
(2003) 02 MAD CK 0049
In the Madras High Court
Case No : Writ Petition No. 12000 of 1996

Mrs. A. Kalavathy

APPELLANT

Vs

The Assistant Director, District Employment Exchange Office

RESPONDENT

Date of Decision : 07-02-2003

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2003) 02 MAD CK 0049

Hon'ble Judges : E. Padmanabhan, J

Bench : Single Bench

Advocate : V. Lakshmi Narayanan, for the Appellant; D. Malarvizhi, G.A., for the Respondent

Final Decision : Dismissed

Judgement

E. Padmanabhan, J.—The petitioner prays for the issue of a writ of mandamus directing the respondent to forward the name of the petitioner

for appointment to the Post of Secondary Grade Teacher to the Chief Educational Officer, Madurai.

2. Notice of motion was ordered at the first instance. A counter has been filed and since certain particulars were lacking and the respondent has

also not acted in terms of the Rule, this court issued a show cause notice calling upon the respondent to show cause as to why he should not be

called upon to pay damages. Thereafter the respondent has also filed a counter.

3. The petitioner who has registered herself with the employment exchange was sponsored by the Employment Exchange for a substitute vacancy

for a period of three months caused by one of the teacher who proceeded on maternity leave. While the petitioner was a substitute, nomination

was called for by the District Educational Officer. Ignoring the fact that the

petitioner is a substitute for a fixed period, the respondent Employment

Exchange Officer forwarded the names of others who registered themselves after the petitioner and omitted to forward the name of the petitioner.

The above is an illegality and this has resulted in denial of getting permanent appointment earlier in point of time. However, it is brought to the

notice of the court that the petitioner was brought to live register at the end of substitute arrangement and thereafter she was sponsored by the

Employment Exchange and thereafter she has been appointed. Thus for a valuable period, the petitioner has been denied of permanent

employment which has resulted in loss of seniority as well as in her earning. However, as the petitioner has been appointed on a regular basis at the

place which she opted, though there is omission on the part of the respondent, this court is dropping the suo motu action.

4. This court is unable to sustain the contention advanced by the respondent as the respondent has proceeded as if on the petitioner joining being

appointed as substitute in the place of a teacher who proceeded on maternity leave, her name has to be deleted and carried over to dead register.

Such a contention cannot be accepted at all as such a procedure is unknown to law and that apart, even the departmental guidelines do not

authorise the respondent to delete the name of the petitioner from the live register and being transferred to dead register. It is not as if it is a

temporary appointment or permanent appointment to which the petitioner was sponsored, but it was only as a substitute. There is a clear

distinction between a temporary appointment and substitute engagement for a limited period when the incumbent proceeds on leave like maternity

leave. This misconception has resulted in denial of valuable opportunity to the petitioner.

5. The plea that the petitioner's name has been transferred to dead register cannot be sustained at all. Even para 7.39 would show that if an

applicant is placed against casual/term vacancy, it should be shown as placed and her index card should be removed from the Live Register. The

relevant rule reads thus:-

7.39:: If an applicant is placed against casual/short term vacancy, it should be shown as placed and his index card should be removed from the

Live Register. A dummy card should be kept on the L.R for submissions against

regular vacancies. After the lapse of two years, the aforesaid

dummy card should be removed from the L.R. In case the applicant is able to secure placement against a regular vacancy during the period of two

years, he may be shown ""brought on L.R and placed.

6. The above instruction alone would apply if at all and this provision would show that a dummy card should be kept and thereafter the petitioner's

name should be transferred to the Live Register. The contention that the petitioner's name has to be transferred to Dead register cannot be

sustained at all as it is a misconception. However, the petitioner has already been appointed subsequently, and therefore this court is not awarding

any compensation or damages. However, this court direct the respondent to be careful in future and adopt the procedure prescribed in this behalf

and avoid such illegalities.

7. With the above direction, the writ petition is dismissed. No costs.