

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.07.2017

CORAM :

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

W.P.No.17140 of 2004

B.Mosco

.. Petitioner

Vs.

1.The District Elementary Educational Officer,
Tirunelveli - 2.

2.The Additional Assistant Elementary,
Educational Officer,
Radhapuram, Tirunelveli District.

.. Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India to issue a writ of Certiorari, to call for the records relating to the proceedings of the second respondent made in Na.Ka.No.413A1/2004, dated 21.5.2004 and quash the same insofar as the petitioner is concerned.

For Petitioner : Mr.M.Devaraj
for Mr.S.Elamurugan

For Respondents : Mrs.M.E.Rani Selvam
Additional Government Pleader

ORDER

This writ petition is filed challenging the proceedings dated 21.5.2004 of the second respondent in and by which the salary payable to the writ petitioner was directed to be stopped with effect from May, 2004.

2.The case of the petitioner is that his father, one C.Paulraj, who belonged to minority community, established and administered a school in the year 1956 by name "Eswaramurthy Primary School" at Urumankulam. The said school has been recognized as a minority institution by the respondent authorities.

3. According to the petitioner, he completed B.A. Degree in the year 1990 and B.Ed. Degree in the year 1992. On completion of B.Ed. Degree, the petitioner claims to have discharged duties as a teacher from 1992-1996 and such services, it is averred by the petitioner, were also acknowledged by the authorities of the Educational Department and the Management of the said school.

4. It is the plea of the petitioner that he was appointed as a Head Master in the school and assumed charge on 01.11.1996. The first respondent, vide proceedings dated 18.12.1996, granted approval for release of teaching grant after scrutinizing the records and, according to the petitioner, the said proceedings confers on the petitioner a vested right to receive his salary from the teaching grant and to discharge duties as Head Master. The educational authorities, it is stated, have also released the increments payable to the petitioner every year.

5. It is the case of the petitioner that, on the death of his father, he was also discharging the functions of the Correspondent of the said school and the same was also recognized by the educational authorities. Thus, it is claimed that the petitioner is discharging the duties as Correspondent and Headmaster of the said school.

6. While things stood thus, it is claimed that, by proceedings dated 21.5.2004, which is impugned in this writ petition, the second respondent stopped the salary of the petitioner from May, 2004. Assailing the same, the present writ petition is filed.

7. Mr. M. Devaraj, learned counsel for the petitioner vehemently contended that abrupt stopping of salary to an approved teacher would amount to stopping of the grant payable to the school and that the second respondent, who issued the impugned proceedings, is not the appropriate authority to pass such proceedings.

8. He further submitted that the proceedings under challenge are purely based on G.O.Ms.No.559, Education, Science and Development Department, dated 11.07.1995, and the second respondent has not taken note of the fact that the said government order was modified subsequently by the Government by issuance of G.O.Ms.No.155, School Education (D-2) Department, dated 3.10.2002, and based on the said government order all appointments made between 11.07.1995 and 19.05.1998 are approved. In this regard, he placed reliance on a decision of the learned Single Judge of this Court in V. Antony Benildas v. Director of Elementary Educational, Chennai and others, order dated 10.11.2009 passed in W.P.No.15049 of 2004.

9.It is further submitted that the second respondent instead of submitting his explanation to the first respondent for the query raised by the first respondent has erroneously stopped the salary payable to the petitioner without any authority in law.

10.Lastly, it is contended that the petitioner, based on the approval granted by the first respondent on 18.12.1996 for his appointment as Head Master, continued to discharge his duties without interruption for nearly eight years and, therefore, he should be permitted to continue his service and salary should be paid to him.

11.I heard Mr.M.Devaraj for Mr.S.Elamurugan, learned counsel appearing for the petitioner and Mrs.M.E.Rani Selvam, learned Additional Government Pleader appearing on behalf of the respondents and perused the documents filed in support of the writ petition.

12.At the outset, it is to be noted that the respondents despite lapse of almost 13 years have not chosen to file a counter affidavit till date. That apart, at the time of admission, this Court granted interim stay of the proceedings of the second respondent on 23.06.2004 and the same had been made absolute by order dated 29.08.2006. The respondents have also not taken any steps to vacate the said interim order. Therefore, as on date, the petitioner continues to discharge his duties.

