

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated:- 22.12.2006

Coram:-

The Hon'ble Mr. Justice P.SATHASIVAM
and
The Hon'ble Mr. Justice S.TAMILVANAN

Writ Appeal No.1578 of 2003
WAMP No.2115 of 2003

P.L.Valliammai

.... Appellant/5th Respondent

Vs.

1.K.Varadarajan

.. 1st respondent/petitioner

2. Director of Higher Secondary School
Education, College Road, Nungambakkam,
Chennai-600 006.

3. The District Educational Officer,
Devakottai.

4. The Joint Director,
The Professional and Executive
Employment Exchange,
R.K.Mutt Road, Chennai.

5. S.M.S. Higher Secondary School,
rep. by its Correspondent,
R.M.Muthiah,
Keelasevalpatti,
Tirupathur Taluk,
Sivagangai District.

.. Respondent 2 to 5/
Respondents 1 to 4

Writ appeal filed under Clause 15 of the Letters Patent against the order dated 31.03.2003 made in W.P.No.18197 of 1997 presented to this Court under Article 226 of the Constitution of India to issue a Writ of Mandamus, directing the respondents one to four to appoint the petitioner as post Graduate Assistant (Economics) Teacher in S.M.S Higher Secondary School, Keelasevalpatti, Thirupathur Taluk, Sivagangai District by following due process of law by calling for names of persons registered with 1 to 3rd respondent office by Seniority.

For Appellant : Mr.AR.L.Sundaresan, S.C., for
Ms.AL.Ganthimathi
For respondents : Mr.V.Viswanathan,
2, 3 & 4 Addl. Government Pleader

JUDGMENT

(Judgment of the Court was delivered by P.SATHASIVAM, J.)

The above writ appeal is directed against the order dated 31.03.2003 made in W.P.No.18197 of 1997, in and by which, the learned single Judge, after quashing the appointment of fifth respondent therein/appellant herein, has allowed the writ petition and directed the third respondent therein viz., Joint Director, the Professional and Executive Employment Exchange, R.K.Mutt Road, Chennai, to sponsor all eligible candidates to the fourth respondent school within 30 days from the date of communication of the said order, as per the employment exchange seniority list, who are eligible and who possess eligible qualifications and thereafter, the fourth respondent school shall hold a fresh selection, select and appoint the suitable candidate on merits and in accordance with law.

2. The first respondent-writ petitioner, though was duly served notice in the above appeal, has not chosen to contest the same by engaging a counsel.

3. Mr.AR.L.Sundaresan, learned Senior Counsel appearing for the appellant-fifth respondent in the writ petition, submits that pursuant to the selection, the appellant was continuing her service in the fifth respondent school and even now, she continues in the same school.

4. Before going into the merits, it is relevant to note that the writ petitioner-first respondent herein filed the said writ petition seeking to issue a writ of Mandamus directing respondents 1 to 4 therein to appoint him as Post Graduate Assistant (Economics) Teacher in S.M.S. Higher Secondary School, Keelasevalpatti, Tirupathur Taluk, Sivagangai District by following due process of law or by calling for names of persons registered with the third respondent Exchange by following employment exchange seniority list. The interest of the appellant/fifth respondent therein was taken care of by the school viz., fourth respondent therein and the learned counsel, who appeared for the school also represented the fifth respondent therein. Before the learned single Judge, the third respondent therein has filed a counter affidavit highlighting their stand and prayed for dismissal of the writ petition.

5. The learned single Judge, after considering the claim of both parties, though the relief prayed for in the writ petition is only Mandamus, on the oral request made by the learned counsel for the petitioner, has quashed the orders of selection and appointment made by the fourth respondent-school appointing the fifth respondent as P.G. Assistant and thereafter, directed the third respondent-the Professional and Executive Employment Exchange, R.K.Mutt Road, Chennai, to sponsor candidates as per the Employment Exchange seniority list and it is for the fourth respondent-school to select one of them according to law and on merits.

