

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.09.2017

CORAM

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

W.P.No.27227 of 2010

and

M.P.No.2 of 2010

M.Delsy Jessy Elizebeth .. Petitioner

Vs

1.The Director of School Education,
DPI Campus, Chennai-6.

2.The District Educational Officer,
Ponneri, Tiruvallore District.

3.The Correspondent,
Britannia High School,
Padi, Chennai - 50.

.. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India for issuance of writ of certiorarified mandamus calling for the records of the 2nd respondent in proceedings No.NA.KA.494/Aa3/2000- 2001, dated 11.03.2008, to quash the same and consequently to direct respondents 1 and 2 to grant time scale of pay to the petitioner Secondary Grade Teacher in the 3rd respondent School.

For Petitioner : Mr.Gopalakrishnan

For Respondents : Mr.R.Govindasamy
Spl. Government Pleader
for respondents 1 and 2

Mr.A.V.Arun
for 3rd respondent

ORDER

The petitioner has filed this writ petition seeking issuance of a writ of Certiorarified Mandamus to call for the records of the second respondent in proceedings No.Na.Ka.494/Aa3/2000-2001,

dated 11.03.2008, to quash the same and to direct the first and second respondents to grant time scale of pay to the petitioner, who is a Secondary Grade Teacher in the third respondent school.

2. The brief facts of the case are as under: The petitioner was appointed as Secondary Grade Teacher on 20.08.2003 in the third respondent school in a regular vacancy. The third respondent school is a religious minority school aided by the Government. The second respondent accorded approval to the appointment of the petitioner with effect from 20.08.2003 vide proceedings dated 07.04.2004. It is stated that the petitioner was paid only consolidated salary of Rs.3,000/-.

3. The petitioner as well as the third respondent school made representations to the respondent authorities seeking grant of time scale of pay to the petitioner as per G.O.Ms.No.120, Education (Budget)-2 Department, dated 18.07.2006.

4. It is averred that, when things stood thus, the second respondent vide proceedings dated 11.03.2008 sought to withdraw the approval granted in respect of the appointment of the petitioner with a further direction to recover the salary paid to the petitioner. The said proceedings was communicated to the petitioner by the third respondent vide letter dated 20.03.2008. The petitioner immediately submitted a representation on 25.03.2008, followed by a series of representations to various authorities.

5. It is the case of the petitioner that from 20.03.2008 onwards, she is not being paid salary, but she is continuing to discharge her duties without any remuneration. It is stated that the petitioner has been appointed to a sanctioned post and the second respondent had approved her appointment and in any event, such appointment and approval had been granted prior to issuance of G.O.Ms.No.125, School Education (X2) Department, dated 12.11.2003 and, therefore, the same would operate only prospectively and not retrospectively.

6. In this backdrop, the present writ petition is filed for the relief stated supra.

7. I heard Mr.Gopalakrishnan, learned counsel for the petitioner, Mr.R.Govindasamy, learned Special Government Pleader for respondents 1 and 2 and Mr.A.V.Arun, learned counsel for the 3rd respondent and perused the entire records.

8. It is the contention of the learned counsel appearing on behalf of the petitioner that the third respondent school is an aided minority school; the petitioner's appointment was made as per rules to a regular vacancy and she is fully qualified to

hold the post and, based on the same, when a service register has also been opened and entries had been made, which were duly endorsed by the second respondent, the second respondent cannot give her a pink slip arbitrarily.

9. It is further contended that the petitioner's appointment as well as approval of such appointment were made much early to the publication of the government order imposing ban on recruitment of teachers and, therefore, the approval cannot be withdrawn at the whims and fancies of the respondents, more particularly when the ban on recruitment imposed was held to be bad by this Court vide the decision in Viveka Poorana Aided Elementary School v. The director of Elementary Education and others, 2004 WLR 248.

10. Per contra, the learned Special Government Pleader appearing on behalf of respondents 1 and 2 submitted that the approval granted by the second respondent was erroneous and in order to rectify the same, the approval was withdrawn and the respondent authorities are empowered to do so.

11. At the time of admission of the writ petition, this Court, on 02.12.2010, granted an order of interim stay of recovery alone and further directed the respondents to permit the petitioner to continue in service, if she is not relieved as on date.

12. The ban imposed on appointment of teachers was stayed by this Court and it was directed that appointments in aided private schools after 01.06.2003 are subject to the Rules to be framed in terms of G.O.Ms.No.100, School Education (Budget) Department, dated 27.06.2003 and the rules framed in G.O.Ms.No.125, School Education (X2) Department, dated 12.11.2003 govern the petitioner.

13. In any event, insofar as the Private Schools are concerned, a learned Judge of this Court had already held in Viveka Poorana Aided Elementary School, rep.by its Secretary R.Aravamudhan, Cuddalore Old Town Cuddalore, -vs- The Director of Elementary Education, Madras -6 and others reported in 2004 Writ L.R.248, that G.O.Ms.No.100, dated 27.06.2003 does not govern the appointment of Private Aided Schools, as follows:-

"12. Learned counsel appearing for some of the petitioners represented that in some of the cases by virtue of interim order obtained from this Court appointments have been made specifically subject to the Government Order that may be passed. Inasmuch as the Government Order No.100 dated 27.6.2003 does not govern the appointments in private aided school, that Government Order is not applicable to

them. Hence, those appointments will have to be considered as valid notwithstanding the impugned circulars. In some other cases, some appointments have already been made before 1.6.2003 but approval has not been given in view of the impugned circulars. Inasmuch as the impugned circulars are held invalid in so far as it relates to the writ petitioners and inasmuch as no Government Order has been passed so far relating to the aided private schools the appointments made does not suffer from any illegality; in so far as the appointments made before the issuance of the impugned circular there is no ground to refuse the grant of approval. But it is for the authorities to consider the same and pass orders. Hence, the respondents are directed to consider those cases within four weeks from the date of receipt of copy of this order and pass orders."

14. In the light of the law enunciated in the decision referred supra, this Court is of the firm view that Government Orders referred supra will not ipso facto apply to petitioner private aided school, which is governed by the provisions of the Private Schools Act and the Rules made therein. Therefore, the action of the respondents in denying approval to the said teacher is not proper.

15. That apart, nothing has been placed on record to show that the petitioner has been denied employment pursuant to the impugned order, as the respondent authorities have not taken any steps to vacate the interim order till date, which only fortifies the plea of the petitioner that she is in continuous employment till date.

16. In the light of the above, the writ petition shall stand allowed. The second respondent is directed to approve the appointment of the petitioner from the date of her initial appointment, fix time scale of pay and release the salary within a period of eight weeks from the date of receipt of a copy of this order. However, there will be no order as to costs. Consequently, M.P.No.2 of 2010 is closed.

Sd/-

Deputy Registrar (CO)

//True Copy//

Sub Assistant Registrar

vs

To

1.The Director of School Education,
DPI Campus, Chennai-6.

2.The District Educational Officer,
Ponneri, Tiruvallore District.

+lcc to the Government Pleader, S.R.No.63537

W.P.No.27227 of 2010
and M.P.No.2 of 2010

RRK(20/04/2018)



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