

In the High Court of Judicature at Madras

Dated: 03.03.2015

Coram:

The Hon'ble Mr. Justice T. RAJA

W.P.No.36545 of 2007

N.Kumaravel

.. Petitioner

Vs.

- 1.The Secretary,
State of Tamil Nadu,
Department of School Education,
Fort St. George, Chennai-9.
- 2.The Director of School Education,
Chennai-600 006.
- 3.The District Educational Officer,
North Chennai, Chennai-600 008.
- 4.The Chief Educational Officer,
Panagal Building,
Saidapet, Chennai-15.
- 5.The Secretary,
Motilal Fomra Sahatara
Dharma Higher Secondary School,
26, Mangappan Street,
Sowcarpet, Chennai-600 079.

.. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India for a writ of Certiorari and Mandamus, calling for the records of the respondents, resulting in the third respondent's communication Na.Ka.No.2965 A1/07 dated 06.09.2007, and to quash the same "as far as the rejection of the claim of the petitioner for the approval of his post from 18.06.1999 is concerned" and direct the respondents 1 to 4 to regularise the service of the petitioner since the date of joining in service i.e., 18.06.1999 by giving approval for his appointment as P.G. Assistant (Biology) and further directing the respondents to pay the arrears of salary of a sum of Rs.3,42,621/- to the petitioner.

For Petitioner : Mrs.R.Anitha
For respondent : Mr.N.Srinivasan
Nos.1 to 4 Additional Government Pleader
For respondent-5 : No Appearance

O R D E R

The petitioner has filed the present writ petition challenging the impugned order passed by the third respondent/District Educational Officer, North Chennai, Chennai in Na.Ka.No.2965 A1/07 dated 06.09.2007, in and by which, the service of the petitioner was regularised by grant of approval for his appointment as P.G. Assistant (Biology) with effect from 01.08.2002 denying the benefit of service from the date of his initial appointment dated 18.06.1999.

2.The learned counsel for the petitioner would submit that petitioner has qualified M.Sc. (Biology) with B.Ed. Consequent to the promotion of S.Adhiappan, P.G. Assistant (Biology) as Head Master on 05.06.1996, the post of P.G. Assistant (Biology) had fallen vacant. Therefore, the management has called for an interview to fill up the suitable candidate in the vacant post of P.G. Assistant (Biology) by publishing advertisement in the Hindu Newspaper. In response to the same, petitioner applied and got selected out of 10 candidates who attended the interview on merits. Resultantly, he was appointed as P.G. Assistant in Biology in the fifth respondent school from 18.06.1999. There are only two B.T. Assistants in the fifth respondent school and therefore, the services of the P.G. Teachers are utilised to take classes for IX and X standards and also in subjects like Hindi, English, Science and Social Sciences as there is shortage of B.T. Assistants. It is also submitted that petitioner has been taking Biology subject for the classes XI and XII standards and also taking science subject for IX and X classes. Although petitioner was not paid salary by the Education Department, fifth respondent school came forward to pay the consolidated salary of Rs.1000/- per month for a period from 01.06.2000 to 31.12.2000 and then from 01.01.2001, he was paid a sum of Rs.2500/- per month till 31.07.2002. Totally, a sum of Rs.54,000/- alone was paid to the petitioner.

3.It is submitted by the learned counsel for the petitioner that meanwhile, the fifth respondent management also addressed to the fourth respondent to revise the staff fixation by submitting a letter dated 15.12.1999. The fourth respondent replied to the fifth

respondent school stating that post was surrendered to the second respondent by proceedings dated 17.02.2000. Citing the said proceedings, the second respondent also in his proceedings dated 06.12.2000 rejected the claim of the fifth respondent management for the sanction of the post of P.G. Assistant (Biology) for the reason as on 01.08.1999, staff fixation for the year 1999-2000, P.G. Assistant was promoted as Headmaster and hence, the said post was treated as excess and surrendered by the fourth respondent. However, the said post was sanctioned by the second respondent in his proceedings dated 10.07.2002. Only thereafter, the third respondent/District Educational Officer, North Chennai in his proceedings dated 17.10.2002 sanctioned the post of PG Assistant (Biology) with effect from 01.08.2002 with a scale of pay of Rs.6500-200-10500. In this background, the grievance of the petitioner is that when the petitioner was appointed to the sanctioned post by the fifth respondent school on 18.06.1999 even after completion of probation, the respondents did not wish to approve the appointment of the petitioner on the date of his initial appointment.

