

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.11.2017

CORAM

THE HON'BLE MR. JUSTICE V.PARTHIBAN

W.P.No.21005 of 2007

P.Hemavathy

...Petitioner

Vs.

1. The Director of School Education,
Chennai - 600 006.
 2. The Joint Director of School Education (Secondary),
Chennai - 600 006.
 3. The Chief Education Officer,
Chennai - 600 015.
 4. The District Educational Officer,
South Chennai,
Chennai - 600 008.
 5. 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 fourth respondent in his proceedings Mu.Mu.No. 5314/A2/1997 dated 10.09.1997 and the order passed by the second respondent in his proceedings Mu.Mu.No.935/D1(1)/2007 dated 31.01.2007 insofar as the denial of approval from the date of appointment ie., 19.08.1996 and quash the same, and direct the respondent to approve the appointment of the petitioner from 19.08.1996 instead of 04.07.1997 and confer all the consequential benefits.

(Prayer amended as per order dated 06.09.2017 by MVMJ 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 R4 : Mr.S.Gunasekaran
Additional Government Advocate

For R5 : 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 fourth respondent in his proceedings Mu.Mu.No. 5314/A2/1997 dated 10.09.1997 and the order passed by the second respondent in his proceedings Mu.Mu.No.935/D1(1)/2007 dated 31.01.2007 insofar as the denial of approval from the date of appointment ie., 19.08.1996 and quash the same, and direct the respondent to approve the appointment of the petitioner from 19.08.1996 instead of 04.07.1997 and confer all the consequential benefits.

2. The writ petitioner is a Diploma Holder in DTE and also possess the qualification of B.Sc Degree in Maths and B.Ed. She was qualified for the appointment of Secondary Grade Teacher in the fifth respondent-School. On retirement of one incumbent on 31.05.1996, a vacancy had arisen, for which, the fifth respondent School Management had written a letter to the concerned school authority on 12.04.1995 itself for 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 an another letter was addressed on 25.06.1996 to the third respondent - The Chief Education Officer, 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 the Secondary Grade Teacher. 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 Secondary Grade Teacher on 19.08.1996. Thereafter, the proposals were sent on 22.05.1997 seeking approval of the appointment of the petitioner as Secondary Grade Teacher from 19.08.1996 i.e., from the date of her original appointment. In any event, subsequently, on 04.07.1997, the third respondent has given permission to fill up the said vacancies.

5. However, without considering the request of the fifth respondent, the second respondent vide order dated 31.01.2007, rejected the claim of ratification and approval of the appointment of the petitioner with effect from 19.08.1996, however granted approval only from 04.07.1997. 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 19.08.1996. 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 authority on 04.07.1997 or from the date of the petitioner's original appointment on 19.08.1996.

7. Upon notice Mr.S.Gunasekaran, learned Additional Government Pleader entered appearance on behalf of the respondents 1-4 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 cannot seek for

ratification of appointment from 19.08.1996, since the permission of the authority was granted only on 04.07.1997. 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 04.07.1997. Thereafter, the ratification was sought for from date of the original appointment of the petitioner i.e., from 19.08.1996.

9. This Court has considered the submission of the learned counsels, pursued 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 19.08.1996 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 04.07.1997. 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., 19.08.1996.

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. 19.08.1996 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

/TRUE COPY/

SUB ASST. REGISTRAR

rts

To

1. The Director of School Education,
Chennai - 600 006.
2. The Joint Director of School Education (Secondary),
Chennai - 600 006.
3. The Chief Education Officer,
Chennai - 600 015.
4. The District Educational Officer,
South Chennai,
Chennai - 600 008.

+1 CC to Government Pleader in SR.NO.82902
+1 CC to M/s.C.S.Associates in SR.NO.82794

W.P.No.21005 of 2007

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

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