

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.11.2017

CORAM

THE HON'BLE MR. JUSTICE V.PARTHIBAN

W.P.No.21004 of 2007

R.Kasthuri

...Petitioner

Vs.

1. The State of Tamil Nadu rep. By
Secretary to Government,
School Education Department,
Chennai - 9.
2. The Director of School Education,
Chennai - 600 006.
3. The Joint Director of School Education (Secondary),
Chennai - 600 006.
4. The Chief Education Officer,
Chennai - 600 015.
5. The District Educational Officer,
South Chennai,
Chennai - 600 008.
6. The Secretary,
Guntur Subbiah Pillai T.Nagar,
Girls Higher Secondary School,
30, Venkatnarayana Road,
T.Nagar, Chennai - 600 017

...Respondents

Prayer:- Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus calling for the records pertaining to the order passed by the fifth respondent in his proceedings Mu.Mu.No. 5315/A2/1997 dated 10.09.1997 and the order passed by the first respondent in its Letter(D) No.356, School Education Department, dated 04.12.2006 insofar as the denial of approval from the date of appointment i.e., 07.08.1996 and quash the same and direct the respondents to approve the appointment of the petitioner from 07.08.1996 instead of 02.07.1997 and confer all the consequential benefits. (Prayer amended as per order dated 06.09.2017 by NVMJ in W.M.P.Nos.24323 & 24325 of 2017 in W.P.No.21005 of 2007)

For Petitioner : Mr.P.Ganesan
for S.Mani

For Respondents

For R1 to R5 : Mr.S.Gunasekaran
Additional Government Advocate

For R6 : No appearance

O R D E R

The petitioner has approached this Court seeking the following relief:-

To issue Writ of Certiorarified Mandamus calling for the records pertaining to the order passed by the fifth respondent in his proceedings Mu.Mu.No. 5315/A2/1997 dated 10.09.1997 and the order passed by the first respondent in its Letter(D) No.356, School Education Department, dated 04.12.2006 insofar as the denial of approval from the date of appointment i.e., 07.08.1996 and quash the same and direct the respondents to approve the appointment of the petitioner from 07.08.1996 instead of 02.07.1997 and confer all the consequential benefits.

2. The writ petitioner is a post graduate and also possess the qualification of M.Phil and M.Ed degree. She was qualified for the appointment of P.G. Assistant in the sixth respondent-School. On retirement of one incumbent in the Economics Department on 31.05.1996, a vacancy had arisen. For which, the sixth respondent School Management had written a letter to the concerned school authority on 12.04.1995 itself seeking permission for them to initiate and fill up the ensuing vacancies. This letter was sent in anticipation of the retirement of teachers on 31.01.1996.

3. However, there was no response for the said representation. Pursuant to that another letter was addressed to the fourth respondent - The Chief Education Officer on 25.06.1996, requesting him to grant permission for filling up few vacancies in various categories of posts on retirement of incumbents therein. One of the posts requested was the post of Economics Teacher (P.G.Assistant). However, even for this communication, there was no response.

4. In the above circumstances, the school management in the interest of the academic activities of the institution

and not to deny the proper and constant education to the students, had proceeded with the appointment process by calling for candidates from the employment exchange. Thereafter, an interview was conducted and the petitioner was selected and appointed as P.G. Assistant on 07.08.1996. In any event, subsequently, on 02.07.1997, the fourth respondent has given permission to fill up the said vacancies. Thereafter, the proposals were sent on 07.07.1997 seeking approval of the appointment of the petitioner as P.G. Assistant from 07.08.1996 i.e., from the date of her original appointment.

5. The Management, thereafter, sent a representation on 22.10.1997 requesting to ratify the approval for the appointment of the petitioner from 07.08.1996. However, without considering the request of the sixth respondent, the first respondent vide order dated 04.12.2006, rejected the claim of ratification and approval of the appointment of the petitioner with effect from 07.08.1996, however granted approval only from 02.07.1997. Aggrieved by the rejection of the request of the petitioner, the petitioner is before this Court with the prayer as stated supra.

6. The learned counsel appearing for the petitioner would submit that in anticipation of approval and in order to safeguard the academic interest of the students, particularly in higher education, the petitioner was selected and appointed on 07.08.1996. The said selection was conducted as per the procedure contemplated under the Tamil Nadu Private Schools Education Act/Rules. In any event, the appointment was subsequently ratified by the authority concerned. But the only issue, which requires for consideration by this Court is, whether the ratification is from the date of permission granted by the authority on 02.07.1997 or from the date of the petitioner's original appointment on 07.08.1996.

