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W.P.No.30847 of 2012

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.02.2024

CORAM:

THE HONOURABLE MR. JUSTICE J.SATHYA NARAYANA PRASAD

W.P.No.30847 of 2012

M.Praba

...Petitioner

-Vs-

1.The Director of School Education,
Department of Education,
College Road,
Chennai.

2.The District Educational Officer,
Coimbatore,
Coimbatore 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 Mandamus directing the respondents to consider the petitioner for promotion to the post of B.T.Assistant (Mathematics) at M.Goundanpalayam Panchayat Union Middle School, Karamadai Union, Coimbatore District, and grant such other relief.

For Petitioner : Mr.G.Rajan

For Respondents : Mr.R.Neelakandan
Additional Advocate General
Assisted by Mr.T.M.Rajangam
Government Advocate



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ORDER

This writ petition is filed for issuance of a Writ of Mandamus directing the respondents to consider the petitioner for promotion to the post of B.T.Assistant (Mathematics) at M.Goundanpalayam Panchayat Union Middle School, Karamadai Union, Coimbatore District, and grant such other relief.

2. The case of the petitioner is that she completed B.Sc.(Mathematics) in the year 2005 from Annamalai University. Thereafter, he completed Degree of Bachelor (Education) in the year 2010 from Indira Gandhi National Open University. The petitioner completed the Bachelor of Education only after obtaining the necessary departmental permission from the respondents authorities as contemplated under the departmental rules and was fully qualified for the promotion to the post of B.T.Assistant. The petitioner was appointed as primary school teacher on a consolidated basis in the year 2004 and was made permanent in the year 2006 by the 2nd respondent herein in his proceedings in Letter No.4345/A2/A4/A5/2006 dated 15.12.2006. From the date of joining, he was working at Vijayanagaram Panchayat Union Primary School in Karamadai Union, Coimbatore District. By following various Government Orders and the



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guidelines issued by the Department of Education every year a seniority panel has been prepared from the list of primary school teachers in the concerned union for promotion to the post of B.T.Assistant (Mathematics) in the respective departments. The petitioner has a Bachelor's degree in Mathematics and also has a Bachelor's degree in education and therefore, he was eligible to be considered for promotion to the post of B.T.Assistant (Mathematics).

3. Learned counsel for the petitioner would submit that the petitioner is first in the seniority list for promotion to the post of B.T.Assistant (Mathematics) in the Karamadai Union. In the counselling held in the year 2011 for promotion and transfer within the Karamadai Union, her case for promotion was ignored by the respondents for reasons better known to them and in the year 2011, one Bhuvanaeswari, who was working at Salem District was transferred to Karamadai Union on 13.09.2011 i.e. 3 days before the date of counselling for transfer and promotion had begun and joined the post of B.T.Assistant (Mathematics) at Thimmampalayam Middle School within the Karamadai Union. The said transfer from one district to another without considering the case of the promotion to the petitioner has caused grave prejudice to the petitioner. Because of the transfer of



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Bhuvaneswari from one district to another district, she has lost the opportunity to be promoted to the post of B.T.Assistant (Mathematics) in the year 2011. In the counselling held in the year 2011, post of B.T.Assistant (Mathematics) at Muthukallur Middle School, was not shown as vacant, but within a couple of days after the counselling was over, the post was later filled up. The same thing also continued in respect of the vacancy at Dhadayampalayam in the counselling held on June 2012. Therefore, his right to promotion as B.T.Assistant (Mathematics) has been defeated because of the unfairness in the approach of the 2nd respondent dealing with the case of the petitioner.

4. Learned counsel further submitted that in the present year also the counselling for transfer and promotion was held on 07.11.2012 for the academic period of 2012 to 2013. In that counselling, she had participated and expressed her willingness to be transferred to any of the middle schools if the vacancies are available within the Karamadai Union and to be promoted as B.T.Assistant (Mathematics) since there was a vacancy for the post of B.T.Assistant (Mathematics) is available at M.Goundanpalayam Panchayat Union Government Middle School, Karamadai Union, Coimbatore District. The vacancy for the post of B.T.Assistant (Mathematics) arose because the



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incumbent one Bella Jayanthi was transferred from that school on 26.09.2012. Though it is a fact that there is a vacancy for the post of B.T.Assistant (Mathematics) the said vacancy has been purportedly withheld and was not shown at the time of counselling. Apprehending that the events of the year 2011 would get repeated she has also advised her husband to prefer an application under the Right to Information Act requesting the information regarding the availability of the vacancies in the Karamadai Union. Even in the reply given to the queries made under the RTI Act the 2nd respondent obstinately refused to divulge the information that the post of B.T.Assistant (Mathematics) is vacant in the M.Goundanpalayam Panchayat Union Government Middle School, Karamadai Union, Coimbatore District. The action of the 2nd respondent in withholding and suppressing the information about the vacancy for the post of B.T.Assistant (Mathematics) is for reasons better known to him.

