

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 10.07.2017

CORAM

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

W.P.No.22119 of 2003

and

W.P.M.P.No.27395 of 2003

J.Jansi Emelda

.. Petitioner

Vs.

1. The Government of Tamil Nadu
rep. By its Secretary
School Education Department
Fort St. George, Chennai - 9.
 2. The Director of Elementary Education
College Road, Chennai - 600 006.
 3. The District Elementary Education Officer
Tirunelveli and District.
 4. The Assistant Elementary Education Officer
Nagunari, Tirunelveli District.
 5. The Correspondent, R.C.Primary School
Vijaya Achamedu, Tuticorin District.
- .. Respondents

Prayer : Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus to call for the records relating to the order of the first respondent issued in G.O.Ms.No.155, School Education (D2) Department, dated 3.10.2002 and the consequential order of the third respondent issued in proceedings Na.Ka.No.10765/A4/02, dated 17.5.2003, to quash the same insofar as the direction to take steps to refund arrears paid, direction to pay salary only after completing the training alone are concerned and direct respondents 1 to 4 to send the petitioner for one month Child Psychology Training through DIET Tirunelveli and continuously pay salary and other benefits from the date of the petitioners appointment as Primary School Headmistress, i.e., 28.12.1995.

For Petitioner : Mr.L.Chandrakumar

For Respondents : Mrs.M.E.Raniselvam (for R1 to R4)
Addl. Government Pleader

Mr.K.Sathiskumar (for R5)

ORDER

The petitioner has filed this writ petition seeking issuance of a writ of Certiorarified Mandamus to call for the records relating to the order of the first respondent issued in G.O.Ms.No.155, School Education (D2) Department, dated 03.10.2002 and the consequential order of the third respondent issued in proceedings Na.Ka.No.10765/A4/02, dated 17.05.2003, to quash the same insofar as the direction to take steps to refund arrears paid, direction to pay salary only after completing the training alone are concerned and direct respondents 1 to 4 to send the petitioner for one month Child Psychology Training through DIET Tirunelveli and continuously pay salary and other benefits from the date of the petitioners appointment as Primary School Headmistress, i.e., 28.12.1995.

2. The facts in a nutshell are as under: The petitioner was appointed as Primary School Headmistress in the fifth respondent school on 28.12.1995 and the said appointment was approved by order dated 26.11.1996 of the third respondent and the petitioner was paid salary from the date of appointment till April, 2003.

3. It is stated that the Government issued G.O.Ms.No.394, Education, dated 12.09.1997 ordering that B.Ed. qualified candidates cannot be appointed in Secondary Grade vacancies in High and Higher Secondary School akin to another government order in G.O.Ms.No.559, Education, dated 11.07.1997 in respect of Secondary Grade vacancies in Primary and Middle Schools.

4. It is stated that the above said government orders were challenged by this Court and ultimately, the Division Bench upheld the government orders, but held that the appointments made up to 19.05.1998, i.e., the date on which the learned Single Judge dismissed the writ petitions, can be approved, of course, based on the undertaking given by the learned Additional Advocate General to that effect.

5. It is averred that the government issued G.O.Ms.No.155, School Education (D2) Department, dated 03.10.2002, by which the government ordered that B.Ed. qualified candidates appointed up to 19.05.1998 in regularly sanctioned post can be approved and they have to undergo one month training in Child Psychology in the District Institute of Education and Training (DIET).

6. It is stated that the respondent authorities gave training to the B.Ed. qualified teachers appointed in Secondary Grade vacancies up to 19.05.1998, through concerned DIETs from 02.05.2003 and the petitioner is not given one month training till date. When things stood thus, it is alleged that the third respondent issued proceedings dated 17.05.2003 to the effect that the salary for teachers shall be withheld as per G.O.Ms.No.155 and steps will be taken to recover the salary already paid.

