

RESERVED ON :20.04.2017

DELIVERED ON:01.11.2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.11.2017

CORAM :

THE HONOURABLE MR. JUSTICE R.SURESH KUMAR

W.P.No.18691 of 2004

N.S. Bhagavathi

... Petitioner

Vs.

1. The Director of Elementary Education,
College Road, Chennai – 600 006.
 2. The District Elementary Education Officer,
Nagercoil, Kanyakumari Dist.
 3. The Assistant Elementary Educational Officer,
Karingal Range, Karingal Post, KK Dist.
 4. The Assistant Educational Officer,
Suchindram and post, KK Dist.
- ... Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus, calling for the records relating to the order of 2nd respondent passed in his proceedings Na.Ka.No.7293/A3/2002 dated 24.3.2004 and quash the same and direct the respondents to pay salary and other benefits to the petitioner from 1.9.2002 to 23.6.2003.

For Petitioner : Mrs.P.Mahalakshmi

For R1 to R4 : Mr. A.Zakir Hussain
Govt. Advocate

ORDER

The case of the petitioner as culled out from the averments made in the affidavit filed in support of the writ petition are as follows:

(i) The petitioner was appointed as Secondary Grade Teacher in Kasturba Middle School, Therur, Kanyakumari District from 28.10.1995 in a clear vacancy arose in that school from 31.7.1995.

(ii) The appointment of the petitioner was approved by the third respondent by order dated 06.3.1996. The petitioner had been paid salary from the date of appointment till 31.08.2002. However, the petitioner had not been paid salary from 01.09.2002 to 23.6.2003. However, he has been paid salary from 24.6.2003.

(iii) The reason for not paying salary to the petitioner for the said period i.e., from 01.09.2002 to 23.6.2003 is because of the reasons set out below:

“(a) During this period, by order dated 31.7.2002, issued by the second respondent, the petitioner, after having been found that, she

is one of the excess teacher comparing with the sanctioned staff and based on the students-teachers ratio at the Kasturba Middle School, Therur, was redeployed to the school called St. Aloysious Middle School, Sayakaranparappuvillai.

(b) Though the petitioner had been deployed as such to the said school, namely, St. Aloysius Middle School, the petitioner was not permitted to join in the said school by the Management of the school. Therefore, the second respondent by further order dated 04.09.2002, instead of finding out the school in the revenue district to locate the petitioner, had deployed the petitioner along with some other teachers, who were working in Kanyakumari District, to Virudhunagar District.

(c) The said order dated 04.09.2002 since had directed the petitioner to report before the Virudhunagar District, was challenged by the petitioner in W.P.No.35196 of 2002.

(d) In the meanwhile, even though the petitioner and others had been redeployed to Virudhunagar District by virtue of the order dated 04.09.2002, the concerned District Educational Officer of Virudhunagar District had refused to take these teachers including the petitioner at his District and the same was communicated to the second respondent. The second respondent, therefore, had once again issued an order dated 11.10.2002, whereby the petitioner had been

redeployed to instead of Virudhunagar District, to Ramanathapuram District. In the meanwhile, since the petitioner had already approached this Court by filing the said writ petition referred to above, challenging the earlier redeployment order dated 04.09.2002 of the second respondent, this Court by order dated 11.11.2002 in W.P.M.P.No.52372 of 2002 in W.P.No.35196 of 2002 had granted interim order of stay of the operation of the order of redeployment dated 04.09.2002 issued by the second respondent.

(e) The said order had been immediately communicated on 15.11.2002 to the second respondent requesting him to give postings to the petitioner either at the same school where he worked or in any other school in the same Taluk or District.

(f) Since nothing was forthcoming from the second respondent, the petitioner caused a legal notice on 06.12.2002 for implementing the interim order passed by this Court, stated supra. In spite of the orders passed by this Court, nothing was forthcoming and the petitioner had been put under pitiable situation, where, neither the school where he worked, allowed him to continue, nor the second respondent had come forward to give posting to the petitioner to any other school in the locality. Therefore, the petitioner had filed a contempt petition in Cont.P.No.78 of 2003. The said contempt petition was finally disposed by orders of this Court dated 03.02.2003, where

this Court had directed the respondents, especially, the second respondent to give posting to the petitioner in any of the schools located in the same taluk where he worked already or in any near by taluk in the same district and such posting orders to be passed within 8 weeks period.

