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W.P.No.20295 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.11.2024

CORAM:

THE HONOURABLE MR. JUSTICE J.SATHYA NARAYANA PRASAD

W.P.No.20295 of 2020

and

W.M.P.Nos.25069, 25071 & 25073 of 2020

1.D.Rajesh
Secondary Grade Assistant
Govt. High School for Hearing Impaired,
Virudhunagar,
Virudhunagar District.

2.S.Shelton
Secondary Grade Assistant
Govt. High School for Hearing Impaired,
Virudhunagar,
Virudhunagar District.

...Petitioners

-Vs-

1.Secretary to Government,
Department of Welfare of Differently Abled,
Secretariat, Chennai – 9.

2.The State Commissioner,
Commissionerate for the Welfare of the Differently Abled,
No.5, Kamarajar Salai,
Lady Wellington College Campus,
Chennai – 5.

3.The Joint Director,



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Commissionerate for the Welfare of the Differently Aabled,
No.5, Kamarajar Salai,
Lady Wellington College Campus,
Chennai – 5.

4.The Headmaster,
Govt. High School for Hearing Impaired,
Virudhunagar,
Virudhunagar District.

...Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying for the issuance of a direction in the nature of Writ of Certiorarified Mandamus, to call for the records in the order passed by the 2nd Respondent in Sa.Mu.Aa.No.8067/SS.3/2019 dated 11.12.2020 and quash the same, consequently direct Respondents 2 and 3 to permit the petitioners to continue in the upgraded post of B.T.Assistant in the 4th Respondent school as per the order passed in Na.Ka.No.8067/SS.3/2019 dated 19.11.2020 with all other attendant benefits and pass such further orders.

For Petitioners : Mr.D.Muthu Kumar
for M/s.Paul and Paul

For Respondents : Mr.V.Manoharan
Additional Government Pleader

ORDER

This writ petition is filed seeking to quash the order passed by the 2nd Respondent in Sa.Mu.Aa.No.8067/SS.3/2019 dated 11.12.2020 and consequently direct Respondents 2 and 3 to permit the petitioners to continue



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in the upgraded post of B.T.Assistant in the 4th Respondent school as per the order passed in Na.Ka.No.8067/SS.3/2019 dated 19.11.2020 with all other attendant benefits.

2. The case of the petitioners are as follows:

2.1 The first petitioner had completed his Diploma in Teacher Education in August 2002, and B. Lit in May 2003, and passed his Diploma in Special Education in Hearing Impaired at Secondary Grade Level Examination in July 2004. Subsequently, he completed MA Tamil in May 2005, M.Phil in May 2007, and thereafter he was appointed by the 2nd Respondent as Secondary Grade Assistant on 20.11.2008 in the Government High School for Hearing Impaired, Erode, and have successfully completed his probation on 19.11.2010. Thereafter, he completed his B.Ed in December 2010 and passed the Diploma in Special Education in Hearing Impaired at B.Ed Level Examination in July 2012 (S.D.T.D) which is a mandatory qualification for the post of B.T.Assistant in the Schools and comes under the 2nd Respondent Commissionerate. Thereafter, he was transferred to the 4th Respondent School on 24.02.2011 and continued in the same school till date.



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2.2 The 2nd Petitioner had completed Diploma in Teacher Education in August 2003 and passed his Diploma in Special Education in Hearing Impaired at Secondary Grade Level Examination in July 2005. Thereafter, he was appointed as Secondary Grade Assistant by the 2nd Respondent on 19.11.2008 in the Government High School for Hearing Impaired, Dharmapuri, and he has successfully completed his probation on 18.11.2010. The 2nd Petitioner has acquired the B.Ed qualification in Jun 2014 and passed the Diploma in Special Education in Hearing Impaired at B.Ed Level Examination in July 2014 (S.D.T.D) which is a mandatory qualification for the post of B.T.Assistant in the Schools comes under the 2nd Respondent, and completed his MA (Tamil) in May 2015.

2.3 It is seen that the next promotional avenue for the petitioners is to move to the post of B.T.Assistant, and the essential education qualification for the post is Any Degree, D.T.Ed and S.D.T.D. Initially, classes 1 to 8 were handled by the Secondary Grade Teachers, and classes 9 and 10 were handled by the B.T.Assistant and classes 11th and 12th were handled by the P.G.Assistants. In the said circumstances, in 2002 the Government felt that the Secondary Grade Teachers could not handle the subjects of English, Maths, and Science in class 6th, 7th and 8th and therefore passed an order in



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G.O.Ms.No.79 School Education dated 14.06.2002, to the effect that the permanent vacancy of Secondary Grade Teachers in Classes 6th, 7th and 8th will be filled by the Secondary Grade Teachers who have the required qualification of B.T.Assistant by providing one increment.