7. In such backdrop, the present writ petition is filed for the relief stated supra.

8. It is the contention of the learned counsel for the petitioner that the proceedings of the respondents runs counter to the decision of the Hon'ble Division Bench of this Court in Secretary & Correspondent, Uswathun Hasana Oriental (Arabic) Girls Higher Secondary School V. The State of Tamil Nadu rep. by its Secretary, Education Department and Others, 2002 Writ L.R. 173, as it was categorically recorded in the said decision that the services of persons appointed prior to 19.05.1998 will be regularised.

9. It is further contended that the petitioner, who has been appointed in a regular vacancy, is ready and willing to undergo training, but the respondent authorities, vide the proceedings under challenge, directed to pay salary from the date of completion of training invoking the provisions of the government order, referred supra, and the same is grossly illegal. In other words, the proceedings of the respondent authorities attempting to withhold or reduce salary of the petitioner is illegal and violative of Articles 14, 16 and 21 of the Constitution of India.

10. Per contra, the learned Additional Government Pleader appearing on behalf of the respondent authorities reiterated the reasons that weighed with the official respondents in passing the impugned proceedings.

11. I heard Mr.L.Chandrakumar, learned counsel appearing for the petitioner, Mrs.M.E.Raniselvam, learned Additional Government Pleader for the respondents 1 to 4 and Mr.K.Sathiskumar, learned counsel for the 5th respondent and perused the documents available on record.

12. At the outset, it is to be noted that this Court, at the time of admission of the writ petition, passed an order of interim injunction restraining the respondent authorities from recovering/reducing/ withholding the petitioner's salary from May, 2003 and records reveal that the said interim order operates even as on date. In other words, no recovery or reduction or withholding of petitioner's salary was effected till date.

13. The point in issue in this writ petition is covered by the decision of this Court in Secretary & Correspondent, Uswathun Hasana Oriental (Arabic) Girls Higher Secondary School V. The State of Tamil Nadu rep. by its Secretary, Education Department and Others, 2002 Writ L.R. 173. The Hon'ble Division Bench of this Court while upholding G.O.Ms.No.559, dated 11.07.1995 held that B.Ed. qualified Teachers, appointed in Secondary Grade Teachers vacancy up to the dismissal of the writ petition are entitled to get relief and the Government was directed to formulate the modalities. The date of order in the writ petition by the learned Single Judge is 19.05.1998. The petitioner having been appointed in the fifth respondent school as Primary School Headmistress 28.12.1995 and such appointment having been approved by the third respondent vide order dated 26.11.1996 from the date of appointment, her appointment is covered by the Hon'ble Division Bench judgment cited above.

14. The Government for implementing the said judgment, issued G.O.Ms.No.155 and granted relief to the Teachers appointed up to 19.05.1998 by giving one month Child Psychology Training.

15. In the case on hand, the fact that the petitioner's appointment was approved by the proceedings of the third respondent with effect from the date of her initial appointment is not disputed. Admittedly, the said date is much prior to the cut off date (19.05.1998) prescribed in the order of the Division Bench.

16. In such view of the matter, this Court is inclined to allow the writ petition to the limited extent that no recovery, reduction or withholding of salary of the petitioner shall be made and her services shall not be interfered with on this

score. If the petitioner has not yet completed his Child Psychology training, she shall be forthwith referred for such training. No costs. Consequently, connected miscellaneous petition is closed.

vs

Sd/-
Assistant Registrar (CS-IX)

//True Copy//

Sub Assistant Registrar

To

1. The Secretary,
Government of Tamil Nadu,
School Education Department,
Fort St. George, Chennai - 9.
 2. The Director of Elementary Education,
College Road, Chennai - 600 006.
 3. The District Elementary Education Officer,
Tirunelveli and District.
 4. The Assistant Elementary Education Officer,
Nagunari, Tirunelveli District.
- + 1 cc to Mr.L.Chandrakumar, Advocate Sr.47986
+ 1 cc to Mr.K.Vijaykumar, Advocate Sr.47868
+ 1 cc to MR. Government Pleader Sr.47811

W.P.No.22119 of 2003
and
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(CS-IX)
EU(11/07/2018)

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