(g) Subsequently, pursuant to the orders passed by this Court in contempt petition, the second respondent by order dated 23.3.2003 had redeployed the petitioner to a school called St. Crusulas Primary School at Kulasekaram, Kanyakumari District. However, when the petitioner reported, even that school had not taken the petitioner and this was also informed to the second respondent. As the petitioner had not been permitted to work in the school where he originally worked, i.e, Kasturba Middle School, Therur, KK District inspite of the order of stay granted by this Court, also the petitioner had not been given posting in any of the schools located in that area and even after orders passed by this Court in the contempt petition, though the petitioner had been deployed and posted at a school in Kulasekaram, the Management of the said school since had refused to take the petitioner, the petitioner had been placed in a situation where she is not able to work in any of the school and literally none of the orders passed by the second respondent had been accepted by the concerned school Managements. Therefore, the petitioner once again

represented before the second respondent and also agitated the issue before the revenue authorities, as the petitioner had approached the Collector concerned to redress her grievance.

(h) Accordingly, a tripartite meeting seems to have been conducted in the presence of the revenue officials, where the second respondent had assured to give posting to the petitioner shortly and also assured to pay the salary during the interregnum period, where, the petitioner was not permitted to work, inspite of the orders of this Court.

(i) Accordingly, by order dated 21.6.2003, the second respondent passed an order redeploying and posting the petitioner in a school called St. Joseph's Primary School, Vizhunthaiambalam at Kanyakumari District, where the petitioner joined on 24.6.2003 and had been continuously working there."

(iv) The petitioner had not been paid salary from 01.09.2002 to 23.6.2003 as either she was not permitted to work or even was redeployed, the concerned school management had not taken her for the job. Therefore, the petitioner inorder to get the salary for the said period, had filed a detailed representation to the second respondent on 09.10.2003. Since the said representation was not considered and

decided and it was kept pending, the petitioner had approached this Court by filing a writ petition in W.P.No.36051 of 2003, wherein this Court by final order dated 10.12.2003 directed the second respondent to decide the said representation dated 09.10.2003 of the petitioner and pass a reasoned order and communicate the same to the petitioner within a time frame.

(v) Only pursuant to the said directive issued by this Court, the second respondent has passed an order on 24.3.2004, whereby the request of the petitioner to get salary from the period 01.09.2002 to 23.6.2003, was rejected. Aggrieved by the said order of the second respondent, dated 24.3.2004, the petitioner has filed the present writ petition with the aforesaid prayer.

2. Contesting the said case of the petitioner, the second respondent has filed a counter, where the following averments has been given:

(i) The petitioner was appointed at Kasturba Middle School, Therur, which is a non minority school and the petitioner's appointment was approved by the second and the third respondents. It was also admitted in the counter that the petitioner had not been paid salary from 01.09.2002 to 23.6.2003. The reason given for non

payment of salary from the said period, according to the respondents, is that the petitioner during the said period did not work in any school.

(ii) The counter would further state that, as per G.O.Ms.No.525, School Education Department, dated 29.12.1997, it is the duty of the respondent department to redeploy excess teachers. Accordingly, it was found by the department that four teachers were in excess in the school, namely, Kasturba school where the petitioner worked. The counter further states that out of the four, since one post was kept vacant, the remaining three posts where the teachers worked, including the petitioner had to be redeployed. Accordingly, two teachers were redeployed to a school called S.M.R.V. Primary School, Vadasery and the petitioner was redeployed to a school called St. Aloysious Middle School. The two teachers re-deployed to S.M.R.V Primary School had been taken by the said school. However, the petitioner, who had been redeployed to St. Aloysious Middle School was not taken by the said school. Therefore, the petitioner was allowed to re-join duty in the Kasturba School itself and therefore, she was paid the salary for the month of August 2002.