5. Learned counsel further submitted that since the petitioner is first in the seniority list for promotion for the post of B.T.Assistant (Mathematics) in the Karamadai Union and there is a vacancy as on 26.09.2012 for the post of B.T.Assistant (Mathematics) at M.Goundanpalayam Panchayat Union



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Middle School, Karamadai Union, Coimbatore District. The post falling vacant has to be filled by transfer and promotion by following the G.O.Ms.No.259 dated 09.09.2011 and G.O.758 (school education department). As per the Government orders the list of vacancies shall be declared before the date of counselling. However, the respondent continuously flouted the Government Order by disclosing an incomplete list of vacancies. Further, the petitioner is working in the Karamadai Union and being first on the seniority list has to be considered for promotion to the post of B.T.Assistant (Mathematics) at M.Goundanpalayam Panchayat Union Middle School, Karamadai Union, Coimbatore District, in preference to the other candidates from other unions and other districts. Since the petitioner was now considered for promotion to the post of B.T.Assistant (Mathematics) at M.Goundanpalayam Panchayat Union Middle School, Karamadai Union, Coimbatore District and since there was a vacancy for the said post, the petitioner was not accommodated. Aggrieved by the same, the petitioner has come forward with the present writ petition.

6. A counter affidavit was filed on behalf of the 2nd respondent on 25.02.2013, in which it is stated that on 26.09.2012, there was a vacancy for Mathematics Teacher at M.Goundanpalayam Panchayat Union Middle



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School, Karamadai Union, Coimbatore District, but one R.Sujini got transferred to this vacant post from Nekkunthi Panchayat Union Middle School, Nallampalli Union, Dharmapuri District, as Mathematics B.T. Teacher and hence this petitioner could not be promoted. Whenever the next counselling is held for the filing of a vacancy, this petitioner will be the 1st candidate for promotion.

7. Heard both sides and perused the materials available on record.

8. In the present case, it is an admitted fact that the petitioner is the first person in seniority for promotion to the post of B.T.Assistant (Mathematics) in M.Goundanpalayam Panchayat Union Middle School, Karamadai Union, Coimbatore District. Even though she was senior, she was not considered for promotion to the said post. Since one R.Sujini, has been transferred from Dharmapuri District on 26.09.2011 and appointed to the post of B.T. Assistant (Mathematics) at M.Goundanpalayam Panchayat Union Middle School, Karamadai Union, Coimbatore District.

9. The main contention of the petitioner is that even prior to the counselling, the said R.Sujini, was appointed on 26.09.2011, by violating the



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Government Order which was in force on that day. In that case, the petitioner ought to have challenged the said post by filing a writ petition for certiorarified mandamus, which she failed to do so. **Whereas she filed the writ petition only on 16.11.2012 for a writ of mandamus directing the respondents to appoint her in the M.Goundanpalayam Panchayat Union Middle School, Karamadai Union, Coimbatore District. The said R.Sujini was appointed on 26.09.2011. Now 12 years have lapsed and this Court is not inclined to interfere with the said posting and appointment since it is pertaining to the year 2011.**

10. Learned Government Advocate submitted **a copy of the written instruction of the Block Education Officer, Karamadai, Coimbatore District, dated 13.02.2024, in which it is stated that from 26.09.2011, R.Sujini was appointed as B.T.Assistant (Mathematics) in the above said school. There is no vacancy till date in M.Goundanpalayam Panchayat Union Middle School, Karamadai Union, Coimbatore District, in order to accommodate the petitioner, who is number one in the seniority for promotion to the post of B.T.Assistant (Mathematics). However, in the counter affidavit it is stated that in the next counselling for filling up the vacancy, the petitioner will be the first candidate for promotion.**



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11. In view of the above factual matrix of the case, this Court is of the considered view that the 1st respondent is directed to consider the case of the petitioner since she is senior most in the seniority list for the post of B.T.Assistant (Mathematics) in the next counselling as per law.

In the result, the writ petition stands allowed with the above **direction**. No costs.

15.02.2024

cda
Index : Yes/No
Speaking/Non Speaking Order

J.SATHYA NARAYANA PRASAD, J.

cda

To

1.The Director of School Education,
Department of Education,
College Road,
Chennai.



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2.The District Educational Officer,
Coimbatore,
Coimbatore District.

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