
(2014) 10 MAD CK 0246

In the Madras High Court

Case No : Writ Petition (MD) No. 12248 of 2014, M.P(MD) Nos. 1 and 2 of 2014

K. Bavani Bai

APPELLANT

Vs

The Director of Elementary Education

RESPONDENT

Date of Decision : 28-10-2014

Acts Referred:

Citation : (2014) 10 MAD CK 0246

Hon'ble Judges : T. Raja, J

Bench : Single Bench

Judgement

T. Raja, J.—The petitioner/K.Bavani Bai has filed the present writ petition challenging the order of transfer made in favour of the 4th respondent/K.Rajeswari transferring her as BT Assistant (Science) from Panchayat Union Middle School, Thirupachetty, Thirupuvaram Union, Sivagangai District to Panchayat Union Middle School, N.Pugaloor, Karur Union, Karur District, on the ground that the 2nd respondent/District Elementary Educational Officer, Karur, Karur District, has passed the impugned order, completely overlooking G.O.Ms.No. 239 dated 22.09.2007, wherein it is clearly mentioned that if eligible candidate is working in the same union to be promoted as B.T Assistant, then the same shall be filled up by way of promotion alone and if there is no eligible candidate available, the same shall be filled up by way of direct recruitment by getting concurrence from the Government.

2. Learned counsel for the petitioner has contended that when the said G.O., has categorically emphasized that after exhausting promotion alone, posts have to be filled up by resorting direct recruitment, the 2nd respondent completely overlooking the mandatory condition wrongly passed the impugned order, transferring the 4th respondent as BT Assistant (Science) from Panchayat Union Middle School, Thirupachetty, Thirupuvaram Union, Sivagangai District to Panchayat Union Middle School, N.Pugaloor, Karur Union, Karur District, totally violating G.O.Ms.No. 239, hence the impugned order is liable to be interfered with.

3. Adding further, he has submitted that the 2nd respondent has already prepared a seniority list for the post of B.T Assistant (Science) keeping the petitioner as the only candidate in the seniority list, therefore, when the petitioner has been shown as the sole candidate eligible to be promoted to the post of B.T Assistant (Science), the action taken by the 2nd respondent in effecting transfer of the 4th respondent has completely put the petitioner in grave prejudice, therefore, the impugned transfer made in favour of the 4th respondent being ex facie illegal in the light of G.O.Ms.No. 239, the impugned order dated 18.06.2014 and the consequential order dated 16.07.2014 passed by the 3rd respondent permitting the 4th respondent to join in the transferred place, he pleaded, are liable to be set aside.

4. Taking support from G.O.Ms.No. 137 School Education Department, dated 09.06.2014, learned counsel for the petitioner further submitted that when the schedule for holding the counselling is properly explained in Annexure II attached to G.O.Ms.No. 137 making it clear that counselling for B.T Assistant has taken place on 18.06.2014 (Wednesday), on the same day, namely, on 18.06.2014, the counselling for transfer/promotion of B.T. Assistants within the same union, has taken place, similarly, the counselling for transfer of B.T Assistants from one district to another district has taken place on 21.06.2014, whereas in the present case, as against the guidelines given for holding the counselling, the impugned order of transfer promoting the 4th respondent has been passed on 18.06.2014 that shows the 2nd respondent has violated G.O.Ms.No. 137, therefore, looking at the impugned order from any angle, he pleaded, the 2nd respondents has wrongly passed the same deliberately ignoring the seniority of the petitioner, as a result the petitioner has been put to grave prejudice.

5. In reply to the above contentions, the 1st respondent/Director of Elementary Education, College Road, Chennai, has filed two counter affidavits, justifying the impugned order, wherein, it has been averred that the Panchayat Union School, N.Pugaloor was in need of one B.T Assistant (Science) and one B.T Assistant (Maths), that apart, one B.T Assistant (English) and one Headmaster were already working in the said school. As per the provisions of the Right of Students to Compulsory Education Act, there must be three B.T Assistants more particularly in Science, Maths and English subjects, therefore, after fixing the staff strength on 01.09.2013, a request was made by the respondents 2 and 3 on 10.09.2013 to the 1st respondent for sanctioning one additional post namely, B.T Assistant Maths or Science. Accepting the above said request made by the respondents 2 and 3, the 4th respondent B.T Assistant (Science) was transferred from Thirupachetty to N.Pugaloor by the impugned order on administrative grounds by sanctioning a post, therefore as contended by the petitioner, there was no available sanctioned vacancy as on 01.06.2014 in Karur Union and only by way of transfer of the 4th respondent, by sanctioning a post at Pugaloor it can be filled up, therefore the challenge made by the petitioner, the learned Government Advocate, pleaded is liable to be brushed aside.

6. Adding further, he submitted that the arguments made on the basis of G.O.Ms.No. 239 that if eligible candidates are working within the same union, they must be promoted first and after exhausting them alone, the posts have to be filled up by resorting direct recruitment from open market or Teachers Recruitment Board, is inapplicable to the present case, inasmuch as there was neither any vacancy as on the crucial date nor the vacancy was filled up by direct recruitment and only by sanctioning a post, the 4th respondent was transferred to Pugaloor.

7. But this Court finds no justification or any good reasons to support the impugned order for more than one reasons. Admittedly, the seniority list for the post of B.T Assistant was prepared on 01.01.2014 (Form-19) wherein, the petitioner has been shown as the sole eligible candidate for the post of B.T Assistant in Velayuthampalayam union. While such being the fact situation, the 2nd respondent ought to have applied the mandatory conditions mentioned in G.O.Ms.No. 239, as per which, if eligible candidates working in the same union is eligible to be promoted as B.T Assistant, then such an eligible person should be considered by way of promotion and if there is no eligible candidate available, the same shall be filled up by way of direct recruitment, and after exhausting the said method alone, the posts have to be filled up by resorting direct recruitment from open market or Teachers Recruitment Board. Sadly, G.O.Ms.No. 239 has been conveniently omitted, may be for the purpose of accommodating the 4th respondent for the reasons best known to them alone. Secondly, one another G.O.Ms.No. 137 mentioning the procedure for holding the counselling for both transfer and promotions, also has been completely ignored.

8. At this juncture, it is necessary to extract the relevant guidelines with the specific date as to when the counselling for teachers' deputation, transfer and promotion has to take place, which is as under:-

9. A mere perusal of the above clearly shows that when the transfer of a teacher from one district to another district has to take place only on 21.06.2014, in the present case, the transfer of the 4th respondent/K.Rajeshwari has been effected from one district to another district on 18.06.2014 that clearly reveals total violation and arbitrary ignorance of the conditions mentioned in G.O.Ms.No. 137, therefore, in my considered opinion, the impugned order passed only in order to accommodate the 4th respondent out of context, is liable to be set aside.

10. In the result, the impugned order dated 18.06.2014 and the consequential order dated 16.07.2014 are set aside and the writ petition is allowed and the respondents are directed to consider the case of the petitioner for promotion to the post of BT Assistant (Science) in the Panchayat Union Middle School, N.Pugaloor, Karur Union, Karur District, within a period of six weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petitions are closed.