(iii) It is further averred in the counter that, the petitioner had given declaration that she is willing to work under any Management

school in the State due to the redeployment of excess teachers. Therefore, the petitioner had been transferred to Virudhunagar District by order dated 04.09.2002. The counter would further state that, however, DEEO of Virudhunagar District informed to the second respondent that he was not able to give postings to the petitioner for want of vacancy. Thereafter, the petitioner had been once again redeployed to Ramanathapuram District by order dated 11.10.2002. In the meantime, the petitioner challenging the order of redeployment, dated 04.09.2002 to Virudhunagar District, had approached this Court by filing W.P.No. 35196 of 2002, where he obtained an interim order of stay of the said order, by order of this Court dated 11.11.2002.

(iv) The counter would further state that in the Cont.P.No.78 of 2003, this Court, since has directed the respondents to post the petitioner in same Taluk or in the district, the petitioner had been transferred to St. Crusulas Primary School at Kulasekaram, as per the request of the petitioner on 07.03.2003. However, the Management of the said school refused to admit the petitioner to join duty. The counter would further state that, therefore, the petitioner was transferred to one St.Joseph's Primary School by proceedings dated 21.6.2003, where the petitioner joined duty on 24.6.2003 and was

receiving salary from that date.

(v) The counter affidavit of the second respondent would further state that, the second respondent gave a written statement before the Peace Committee Meeting on 18.6.2003 regarding the payment of salary and to issue redeployment order to the petitioner. Accordingly, the petitioner had been given posting at St. Joseph's Primary School, where he joined duty on 21.6.2003. However, the second respondent never gave any assurance to pay salary to the petitioner for the period from 01.09.2002 to 23.6.2003, but only gave assurance to settle the issue after getting orders from the first respondent.

(vi) It is further averred in the counter affidavit that the second respondent had taken earnest steps to redeploy the petitioner to the nearby school but, the Managements refused to admit the petitioner to join duty.

(vii) The petitioner failed to co-operate with the department to the deployment of surplus teachers. Therefore, the department was not responsible to pay salary to the petitioner for the said period i.e, from 01.09.2002 to 23.6.2003.

(viii) The counter of the second respondent would also have the averment that, as per G.O.Ms.No.525, School Education Department, dated 29.12.1997, if the deployment is not possible, the concerned teacher would be permitted to work in the very same school till retirement. Therefore, it is evidently clear that the excess teacher should be deployed to another needy school. Since the Accountant General, Chennai audited the accounts of the AE concerned and objected the payment of salary to the excess teachers, the department redeployed teachers wherever it found excess teacher working in a particular school.

3. I have heard Mrs.P.Mahalakshmi, the learned counsel appearing for the petitioner and Mr..A.Zakir Hussain, the learned Government Advocate appearing for the respondents.

4. It is the submission of the learned counsel appearing for the petitioner that the reason given in the impugned order that the department is not responsible for payment of the salary for the period for which salary is now sought for by the petitioner is absolutely, unjustifiable for the reason that, even according to G.O.Ms.No.525, dated 29.12.1997, if at all any difficulty is found out by the department in redeploying the excess teacher, such teacher shall be

permitted to work in the same school where she or he worked as excess teacher, till retirement.

5. The learned counsel for the petitioner would further state that, as far as the case of the petitioner is concerned, though an attempt was made to redeploy the petitioner by the second respondent in a nearby school in the same district and the petitioner also was immediately reporting duty to the said school, she was not taken by the Management of the School. Therefore, the petitioner had been permitted to work in the school where she worked. Upto this step, it was in consonance with the guidelines issued in the said G.O.Ms.No.525, dated 29.12.1997.

6. The learned counsel would further state that, however, in the subsequent events, the petitioner was deployed to far away place, ie., in Virudhunagar District where also the concerned DEEO has refused to take the petitioner for want of vacancy. Once again, the petitioner had been redeployed to Ramanathapuram District. Since the petitioner had challenged the order of redeployment to a far away place i.e., order dated 04.09.2002, that was stayed by this Court and inspite of the order of stay, the petitioner was not permitted to work at Kasturba school, where she was working originally. The second

respondent also had not come forward to rescue the petitioner inspite of the orders passed by this Court.