13.By G.O. Ms. No. 559, Education, Science and Technology Department, dated 11.07.1995, the Government directed the educational authorities not to approve the appointment of B.Ed. teachers in the Secondary Grade Teacher vacancies. Challenge made to the said government order did not find favour with the learned Single Judge. Thereafter, the aggrieved persons approached a Division Bench of this Court. The Division Bench in Secretary and 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, affirmed the order of the learned Single Judge. However, a concession made by the then learned Additional Advocate General was recorded to the effect that B.Ed. teachers, who were appointed in the Secondary Grade Teacher vacancies before 19.05.1998, the date of dismissal of the batch of writ petitions by the learned Single Judge, would be regularized in services after giving them "Child Psychology Training" for a period of a month.

14.Thus, in effect, the Division Bench protected the services of the B.Ed. teachers, who were appointed before 19.05.1998 in the Secondary Grade Teacher vacancies. Later, the Government protected the services of the B.Ed. Teachers appointed in the Secondary Grade Teacher vacancies upto

29.06.2001, the date of the judgment of the Division Bench in the batch of writ appeals, referred supra.

15. In the case on hand, it is not in dispute that approval of the first respondent was granted vide proceedings dated 18.12.1996 for release of teaching grant in respect of the writ petitioner. Therefore, the concession granted vide UswathunHasana Oriental (Arabic) Girls Higher Secondary School, supra, should, in my considered opinion, also be extended to the writ petitioner.

16. Under identical circumstances, in V. Antony Benildas v. Director of Elementary Educational, Chennai and others, order dated 10.11.2009 passed in W.P.No.15049 of 2004, in the case of a Headmaster appointed on 02.06.1997, with approval of the District Elementary Educational Officer, Tirunelveli, granted on 09.06.1997, the learned Single Judge extended the concession granted in Uswathun Hasana Oriental (Arabic) Girls Higher Secondary School, supra. The operative portion of the said order reads as follows:

"9. The petitioner was admittedly appointed on 2.6.1997 and the approval from the second respondent was obtained on 9.6.1997. The order in the writ petition in Viswanathan Hasana Oriental School was passed on 15.5.1998. Therefore the concession/relief given by the Division Bench would be applicable to the petitioner herein. As per the Division bench judgment, the petitioner would also be a beneficiary as his appointment is covered by the protection given by the Division Bench. ...

10. Taking into consideration of the Division Bench judgment, the five years experience as teacher obtained by the petitioner and also considering the nature of the institution, the impugned order is not sustainable..."

17. Apropos the plea of five years of experience, the contention of the learned counsel for the petitioner that the petitioner had discharged duties as Secondary Grade Teacher from 1992 to 1996 is not refuted by the learned Additional Government Pleader appearing on behalf of the respondent. That apart, the stand of the petitioner that the Government vide letter dated 1.3.1988 clarified that while appointing a Head Master with B.Ed. qualification, five years teaching experience need not be insisted, is also not rebutted by the respondents by filing of a counter or across the bar. While noting so, this Court is cognizant of the fact that the petitioner is rendering continuous service till date, i.e., for almost 13 years, by dint of the interim order passed by this Court.

18.For the reasons aforesaid and in the light of the decision in V.Antony Benildas, cited supra, this writ petition is liable to be allowed.

19.In the result:

(a) this writ petition is allowed by setting aside the impugned order in Na.Ka.No.413A1/2004, dated 21.05.2004, passed by the 2nd respondent in so far as the petitioner concerned;

(b) the respondents are directed to pay all the service benefits to the petitioner from 21.05.2004;

(c) the said exercise shall be done within a period of eight weeks from the date of receipt of a copy of this order. No costs.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

To

1.The District Elementary Educational Officer,
Tirunelveli - 2.

2.The Additional Assistant Elementary,
Educational Officer,
Radhapuram, Tirunelveli District.

+1 cc to M/s.S.Elamurugan Advocate sr 46999
+1 cc to the Govt Pleader sr 47290

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