4. Adding further, the learned counsel for the petitioner submitted that even after the petitioner was appointed in the sanctioned post on 18.06.1999 as P.G. Assistant (Biology), the post came to be surrendered only on 02.12.1999 which is neither communicated to the petitioner nor to the fifth respondent school. As a result, the petitioner has not challenged the same, hence, it is not open to the respondents to say that in view of the non challenge of the rejection order dated 02.12.1999 by the petitioner, the petitioner cannot make the present way. Taking reliance from the G.O.Ms.525 [School Education (D1) Department] dated 29.12.1997, it is further argued that when the above G.O.Ms.525 dated 29.12.1997 mandates that staff strength shall be fixed by the District Educational Officer concerned for High and Higher Secondary Schools and by District Elementary Officer in respect of Elementary Middle Schools and those who may be rendered surplus due to application of these norms, shall as far as possible be redeployed to the needy schools, the redeployment of staff in school shall be done by Director of School Education and Director of Elementary Education or the officers to be authorised by them. This will be in supersession of the orders issued in G.O.Ms.No.392, Education dated 24.05.1996. Para 8 of the said Government Order states that in cases where such deployment is felt difficult, the surplus staff shall be allowed to continue in the same school till their retirement and then the staff strength refixed as per norms. So also wherever necessary, additional posts shall be sanctioned only after taking into account the number of staff deployed to such schools. When that is the mandate of G.O.Ms.525 dated 29.12.1997, the

petitioner having been admittedly appointed through interview held by the fifth respondent private school pursuant to advertisement calling upon eligible candidate for the post of P.G. Assistant (Biology) on 18.06.1999 on merits out of 10 contesting candidates, the respondents ought not to have surrendered the post of P.G. Assistant (Biology) on 02.12.1999 against G.O.Ms.525 dated 29.12.1997. Adding further, it was contended that where the impugned order also states that appointment of the petitioner is required to be approved from 01.08.2002, the fifth respondent school being a minority educational institution, they are entitled to fill up the sanctioned post on account of promotion of one Adhiappan to the post of Headmaster and therefore, the contention of the respondents for appointment of the petitioner to the sanctioned post on 18.06.1999 by the fifth respondent school without prior approval is invalid is not acceptable. For all these reasons, the learned counsel for the petitioner prays for allowing the writ petition by setting aside the impugned order.

5. Learned Additional Government Pleader for the respondents 1 to 4 heavily opposing the petition submitted that the present writ petition is not maintainable since the petitioner has not challenged the surrender order dated 02.12.1999 accordingly urged this Court to dismiss the writ petition as not maintainable. Secondly, he contended that when Mr.S.Adhiappan, P.G. Assistant (Biology) working under fifth respondent school was promoted as Headmaster on 05.06.1999, the work load for biology subject for classes XI and XII has been limited to 7 periods each for XI and XII Standards, i.e., totally 14 periods. Therefore, one P.G. Assistant Post for Biology was sanctioned. That apart, when the person appointed as P.G. Assistant for this subject was promoted as Headmaster, the subject is to be handled by the Headmaster as the work load is meagre. Besides, in the staff fixation for the year 1996-97 to 1998-99, it was shown by the Chief Educational Officer that P.G. Assistant post for Biology was excess as it should be handled by the Headmaster. Again, the Chief Educational Officer, Chennai in his proceedings in K.Dis.No.9417/B2/99, dated 02.12.1999 has resumed the said vacant P.G. Assistant Post as surplus and surrendered that post to the Director of School Education. In the meanwhile, the petitioner was appointed by the fifth respondent management as P.G. Assistant on 18.06.1999 and submitted the proposal to the third respondent and the same was not approved by the third respondent on the ground that appointment of petitioner was made in the surplus post pending receipt of the staff fixation order for the year 1999-2000 from the Chief Educational Officer, Chennai. When the staff fixation was received from the Chief Educational Officer on 12.12.1999 and the same was also mentioned in the fixation order as surplus post, the management having taken steps on his own accord and risk, the

petitioner cannot claim salary from the date of his appointment from 18.06.1999 for the Government grant to P.G. Assistant (Biology) for handling higher secondary subjects and not for handling high school subjects. Therefore, it is for the management to appoint anybody from their own funds and hence, department cannot approve any post, more particularly, when the work load in the fifth respondent school was so low.

6. Concluding his argument, it was stated that management has made representation to the Chief Educational Officer to resume the post. The Chief Educational Officer in his proceeding dated 17.02.2000 has stated that the earlier order dated 02.12.1999 was not challenged either by the petitioner or by the fifth respondent management and therefore, neither the petitioner nor the fifth respondent management school can find fault with the impugned order.