7. The learned counsel would further state that only after getting order from this Court in contempt petition, once again the second respondent started redeploying the petitioner to a nearby school, namely, St. Crusulas Primary School. Even that Management also had not taken the petitioner. Thereafter, on further agitating the issue by the petitioner in the presence of the revenue officials, it was assured by the second respondent to give posting to the petitioner, immediately, in any of the school in that locality and also to pay salary. Accordingly, she was finally placed at St. Joseph's Primary School, where she immediately, joined on 24.6.2003.

8. The learned counsel for the petitioner, therefore would submit that, these chain of events, would go to show that certainly, on the side of the petitioner there is no flaw, as at any point of time, the petitioner had not refused to join in any of the school in Kanyakumari District, where the petitioner was redeployed, atleast three times. Each time, only the concerned school Management had not given postings to the petitioner. Since those schools are aided schools, coming under the control of the second respondent, it is for

the second respondent to take effective steps to implement his order. Instead, the second respondent has not taken any steps to implement his order by mandating the said school management to take the petitioner, who was redeployed. Therefore, the delay caused in joining the redeployed school is not on the part of the petitioner, but because of the inaction on the part of the respondents, especially the office of the second respondent and therefore, no blame can be put against the petitioner. Therefore, the only reason cited in the impugned order to refuse salary to the petitioner for the period from 01.09.2002 to 23.6.2003, is also unjustifiable and therefore, the writ petition has to be allowed.

9. Per contra, Mr. A. Zakir Hussain, the learned Government Advocate appearing for the respondents by relying upon the submissions made in the counter affidavit filed by the second respondent would submit that, though initially the petitioner had been redeployed to a school in the same district, the petitioner was not able to join in the said school, as the Management of the school had refused to take the petitioner. Therefore, she was permitted to continue for a while at the school where she worked.

10. The learned Government Advocate would further submit

that thereafter, when redeployment was given to other district, namely, Virudhunagar District on the basis of the consent / declaration given by the petitioner, that order could not be implemented, because the DEEO concerned of Virudhunagar District also could not take the petitioner by way of redeployment, for want of vacancy. Therefore, the second respondent had no other option, except to redeploy the petitioner to Ramanathapuram District and in the meanwhile, since the petitioner had approached this Court by filing writ petition as stated supra and obtained orders of stay, the second respondent could not proceed further.

11. The learned Government Advocate would further state that even during the hearing of the contempt petition, the difficulty faced by the department was placed before this Court. Considering the same, this Court in the contempt proceedings directed the department to place the petitioner in any of the schools in that taluk or nearby taluk in the same district.

12. The learned Government Advocate would further state that, only pursuant to the directive issued by this Court in the contempt proceedings, further order of redeployment was given to join in St. Crusulas Primary School, where also the petitioner was not able to

join. Therefore, at last the petitioner had been given posting at St. Joseph's Primary School, by order dated 21.6.2003 where the petitioner joined at 24.6.2003.

13. Therefore, the learned Government Advocate would submit that, at any point of time, the second respondent or any other respondent was not at fault, as, inspite of several earnest efforts taken by the second respondent, the petitioner could not be successfully redeployed to a school located in a taluk or in the district and moreover, since the petitioner had obtained stay of the order of redeployment to other district, no further proceedings could be issued by the second respondent and therefore, the period i.e., from 01.09.2002 to 23.6.2003, admittedly, the petitioner did not work in any school. Therefore, by adopting the theory of no work and no pay, and also the reason for not working in the said period by the petitioner cannot be attributed to the respondents, the petitioner cannot claim salary for the said period. Therefore, the request made by the petitioner to give salary for the said period, was rightly rejected by the second respondent through the impugned order. Hence, the learned Government Advocate submits that the order impugned, is justifiable and hence, requires no interference from this Court.

14. I have considered the said submissions made by both sides and also perused the materials placed before this Court.

15. The only issue raised in this writ petition is, as to whether the petitioner is entitled to claim salary for the period from 01.09.2002 to 23.6.2003. It is not in dispute that the petitioner was appointed in a sanctioned vacancy as a Secondary Grade Teacher and her appointment was approved by the respondents.

