

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 04.08.2016

CORAM:

THE HON'BLE MR.JUSTICE A.SELVAM
AND
THE HON'BLE MR.JUSTICE P.KALAIYARASAN

Writ Appeal No.377 of 2012

& M.P.No.1 of 2012

1. The Government of Tamil Nadu
rep.by its Secretary
Higher Education Department
Fort St.George
Chennai 600 009
2. The Director of Secondary Education
College Road
Chennai 600 006
3. The Chief Educational Officer
Kanyakumari District at Nagercoil
Kanyakumari District
4. The District Educational Officer
Thuckalay,
Kanyakumari District.

Vs.

1. N.Francis Edwar
2. The Correspondent
Punitha Susaiappar (St.Joseph's) High School
Rajakkamangalamthurai
Kanyakumari District

... Respondents

Prayer: WRIT APPEAL filed under Clause 15 of Letters Patent against the order dated 27.8.2009 passed in W.P.No.33431 of 2002.

Writ Petition filed Under Article 226 of the Constitution of India praying for the issuance of a Writ of Mandamus directing the respondents 1 and 2 to sanction the post of Physical Education Teacher in the 5th respondent School and further direct the respondents to pay salary from 9/11/1988.

For Appellant : Mr.N.Srinivasan,
Additional Government Pleader

For Respondents : Mr.S.Saisathyajith for R1
No appearance for R2

JUDGMENT

(Judgment of the Court was delivered by
A.SELVAM, J)

This Writ Appeal has been directed against the order dated 27.8.2009 passed in W.P.No.33431 of 2002 by the learned Single Judge of this Court.

2. The first respondent herein, as petitioner, has filed W.P.No.33431 of 2002 on the file of this Court under Article 226 of the Constitution of India, praying to issue a Writ of Mandamus, directing the respondents 1 and 2 to sanction a post of Physical Education Teacher in the School of the 2nd respondent.

3. The learned Single Judge, after considering the divergent contentions raised on either side, has allowed the writ petition by way of passing the impugned order and the same is being challenged in the present Writ Appeal.

4. The learned Additional Government Pleader appearing for the appellants has contended to the effect that the first respondent/petitioner has been appointed as Physical Education Teacher in the School of the 2nd respondent on 9.11.1988. On the date of appointment, no sanctioned post has been in existence as Physical Education Teacher. The 2nd respondent School, without getting sanction, has erroneously appointed the first respondent/petitioner as Physical Education Teacher on 9.11.1988 and after a lapse of thirteen years, the first respondent/petitioner has filed the present writ petition for getting the relief sought therein and the learned Single Judge, without considering the fact that the appointment of the first respondent itself is erroneous, has allowed the writ petition by way of passing the impugned order and therefore, the order passed by the learned Single Judge is liable to be set aside.

5. Per contra, the learned counsel appearing for the first respondent/petitioner has contended that the first respondent/petitioner has been appointed as Physical Education Teacher on 9.11.1988 and since the second respondent School has not given emoluments to the first respondent/petitioner, he has filed the writ petition on the file of this Court and the learned Single Judge, after considering the appointment and also the present situation of the first respondent/petitioner, has rightly allowed the writ petition by way of giving necessary direction. Under the said circumstances, the order passed by the learned Single Judge does not require any interference.

6. It is an admitted fact that the first respondent/petitioner has been appointed as Physical Education Teacher on 9.11.1988 in the School of the 2nd respondent. It is also equally an admitted fact that on 9.11.1988, no sanctioned post of Physical Education Teacher has been in existence in the School of the 2nd respondent. The second respondent, for the reasons best known to it, even without the existence of sanctioned post, has erroneously appointed the first respondent/petitioner as Physical Education Teacher on 9.11.1988.

7. The learned counsel appearing for the first respondent/petitioner has contended that even in the year 1994, the total students' strength is 300. Considering the steep increase of strength of students in the School of the second respondent, the second respondent can be directed to take effective steps for getting sanctioned post of Physical Education Teacher.

8. The second respondent, as stated supra, has not evinced any interest for getting sanctioned post of Physical Education Teacher. However, the second respondent has erroneously appointed the first respondent/petitioner as Physical Education Teacher on 9.11.1988. Since the appointment itself is totally erroneous, this Court is of the view that the relief sought by the petitioner cannot be granted. However, the following direction can be issued to the second respondent.

In fine, this Writ Appeal is allowed without cost and the impugned order dated 27.8.2009 passed in Writ Petition No.33431 of 2002 by the learned Single Judge is set aside and Writ Peition No.33431 of 2002 is dismissed. However, considering the strength of the School of the second respondent and also considering the fact that the first respondent/petitioner has

served as Physical Education Teacher from 9.11.1988, the second respondent is strictly directed to send a representation to the appellants for getting necessary sanction and also for giving necessary monetary benefits to the first respondent/petitioner. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

To

1. The Secretary to Government,
Higher Education Department,
Fort St.George,
Chennai 600 009.
2. The Director of Secondary Education,
Chennai 600 006.
3. The Chief Educational Officer,
Kanyakumari District at Nagercoil,
Kanyakumari District.
4. The District Educational Officer,
Thuckalay, Kanyakumari District.

+1cc to M/S.Mani Sundargopal, Advocate Sr.44530
+1cc to the Government Pleader Sr.44430

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W.A. No.377 of 2012

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srg 24/08/2016

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