



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 25.10.2016

Pronounced on : 10.11.2016

CORAM :

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

Writ Petition(MD) No.1255 of 2011

WEB COPY

Manju P.Bhattathiri
Secondary Grade Teacher,
Madhavaru Narayanaru Memorial
High School,
Edaicode Post,
Kanyakumari District.

...Petitioner

Vs.

- 1.The Government of Tamil Nadu
rep. by it's Secretary,
Department of School Education,
Fort St. George, Chennai.
- 2.The Director of School Education,
Chennai - 6.
- 3.The District Educational Officer,
Kuzhithurai, Kanyakumari District.
- 4.Madhavaru Narayanaru Memorial
High School rep. by it's
Correspondent, Edaicode Post,
Kanyakumari District.

...Respondents

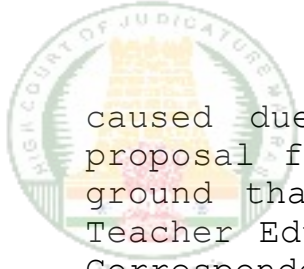
Prayer : Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus to direct the respondents to take into account the petitioner's service between 01.12.1997 and 01.06.2003 for the purpose of pension.

For Petitioner	: Mr.N.C.Ashok Kumar
For Respondents	: Mr.Aairam K.Selvakumar
	Govt. Advocate for R1 to R3
	No representation for R4

ORDER

The petitioner seeks for a Mandamus directing the respondents to take into account her service between 01.12.1997 and 01.06.2003 for the purpose of pension.

<https://hcservices.ecourts.gov.in/hcservices/>
2. The case of the petitioner is that she is a B.Sc., B.Ed., graduate and on 01.12.1997, she was appointed as Secondary Grade Teacher in the fourth respondent school in a permanent vacancy



caused due to the retirement of one Madhavan Nair. But the proposal for approval sent by the Management was rejected on the ground that she was not having the qualification of Diploma in Teacher Education. In the meantime, in the case of Secretary and Correspondent, Uswathun Hasana Oriental (Arabic) Girls Higher Secondary School vs. The State of Tamil Nadu, reported in 2002 Writ L.R 173, the Honourable Division Bench of this Court directed the Government to approve the appointment prior to 19.05.1998 and further directed the Government to send the teachers to one month child psychology training. As the petitioner was not sent for child psychology training, she filed W.P.No.4135 of 2003. Thereafter, she was sent for child psychology training. But by proceedings, dated 21.06.2006, the respondent refused to approve her appointment. Challenging the order, dated 21.06.2006, the petitioner filed W.P(MD)No.3206 of 2007 before this Court. In the said case, the respondent filed their counter and contested the case. After hearing both sides, this Court, by an order dated 13.12.2007, allowed that writ petition and directed the respondent to approve the appointment with effect from 02.06.2003 and pay the salary with in a period of eight weeks from the date of receipt of a copy of that order. Further, the respondents were directed to take into account the petitioner's service prior to 02.06.2003 for the purpose of calculating pension. Aggrieved over the said order, the respondents filed writ appeal in W.A(MD)No.617 of 2008, which was dismissed. Even thereafter, the order was not complied with. Therefore, the petitioner filed Cont.P(MD)No.165 of 2009 before this Court. In the said contempt petition, on 30.04.2009, the learned Government Pleader took time to get instruction. Subsequently, the first respondent issued G.O(4D)No.4, dated 15.09.2009 and approved the petitioner's appointment with effect from 02.06.2003. But the first respondent did not take into account the petitioner's earlier service prior to 02.06.2003 for the purpose of calculating pension. Hence, the petitioner met the third respondent many times and requested to pass orders on her earlier service. Therefore, the petitioner filed this writ petition with the relief as stated supra.

3.No counter affidavit has been filed by the respondents.

4.Heard Mr.N.S.Ashokkumar, learned counsel for the petitioner as well as Mr.Aairam K.Selvakumar, learned Government Advocate appearing for the respondents 1 to 3. No representation for the fourth respondent.

5.Admittedly, the petitioner has passed B.Sc., B.Ed., degree and on 01.12.1997, she was appointed as Secondary Grade Teacher in the fourth respondent school in a permanent vacancy caused due to the retirement of one Madhavan Nair. But proposal for her approval sent by the Management was rejected on the ground that she was not having the qualification of Diploma in Teacher Education. In the meantime, the Honourable Division Bench of this