2.4 Subsequently, the Government had realized that two kinds of appointments of B.T.Assistants existed in School Education, as some of them were appointed in 6th standard to 8th standard to handle few subjects, and other groups of B.T.Assistants were appointed in 9th and 10th classes. In order to avoid this two kinds of appointments, the Government had come up with an order in G.O.Ms.No.100 School Education dated 27.06.2003, wherein a clear decision has been taken to appoint graduate teachers alone with B.Ed qualification in 6th standard to 8th standard to teach English, Maths and Science, and till the upgrade of all the Secondary Grade posts to B.T.Assistants, the Secondary Grade Teachers who are taking those subjects were allowed to continue.

2.5 The 1st Respondent Government had issued another government order in G.O.Ms.No.244 School Education Department Dated 22.06.2007, wherein it has been clarified that not only the posts of Maths, Science and



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English, even other subjects like Tamil and History taught in the 6th standard to 8th standard also should be filled by the graduate teachers, and 66.66% of the vacancy in Tamil subject shall be filled by way of promotion and the remaining 33.33% shall be filled by way of direct recruitment. As far as other posts are concerned, 50% of the vacancy will be filled by direct recruitment and the remaining 50% will be filled by promotion. Subsequently, by way of another G.O.Ms.No.144 School Education Department dated 4.7.2008, the government clarified that the above government order will also be applicable to aided schools.

2.6 In order to implement the above government orders in the Special Schools for differently abled children's, the 2nd Respondent had sought for certain details of the Secondary Grade Teachers who are having the required educational qualification for the post of BT.Assistant by way of a proceedings dated 17.08.2009 and 31.12.2009. Further, a recommendation was also sent by the 2nd Respondent to the School Education Department to fill the vacancy of Secondary Grade Teachers, who were teaching in the 6th standard to 8th standard in the special Schools of the 2nd Respondent through the Secondary Grade teachers who are having the B.T.Assistants qualification, as per the practice followed in the School Education



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Department.

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2.7 The above said upgrade was allowed by the Government in G.O.No.57 dated 18.04.2012 to the CSI High School for Hearing Impaired, and the same kind of an upgrade was permitted to Florence Swainson Higher Secondary School for the Deaf pursuant to an order passed by this Court in W.P.(MD).Nos.4781 to 4788 of 2013. Though the upgrade of Secondary Grade Post to B.T.Assistant was permitted/allowed to aided private schools, the respondents did not implement the same in the Special Schools of the Government which are coming under the control of the 2nd Respondent. In the said circumstances, the petitioners have submitted our representations dated 15.06.2015 through proper channel and the same was also forwarded to the 2nd Respondent for an appropriate action.

2.8 Even after the aforeaside clear representation, the 2nd Respondent did not take any steps to upgrade the vacant post, instead issued a recruitment notification dated 26.11.2015 to recruit the fresh candidates for various posts, including of BT.Assistant (School for the Deaf). The said notification prescribed the essential education qualifications for the post of B.T.Assistant and the same are as follows:



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(i) Must possess the B.A., B.Sc., B.Litt. degree from a recognised University

(ii) and must have completed Senior Diploma in Teaching the Deaf and

(iii) and must have passed the Teacher Eligibility Test - Paper II conducted by the Teachers Recruitment Board, Government of Tamilnadu.

2.9 On 21.10.2016, the 2nd Respondent had granted an order of upgradation in favour of CSI Darling Selvabai David School for Deaf, wherein eight Secondary Grade Teachers who are having the required qualification for the post of B.T.Assistant were granted upgradation to the post of B.T.Assistant in the regular time scale. Likewise, on 12.06.2018 the 2nd Respondent also granted the upgrade to 5 Secondary Grade Teachers, who are working in the Florence Swainson Higher Secondary School for the deaf.

3. In the said situation, the petitioners have submitted their representation dated 30.07.2019 to the 2nd Respondent with the request to upgrade/promote petitioners to the post of B.T.Assistant as they have the required education qualification and also teaching to the students who are studying 6th standard to 8th standard. Subsequently, the 2nd Respondent had



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taken steps to draw the panel for promotion to the post of B.T.Assistant. The said panel was placed in the public domain for perusal and objection, and after taking into consideration all objections, a final panel was drawn on 20.11.2019. As per the said panel, only nine persons are having the required essential educational qualifications and are eligible to be promoted as B.T. Assistant, and both petitioners are coming within that nine eligible persons. Thereafter, first two persons in the above seniority list got the promotion in December 2019 as B.T.Assistants in the vacancy available in 9th and 10th Standard.

