

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 28.07.2017

CORAM:

THE HON'BLE MR.JUSTICE N.KIRUBAKARAN

W.P.No.19560 of 2004

and

WPMP.Nos.23533 of 2004 and 1782 of 2007

SBM Primary School
Trichy Road,
Namakkal 637 002,
Rep by its Correspondent.

..Petitioner

Vs.

1. The District Elementary Educational Officer
Namakkal.

2. The Assistant Elementary Educational Officer,
Namakkal.

..Respondents

Prayer: This petition was filed under Article 226 of the constitution of India praying to issue a Writ of Certiorarified Mandamus, call for the entire records connected with the impugned order in Na.Ka.No. 896/A4/2002 dated 01.04.2002 passed by the first respondent and quash the same in the light of the dictum laid down in W.A.Nos.249, 282 44448 to 452 of 2002 batch dated 02.04.2004 and direct the respondents to repay the money already recovered including maintenance grant from the petitioner.

For Petitioner : Mr.S.N.Ravichandran

For Respondent : Mr.V.Anandhamoorthy
Additional Government Pleader

ORDER

The petitioner/school has employed Tmt.K.Selvarani and Tmt.V.Selvi as teachers on 01.11.1998 and 04.08.1998 respectively. These appointments were approved by the authorities and salary was also paid. Since the school had appointed the aforesaid teachers beyond the cut off date (i.e,) 19.05.1998, they were terminated from service, based on the judgment of the Division Bench of this Court dated 29.06.2001 and the amount which has been paid as salary is sought to be recovered by the authorities by impugned order dated 01.04.2002

dated Na.Ka.No.896/A4/2002. Hence, the petitioner/School has come before this Court.

2.Heard Mr.S.N.Ravichandran, learned counsel appearing for the petitioner and Mr.V.Anandhamoorthy, learned Additional Government Pleader appearing for the respondents.

3.The issued raised in this Writ Petition is no more res integra and a Division Bench of this Court in The State of Tamil Nadu & Others V. Pallivasal Primary School reported in 2004-2-L.W.591 held that the amount already paid to the teachers cannot be recovered. The relevant portion of the order is extracted hereunder:

"6.The Government Order No:155 directs recovery of salary paid to the appellants/petitioners on the ground that prior to their completing the training, they could not have held the posts that were held by them. There is no dispute about the fact that these persons had actually worked. Salary paid to persons who had actually rendered service cannot be regarded as amount paid as gratis. More over the Division Bench had noticed the fact that these persons had been working and had indicated that it would be equitable to allow them to remain in employment. It was left to the Government to device a scheme by which these persons could acquire qualifications which were essential for holding the post to which they had been appointed at a time when they did not possess the qualification. The salary that had been paid to them during that period when they were actually teaching, even though without the requisite qualifications, in our view, is not an amount which they should be called upon to repay. It has been noticed by the Division Bench which upheld the G.O.Ms.No:559 that most of these teachers came from a poor background, that it was after a great deal of effort before that they could equip themselves to a limited extent and thereafter had been working in the schools for meager salaries. Directing such persons to repay huge amounts, huge amounts because the entire salary paid over a period of nearly nine years would amount to inas much as over five lakhs of rupees per person, would cause untold hardship to such teachers. We, therefore, set aside that part of the Government Order namely sub-para (vii) of Para 3 which directs recovery from these teachers.

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11. We, therefore, allow the writ appeals and writ petitions to the limited extent of directing that no recovery be made from the persons to whom the Government had already released grants and paid salaries. The writ appeals/writ petitions are disposed of accordingly. Connected miscellaneous petitions are closed."

4. In the light of the above judgment, this writ petition is allowed. The impugned order dated 01.04.2002 passed by the first respondent in Na.Ka.No.896/A4/2002 is quashed. Pursuant to the impugned order, it is stated that a sum of Rs.97,204/- is said to have been paid by the petitioner. The first respondent has also admitted in his letter dated 20.03.2002 in Na.Ka.No.192/A4/2002 that a sum of Rs.11,445/- was already recovered from the petitioner. Therefore, both the above said amounts have to be returned to the petitioner within a period of eight weeks from the date of copy of this order. Consequently, connected miscellaneous petitions are also closed. No costs.

rm

Sd/-
Asst.Registrar (CS IX)

/true copy/

Sub Asst. Registrar

To

1. The District Elementary Educational Officer
Namakkal.
2. The Assistant Elementary Educational Officer,
Namakkal.

+ 1 CC TO THE GOVT. PLEADER, SR 55028

KR/13/11/18

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