

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 13.10.2017

DELIVERED ON : 30.11.2017

CORAM

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

W.P No.15090 of 2011

N.Ramani

... Petitioner

vs.

- 1.Government of Tamil Nadu,
Represented by its Secretary,
Education Department,
Fort St. George,
Chennai - 600 009.
- 2.The Director of School Education,
DPI Complex, College Road,
Chennai - 600 009.
- 3.The Chief Educational Officer,
Nagercoil,
Kanyakumari District.
- 4.The District Educational Officer,
Kuzhithurai,
Kanyakumari District.
- 5.The Correspondent,
High School,
Mottakkala, Edacode Post Office,
Kanyakumari District.
- 6.The Correspondent,
High School,
Amshi,
Kanyakumari District.
- 7.The Correspondent,
Thiru Irudhaya Higher Secondary School,
Mela Ilandaikulam,
Thirunelveli District.

... Respondents

Prayer: Writ Petition filed under Article 226 of Constitution of India, to issue a Writ of Mandamus, directing the Respondents 1 and 2 to grant approval for the post of B.T. Assistant held by the petitioner in the 5th respondent school with effect from 11.02.1982 instead of 17.05.1984 and to grant all seniority benefits together with monetary benefit attached thereto and arising thereof.

For Petitioner : Mr.C.Johnson

For Respondents : Mr.R.Govindasamy (for R1 to R4)
Special Government Pleader

Mr.P.Ebenezer Paul (for R5)

No Appearance (for R6 and R7)

O R D E R

The learned counsel appearing for the petitioner submits that the petitioner has passed B.Sc., and B.Ed., degrees and fully qualified to be appointed as B.T. Assistant. Consequently, the petitioner was appointed as a B.T. Assistant in the 5th respondent school with effect from 01.06.1981. It is further submitted by the learned counsel appearing for the petitioner that ever-since the date of appointment of the petitioner, she has been discharging her duties as a teacher continuously without any blemish. It is also submitted that the petitioner's entire service is meritorious and appreciated by her superiors.

2.The learned counsel appearing for the petitioner further submitted that admittedly the 5th respondent school (Amshi Aided High School) is having sufficient students strength to sanction the petitioner's post as B.T. Assistant and approve salary during the relevant period in consonance with Tamil Nadu Recognized Private School (Regulation) Act, 1973 and Rules 1974 framed thereunder. Though the petitioner is continuously working as a Science Teacher from the very date of her appointment she has not been favoured with salary for the period beginning from 01.06.1981, alleging that her post was not approved by the competent authority.

3.It is further submitted that the petitioner school fulfills all the norms for approval of the petitioner's appointment as a B.T. Assistant as she has enough teaching periods to handle High School Science classes as prescribed

under the Rules. The Management is also competent to appoint the petitioner as a High School Assistant with reference to student strength and other required criterions. It is also submitted that as the petitioner was not paid salary though her appointment was regular, she has been representing the respondents for necessary sanction and approval of her post and grant of salary from the date of her appointment.

4.It is further submitted that while so two B.T. (sanctioned) posts fell vacant (due to retirement) on 11.02.1982, at Amshi Aided High School a nearby school the 6th respondent herein, were transferred to the 5th respondent school, as the school satisfied all requirements which are necessary for approval of two High School posts in accordance with Tamil Nadu Recognized Private Schools (Regulation) Act, 1973 and Rules made thereunder. It is also pointed out by the learned counsel appearing for the petitioner that the said two (sanctioned) posts were considered excess at 6th respondent school during staff fixation made by the District Educational Officer, Kuzhithurai for the period commencing from 1980. In the meantime, the said two excess teachers working at Amshi School (6th respondent herein) retired on attaining the age of superannuation on 10.02.1982. To meet the urgent requirement of the 5th respondent School, the 2nd respondent Director of School Education vide its proceedings in Na.Ka.No.440497/G2/83 dated 28.04.1984, ordered transferring of the excess posts to the 5th respondent school and permitted C.E.O., the 3rd respondent herein to proceed further. Pursuant to the Directors proceeding, the C.E.O. Nagercoil vide proceeding in Na.Ka.No.16592/AA5/83 dated 17.05.1984, transferred the said two excess High School Posts to Mottakkala Aided High School.

5.It is also brought to the notice of this Court that the above said two posts (sanctioned) fell vacant on 11.02.1982, due to the retirement of then teachers and C.E.O. initiated proceedings at the earliest to transfer the said posts to the 5th respondent school. It is also submitted that admittedly the petitioner was appointed as early as 01.06.1981 and she has been giving various representations to the officials respondents for the approval of the post and grant of salary. It is also pointed out that the two posts fell vacant on 11.02.1982 were duly sanctioned and approved by the respondents. The learned counsel appearing for the petitioner further pointed out that the salary of the petitioner was denied on the sole ground that there is no sanction for the petitioner's post. Thus when sanctioned posts are available from 11.02.1982, the petitioner is very much entitled and eligible to get salary at least on and from 11.02.1982 especially when the said posts were duly transferred

to 5th respondent school. It is further contended that the original sanction for the said post are available on and from 11.02.1982, the respondent cannot restrict the sanction and permit the petitioner to draw salary from 17.05.1984 to the prejudice of the petitioner who is continuously working from the year 1981, saying that the transfer was effected belatedly on 17.05.1984. In other words, subsequent transfer cannot be a hindrance as the post itself was sanctioned much early.

