

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.10.2017

CORAM

THE HON'BLE MR.JUSTICE HULUVADI G.RAMESH
AND
THE HON'BLE MR.JUSTICE RMT.TEEKAA RAMAN

W.A.No.749 of 2011
and
M.P.No.1 of 2011

A.Karikalan ... Appellant

-vs-

1. Director of Elementary Education,
Chennai-6.
2. District Elementary Educational Officer,
Ariyalur District, Ariyalur.
3. Additional Assistant Elementary Educational Officer,
Thirumanoor, Ariyalur District. ... Respondents

Appeal filed under Clause 15 of the Letters Patent, against the order passed by this Court in W.P.No.7562 of 2010 dated 31.01.2011.

W.P.No.7562 of 2010:-

Writ of Certiorarified Mandamus Calling for the records pertaining to the order passed by the 2nd respondent in his proceedings Na.Ka.No.AA4/Aa2/3051/09 dt.22.3.2010 and quash the same in so far as it directs to re-fix the scale of pay of the petitioner and to recover the amount and direct the respondents to confer all the consequential benefits to the petitioner.

For Appellant :: Mr.Ibrahim Ali for
Mr.A.S.Mujibur Rahman

For Respondents :: Mr.P.S.Sivashanmugasundaram,
Special Government Pleader

JUDGMENT

(Judgment of the Court was delivered by
RMT.TEEKAA RAMAN, J.)

This writ appeal has been filed against the order passed by this Court in W.P.No.7562 of 2010 dated 31.01.2011.

2.Originally, the appellant was appointed as Part Time Vocational Instructor in the subject of Agriculture through employment exchange and posted at Panchayat Union Middle School, Vetriyur, Ariyalur District on 22.03.1989. On the basis of the representation made by the Association on behalf of the appellant and others, and considering the number of persons working in the said post of Part Time Vocational Instructor, the Government thought it fit to regularise them in the regular time scale of pay and to absorb them in the Secondary Grade Teacher post after giving three months training, so as to enable them to be absorbed. After completion of the training on 13.11.1997, the appellant was absorbed as Full Time Secondary Grade Teacher only on 23.10.1998. Subsequently, based on his representation, the pay has been fixed from the date of completion of training, ie., from 13.11.1997. Subsequently, the first respondent has issued a letter clarifying that only from the date of acting on the post, they are entitled for salary and accordingly salary has been refixed from the date of acting on the post and subsequently recovery has been ordered. Challenging the said recovery order, a writ petition in W.P.No.7562 of 2010 has been filed on the ground that no proper notice was issued and no proper opportunity was given. This Court, by order dated 31.01.2011, dismissed the writ petition. Hence this appeal.

3.Heard the learned counsel for the appellant and the learned Special Government Pleader appearing for the respondents and perused the materials available on record, including the order impugned herein.

4.We are of the considered view that the impugned order does not require any interference by this Court, since the learned single Judge has dealt with the matter in proper perspective and observed that the principle of 'no work no pay' is applicable to the case on hand and that the appellant does not have a statutory or legal right to insist that his scale of pay should have been refixed in the post he had not worked. It is seen that on 13.11.1997, there was no vacancy at all and hence the appellant joined the post on 23.10.1998. F.R.17 also states that a Government servant shall begin to draw the pay and allowances attached to his tenure of a post with effect from the date when he assumes the duties of that post. In such view of the matter, the learned single Judge has observed that even if a show cause

notice has to be issued to the appellant, it would only be an empty formality. In the stated circumstances, we find no merit in this appeal and accordingly the writ appeal is dismissed. Consequently, the connected miscellaneous petition is closed. No costs.

5.At this juncture, the learned counsel for the appellant has submitted that the pensionary benefits of the appellant has been withheld. It is his further submission that the Department may calculate the dues to be recovered from the appellant and thereafter disburse the pensionary benefits after adjusting the dues. Stating so, the learned counsel prayed for a direction to the authorities.

6.In view of the above submission made by the learned counsel for the appellant, the respondent-authorities are directed to calculate the dues to be recovered from the appellant and thereafter disburse the pensionary benefits in accordance with law, within a period of two months from the date of receipt of a copy of this judgment.

Sd/-

Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

KM

To

1. The Director of Elementary Education,
Chennai-6.
2. The District Elementary Educational Officer,
Ariyalur District, Ariyalur.
3. The Additional Assistant Elementary
Educational Officer,
Thirumanoor, Ariyalur District.

+1cc to Mr.Ibrahim Ali, Advocate, S.R.No.75367
+1cc to the Government Pleader, S.R.No.75682

W.A.No.749 of 2011
and
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RK(CO)
CS/30/11/17