

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 9/2/2017

C O R A M

The Honourable Mr. Justice S. Manikumar
and
The Honourable Mr. Justice M. Govindaraj

Writ Appeal No. 1969 of 2010
against WP. 20739/2008

V. Pauldurai Appellant/Petitioner

Vs

1. The Director of Elementary Education
Chennai 6.
2. The District Elementary Educational Officer
Tirunelveli
Tirunelveli District.
3. The Correspondent
R.C. Middle School
Chinthamani
Vasudevanallur
Tirunelveli District. Respondents/Respondent

Appeal filed under Clause 15 of Letters Patent against the order passed in W.P.No. 20739 of 2008 dated 5/1/2010.

WP.No. 20739/08: This Writ Petition is filed under Article 226 of the Constitution of India praying for the Issuance of a Writ of Certiorari and Mandamus calling for the records pertaining to the order passed by the 1st respondent in his proceedings Mu.Mu.No. 40030/G3/2005 dated 2.4.2008 and the consequential order passed by the 2nd respondent in his proceedings Mu.Mu.No. 6202/Aa1/2005 dated 25.4.2008 and quash the same in so far as the date of 2.4.2008 and direct the respondents to upgrade the post of Headmaster of Elementary School as Headmaster of Middle School retrospectively from 7.6.2005 and release the salary and all consequential benefits.

For Appellant ... Mr.C.Selvaraj
Senior Counsel, assisted
by Mr.P.Ganesan
For respondents ... Mr.A.Zakir Hussain
Government Advocate
for R.R.1 and 2.

J U D G M E N T

(Judgment of the Court was made by S.MANIKUMAR,J)

Challenge in this writ appeal is to an order made in W.P.No.20739 of 2008, dated 5/1/2010, by which, the writ Court declined, to issue a writ of certiorarified mandamus, to quash the order, dated 2/4/2008, of the Director of Elementary Education, Chennai - 6/first respondent, the consequential order, dated 25/4/2008, of the District Elementary Educational Officer, Tirunelveli District/second respondent and refused to issue any direction to the respondents, to upgrade the post of the Headmaster of Elementary School, as Headmaster of the Middle School, respectively from 7/6/2005 and consequently, release salary and consequential benefits to the appellant.

2. Facts leading to the writ appeal are that the writ petitioner/appellant completed his B.Sc and B.Ed degrees and joined as B.T.Assistant in St.Joseph Boys High School, Yercaud, Salem, on 1/10/1978. When a post of Headmaster of Middle School fell vacant in R.C.Middle School, Chinthamani, Tirunelveli District/third respondent, he was relieved from the School at Yercaud, Salem. He joined R.C.Middle School, Chinthamani, Tirunelveli District/third respondent, on 3/7/1984.

3. Further case of the appellant is that when the petitioner/appellant was working in the Elementary School, Chinthamani, Tirunelveli District under the control of Corporate Management, the school was upgraded as Middle School, on 1/6/1989, on condition that, no aid would be granted. Hence, the Management filed a writ petition No.2931 of 1995, challenging the refusal to grant aid. The Writ Petition was allowed. Appeals filed by the Government before the Hon'ble Division Bench and Apex Court, were dismissed.

4. The appellant has further contended that on 20/12/1999, three posts of Secondary Grade Teachers were sanctioned for standards VI to VIII in R.C.Middle School, Chinthamani, Tirunelveli District. At that time, a senior Secondary Grade Teacher Mr.Irudhaya Raj, working as Headmaster of the Elementary School, continued to serve as Headmaster of the upgraded Middle School, till he retired on 31/5/2005. After the retirement of

Mr.Irudhaya Raj, on 7/6/2015, the petitioner/appellant was posted, in the upgradation Middle School as Headmaster. The School continued under the Corporate Management.

5. The appellant has further contended that whenever an Elementary School is upgraded as Middle School, one post of Secondary Grade Teacher, has to be upgraded as Headmaster Middle School, but the same was not done. Therefore, the Management of the R.C.Middle School, Chinthamani, Tirunelveli District/third respondent herein, was constrained to take up the matter with the School authorities, for upgradation of the post of Elementary School Headmaster, as Middle School Headmaster. There was a considerable delay in the process of upgradation.

6. Vide order, dated 2/4/2008, the Director of Elementary Education, Chennai upgraded a post of Secondary Grade Teacher, as B.T. Headmaster from the date of issuance of the said order. Consequently, the District Elementary Educational officer, Tirunelveli has passed an order, dated 25/4/2008, approving the order of upgradation, and salary of the Middle School Headmaster was released from 2/4/2008.

