

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.08.2017

CORAM

THE HON'BLE MR. JUSTICE M.V.MURALIDARAN

W.P.No.24787 of 2012

A.Philomena

.. Petitioner

vs

- 1.Government of Tamilnadu,
rep. by Secretary to Government,
School Education Department,
Secretariat,
Chennai - 600 009.
 - 2.The Director of Elementary Education,
Nungambakkam,
Chennai - 600 006.
 - 3.The District Elementary Educational Officer,
Nagapattinam District.
 - 4.The Assistant Elementary Educational Officer,
Keezhaiyur,
Nagapattinam District.
 - 5.The Manager/Secretary,
St. Sebastian Aided Primary School,
Kameswaram East,
Kameswaram Post,
Nagapattinam District.
- सत्यमेव जयते .. Respondents

Writ Petition filed under Article 226 of the Constitution of India for issuance of a writ of certiorarified mandamus, calling for the records of the fourth respondent relating to the order in A.Thi.Mu.No.592/A1/2012 dated 18.4.2012 to quash the same and issue consequential directions to respondents to approve the appointment of the petitioner as Secondary Grade Teacher w.e.f. 18.9.1996 in the 5th respondent school and disburse pay and allowance for the period from 18.9.1996 to 01.6.2003 with interest and to grant selection Grade Scale of pay on completion of 10 years of service in ordinary grade and disburse monetary benefits thereof.

For Petitioner : Mr.V.Thirupathi

For Respondents : Mrs.M.E.Raniselvam (R1 to R4)

Addl. Government Pleader

* * * * *

ORDER

This writ petition has been filed by the petitioner seeking to quash the impugned order of the fourth respondent dated 18.04.2012 and to direct the respondents to approve the appointment of the petitioner as Secondary Grade Teacher with effect from 18.06.1996 in the fifth respondent school and disburse pay and allowance for the period from 18.09.1996 to 01.06.2003 and to grant Selection Grade Scale of Pay on completion of 10 years of service in ordinary grade and disburse monetary benefits thereof.

2. Briefly stated case of the petitioner is as follows:

The petitioner, who possessed B.Lit. B.Ed. qualification was appointed as Secondary Grade Teacher in the fifth respondent school, which is a minority institution, with effect from 18.09.1996 in the permanent vacancy. The Government had issued G.O.Ms.No.559, dated 11.07.1995 directing the Director of Elementary Education not to approve the appointment of B.Ed. qualified teachers in the Secondary Grade Teacher vacancies in future.

3. Challenging G.O.Ms.No.559, dated 11.07.1995, writ petitions were filed, wherein interim order was passed. During stay period several B.Ed. qualified teachers were appointed in the Secondary Grade Teacher vacancies and the petitioner was one among them.

4. The Government had issued G.O.Ms.No.203, dated 19.03.1996 by which the appointment of B.Ed. Teachers in the Secondary Grade vacancy up to 10.07.1995 were ratified by the Government. On 19.10.1996, the Secretary of the fifth respondent school submitted a representation to the third respondent to approve the appointment of the petitioner.

5. Thereafter, the Government issued G.O.Ms.No.301, dated 15.10.1999 directing to follow the rule of reservation and other conditions and further directed to get training regarding child psychology with the District Education and Training Institute

for one month. By an order dated 19.05.1998, writ petitions filed challenging G.O.Ms.No.559 were dismissed, against which writ appeals were filed and the same were also dismissed on 29.06.2001. Therefore, the appointment of the petitioner was not approved by respondent Nos.3 and 4.

6. By a letter dated 08.01.2003, the third respondent requested the fifth respondent school to depute the petitioner for the short term child psychology training from 02.05.2003 to 31.05.2003 and the petitioner also participated in the training for B.Ed. Secondary Grade Teachers held from 02.05.2003 to 31.05.2003 and got certificate issued by the Principal of the Institute. Thereafter, the third respondent, vide proceedings dated 28.07.2003, approved the petitioner's appointment as Secondary Grade Teacher from 02.06.2003 F.N. in the scale of pay of Rs.4500-125-7000.

7. On 02.04.2012, the petitioner made a representation to the third respondent through the fourth respondent to approve her appointment with effect from the date of initial appointment and to regularize the services from 18.09.1996 and also requested to give monetary benefits. The fourth respondent instead of forwarding the representation of the petitioner to the third respondent, had passed the impugned order dated 18.04.2012 stating that since it had already approved the appointment with effect from 02.06.2003, the claim of the petitioner cannot be recommended. Challenging the same, the petitioner has filed the writ petition.

8. Resisting the writ petition, the third respondent has filed counter. In paragraphs 3 and 4, it has been stated that the fifth respondent appointed the petitioner without getting prior permission from the third respondent and thus violated the appointment procedure. It is stated that on noting the defects, the fourth respondent returned the proposal of the fifth respondent for the approval of appointment of the petitioner.

9. On a perusal of the counter, there is no 5th paragraph. Further, the details set out in paragraphs 6 to end, are not relevant to the case on hand.

10. I heard Mr.V.Thirupathi, learned counsel for the petitioner and Mrs.M.E.Raniselvam, learned Additional Government Pleader for the respondents 1 to 4 and perused the records.

