



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 11.08.2017

CORAM:

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN
AND
THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.A. (MD) .No.1142 of 2014
and
M.P. (MD) No.1 of 2014

1.The Director of School Education,
Higher Secondary,
Chennai-6.

2.The District Educational Officer,
Musiri, Trichy District.

... Appellants/Respondents

Vs.

1.S.P.Vimala

...1st Respondent/Writ Petitioner

2.The Headmaster,
Zamindar Higher Secondary School,
Kattuputhur, Thottiam Taluk,
Trichy District.

...2nd Respondent/3rd Respondent

PRAYER : Writ Appeal is filed under Clause 15 of Letters Patent, to set aside the order dated 04.04.2014 in W.P(MD).No.11232 of 2008.

Prayer in WP(MD). 11232/ 2008 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, calling for the records pertaining to the order passed by the first respondent No. Pa.Mu.No. 103156/D1(2) 04 dated 27/07/2005 and confirmed by the first respondent by his order O.Mu.No. 113707/D (E2)/05 dated 29/09/2008 quashes the same in so far as it refused to confer benefits in the cadre of Lab Assistant from 29/05/2000 and direct the respondents to approve the appointment of the petitioner as Lab Assistant from 29/05/2000 and confer all consequential benefits in the post of Lab Assistant.

For Appellants : Mr.T.S.Mohamed Mohideen, AGP

: Mr.V.Panneer Selvam



JUDGMENT

[Judgment of the Court was delivered by G.R.SWAMINATHAN, J.]

This Writ Appeal is directed against the order dated 04.04.2014 made in W.P.(MD) No.11232 of 2008 filed by the first respondent herein.

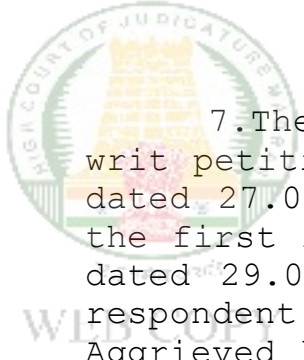
2. According to the first respondent, she joined the Zamindar Higher Secondary School as Record Clerk on 29.09.1997. Her appointment was not approved. Then vacancy arose in the post of Lab Assistant in the year 2000. The name of the first respondent was also sponsored and she was appointed as Lab Assistant on 29.05.2000. The authorities returned the papers on the ground that the said appointment was made without prior permission. In the meanwhile there arose inter se dispute within the management.

3. The new secretary of the school terminated the services of the first respondent in the post of Lab Assistant. Questioning the same, the first respondent filed Writ Petition in W.P.(MD) No.9518 of 2002. This Court, directed the first respondent to move the appellate authority that is the Director of School Education. The Director of School Education passed an order dated 27.07.2005, holding that if appointment of Lab Assistant was not approved, she should have been reverted back to the post of Record Clerk and she should not have been terminated. There upon, the writ petitioner joined the post of Record Clerk on 16.08.2005.

4. The writ petitioner was not paid any salary for the period, when she was out of employment. According to the petitioner she was not at fault. She would also contend that prior permission from the department was not required for appointing her as Lab Assistant.

5. In the meanwhile, the composition of the school management underwent change. The earlier termination order was cancelled by the subsequent Secretary and the writ petitioner was reinstated in the year 2003. Now the question was regarding the mode of treating the period of termination during 2002-03. In these circumstances, the first respondent herein filed in W.P.(MD) No.9925 of 2007. The said writ petition was disposed of with a direction to the Director of School Education to consider her case. The Director of School Education by order dated 29.09.2008, noted that an order has already been passed on 27.07.2005, and therefore, it is not possible to pass a fresh order in respect of the very same issue. Therefore the first respondent herein filed the present writ petition challenging both orders dated 27.07.2005, and dated 29.09.2008.

<https://hcservices.ecourts.gov.in/hcservices/>
6. The first respondent sought approval of her appointment as Lab Assistant from 29.05.2000 and conferment of all consequential benefits in the said post.



7. The learned Judge by order dated 04.04.2014, allowed the writ petition. The proceedings of the Director of School Education dated 27.07.2005 and 29.09.2008 were set aside. The service of the first respondent as Lab Assistant from date of her appointment dated 29.05.2000 was approved. It was also held that the first respondent was entitled to the salary arrears and allowances. Aggrieved by the said order allowing the writ petition, this writ appeal has been filed.

8. Heard the learned Additional Government Pleader appearing for the appellants and the learned counsel appearing for the respondents.

9. It is pointed out by the appellants that following the issuance of the order dated 27.07.2005, by the Director of School Education, the first respondent/ the writ petitioner had executed a voluntary letter of undertaking to the effect that the period from 28.07.2002 and 17.01.2003 should be treated as leave on loss of pay. On this basis, the District Educational Officer, Musiri, had issued proceeding dated 22.06.2006, passing appropriate orders of regularization. This proceedings has not been challenged by the writ petitioner.

10. A mere perusal of the order dated 29.09.2008, would show that the issue of regularization of the writ petitioner's service had already been dealt with in the proceedings of the District Educational Officer, Musiri. Therefore, there is nothing to challenge in the said order dated 29.09.2008.

11. That apart, the reason for the writ petitioner being out of employment was on account of the internal management dispute. The department cannot be made to pay the salary to the writ petitioner when she was out of employment on account of the action of the management. More than any thing else, the writ petitioner accepted the order dated 27.07.2005, issued by the Director of School Education and also joined as Record Clerk with effect from 16.08.2005.

12. Another contention raised by the learned Additional Government Pleader appearing for the appellants is that between 2005 and 2008, the first respondent herein filed W.P.(MD)No.11396 of 2005 and W.P.(MD)No.9925 of 2007 for mandamus. She did not challenge the proceedings of the Director of School Education, dated 27.07.2005, or the proceedings dated 22.06.2006, issued by the District Educational Officer. Therefore, she cannot challenge them later. The department cannot be saddled with financial liabilities for the action taken by the second respondent/school management.

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13. The learned single Judge allowed the writ petition without taking note of these aspects. We therefore, set aside the order,



dated 04.04.2014. This writ appeal stands allowed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(CO)

WEB COPY

/True Copy/

Sub Assistant Registrar

To

1.The Director of School Education,
Higher Secondary,
Chennai-6.

2.The District Educational Officer,
Musiri, Trichy District.

+1cc to M/S.V.Panneer Selvam, Advocate SR.No. 72512

+1cc to Special Government Pleader, SR.No. 72893

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and

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das/gsp

JM/SKN RSK/SAR 1/30.11.2017/4P/5C