7. The appellant has further contended that from the date on which the petitioner/appellant started discharging the duties as Headmaster Middle School, salary was not given to him, for the period, from 7/6/2005 to 1/4/2008. But salary in the post of Headmaster, Middle School was granted only from 2/4/2008.

8. As the appellant was denied of his legitimate salary for the duty rendered in the post of Headmaster Middle School, from 7/6/2005 till 1/4/2008, he has filed writ petition, challenging the orders stated supra and prayed for the consequential prayers, as stated supra.

9. Defending the prayer sought for, the District Elementary Educational Officer, Tirunelveli District/second respondent in his counter affidavit before the writ Court, has contended that even though grant was directed to be given for the Primary School for Standards I to V, upon upgradation, as Middle School, a post of Primary School Headmaster was already sanctioned on 1/6/1987. As Teacher, who held the post of Primary School Headmaster, was not qualified to be a Middle School Headmaster, he was allowed to continue in the Primary School Headmaster post, till his retirement, on 31/5/2005.

10. The District Educational Officer, Tirunelveli/second respondent, in his counter affidavit has further submitted that as per G.O.Ms.No.5 School Education (B2) Department, dated 9/1/2001, only after upgradation of the post of Elementary School Headmaster, as Middle School Headmaster, the said post

can be filled up by a qualified person, as Middle School Headmaster. According to the respondents, the Management without following the procedure, for upgradation to the post had transferred the appellant to R.C.Middle School, Chinthamani, Tirunelveli District, on 7/6/2005 and appointed him, as Headmaster, Middle School. It is also the case of the respondents that a post of Middle School Headmaster, in R.C.Middle School, Chinthamani, Tirunelveli District/third respondent was not sanctioned, on 7/6/2005, and therefore, salary cannot be claimed from the Education Department.

11. The second respondent has further contended that only after the appellant joined the third respondent School on 7/6/2005, management applied for upgradation of the post of Primary School Headmaster, as Middle School Headmaster. After verifying the entire records, the Director of Elementary Education, Chennai/first respondent, passed an order, on 2/4/2008, upgrading a post of Primary School Headmaster, as Middle School Headmaster.

12. The respondents have further contended that there is no power to ratify the appointment of the appellant, as Middle School Headmaster, by the Management, retrospectively from 7/6/2005, the date on which the appellant started discharging his duties, as Headmaster in R.C.Middle School, Chinthamani, Tirunelveli District.

13. On the above averments, respondents had prayed for the dismissal of the writ petition.

14. Adverting to the above averments, the writ Court has framed the following question.

"The crux of the issue involved in this case is as to whether the third school is entitled for upgradation of primary school Headmaster post as Middle School Headmaster post from the date on which the said School was granted aid in respect of middle school viz., 7/6/2005 or from the date when the first respondent granted approval, for upgradation of the said post viz., 2/4/2008."

15. Taking note of G.O.Ms.No.525, School Education Department, dated 29/12/1997, G.O.Ms.No.5, School Education (B2) Department, dated 9/1/2001, contention of the respondents, regarding the procedure to be followed in the matter of upgradation of a Secondary Grade Teacher and the claim of the management of R.C.Middle School, Chinthamani, Tirunelveli

District, for upgradation of the post, the writ Court, vide order, dated 5/1/2010, held that upgradation of the post of the Primary School Headmaster, as Middle School Headmaster, is not automatic and that the same has to be done by the Director of Elementary Education, Chennai. Writ Court, further held that only considering the entire issues, upgradation has been granted. For the abovesaid reasons, writ Court declined to grant the reliefs sought for.

16. Assailing the correctness of the abovesaid order, Mr.C.Selvaraj, learned Senior Counsel appearing for the appellant, reiterated the averments extracted supra, and contended that, as per G.O.Ms.No.1297, Education Department, dated 21/7/1979, the post of Headmaster Middle School, has to be manned, either by a B.T.Assistant or B.Ed qualified Teacher. He further contended that no sooner a primary School is upgraded, as a Middle School on 1/6/1989, a post of Middle School Headmaster ought to have been upgraded or sanctioned, though at that time, aid was not given. He submitted that when the School was upgraded, as Middle School, by the educational authorities, the only condition imposed in the order, dated 1/6/1989 was that no aid would be given. But, when the said order was challenged, in W.P.No.2931 of 1995 filed by the Management, writ petition was allowed. According to him, the Education Department, ought to have upgraded the post of Primary School Headmaster as Middle School Headmaster. It is also the submission of Mr.C.Selvaraj, learned Senior Counsel that when the Education Department had failed in all their attempts, to reverse the order of the writ Court, directing aid to be given to the Middle School, upgradation of the post of primary School Headmaster or sanction of a new post, as the case may be, ought to have been done.

