



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 07.10.2016

CORAM:

THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN

and

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

W.A (MD) .No.1342 of 2016

and

C.M.P. (MD) .No.9711 of 2016

1.The Joint Director of School Education (Personnel),
DPI Campus, College Road, Nungampakkam, Chennai.

2.The Additional Chief Educational Officer,
Sarva Shiksha Abhiyan (SSA),
Tirunelveli, Tirunelveli District.

...Petitioner

Vs.

P.Indira Parvathi

...Respondent

Writ Appeal is filed under Clause 15 of Letters Patent against the order dated 29.09.2016 made in W.P.(MD).No.17787 of 2016.

Prayer in WP(MD). 17787/ 2016 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Certiorarified Mandamus to call for the records on the files of the 2nd respondent pertaining to its order bearing R.C.No.430/B2/AKE/2016 dated 10.08.2016 and to quash the same and consequently direct the respondents to order the re-employment of the petitioner till the end of academic year 2016-2017.

For Appellants :Mr.A.K.Baskara Pandiyan
Spl.Govt.Pleader

For Respondent :Mr.C.Heroldsingh

JUDGMENT

[Judgment of the Court was delivered by M.SATHYANARAYANAN, J.]

By consent, the Writ Appeal itself is taken up for final disposal.

2. The petitioner in the affidavit filed in support of the Writ Petition would aver among other things that pursuant to the selection conducted by the Teacher Recruitment Board, by proceedings, dated 15.07.2006, the petitioner was appointed as Block Resource Teacher Educator (hereinafter referred to 'BRTE')

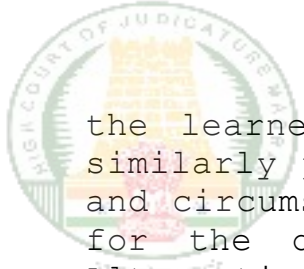


and joined in the services of the respondents therein. Since the date of her appointment, she claims that she is discharging her duties diligently and sincerely to the utmost satisfaction of her superiors and considering her unblemished records of service, she was posted as Supervisor (incharge) and presently, she is serving as Supervisor at Kadayanallur. The petitioner attained the age of superannuation on 30.09.2016 and in order to have employment till the end of the academic year, she repeatedly made requests to the respondents and she was informed that it is a routine procedure and her services would be extended, till the end of the academic year. Subsequently, the petitioner made an application requesting the respondents to re-employ her from 01.10.2016 to 31.05.2017. However, the said request was not favourably considered and vide proceedings dated 10.08.2016, the respondents rejected the claim of the petitioner. Challenging the legality of the same, she filed Writ Petition. The Writ Petition was entertained and notices were ordered. The second respondent has filed a counter affidavit stating among other things that the retirement of Block Resource Teacher is 58 years. Since BRTEs are not a teacher teaching classes in Government Schools, such teachers should be relieved on the date of completion of 58 years of age and they are not entitled for re-employment, if their date of superannuation falls during the middle of the academic year.

3. During the course of the arguments, it was brought to the knowledge of the learned Judge that the Principal Bench vide its order dated 25.11.2014 made in W.P.No.28810 of 2014 had considered the similar issue and granted interim orders and directed the respondents therein to permit the petitioner therein to work in the same position until further orders, with a further direction to file a counter affidavit in that Writ Petition. It was also brought to the knowledge of the learned Judge that the said order made in W.P.No.28810 of 2014 has been complied with by the respondents therein and taking note of the same, the Writ Petition was allowed vide order dated 29.09.2014. The official respondents, aggrieved by the said order in allowing the Writ Petition, has filed the present Writ Appeal.

4. Mr.AK.Baskarapandiyan, learned Special Government Pleader appearing for the appellants/official respondents would contend that since BRTE cannot be termed as teachers, on attaining the age of superannuation during the middle of the academic year, their services cannot be extended till the academic year and in any event, the interim order cannot be a basis to allow the Writ Petitioner to continue to work in the same position and prays for interference.

5. *Per contra*, learned Counsel appearing for the Writ Petitioner would contend that the interim order dated 25.11.2014 made in W.P.No.28810 of 2014 has been taken note of by



the learned Judge and since the Writ Petitioner/respondent also similarly placed person, on proper appreciation of relevant facts and circumstances, has rightly allowed the Writ Petition and prays for the dismissal of this Writ Appeal with exemplary costs. Alternatively, it is the submission of the learned Counsel for the first respondent that in the event of Writ Appeal being allowed, a chance may be given to the petitioner by remanding the matter again for fresh consideration to work out her remedy at the earliest in a direction petition filed by her in W.M.P.(MD). No.128282 of 2016 to consider her claim.

6. This Court has considered the rival submissions made on either side and perused the materials available on record.

7. In the considered opinion of this Court, the subsistence of the interim order cannot be a basis to pass final orders in the Writ Petition and to that extent, the learned Special Government Pleader is correct in making the afore-said submission. Though it is vehemently contended by the learned Special Government Pleader that BRTE cannot be termed as teachers, they cannot have the extension of service till the completion of the academic session, this Court is not inclined to go into the matter for the reason that it inclines to set aside the order impugned in this Writ Appeal and remand the Writ Petition once again for fresh consideration.

8. In the result, this Writ Appeal is partly allowed and the impugned order dated 29.09.2016 is set aside and the Writ Petitioner is at liberty to work out her remedy in a direction petition filed by her in W.M.P.(MD).No.12828 of 2016 at the earliest. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(AE)

/True Copy/

Sub Assistant Registrar(CS)
Madurai Bench of Madras High Court,
Madurai-23.

To:

- 1.The Joint Director of School Education (Personnel),
DPI Campus, College Road, Nungampakkam, Chennai.
- 2.The Additional Chief Educational Officer,
Sarva Shiksha Abhiyan (SSA),
Tirunelveli, Tirunelveli District.

+1cc to the Special Government Pleader, in SR.60650

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