7. Upon notice Mr.S.Gunasekaran, learned Additional Government Pleader entered appearance on behalf of the respondents 1-5 and filed a counter affidavit. The learned counsel for the respondents would submit that the petitioner having been appointed without seeking prior permission from the authority concerned and cannot seek for ratification of appointment from 07.08.1996, since the permission of the authority was granted only on 02.07.1997. Therefore, the claim of the petitioner is devoid of merits and no interference is called for from this Court.

8. On the other hand, the learned counsel for the petitioner would submit that the School authority was constrained to make the appointment of the petitioner to safeguard the interest of the students particularly +2 level, anticipating the permission to be granted and that the

permission was indeed granted from 02.07.1997. Thereafter, the ratification was sought for from the date of the original appointment of the petitioner i.e., from 07.08.1996.

9. This Court has considered the submission of the learned counsels and perused the materials and pleadings placed on record. This Court finds some force in the contention put forth by the learned counsel appearing for the petitioner that the school authority had selected and appointed the petitioner on 07.08.1996 only in the larger interest of the students and also in anticipation of the permission to be granted by the authority concerned from the date of the original appointment. As rightly anticipated, the permission was granted on 02.07.1997. In the said circumstances, the approval of the appointment from the date of the permission appears to be not well founded and cannot be sustained in law. As rightly contended by the learned counsel appearing for the petitioner, once the appointment is ratified as being a valid appointment, the ratification must relate back to the date of the original appointment i.e., 07.08.1996.

10. In the above circumstances, this Court has no hesitation in allowing this writ petition. The impugned order, rejecting the claim of the petitioner on the stated reasons, is not sustainable and therefore, the same is set aside. There shall be a subsequent direction to the officials/respondents to approve the appointment of the petitioner w.e.f. 07.08.1996 and confer all the consequential benefits. The said direction shall be complied with by the official respondents/competent authority, within a period of three months from the date of receipt of a copy of this Order.

11. The writ petition stands allowed on the above terms. No costs.

Sd/-

ASST. REGISTRAR

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SUB ASST. REGISTRAR

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rts

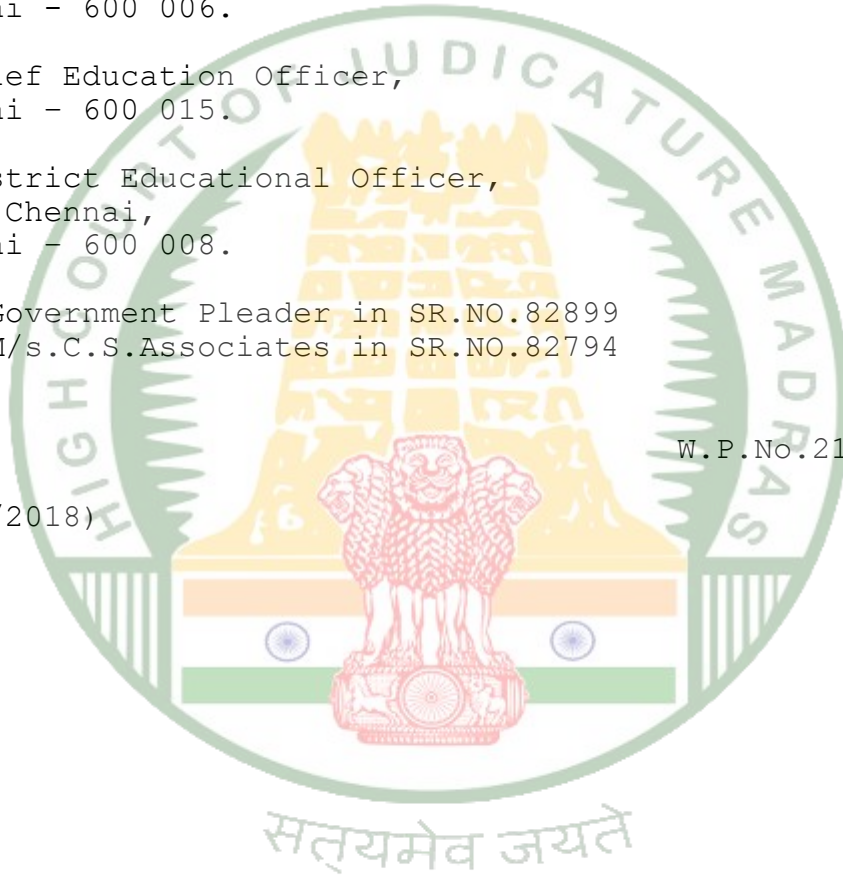
To

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5. The District Educational Officer,
South Chennai,
Chennai - 600 008.

+1 CC to Government Pleader in SR.NO.82899
+1 CC to M/s.C.S.Associates in SR.NO.82794

KAN(CO)
KAK(03/02/2018)

W.P.No.21004 of 2007



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