

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.12.2016

CORAM:

THE HON'BLE MR.JUSTICE S.MANIKUMAR

AND

THE HON'BLE MR.JUSTICE M.GOVINDARAJ

Writ Appeal No.1153 of 2010

and

M.P.No.1 of 2010

1.The District Education Officer
District Education Office
Palani (P.O.)
Dindigul District

2.The Chief Education Officer
The Chief Education Office
Dindigul

3.The Joint Director of School
(Personal)
Sampath Maligai
College Road
Madras 600 008

4.The Joint Director of School
Education (Secondary Education)
Sampath Maligai
College Road
Madras 600 008

.... Appellants

सत्यमेव जयते
vs.

1.Raja Immanuel

2.The Correspondent
Santhi Niketan Higher Secondary School
Ambilikkai, Ottanchatram Taluk
Dindigul District

3.Arul Stephen
B.T.Assistant
Santhi Niketan Higher Secondary School
Ambilikkai, Ottanchatram Taluk
Dindigul District

.... Respondents

Writ Appeal filed under clause 15 of the Letters Patent against the order of the writ court dated 05.03.2010 made in W.P.No.16473 of 1999.

Prayer in W.P.No.16473/99:- Writ petition filed under Article 226 of the constitution of India praying to issue a writ of mandamus directing respondents 1 to 5 to permit the petitioner to continue his service as a graduate teacher in the fifth respondent school in pursuance of the appointment order dated 2.3.1998 passed by the fifth respondent alongwith the salary payable from 2.3.98.

For Appellants : Mr.V.Anandamurthy,
Additional Government Pleader

For Respondents : Mr.S.Krishnasamy for R1
Mr.P.Mathivanan for R3
No Appearance for R2

JUDGMENT

(made by S.MANIKUMAR, J)

Challenge in this appeal is to a direction issued by the writ court in W.P.No.16473 of 1999 dated 05.03.2010, to the Education Department, to approve the appointment of first respondent Raja Immanuel in the post of Graduate Teacher in the second respondent school from 02.03.1998, without waiting for any formal correspondence from Santhi Niketan Higher Secondary School/respondent No.2 in this appeal, within a period of two months from the date of receipt of order made in the writ petition.

2. Short facts leading to the appeal are that Raja Immanuel/respondent No.1, was serving as a Graduate Teacher in Santhi Niketan Higher Secondary School on consolidated pay from 1993 to 1997. Government passed G.O.Ms.No.523 School Education (D1) Department dated 29.12.1997 sanctioning four posts of BT Assistants and four posts of Second Grade Teachers to the second respondent school. The first respondent was appointed on 2.3.1998 as Graduate Teacher in one of the four posts of BT Assistants sanctioned by the Government in the scale of pay of Rs.1400-40-1600-50-2300-60-2600. He worked in the said school up to 07.04.1998. When he reported for duty on 08.06.1998 after vacation, he was restrained from joining the school. He was not permitted to sign the Attendance Register. Therefore, he was constrained to file W.P.No.16473/1999 for a mandamus directing respondents 1 to 5 therein, to permit him to continue in the second respondent school as Graduate Teacher pursuant to the appointment dated 02.03.1998.

3. Before the writ court, the official respondents therein/appellants herein have filed a counter affidavit

contending inter alia that the order of appointment of the first respondent dated 02.03.1998 was not at all communicated, for approval. Appointment of third respondent herein/6th respondent in the writ petition was communicated and accordingly, it was approved on 26.10.1998.

4. Santhi Niketan Higher Secondary School/respondent No.2 herein filed counter affidavit saying that the first respondent did not report for duty on 28.3.1998 and therefore, the third respondent herein/6th respondent in the writ petition was appointed in his place as B.T.Assistant.

5. Having regard to the rival submissions, the writ court, vide order dated 05.03.2010 made in W.P.No.16473 of 1999, issued a mandamus to the second respondent school, to permit the first respondent herein/writ petitioner, to continue in service as Graduate Teacher, based on the order of appointment dated 02.03.1998 and further directed the school to pay all back wages and attendant benefits to the first respondent herein/writ petitioner from 02.03.1998, within a period of two months from the date of receipt of a copy of that order.

6. There is no representation for the second respondent. Heard the learned Additional Government Pleader appearing for the appellants and the learned counsel for the respondents 1 and 3 and perused the material available on record.

7. Insofar as the Education Department is concerned, the writ court, directed approval of appointment of the writ petitioner from 02.03.1998 without waiting for any formal correspondence from the second respondent school.

8. Appellants are aggrieved only, over the directions regarding approval on the grounds inter alia that, without any proposal from the school, approval cannot be granted. They have also contended that the appointment of the third respondent herein, has been approved in the post of B.T. Assistant. Added further, Mr.V.Ananthamurthy, learned Additional Government Pleader submitted that on 21.01.2012, first respondent herein has been appointed as B.T. Assistant in Panchayat Union Middle School, Periyapatti, Natham Block, Dindigul District.

9. Perusal of the order shows that before the writ court submission has been made by the learned counsel appearing for the petitioner that offer of lower post made by the second respondent school cannot be a ground to reject the claim for back wages from the second respondent school. Writ court has only directed the second respondent school to pay all back wages and attendant benefits to the writ petitioner with effect from 02.03.1998 onwards.

10. Today, the first respondent is also employed in Government Panchayat Union School. Mr.S.Krishnasamy, learned counsel for the first respondent submitted that the second respondent school has not preferred any appeal challenging the direction issued for payment of back wages and other attendant benefits. As rightly contended, approval cannot be processed without any proposal containing the details of qualification, certificates etc. Already another teacher is working in the post. As direction to pay wages is only against the school, approval is not required, more so at this juncture, when the first respondent is already working in a Panchayat Union school. Submission is placed on record.

11. Therefore, while partly allowing the appeal filed by the appellants, deleting the portion regarding approval of appointment of the first respondent with effect from 02.03.1998, other directions issued against the second respondent school, would remain unaltered. Appeal is disposed of accordingly. However, there shall be no order as to cost. Consequently, the connected miscellaneous petition is closed.

Sd/-
Asst.Registrar (CO)

/true copy/

Sub Asst. Registrar

asr

To

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District Education Office
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Dindigul District

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The Chief Education Office
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1 cc to Government Pleader, Sr. 72650

W.A. No.1153 of 2010

AK (CO)
kk 6/1



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