16. It is also not in dispute that though three teachers including the petitioner were deployed, two teachers had been taken by the deployed school, however, the petitioner had not been taken in the school, where she was deployed.

17. It is also an undisputed fact that since the petitioner had not been taken by the deployed school, she was permitted to continue in the school, where i.e., Kasturba School, she worked for a month, i.e., August 2002 and she was also given salary for the said month.

18. However, only subsequently, the petitioner had been redeployed to a far off place, i.e., Virudhunagar District, where also

the fact remains that the DEEO concerned in the said district had expressed his inability to take the petitioner for want of vacancy in that district. Thereafter, the petitioner once again had been redeployed to Ramanathapuram District and in the meanwhile, the earlier deployment order dated 04.09.2002 to Virudhunagar District itself was stayed by this Court at the instance of the petitioner, who filed writ petition as stated supra.

19. Once the order of redeployment dated 04.09.2002 was stayed by this Court and the petitioner had already been permitted to work in the school, namely, Kasturba School, she should have been permitted to continue in the said school for two reasons.

20. Firstly, this Court by interim order of stay, stayed the operation of the redeployment order dated 04.09.2002. Secondly, even as per G.O.(Ms).No.525 dated 29.12.1997, if the redeployment of excess teacher is not possible, he or she shall be permitted to work in the school, where she / he worked, till his or her retirement.

21. However, the fact remains that, when both the reasons were available, one is by way of order of this Court and another is by way of the Government Order giving clear indication to that effect, neither

the school, i.e., the Kasturba school, where the petitioner worked already, had permitted the petitioner to work in that school, nor the second respondent had given any proceedings directing the said school to permit the petitioner to continue. This action on the part of the second respondent cannot be redirected towards the petitioner as it is the second respondent alone ought to have directed the school, where the petitioner worked already, to permit the petitioner to continue in that school.

22. Moreover, when no action was taken pursuant to the orders passed by this Court, the petitioner had approached this Court by filing the contempt petition, where the department expressed its inability to permit the petitioner to continue in the same school because of no vacancy, then it was directed by this Court in the said contempt proceedings to give her posting in any of the schools located either in the same taluk or in any other nearby taluk located in the same district.

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23. Pursuant to the said directives issued by this Court, when order of posting was given by the second respondent to the petitioner to work in St. Crusulas School at Kulasekaram, where also the Management had not permitted the petitioner to join duty. The second

respondent seems to have not taken any steps to direct the Management of the said school to take the petitioner to work there. However, he had subsequently, issued further order dated 21.6.2003 giving posting to the petitioner to one St.Joseph's School at Vizhunthaiambalam, where she joined on 24.6.2003.

24. All these factors would go to show that in every moment, though persistent steps were taken and diligent action had been shown by the petitioner to work either in the school where she worked already or any other school located in the same taluk or district and whenever efforts were taken by the second respondent to deploy the petitioner to the schools in that locality or district, those Managements had refused to take the petitioner. One cannot lose sight of the fact that all these schools, though come under private Management, are getting aid from the Government, for salary. Therefore, these aided schools cannot refuse the redeployment, when it is made by the department and if at all, any practical difficulty arose for want of vacancy etc, in a school, where the petitioner had been deployed, it is the duty of the second respondent to either provide her posting in any other school, where vacancy is available or atleast permit the petitioner to continue in the same school, i.e., Kasturba School.

25. This action on the part of the second respondent was possible because, even as per G.O.Ms.No.525, dated 29.12.1997, as stated supra, if the department found that the redeployment was not immediately possible inspite of the fact that the particular teacher working in that school is excess, that teacher shall be permitted to continue in the school, where she is already working till his or her retirement. This leverage, as has been indicated in the said G.O.Ms.No.525, has been given by the Government only in order to meet out the situation like this and to tide over this kind of extraordinary circumstances that arises, where redeployment is unworkable.