17. Learned Senior Counsel further submitted that when the Education Department, failed to discharge their duties, in terms of the Government Orders, Management was constrained to take up the issue with the Education Department, and after considerable delay of three years, the Director of Elementary Education, upgraded a post, as B.T.Middle School Headmaster, on 2/4/2008. According to him, because of the inaction of the Education Department, the appellant, who had faithfully discharged the duties, as Middle School Headmaster, from 7/6/2005, cannot be deprived of his salary and therefore, upgradation, should be given effect retrospectively. For the abovesaid reasons, he prayed to reverse the order made by the Writ Court and consequently, to set aside the orders, impugned in the writ petition, and grant all consequential benefits.

18. Mr.A.Zakir Hussain, learned Government Advocate, reiterated the averments made in the counter affidavit. He

submitted that the well considered order of the writ Court need not be interfered with. According to the learned Counsel, ratification cannot be made retrospectively and the Management has to pay the salary for the period between 7/6/2005 and 1/4/2008. He prayed for dismissal of the Writ Appeal.

19. Heard the learned counsel for the parties and perused the material on record.

20. Firstly, it could be deduced from the pleadings that primary School has been upgraded as Middle School on 1/6/1989. But aid has not been given. At this juncture, the Education Department should have upgraded a post as Middle School Headmaster, which was not done. Secondly, when all the litigation, regarding aid was over, the education Department should have upgraded a post as Middle School Headmaster.

21. G.O.Ms.No.1297, Education Department, dated 21/7/1979, reads thus:-

"Out of 5700 Middle School (Higher Elementary) Schools under all kinds of managements in Tamil Nadu, now, about 1234 are having B.Ed qualified Headmaster paid on/assessed for grant on the B.Ed, scale of Rs.450-20-590-25-7-740-30-800. There will be an addition by some more (mainly aided) Middle Schools with B.Ed qualified persons working as Headmasters. But getting only the Secondary Grade Headmasters scale (Rs.400-15-490-20-650-25-700) plus special pay with reference to G.O.Ms.No.1445, Education dated 24/6/1977. Thus about 4400 Higher Elementary Schools are yet to be provided with posts of B.Ed Headmasters.

2. The Government have decided that under the phased programme Middle Schools under all kinds of Managements should be provided with Headmasters on the scale of Rs.450-20-590-25-740-30-800 manned either by a B.Ed or a Tamil Pandit Grade. I accordingly, issuing the following orders:-

3 (a) (1) Out the existing 4400 or so persons working in posts of Middle School Headmasters on 400-15-490-20-650-25-700, 1/9/1979, either
(i). B.Ed
(ii). Tamil Pulavar

shall get B.Ed Scale (Rs.450-20-590-25-740-30-800) from 1/9/1979.

2. Out of the said 4400 those who get either of the above two qualifications in future after 1/9/1979 will get B.Ed scale from the 1st September of the following years, i.e., those who acquire the qualification from 2/9/1979 to 1/9/1980 will get the benefit from 1/9/1980. Those who acquire the qualification from 2/9/1980 to 1/9/1981 will get the benefit from 1/9/1981 and so on.

(b) (1) When permanent vacancies arise in future in posts of Headmasters of Middle Schools (due to death, retirement, resignation, etc) such vacancies shall be filled up by the senior most among persons working as Secondary Grade Teachers or in other cadre of trained but qualified for B.Ed/Tamil pandit.

In the particular management (i.e., Government all Government Schools, Local Bodies Schools under each local body; Aided Schools each Aided School or each cluster of Aided Schools under a single Management and such persons shall be allowed B.Ed., scale from the date of appointment.

(ii). If no such Secondary Grade or other Teacher qualified for B.Ed., Tamil pandit is in service on the date on which a vacancy arises such vacancy shall be filled up by appointing, Tamil Pandit (from the open market or by transfer from another management) as Headmaster (on B.Ed scale).

(c). The orders in sub-para (b) shall apply to vacancies which arise during the period from the date of this order to 1/9/1979 also, but subject to the modification that B.Ed, appointed shall get B.Ed scale only from 1/9/1979.

4. Even after the post of a Middle School Headmaster gets upgraded to B.Ed Scale of Pay, with reference to above orders, the expenditure will continue to be debited to the relevant debit head to which

the expenditure on the erstwhile Headmasters post was debited before the upgradation.

