellaneous Petition is also dismissed.”

13. On perusal of the aforesaid judgment, it is clear and evident that in a similar case i.e., in W.P.No.28058 of 2017 dated 29.01.2019, the respondents had already complied the said order, which was also submitted before the Division Bench of this Court.

14. In view of the above factual matrix of the case, the impugned order passed by the third respondent in Na.Ka.No.529/Aa2/A4/2019 dated 26.08.2020 is liable to be quashed and the same is hereby quashed. Accordingly, the third respondent is directed to restore the order dated 04.12.2018 for granting permission to fill up the post of B.T.Assistant (Science) in General turn (GT) as per the Roster prescribed under G.O.Ms.No.55 Personnel and Administrative Reforms (S) Department dated 08.04.2010 and approve the appointment of the petitioner as B.T.Assistant (Science) teacher in the fifth respondent/school from 18.01.2019 vide proceedings of third respondent dated 20.03.2019 with all consequential and



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other attendant benefits along with interest for delay in payment of salary at the rate of 6% interest, including payment of incentive increment for acquiring higher qualification.

15. This writ petition is allowed with the aforesaid observations and directions. No costs. Consequently, connected miscellaneous petitions are closed.

05.11.2024

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Index : Yes/No
Speaking Order : Yes/No
Neutral Citation : Yes/No

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J.SATHYA NARAYANA PRASAD,J.

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