



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 04.08.2016

CORAM:

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN
and
THE HONOURABLE MR.JUSTICE B.GOKULDAS

W.A. (MD)No.715 of 2011

A.Palanivel : Appellant/Petitioner

Vs.

1.The Director of School Education,
College Road,
Chennai-6.

2.The Assistant Director,
District Employment Office,
Thanjavur.

3.The Chief Educational Officer,
Panagal Building,
Thanjavur.

: Respondents

PRAYER: Writ Appeal is filed under Clause 15 of the Letters Patent praying to set aside the order of Writ Court dated 23.04.2009, made in W.P.(MD)No.4142 of 2007 and allow the Writ Appeal.

Prayer in WP(MD). 4142/ 2007 :

Writ Petition is filed under Article 226 of the Constitution of India, praying for issuance a Writ of Mandamus, directing the 3rd respondent to regularize the petitioners service from 29/12/2001 in which date Mr. Rajagopal appointed instead of the petitioner and consequently direct the 3rd respondent to pay petitioners arrears of salary and all other benefits in accordance with law.

For Appellant : Mr.Antony Arulraj
For Respondents : Mr.VR.Shanmuganathan,
Special Government Pleader

J U D G M E N T

[Judgment of the Court was delivered by

K.K.SASIDHARAN, J.]



the learned Single Judge declined to regularize the services of the appellant from 29.12.2001.

2. Heard the learned counsel for the appellant and the learned Special Government Pleader appearing on behalf of the respondents.

3. The appellant was sponsored by the Assistant Director, District Employment Office, Thanjavur, for appointment to the post of Physical Education Teacher in Government Higher Secondary School, Thanjavur. The selection was on the basis of employment seniority. However, Thiru.Rajagopal, junior to him, was appointed and thereby, the appellant was denied appointment.

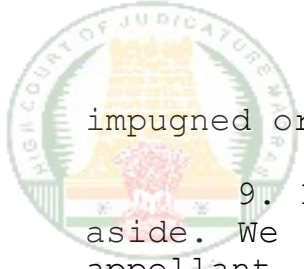
4. The appellant filed W.P.No.13552 of 2003 for a direction to the Chief Educational Officer to conduct enquiry in the matter and to appoint him in the place of Thiru.Rajagopal. The third respondent conducted enquiry, pursuant to the order dated 29.04.2003 in W.P.No.13552 of 2003. The Enquiry Officer found that the appellant was eligible for appointment. The third respondent, therefore, appointed the appellant, by order dated 17.01.2005. The appellant requested the respondents to regularize his services from 29.12.2001, the day in which Thiru.Rajagopal was appointed. The request was rejected. The order was challenged before the Writ Court.

5. The Writ Petition filed by the appellant was dismissed by the learned Single Judge primarily on the ground that appointment of the appellant was only after a period of four years and as such, his services cannot be regularized from 29.12.2001, the date on which, Thiru.Rajagopal was appointed. Feeling aggrieved, the appellant has come up with this appeal.

6. The factual matrix clearly indicates that in the place of the appellant, Thiru.Rajagopal was appointed on 29.12.2001. The mistake was found out by the third respondent after conducting an enquiry. The appellant was, therefore, appointed in the place of Thiru.Rajagopal on 17.01.2005.

7. The appellant was justified in his contention that his date of appointment should relate back to 29.12.2001, the date on which Thiru.Rajagopal was appointed. It is true that the appellant started working only after 17.01.2005. However, that does not mean that he should be denied of his seniority from 29.12.2001.

8. The order passed by the third respondent clearly shows that the appellant was appointed to the post of Physical Education Teacher in the place of Thiru.Rajagopal. The appointment of Thiru.Rajagopal was on 29.12.2001. When it is made out that the appellant was appointed in the place of Thiru.Rajagopal, necessarily, his date of appointment should relate back to the said date, viz., 29.12.2001. This aspect was not considered by the learned Single Judge. We are, therefore, of the view that the



impugned order is liable to be set aside.

9. In the result, the impugned order dated 23.04.2009, is set aside. We direct the respondents to regularize the service of the appellant from 29.12.2001. However, we make it clear that though this order would enable the appellant to claim seniority from 29.12.2001, he would not be entitled to any other kind of benefits including monetary benefits.

10. The intra-court appeal is allowed to the extent indicated above. No costs.

Sd/-
Assistant Registrar (CS-I)

/TRUE COPY/

Sub Assistant Registrar

SML

To

1.The Director of School Education,
College Road,
Chennai-6.

2.The Assistant Director,
District Employment Office,
Thanjavur.

3.The Chief Educational Officer,
Panagal Building,
Thanjavur.

+1 cc to Mr.G.R.SWAMINATHAN,Advocate, Sr.No: 42464

+1cc to M/S Special Government Pleader, Sr No. 42613

jam/24.08.16/AAL-MPA/ 3P-6C

Judgment made in
W.A. (MD) No.715 of 2011

Dated: 04.08.2016