5. This order issues with the concurrence of the Finance Department vide, its U.O.No.52486/E.11/79, dated 21/5/1979."

22. As per G.O.Ms.No.525, School Education (D 1) Department, dated 29/12/1997, the ratio of Teacher - Pupil, 1 : 40 has to be followed. Norms suggested for Middle Schools have to be followed. One of the posts would be in the grade of Middle School Headmaster.

23. Government have issued G.O.Ms.No.5 School Education Department (B 2), dated 9/1/2001, regarding upgradation of the post of Secondary Grade Teachers, in private Elementary Schools, to the post of Middle School BT Headmasters.

24. Paragraph 4 of the said order states that in the middle schools so upgraded, if the Elementary School Headmasters does not have the qualification of B.Ed/Tamil Teacher, permission is granted to the individual to hold the post as Headmaster till he retires. Inference is that the incumbent, holding the post of Elementary School Headmaster can only continue as Headmaster, and there is no prohibition that after his retirement, the Management cannot appoint a qualified person to hold the post of Headmaster Middle School.

25. From the above, it is also clear that the Management is not at fault in allowing Mr.Irudhayaraj to hold the post of Headmaster till he retired on 31/5/2005 and appointing the appellant as Headmaster in R.C.Middle School, Chinthamani, Tirunelveli District/third respondent.

26. As per paragraph No.5 of G.O.Ms.No.5 School Education (B 2) Department, dated 9/1/2001, the Director of Elementary Education, Chennai has been delegated part of the powers in respect of upgradation and starting up a new aided Schools, and the Director of Elementary Education has been requested to forward the entire details of total expenditure while passing the orders in the beginning of every year while passing the upgradation orders itself and to take steps for inclusion of the expenditure in the Budget Estimate/Revised estimate to the Government (Finance Department), as per the Government Rules.

27. Respondents have not disputed the fact that the appellant was appointed as Headmaster, on 7/6/2005, in R.C.Middle School, Chinthamani, Tirunelveli District and that he was fully qualified to hold the post. The only objection of the respondents is that upgradation of the post of Headmaster in Middle School is not automatic and that there should be a

specific sanction from the Director of Elementary Education, Chennai. There is no point in contending that the Department would upgrade a School as Middle School, without upgrading the existing primary School Headmaster post, as Middle School Headmaster. Contention of the respondents that they have upgraded the School as Middle School, but not sanctioned the post of Headmaster, for such upgraded Middle School is irrational, and untenable.

28. Contention of the respondents that the Management had taken up the issue only in 2005 and after considering the records, sanction was granted, only on 2/4/2008 and therefore, the same has to be sustained, is also not tenable, for the reasons stated supra. Putting the blame on the Management for denying the salary to the appellant for the period between 7/6/2005 and 2/4/2008, cannot be accepted.

29. Thus, when G.O.Ms.No.525 states that norms for the Middle School be fulfilled, one of the posts in the middle Schools should be a post of Headmaster Middle School, when G.O.Ms.No.1297, further stipulate that the said post should be filled by B.T/B.Ed qualified teacher and when the Government have further issued the orders in G.O.Ms.No.5, School Education (B 2) Department, dated 9/1/2001, permitting, an un-qualified B.Ed/Tamil Teacher to hold the post of Headmaster till he retires, appointment of the appellant, as Headmaster Middle School, on 7/6/2005 cannot be faulted. The moment a qualified person is appointed as Headmaster of a Middle School, all the consequential actions have to follow automatically. It would not be fair on the part of the respondents to contend that upgradation was done only on 2/4/2008 and consequently, the appellant would be entitled to the salary and other benefits from the date of upgradation.

30. When G.O.Ms.No.5 School Education (B2) Department dated 9/1/2001, enjoins a duty on the Director of Elementary Education, Chennai, to consider the cases of upgradation of Schools as Middle Schools, or starting of a new School, and further obligated him to forward the expenditure involved, while passing orders of upgradation or starting of a new School, as the case may be, and to include in the budget/revised estimate to the Government (Finance Department), as per the Government Rules, then in our considered view, he has failed to do, when the third respondent School was directed to be granted aid to the Middle School, as per the orders of the Court, and confirmed by the Hon'ble Apex Court. What is the effect of the orders of the Hon'ble Apex Court? To grant aid to the Middle School. Does it mean that the School, upgraded as a Middle School, with aid, should not have a middle School Headmaster and to be

continued, without a post of Middle School Headmaster. It is not open to the Education Department to contend that a primary School would be upgraded as a Middle School, but they would take their own time, to upgrade a post as Middle School Head master and further contend that it is their prerogative to sanction a post of Headmaster Middle School.