3.1 Even after drawing of the above final panel for promotion to the post of B.T.Assistant, no promotion was granted to the eligible persons, and therefore petitioners 1 and 2 have once again reached out to the 2nd Respondent by way of representation dated 05.10.2020 and requested to operate the panel as per the eligibility And after much effort, the 2nd Respondent passed an order on 19.11.2020 and upgraded their present secondary grade post to B.T.Assistant and their probation period has commenced from the date on which we have completed the S.D.T.D examination which is one of the mandatory qualifications for the post of B.T. Assistant - teaching to the hearing impaired students, and the petitioners were



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also brought into the pay scale of 9300-34800 with grade pay of 4600.

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3.2 Pursuant to the above order, the petitioners have joined the upgraded post on 10.12.2020 and the same was also communicated to the 2nd respondent by the 4th respondent by way of a letter dated 10.12.2020. Being that so, the 2nd Respondent had passed an order dated 11.12.2020, wherein the earlier order of upgradation dated 19.11.2020 was cancelled till further order is passed, and further direction was also issued to the respective Headmasters to cancel the joining report if submitted by any of the Secondary Grade Teacher pursuant to the order dated 19.11.2020. The said cancellation order did not contain any reason and the same was passed without affording any opportunity to the petitioners. It is important to mention here that the petitioners are qualified persons even as per the panel prepared by the 2nd Respondent, and there is no reason or a cause shown/available for the 2nd respondent to cancel the order dated 19.11.2020. The order dated 11.12.2020 passed by the 2nd Respondent is arbitrary and illegal. Hence, the present writ petition is filed.

4. Learned counsel for the petitioners submitted that the petitioners



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were promoted as B.T.Assistant on 19.11.2020. Thereafter, the promotion orders were cancelled by the second respondent on 11.12.2020 within a period of one month. Learned counsel further submitted that no notice or opportunity was given to the petitioners and the petitioners are eligible for promotion to the post of B.T.Assistant as per the counter affidavit of the respondents. According to the respondents, nine persons are eligible in which the petitioners names are also mentioned and included.

5. Learned counsel further submitted that this Court on the date of admission of the writ petition on 30.12.2020, has granted an order of interim stay for a period of two weeks. Subsequently, by order dated 04.02.2021, the interim order, which was already granted by this Court was extended until further orders and the same is in force till date.

6. A counter affidavit was filed by the respondents dated 01.03.2021.

7. Learned Additional Government Pleader appearing for the respondents submitted that the promotion panel list, which was arrived on



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20.11.2019, only nine persons are having required essential educational qualifications and are eligible to be promoted as B.T.Assistant among them first 2 persons (i.e. The two petitioners of this case) promoted as B.T.Assistant. He further submitted that the order given to the petitioners was cancelled, due to administrative reason of making rationalization exercises for ascertaining the availability of vacancies, which are to be filled by both direct recruitment and by promoting as per norms, and also based on student strength after ascertaining the above fact, the petitioners promotion order will be considered.

8. Learned Additional Government Pleader contended that the case of the petitioners would be considered once again by the respondents subject to the availability of the vacancies.

9. Heard both sides and perused the materials placed on record.

10. In the case on hand, it is an admitted fact that the petitioners were eligible for promotion to the post of B.T.Assistant. According to the respondents, there were nine persons in which both the writ petitioners were eligible for promotion. In view of the interim order



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granted by this Court on 30.12.2020, both the writ petitioners are still continuing as B.T.Assistants till date.

11. The reasons given by the respondents that though the petitioners were eligible for the post of B.T.Assistant, due to the administrative reasons and reason of making rationalization exercises for ascertaining the availability of vacancies, which are to be filled by both direct recruitment and by promoting as per norms and also based on student strength the promotion orders were cancelled is unsustainable and cannot be countenanced by this Court.

12. The above aspects should have been taken into consideration while promoting the writ petitioners to the post of B.T.Assistant along with seven persons. This apart, the cancellation order was passed by the second respondent without giving any notice or opportunity to the petitioners and the same is in violation of principles of natural justice.

13. In view of the above facts and circumstances of this case, the order passed by the 2nd Respondent in Sa.Mu.Aa.No.8067/SS.3/2019



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**dated 11.12.2020 is liable to be quashed, accordingly the same is hereby
quashed.**

14. In the result, the **writ petition stands allowed with the above
observations.** No costs. Consequently, connected miscellaneous petitions are
closed.

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cda

Index : Yes/No

Speaking/Non Speaking order

To

1. The Director of School Education,
DPI Campus, College Road,



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Chennai – 600 006.

- 2.The Joint Director of School Education (Personnel),
Directorate of School Education,
DPI Campus, College Road,
Chennai – 600 006.
- 3.The Chief Educational Officer,
Kancheepuram District,
Kancheepuram.
- 4.The Chief Educational Officer,
Chengalpet District,
Chengalpet.
- 5.The District Educational Officer,
St. Thomas Mount Educational District,
Government Boys Higher Secondary School Campus,
Chrompet, Chennai.

J.SATHYA NARAYANA PRASAD, J.

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