6.The learned counsel appearing for the petitioner further pointed out that in a similar circumstance, a handicraft teacher's post found excess in the 6th respondent Amshi Aided High School and the same was transferred to the 5th respondent school subsequently as in the case of petitioner. One Mr.Salim, a handicraft teacher who was working on the relevant date in Mottakkala High School was accorded sanction by the Chief Educational Officer, Nagercoil from the date when the post fell vacant at Amshi School though the said post was transferred subsequently to the 5th respondent school. Accordingly salary and other benefits were given to Mr.Salim from the date when the post found vacant at Amshi School, though the post was transferred subsequently to the 5th respondent school, as in the case of the petitioner. Following the same principle, the writ petitioner ought to have been accorded sanction from the relevant date when the post fell vacant i.e. on 11.02.1982, at Amshi School, the 6th respondent herein, especially when she was appointed as early as 1981 and working continuously ever-since the date of her appointment. The non-sanctioning of salary to the petitioner on and from 11.02.1982 is nothing but a clear act of discrimination.

7.The official respondents filed counter affirming that the approval for the appointment of the petitioner with effect from 17.05.1984 was done in accordance with law and rules. Further, the learned Special Government Pleader also strongly contended that the petitioner is entitled to get salary only from 17.05.1984 the day when the said sanctioned post was transferred to the 5th respondent school. In the counter, the official respondents admitted the eligibility of the petitioner and as well as her date of appointment. The 5th respondent has also filed counter admitting the original appointment of the petitioner dated 01.06.1981. Further, in the counter, it is stated that again the Correspondent of the 5th respondent school issued an appointment order to the petitioner with effect from 11.02.1982, the day when the post fell vacant in the 6th respondent school. It is also admitted that, the, then Correspondent of the 5th respondent school submitted a representation to the 2nd respondent to approve the appointment

of the petitioner from 11.02.1982.

8. Upon hearing the respective submissions of the learned counsel appearing for the petitioner and other respondents and upon perusal of available records it is very much evident that the petitioner has been appointed as a B.T. Assistant on 01.06.1981, by the 5th respondent and the petitioner is discharging her duties as a B.T. Assistant since then. The official respondents and the 5th respondent admitted the date of original appointment and revised appointment dated 11.02.1982 of the petitioner in the 5th respondent school. The official respondents also admitted that the sanctioned post of B.T. Assistant fell vacant on 11.02.1982, at Amshi Aided High School which is also within the jurisdictional limits of 3rd and 4th respondents.

9. It is also evident from pleadings of the official respondents that the salary could not be given to the petitioner on and from 01.06.1981, only due to the fact that there is no sanctioned post on the relevant date. Now it is relevant to note that the post which fell vacant at Amshi Aided High School is a sanctioned post and the same stood excess in the said school since 1980 and fell vacant on 11.02.1982. It is also worth to mention here that the said excess teacher also retired on 10.02.1982, and thus facilitated the transfer of the post to required school viz., 5th respondent. Accepting the claim of the 5th respondent school, the 2nd respondent also permitted transfer of the post to the nearby school enabling the petitioner to avail salary. The post was also duly transferred to 5th respondent school by the 3rd respondent in and by proceeding dated 17.05.1984. When there is a sanctioned post and the respondents found 5th respondent school is eligible to get the post and when a teacher is admittedly working from the year 1981, at any stretch of imagination the petitioner's claim seems to be reasonable. The administrative delay in transferring the post cannot be a ground to deny the lawful rights of the petitioner. In view of the same, the argument of the learned counsel appearing for the petitioner seems to be acceptable especially when all the respondents admitted the appointment of the teacher and her functioning as teacher with effect from 01.06.1981, complying all required norms.

10. In the result:

- (a) the writ petition is allowed;
- (b) the respondents 1 to 4 are hereby directed to consider the representations of the petitioner

including representation dated 30.08.2010 and approve her appointment as B.T. Assistant in the 5th respondent school with effect from 11.02.1982, being the revised date of appointment and grant all seniority and monitory and attended benefits thereto to the petitioner;

(c) the respondents 1 to 4 are directed to complete the said exercise within a period of eight weeks from the date of receipt of a copy of this order. No costs.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

vs

To

- 1.The Secretary,
Government of Tamil Nadu,
Education Department,
Fort St. George, Chennai - 600 009.
- 2.The Director of School Education,
DPI Complex, College Road,
Chennai - 600 006.
- 3.The Chief Educational Officer,
Nagercoil, Kanyakumari District.
- 4.The District Educational Officer,
Kuzhithurai, Kanyakumari District.

+1cc to Mr.R.Ebenezer Paul, Advocate, S.R.No.85561
+1cc to Mr.C.Johnson, Advocate, S.R.No.85512

W.P.No.15090 of 2011

MR(CO)

RRK(19/12/2017)

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