11. Learned counsel for the petitioner submitted that the fourth respondent ought to have approved the appointment of the petitioner from the date of her initial appointment from 18.09.1996 irrespective of the fact that she underwent child psychology training during May-June, 2003. He submitted that

the act of the fourth respondent is violative of the orders passed by the Tamil Nadu Administrative Tribunal, directing extension of such benefits in the case of Teachers in Adi-Dravidar Welfare Schools. He further submitted that the petitioner is entitled to regularisation of the period from 18.09.1996 to 01.06.2003 and the pay and allowances for the said period and also the consequential benefits of Selection Grade Scale of Pay.

12. Learned Additional Government Pleader would submit that the fifth respondent by violating the appointment procedure, appointed the petitioner as Secondary Grade Teacher in an aided school. He further submitted that only upon consideration of facts, the fourth respondent has passed the impugned order and no interference is warranted.

13. Though in the counter, the third respondent stated that without getting previous permission from the third respondent, the fifth respondent appointed the petitioner as Secondary Grade Teacher, nothing has been produced to establish the same. The counter averments contain different case details.

14. Admittedly, the petitioner was appointed as Secondary Grade Teacher in the fifth respondent school on 18.9.1996 in a permanent vacancy. There is no denial and quarrel that the petitioner possessed B.Lit., B.Ed. at the time of her appointment and there is also bad remarks against the petitioner.

15. In the order impugned, the fourth respondent simply stated that since as per the proceedings of the third respondent, the services of the petitioner was regularised from 02.06.2003, her claim seeking to regularise services from the date of appointment cannot be considered.

16. Relying upon the order passed by the Madurai Bench of Madras High Court in W.P.No.9072 of 2005, dated 19.12.2007, the learned counsel for the petitioner submitted that in similar circumstances, this Court directed the authorities to regularise the services of the petitioner therein from the date of his appointment and also declared to be entitled to all consequential benefits.

17. On a perusal of the order made in W.P.No.9072 of 2005, dated 19.12.2007, I find that the petitioner therein was appointed as Secondary Grade Assistant Teacher on 28.03.1998 and was not regularised from the date of his initial appointment on the ground that he had not completed child psychology course. Citing the decision of the Tamil Nadu Administrative Tribunal in O.A.No.3226 of 2003, dated 13.12.2003 and G.O.Ms.No.122, dated 02.08.2005, the learned Single Judge of the Madurai Bench of

Madras High Court observed in paragraph 5 that the learned Government Pleader would agree to the factual as well as legal position highlighted by the learned counsel for the petitioner and therefore, the learned Single Judge is of the view that there could be no impediment for issuing direction to the effect that the petitioner shall also be regularised with effect from the date of his appointment and also entitled to get consequential benefits. As against the order of the learned Single Judge, the Government preferred writ appeal being W.A(MD) No.11055 of 2009. By the judgment dated 01.10.2009, the First Bench of the Madurai Bench of Madras High Court dismissed the appeal, thereby confirmed the order of the learned Single Judge.

18. The aforesaid decision rendered by the learned Single Judge in the aforesaid writ petition, confirmed by the Hon'ble First Bench of the Madurai Bench of Madras High Court, is squarely applicable to the case of the petitioner.

19. It is pertinent to note that the fourth respondent ought to have seen the experience gained by the petitioner as Secondary Grade Teacher and she would be well aware about the child psychology. However, the petitioner was deputed for the training only in 2003. The delay in deputing the petitioner for such training was not attributable to her and therefore, this Court is of the view that the petitioner should not be penalised for no fault of her.

20. The official respondents have failed to establish that the decision in W.P.No.9072 of 2005 will not apply to the case on hand. Therefore, I am of the view that in commensurate with the aforesaid decision in W.P.No.9072 of 2005, the services of the petitioner should be regularised with effect from the date of her appointment and not from the date of her completion of child psychology training. The said factual position is not disputed by the respondents.

21. Hence, I am of the view that there could not be any impediment in allowing the writ petition, as similarly placed persons have got such benefit.

22. In the result:

(a) this writ petition is allowed by setting aside the impugned order in A.Thi.Mu.No.592/A1/2012 dated 18.04.2012, passed by the 4th respondent, is quashed;

(b) the respondents are directed to regularise the petitioner with effect from the date of her appointment i.e., 18.09.1996 and accordingly, she

is entitled to all consequential benefits. The official respondents are directed to confer such benefits within a period of four months from the date of receipt of a copy of this order. No costs.

Sd/-
Deputy Registrar (CO)

//True Copy//

Sub Assistant Registrar

vs

To

- 1.The Secretary to Government,
School Education Department,
Secretariat,
Chennai - 600 009.
- 2.The Director of Elementary Education,
Nungambakkam,
Chennai - 600 006.
- 3.The District Elementary Educational Officer,
Nagapattinam District.
- 4.The Assistant Elementary Educational Officer,
Keezhaiyur,
Nagapattinam District.

+1cc to Mr.V.Thirupathi, Advocate, S.R.No.55628

+1cc to the Government Pleader, S.R.No.56256

W.P. No.24787 of 2012

RRK (26/03/2018)

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