6. As rightly pointed out by the learned Senior counsel appearing for the appellant, even without filing a proper petition for amendment of the relief prayed for, the learned single Judge has quashed the selection and appointment of the fifth respondent therein/appellant herein. It is also his grievance that since her interest was taken care of by the school management, she was not afforded adequate opportunity to put forth her objection in the course adopted by the learned single Judge.

7. On going through the relief prayed for in the writ petition and the stand taken by the fifth respondent therein, we are of the view that the learned single Judge ought to have dismissed the writ petition.

8. It is brought to our notice that after the appointment of the appellant, the third respondent herein-the District Educational Officer, Devakottai, has approved her appointment during the pendency of the writ petition. It is also highlighted that the major requirement of the fifth respondent School, before selecting a candidate for appointment, is to notify to the employment exchange calling for the names and the same having been followed in the instant case and selected the appellant, there is no illegality or irregularity committed by the management in appointing her. In those circumstances, it is contended that the learned single Judge ought not to have set aside the appointment of the appellant even without a prayer for setting aside the appointment.

9. The learned Government Pleader appearing for the official respondents has also brought to our notice the stand that was taken before the learned single Judge. In the counter affidavit filed before the learned single Judge, the Assistant Director, Professional and Executive Employment Exchange, R.K.Mutt Road, Chennai, has stated that the school management requested the Professional and Executive Employment Exchange to sponsor candidates for appointment as Post Graduate Assistant (Economics). The school also requested them to forward the names of suitable women candidates only. It is further stated that as per the said requirement, the Employment Exchange sent a list of 20 women candidates including the fifth respondent therein. Inasmuch as, only women candidates had to be sponsored, as requested by the school-management, the name of the writ petitioner was not included in the list.

It is also brought to our notice that the name of the writ petitioner was sponsored against the post of "Team Member" to the Special Secretary to Government, Agricultural Department, Fort St. George, Chennai-9, in 1995. But he was not selected for appointment. In 1997, the fifth respondent herein has notified the vacancy in the post of Post Graduate Assistant(Economics) as having been reserved for open competition women category to the fourth respondent-Employment Exchange. In those circumstances, the fourth respondent herein sent a list of 20 women candidates belonging to Sivagangai District. The third respondent has claimed that the action of the fourth respondent-Exchange in nominating the candidates belonging to Sivagangai District is in order according to the departmental instructions issued in the State Employment Exchange circular Memo No.19/85. They further reported that since the vacancy was reserved for women and the writ petitioner-first respondent herein belongs to Trichy District, he was not considered for nomination for making appointment in the said school.

10. Considering the information furnished by the Assistant Director, the Professional and Executive Employment Exchange, R.K.Mutt Road, Chennai, and the stand taken by the fifth respondent before the learned single Judge, we accept the objection raised by the learned Senior Counsel for the appellant. As rightly pointed out, in view of the fact that the action taken by the Employment Exchange cannot be faulted with, particularly, the request made by the school management, we are of the opinion that in view of the relief prayed, the learned single Judge ought to have dismissed the writ petition.

11. In these circumstances, the order of the learned single Judge dated 31.03.2003 made in W.P.No.18197 of 1997 is set aside and the writ appeal is allowed. No cost. Consequently, WAMP No.2115 of 2003 is closed.

Sd/
Asst.Registrar

/true copy/ सत्यमेव जयते

Sub Asst.Registrar

raa

To

1.Director of Higher Secondary School
Education, College Road, Nungambakkam,
Chennai-600 006.

2.The District Educational Officer,
Devakottai.

3.The Joint Director,
The Professional and Executive
Employment Exchange,
R.K.Mutt Road, Chennai.

1 cc To Mr.A.L.Gandhimathi, Advocate, SR.64875.

1 cc To The Government Pleader, SR.65086.

W.A.No.1578 of 2003

AKM(CO)
RVL 05.01.2007



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