31. Going through the material on record, there is a conspicuous failure on the part of the duty of the respondents in upgrading the post of Headmaster in the Elementary School, as Headmaster in the High School from the very inception, i.e., the day on which the said School was upgraded as Middle School, though with aid or without aid. In the light of the Government Orders, referred to above, we are of the considered view, action of the respondents in issuing the impugned orders, amounts to failure to exercise their duties. We do not approve the defence of the education Department, that they have the right to decide, as to when sanction has to be granted or upgradation to be made. With necessary qualifications, he had worked as Headmaster Middle School from 7/6/2005 to 1/4/2008. He cannot be denied salary for the said period, on the grounds that upgradation was done on 2/4/2008. Contention of the respondents that the Management was erred in appointing the appellant without sanction of the post, and therefore, the Management has to pay salary are devoid of merits and hence rejected.

32. In the light of the Government Orders and discussion, we are of the view that the appellant has made out a strong case for interference with the orders of the writ Court. Hence, order made in W.P.No.20739 of 2008 is set aside. Consequently, impugned orders, dated 2/4/2008 and 25/4/2008, passed by the Director of Elementary Education, Chennai and the District Elementary Educational Officer, Tirunelveli are set aside. The respondents are directed to grant upgradation from 7/6/2005, the date on which the appellant started discharging his duties as Headmaster in R.C.Middle School, Chinthamani, Tirunelveli District. The respondents are further directed to work out the differential salary, allowances and other attendant benefits attached to the post of Headmaster Middle School and pay the same, within a period of twelve weeks from today.

33. With the above directions, the Writ Appeal is allowed. No costs.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

mvs.

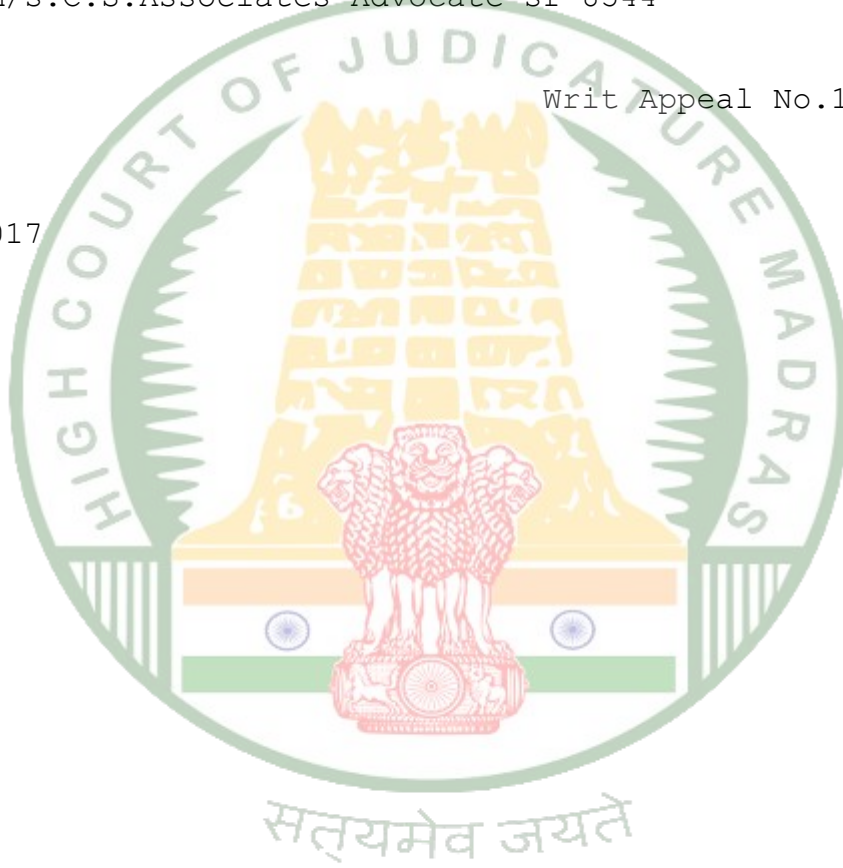
To

1. The Director of Elementary Education
Chennai 6.
2. The District Elementary Educational Officer
Tirunelveli
Tirunelveli District.

+1 cc to M/s.C.S.Associates Advocate sr 8544

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