



W.A.(MD)No.171 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 14.12.2023

CORAM:

**THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM**

**AND**

**THE HONOURABLE MR.JUSTICE V.LAKSHMINARAYANAN**

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and

C.M.P.(MD)No.551 of 2016

1.The Chief Educational Officer,  
Tirunelveli.

2.The District Educational Officer,  
Cheranmahadevi Education District,  
Tirunelveli.

... Appellants

Vs.

1.M.Selvan

2.The Secretary,  
Papanasam Labour Welfare Association  
Higher Secondary School,  
Vickramasingapuram,  
Tirunelveli District.

...Respondents

**PRAYER:** Appeal filed under Clause 15 of the Letters Patent Act to set aside the order of this Court in W.P.(MD)No.22454 of 2019 dated 23.10.2019.

For Appellant : Mr.D.Sadiq Raja



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For R1  
For R2

Additional Government Pleader  
: Mr.P.P.Alwin Balan  
: No Appearance

### **JUDGMENT**

(Judgment of the Court was delivered by ***S.M.SUBRAMANIAM, J.***)

The writ appeal is filed by the Chief Educational Officer and the District Educational Officer, Tirunelveli challenging the order dated 23.10.2019 made in W.P.(MD)No.22454 of 2019.

2.The first respondent/Teacher was appointed as Secondary Grade Teacher on 28.03.1987 in the second Respondent School. He was promoted as BT Assistant on 09.04.2008 and retired from service on 30.09.2019 on attaining the age of superannuation. Thereafter, the first respondent was reemployed from 01.10.2019 to 31.05.2020 till the end of the academic year. The benefit of reemployment was extended based on the Government policy. The grievance of the first respondent before the writ Court was that he was allowed to continue in service till the end of the academic year and therefore, he is entitled for the salary for the reemployment period from 01.10.2019 to 31.05.2020.



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3.The learned Single Judge considered the issue based on the fact that the first respondent was allowed to continue in service till the end of the academic year on 31.05.2020 and therefore, he is entitled for the salary.

4.The State preferred the present appeal mainly on the ground that there was surplus post in the second respondent School in the category of BT Assistant (History) and therefore, the Management ought not to have allowed the first respondent to continue in service beyond his date of retirement on 30.09.2019. If the post of BT Assistant is surplus in the School, the Teacher on attaining the age of superannuation, is not eligible to seek reemployment based on the Government policy. In this context, the learned Additional Government Pleader relied upon the Government Order in G.O.Ms.No.261, School Education Department dated 20.12.2018 and the relevant conditions stipulated in the order read as follows:

□(ii)மாணவர்களின் நலன் கருதி அரசின் கொள்கை முடிவுப்படி, 58 வயது நிறைவு செய்த ஆசிரியர்கள், அக்கல்வியாண்டு முடியும் வரை பணிக்காலம் மறுநியமனம் செய்யும் போது உபரி ஆசிரியர் பணியிடங்கள் இருக்கும் போது மறு நியமனம் செய்யக் கூடாது.

(iii)மாணவர்களின் நலன் கருதி, உபரிப் பணியிடம் அல்லாத ஆசிரியர்களை மறு நிர்ணயம் செய்யக் கருதும்போது, அரசாணை (நிலை) எண்.170, பள்ளிக் கல்வித் (ப.க.5-2) துறை, நாள் 23.10.2014-



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ல் ஆணையிடப்பட்டவாறு, கல்வியாண்டின் இடையில், ஓய்வு பெறும் ஆசிரியர்களுக்கு விருப்பத்தின் அடிப்படையில் மறு நியமனம் வழங்கப்படும் உபரிப் பணியிடம் அல்லாத ஆசிரியர்களுக்கும் ஓய்வு பெறுவதற்கு முன்னர் கடைசியாக பெற்ற ஊதியத்தையே மறு நியமனம் ஊதியமாக வழங்கவேண்டும்.□

5.The learned counsel for the first respondent submitted a copy of the Government Order in G.O.Ms.No.115, School Education Department, dated 28.06.2022 so as to establish that even if the School has surplus post, the Teacher on attaining the age of superannuation is eligible to seek reemployment. Though the said ground is disputed by the learned Additional Government Pleader, it is not necessary to be considered, since the Government Order in G.O.Ms.No.115, dated 28.06.2022 was issued after the retirement of the first respondent on 30.09.2019 and the said Government Order cannot be implemented retrospectively.

6.On the date of retirement of the first respondent on 30.09.2020, the Government Order in G.O.Ms.No.261, dated 20.12.2018 was in force and as per the said Government Order, as the surplus BT Assistant post was available in the second respondent school, the petitioner is not eligible to seek reemployment till the end of the academic year. If the Management on their own volition allowed



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the first respondent to continue in service till the end of the academic year on 31.05.2020, then the second respondent is liable to pay the salary to the Teacher for the services rendered by him from 01.10.2019 to 31.05.2020.

7.In view of the facts and circumstances, the order impugned in the present writ appeal dated 23.10.2019 passed in W.P.(MD)No.22454 of 2019 is set aside and the second respondent is directed to pay the salary to the first respondent for the services rendered by him from 01.10.2019 to 31.05.2020. The appellants are directed to settle all the terminal and pensionary benefits taking into consideration the date of retirement of the first respondent as 30.09.2019, if not already granted within a period of twelve weeks from the date receipt of a copy of this order.

8.With the above direction, this writ appeal stands allowed. No costs. Consequently, connected miscellaneous petition is closed.

**(S.M.S., J.) & (V.L.N., J.)**  
**14.12.2023**

NCC : Yes / No  
Index : Yes / No



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