

(2011) 11 MAD CK 0169

Madras High Court (Madurai Bench)

Case No: Writ Petition (MD) No. 6081 of 2009 and M.P. (MD) No's. 1 and 2 of 2009

C.R. Anitha

APPELLANT

Vs

The State of Tamil Nadu and
Others

RESPONDENT

Date of Decision: Nov. 10, 2011

Acts Referred:

- Constitution of India, 1950 - Article 14, 16, 16(2)

Hon'ble Judges: K. Chandru, J

Bench: Single Bench

Advocate: S. Xavier Rajini, for the Appellant; M. Govindan, Special Government Pleader,
for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

Honourable Mr. Justice K. Chandru

1. It is rather unfortunate that the petitioner, who hails from Kanyakumari District and after having secured an employment as a Secondary Grade Teacher by selection made by the Teachers' Recruitment Board, has come forward to file the present Writ Petition.

2. In this Writ Petition, the prayer made by the petitioner was a direction to respondents 2 to 6 to consider her claim for appointment as a Secondary Grade Teacher in Tamil medium in anyone of the vacancies available in Kanyakumari District, which are sought to be filled up by G.O.Ms.No.220, School Education (S2) Department, dated 10.11.2008.

3. When the Writ Petition came up for admission on 14.07.2009, notice of motion was ordered. Pending the notice of motion, no interim orders were granted in favour of the petitioner, though applications to that effect were filed by the

petitioner. The petitioner claims that she is a qualified teacher and has registered her name in the District Employment Exchange, Kanyakumari on 11.06.1987. Subsequently, she had acquired additional qualifications and she has got M.Phil, during August, 1998. At that time, when the petitioner registered her name in the Employment Exchange, the post of school teachers including the post of Secondary Grade Teachers were filled up by candidates, who were recruited on the basis of the seniority in the District Employment Exchange. Even at the relevant time, many candidates, who hail from Kanyakumari District and Tirunelveli District, as those districts have the maximum number of trained teachers, got their names transferred to different Employment Exchanges, wherein there were dearth of qualified teachers. Having got transferred their names to that Exchange, they got employment, even before their senior counterparts in Kanyakumari could get their employment. This action gave rise to problems, such as the local district people protesting against the so-called migrants. The District Revenue authorities conducted enquiries about the bona fides of such transfers. There were too many litigations before this Court on the basis of the rights claimed by the so called migrants and the protest by the so called locals. Finally, it led to a Writ Petition being filed before this Court, challenging the very concept of recruitment through district level employment exchanges on the basis of district wise seniority.

4. In a judgment in Unemployed Secondary Grade Teachers Welfare Association vs. State of Tamil Nadu reported in 2008 (4) L.L.N. 560, a Division Bench of this Court headed by P.K.MISRA, J. (as he then was), went into the question of selection made on the basis of district level employment exchange and found fault on the practice. It was held that such a practice contravened Article 16(2) of the Constitution of India. It directed that the practice must be stopped and the State must follow the seniority list based upon the state level seniority. During the course of the judgment, he had also observed that even though Kashmir to Kanyakumari -India may be one, Dharmapuri to Kanyakumari -Tamil Nadu cannot have different units. Though the said judgment was taken on appeal to the Supreme Court by the aggrieved parties, the Supreme Court admitted the SLP and granted an interim order on 20.10.2008.

5. The Supreme Court permitted the State to fill up the posts, on the basis of the judgment rendered by the Supreme Court. This led to the State Government issuing a consequential Government Order vide G.O.Ms.No.220, School Education (S2) Department, dated 10.11.2008. In that Government Order, the State Government, while implementing the orders of the Supreme Court as well as the judgment of this Court, held that the list of names for filling up the post of Secondary Grade Teachers should be obtained from all District level employment exchanges and also through public advertisements and the vacancies will be filled up only on the basis of seniority, date of registration in the employment exchange. It was also stated that the persons, who are initially appointed to one District, subsequently should not claim for transfer to other districts and the same shall be indicated in the advertisements itself. The petitioner was one of the beneficiaries in pursuant to the

judgment of this Court, wherein the choice of selection was based upon a state level seniority and she was provisionally selected by the Teachers Recruitment Board for the selection held during the year 2008-2009. Accordingly, the petitioner was allotted to work at Alaikathavalasai Government School, Mandapam Union, Ramanathapuram District.

6. The contention of the petitioner was that the third respondent-Teachers Recruitment Board called her for certain verification on 28.05.2009 at S.L.B. Government Higher Secondary School, Nagercoil and she was selected and her state level seniority was fixed at 37. But, at that time, the District Elementary Education Officer, the sixth respondent herein, informed that there were 61 posts of Secondary Grade Teachers vacant in Kanyakumari District and in terms of rank, she is legitimately expected that she will be allotted to the said District. She was not informed about the real vacancies, when she attended the counselling at Bishop Heeber Higher Secondary School, Theppakulam, Trichy on 10.07.2009 and the non-publication of the vacancy lists and the denial of place of choice would amount to violation of Articles 14 and 16 of the Constitution of India. In that view of the matter, she has filed the present Writ Petition.

7. It is surprising to note that the petitioner, who is the beneficiary of the enforcement of a right under Article 16 of the Constitution of India, now should complain about the violation of the very Article in her not being appointed to Kanyakumari District. The very purpose of the judgment of the Division Bench was to create a unified teacher service for the whole State. In the present case, the petitioner, having secured an employment, cannot dictate the place of her choice in the posting. It is not as if the petitioner being made work as a Secondary Grade Teacher on a reduced scale or on different conditions of service. The present contention raised that had she been informed about the available vacancies, she would have preferred her home district or on the basis of the rank list, she would have had a choice. Such arguments cannot be countenanced in the absence of any enforceable right on the part of the petitioner.

8. In the light of the above, this Court is not inclined to entertain the Writ Petition and hence, the same stands dismissed. Consequently, the connected miscellaneous petitions are closed. No costs.