

(2011) 09 MAD CK 0210

Madras High Court

Case No: Writ Petition No. 13700 of 2011 and M.P. No. 1 of 2011

Mrs. Malliga Janet

APPELLANT

Vs

The District
Educational Officer
Kutchery Road,
Mayiladuthurai, The
Chief Educational
Officer Velipalayam,
Nagapattinam and
The Correspondent
Lutheran Mission
Central Higher
Secondary School
Sirkali - 609 110
Nagapattinam District

RESPONDENT

Date of Decision: Sept. 12, 2011

Acts Referred:

- Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 - Section 47

Hon'ble Judges: D. Hariparanthaman, J

Bench: Single Bench

Advocate: D. Moses Jeyakaran, for the Appellant; R.A. Senthilvelan Govt. Advocate (Education) for Respondent 1 and 2, Mr. T. Sellapandian for Respondent 3, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

Honourable Mr. Justice D. Hariparanthaman

1. The Petitioner was initially joined as B.T. Assistant on 14.06.1990 in the third Respondent School, which is a Government aided school and later, she was

promoted as Post Graduate Assistant (Tamil) on 17.02.1995. According to the Petitioner, while she was teaching the +1 and +2 students, the results in Tamil subject from the year 1995 to till date is between 96% and 100%. She was awarded cash prize by the second Respondent and the Management of the third Respondent School continuously from the year 1995 onwards for her best performance.

2. While so, the Petitioner lost her vision totally, during August 2010 and she became blind. She was permitted by the third Respondent to get the assistance of a PTA member, as her companion, due to her visual disability and to perform her duties to the satisfaction of the Management of the School. The recent result obtained in Tamil subject for the school was 96%. There has been no complaint whatsoever against the Petitioner from any quarters regarding her performance as P.G. Assistant (Tamil).

3. In these circumstances, the third Respondent issued a letter dated 19.04.2011 to the Petitioner, calling upon her to produce the fitness certificate from the District Medical Board, Nagapattinam about her visual ability, as otherwise, they will not allow her to continue to work in the school without the fitness certificate.

4. The Petitioner submitted a detailed explanation dated 22.05.2011 through the Head Master of the school stating that after August 2010, she has been handling classes for the +1 and +2 students and that she was permitted to have the assistance of a PTA member, at her cost, as her companion. She also requested the Respondents to continue the same arrangement until her retirement in July 2014.

5. The Petitioner also sent another representation dated 01.06.2011 enclosing the certificate obtained from the Chief Civil Surgeon and Eye Surgeon, Government Periyar Hospital, Mayiladuthurai, certifying that she suffers 100% visual disability.

6. The Petitioner states that she is entitled to continue in service as per Section 47 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 and she is also entitled to have a companion at her cost, to assist her in discharging her duties. In this regard, she made a representation dated 06.06.2011 requesting the third Respondent to permit her to have the assistance of a member from PTA as her companion, to discharge her duties as P.G. Assistant (Tamil). But the third Respondent did not pass any orders on her representation and also did not claim salary for the Petitioner from July 2011.

7. The Petitioner has filed the present writ petition seeking a direction to the Respondents to consider her representations dated 22.05.2011, 01.06.2011 and 06.06.2011 and to permit her to have a member from the PTA as her companion to discharge her duties as P.G. Assistant (Tamil) in the third Respondent School.

8. When the matter came up for hearing on 14.06.2011, the learned Additional Government Pleader took notice for the Respondents. However, no counter affidavit is filed by the Respondents.

9. Heard the submissions made by Mr. D. Moses Jeyakaran, Learned Counsel for the Petitioner, Mr. R.A. Senthilvelan, learned Government Advocate (Education) for the Respondents 1 and 2 and Mr. T. Sellapandian, Learned Counsel for the third Respondent.

10. The Learned Counsel for the Petitioner submits that if the third Respondent does not permit the Petitioner to have the assistance of a PTA member, she will be satisfied, at least she could have a companion to lead her to the classroom and back to the staff room and she would utilize the help of a student to write something on the blackboard. The Learned Counsel for the Petitioner further submits that the third Respondent could not withdraw the facilities, which they offered to the Petitioner during last year, at her cost.

11. On the other hand, the Learned Counsel for the third Respondent School submits that the Petitioner is not entitled to continue in service. In support of his contention, he has relied on a judgment of the Honourable Supreme Court in [Union of India \(UOI\) Vs. Devendra Kumar Pant and Others](#), .

12. I have considered the submissions made on either side and perused the materials available on record.

13. The Petitioner has been serving in the third Respondent school for the past 21 years. She joined in service as B.T. Assistant in the year 1990 and she became P.G. Assistant (Tamil) in the year 1995. From 1995 to till date, she has produced the best results in the +1 and +2 examinations between 96 % and 100%. While so, she became totally blind during August 2010 and hence, she was permitted to have the assistance of a PTA member, who could lead her to the classroom and to write in the blackboard, whatever she dictates, if necessary, at her cost. In these circumstances, the third Respondent issued the letter dated 19.04.2011 stating that the Petitioner should get a fitness certificate from the District Medical Board, Nagapattinam, about her visual ability. Accordingly, the Petitioner sent a letter dated 01.06.2011 enclosing the certificate obtained from the competent authority that she suffers 100% visual disability. Based on the same, the third Respondent is of the view that the Petitioner is not entitled to continue as a Teacher and to teach +2 students. According to the third Respondent, the Petitioner could be kept on a supernumerary post sanctioned by the Respondent authorities and the third Respondent could be permitted to appoint a new person in Petitioner's place. In my view, the third Respondent is not correct in their view that the Petitioner could not discharge her duties. The visual disability has not disqualified her in the discharge of her duties. The medical certificate does not state that she is not suitable for the teaching job.

14. In fact, as rightly contended by the Learned Counsel for the Petitioner, the Government Order in G.O. Ms. No. 82, Social Welfare Department, dated 21.07.2009, permits appointment of blind persons as Secondary Grade Teachers. Section 47 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full

Participation) Act, 1995 protects the service of an employee, who acquires a disability during his service.

15. In the present writ petition, unfortunately the Petitioner became blind after 20 years of her service. She was permitted to handle the classes after she became blind and she also produced the best results in the +2 examinations. It is also stated that she was awarded cash prize for her best performance. In these circumstances, the third Respondent is not correct in stating that the Petitioner could not discharge her duties, as she became blind. In my view, In the interest of students, the Petitioner should be permitted to continue to have the assistance, which she had during the last academic year, at her cost. Moreover, the Petitioner has only 2 to 3 years of service for her retirement and she has to retire in July 2014. The third Respondent acted arbitrarily and did not claim salary for the Petitioner from July 2011. In my view, the third Respondent is not justified in not sending the claim for salary after July 2011.

16. Therefore, the third Respondent is directed to permit the Petitioner to have the assistance of her choice, at her cost, till her superannuation, to take classes for +1 and +2 students, as P.G. Assistant (Tamil). The third Respondent is also directed to claim salary for the Petitioner from July 2011 from the competent authority, forthwith and the concerned Respondent is directed to sanction salary to the Petitioner, within a period of two weeks from the date of receipt of the claim to be made by the third Respondent.

17. The writ petition is disposed of with the above observation and direction. No costs. Consequently, connected miscellaneous petition is closed.