26. In this case, exactly when the same situation was confronted by the second respondent and it was also directed by this Court earlier, by way of interim order of stay and subsequently, by way of direction in the contempt proceedings, the second respondent had not taken any steps to permit the petitioner to continue in the Kasturba school itself, where the petitioner had worked and if such measure had been taken by the second respondent, it would not have been faulted even by the audit department, because this step was possible for the second respondent to take, in view of the leverage

given under G.O.Ms.No.525, dated 29.12.1997 as discussed above.

27. Therefore, this inaction or non-action on the part of the second respondent cannot be switched over or passed on to the petitioner and therefore, this Court finds that the reason given in the impugned order, that the non working for the period for which salary is sought for by the petitioner, is only because of the action on the part of the petitioner, and not on the part of the respondents, especially the second respondent, cannot be accepted or countenanced.

28. In view of the facts and circumstances and the discussions made above, I am of the considered view that the petitioner shall be entitled to claim salary for the said period as the non working of the said period by the petitioner is not because of her own action but because of the inaction on the part of the respondents, especially the second respondent and therefore, the petitioner would succeed in this writ petition.

29. In the result, the impugned order is set aside. The writ petition is allowed. The respondents shall pay salary to the petitioner for the period from 01.09.2002 to 23.6.2003 in one lumpsum within a

period of two months from the date of receipt of a copy of this order.

No costs.

Index:Yes
Internet: Yes
Kua

01.11.2017

R.SURESH KUMAR,J.

Kua

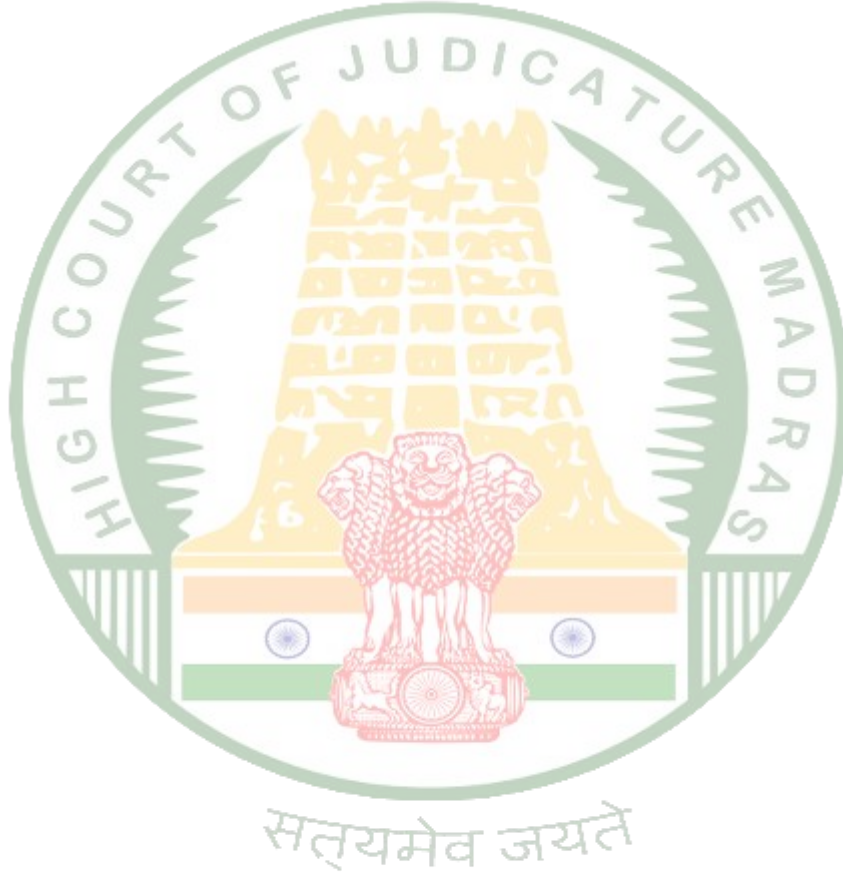
To

1. The Director of Elementary Education,
College Road, Chennai – 600 006.
2. The District Elementary Education Officer,
Nagercoil, Kanyakumari Dist.
3. The Assistant Elementary Educational Officer,
Karingal Range, Karingal Post, KK Dist.
4. The Assistant Educational Officer,
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W.P.No.18691 of 2004

01.11.2017



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