7. Heard the parties on both sides.

8. Admittedly, S. Adhiappan P.G. Assistant, Biology was promoted as Headmaster on 05.06.1999 from the post of P.G. Assistant (Biology) in the fifth respondent school. Since the post had fallen vacant, the fifth respondent school through advertisement given in the Hindu newspaper has sought to fill up the vacancy and in response thereto, the petitioner applied for the same and among 10 candidates, the petitioner was selected by the fifth respondent management on merits. After his appointment as P.G. Assistant (Biology) in fifth respondent school on 18.06.1999, the service of P.G. Assistant has been utilised to take classes for IX and X Standards and also in subjects like Hindi, English, Science and Social Sciences as there was shortage of B.T. Assistants in the fifth respondent school. It appears that petitioner also completed probation on 18.06.2000. In the meanwhile, workload of the fifth respondent school for biology subject was reduced to 7 periods in 11th std and 7 periods in 12th std which is to be handled by one Mr. S. Adhiappan serving in the fifth respondent school in the sanctioned P.G. Assistant post in Biology and since the said person was promoted as Headmaster, taking into account that the workload for the said subject was low, the petitioner was asked to handle classes for IX and X science classes apart from XI and XII Biology classes namely, 14 periods. However, ultimately there was one post for P.G. Assistant (Biology) but the facts remains to be seen is that after promotion of S. Adhiappan P.G. Assistant (Biology) as Headmaster on 05.06.1999, till date fifth respondent school was sanctioned with one P.G. Assistant (Biology) post and it has not been sanctioned with an additional post for the P.G. Assistant (Biology). Therefore, as rightly contended by the petitioner on the basis of G.O. Ms. 525 dated 29.12.1997 which says that staff strength

shall be fixed by the District Educational Officer concerned for High and Higher Secondary Schools and by District Elementary Officer in respect of elementary middle schools and those who may be rendered surplus due to application of these norms, shall as far as possible be redeployed to the needy schools, when the petitioner was appointed on 18.06.1999 in the sanctioned post of P.G. Assistant (Biology) on account of vacancy fallen since S.Adhiappan, P.G. Assistant (Biology) was promoted as Headmaster by the fifth respondent school that being a minority educational institution, they are entitled to fill up the sanctioned post without prior permission for appointment of staff in the sanctioned post. A similar and identical issue came up before me in Dr.S.Sukumaran Vs. State of Tamil Nadu, [2012 (5) MLJ 670]. Following the above said judgment, I have also held in W.P.(MD) No.16116 of 2013 dated 15.10.2014 (S.Jasmin Sugantha Malar Vs. The Director of Collegiate Education, College Road, Chennai-6 & others) that there is no necessity to get prior permission from the Director of Collegiate Education, Chennai when any appointment is made in a sanctioned post of retirement vacancy occurred in a minority institution. On this basis, I have directed the appointment of a similar person with effect from the date of appointment with salary and other service benefits. In the present case, the said post was surrendered on 02.12.1999 as surplus. No doubt that order was not challenged either by petitioner or by the fifth respondent school. However on the date of surrender in the post of P.G. Assistant (Biology), the petitioner was appointed therefore, even if the respondent is of the view that the petitioner has been working as a surplus teacher as per the G.O.(Ms).525 dated 29.12.1997 as far as possible ought to have re-deployed him to the needy school since he was appointed to the sanctioned post. As it was not done, this Court is of the view that para 8 of the G.O.Ms.525 dated 29.12.1997, has been violated inasmuch as Government Order clearly says that in case any deployment is felt difficult, the surplus staff shall be allowed to continue in the same school till their retirement and then, the staff strength refixed as per norms. When surrender of the post was made on 02.12.1999, in my considered view, the same ought to have been avoided by the respondents. Be that as it may, the petitioner's appointment has been approved from 01.08.2002 without sanctioning any more post and as there was a sanctioned post as on 18.06.1999, the petitioner is entitled to get salary from the date of appointment from 18.06.1999. Therefore, the impugned order refusing to grant approval from the date of his appointment on 18.06.1999 alone is set aside.

9. With the above fact situation, this writ petition is allowed setting aside the impugned order dated 06.09.2007. Therefore, the petitioner is entitled to receive salary for the period from 18.06.1999 till 01.08.2002. No costs.

Sd/-

Asst. Registrar (CS II)

/true copy/

Sub Asst. Registrar

DP

To

1. The Secretary,
State of Tamil Nadu,
Department of School Education,
Fort St. George, Chennai-9.
2. The Director of School Education,
Chennai-600 006.
3. The District Educational Officer,
North Chennai, Chennai-600 008.
4. The Chief Educational Officer,
Panagal Building,
Saidapet, Chennai-15.

1 cc to Government pleader, Sr. 11854

1 cc to Ramasamy Law Associates, Sr. 11724

WEB COPY

W.P.No.36545 of 2007

TEJ (CO)

kk 25/5