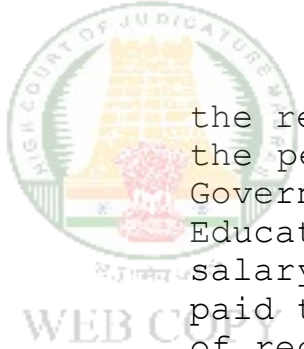
Court in the case of Secretary and Correspondent, Uswathun Hasana Oriental (Arabic) Girls Higher Secondary School vs. The State of Tamil Nadu, reported in 2002 Writ L.R 173 directed the Government to approve the appointment prior to 19.05.1998 and further directed the Government to send the teachers to one month child psychology training. But the petitioner was not sent for child psychology training. Therefore, the petitioner filed W.P.No.4135 of 2003 before this Court and thereafter, she was sent for child psychology training and even thereafter, the respondent has refused to approve the appointment of the petitioner, on 21.06.2006. Challenging the order, dated 21.06.2006, the petitioner filed W.P(MD)No.3206 of 2007 before this Court and this Court has directed the respondents to approve the appointment with effect from 02.06.2003 and pay the salary with in a period of eight weeks. Further, the respondents were directed to take into account the petitioner's service prior to 02.06.2003 for the purpose of calculating pension. Challenging the said order, the respondents have filed writ appeal in W.A(MD)No.617 of 2008, which was dismissed. After filing contempt petition in Cont.P(MD)No.165 of 2009, the Government has issued G.O(4D)No.4, dated 15.09.2009 and approved the petitioner's appointment with effect from 02.06.2003. But the first respondent had not taken into account the petitioner's earlier service prior to 02.06.2003 for the purpose of calculating pension. In this regard, the petitioner approached the respondents on several occasions. Till date no action has been taken, the petitioner has come before this Court.

6. When the appointment of the petitioner was approved as per the direction of this Court with effect from 02.06.2003, as per G.O(4D)No.4, dated 15.09.2009, whether this petitioner is eligible for the service rendered from 01.12.1997 to 01.06.2003 to be taken into account for the purpose of pension.

7. This Court, in para 8 and 9 of the order made in W.P(MD) No.3206 of 2007 dated 13.12.2007, has passed an order as follows:-

"8. The said Judgment is applicable to the facts of the present case. Therefore, I am of the view that the petitioner is entitled to get her appointment approved from 02.06.2003 with salary and other benefits and the service rendered by the petitioner prior to 02.06.2003 is bound to be calculated for the purpose of pension as per the Judgment of a Division Bench of this Court in the decision in "The State of Tamil Nadu & others vs. Pallivasal Primary School" reported in 2004(2) LW 591.

9. This impugned order passed by the first respondent is set aside with a direction to the first respondent to approve the appointment of the petitioner as Secondary Grade Teacher with effect from 02.06.2003 and pay salary. It is made clear that if the post, in which the petitioner is now working, is found surplus by



the respondents, it is open to the respondents to deploy the petitioner in a needy school in accordance with the Government Order issued in G.O.Ms.No.525, School Education Department, dated 29.12.1997. The arrears of salary payable to the petitioner shall be calculated and paid to her within a period of eight weeks from the date of receipt of copy of this order."

8. Therefore, it is made clear that as per the above order passed by the Honourable Single Judge of this Court, this petitioner is entitled and the service rendered by her prior to 02.06.2003 is bound to be calculated for the purpose of pension, as per the Judgment of a Division Bench of this Court in the decision in the State of Tamil Nadu and others vs. Pallivasal Primary School reported in 2004(2) LW 591. When the challenge was made against the said writ petition by way of writ appeal in W.A (MD)No.617 of 2008, the Honourable Division Bench of this Court, on 25.09.2008, confirmed the order of the learned Single Judge and directed the respondents to comply with the order of the learned Single Judge passed in W.P(MD)No.3206 of 2007. As per the above Judgment rendered in 2004(2) LW 591 (cited supra), the teachers, who appointed prior to 19.05.1998 should be approved by the respondents. Therefore, when the petitioner's appointment was approved with effect from 02.06.2003 as per the order of the learned Single Judge made in W.P(MD)No.3206 of 2007, this petitioner is eligible for the service rendered by her from 01.12.1997 to 01.06.2003 and the service should be taken into account for the purpose of pension. Therefore, the petitioner is entitled and the direction is necessary to be issued to the respondents to consider the service rendered by the petitioner from 01.12.1997 to 01.06.2003 by taking into account for the purpose of pension. Therefore, this writ petition is liable to be allowed.

9. Accordingly, I am passing the following order:-

(a) this writ petition is allowed and the direction is issued to the respondents to take into account the service rendered by the petitioner from 01.12.1997 to 01.06.2003 for the purpose of pension. The petitioner is entitled to receive the arrears of pension as per the order of this Court.

(b) the said exercise shall be completed within a period of two months from the date of receipt of a copy of this order. No costs.

Sd/-

Assistant Registrar(AE)

/True Copy/

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



To

1. The Secretary,
Department of School Education,
Fort St. George,
Chennai.

2. The Director of School Education,
Chennai - 6.

3. The District Educational Officer,
Kuzhithurai,
Kanyakumari District.

+1cc to M/s.N.C.Ashok Kumar, Advocate in SR.67991

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skn

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