



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 17.08.2017

CORAM :

WEB COPY

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

W.A(MD)No.1284 of 2014

and

M.P(MD).No.1 of 2014

1.The District Elementary Educational Officer,
Tuticorin District,
Tuticorin.

2.The Additional Assistant Elementary Educational Officer,
Pudukottal Range,
Tuticorin-628 103.

...Appellants / Respondents

Vs.

1.P.Sudha

... Respondent / Petitioner

2.The Correspondent,
T.D.T.A Primary and Middle Schools,
Kulaiyankaraisal postrate,
Kulankaraisal, Tuticorin District.

... Respondent / 3rd Respondent

Prayer : Writ Appeal is filed under Clause 15 of Letter Patent, praying to set aside the order dated 20.02.2014 made in W.P(MD). No.10319 of 2010.

Prayer in WP(MD). 10319/ 2010 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a WRIT OF CERTIORARIFIED MANDAMUS or any other appropriate writ, or order, or direction, in the nature of a Writ, to call for the records and quash the impugned order issued by the 2nd respondent in his proceedings Na.Ka.No.307/Aa1/2010 dated 08.04.2010 and consequently direct the 1st Respondent to approve the appointment of the Petitioner as Vocational Instructor in Tailoring from the date of appointment from 11.03.2008 and confer all consequential benefits.

For Appellants : Mr.T.S.Mohammed Mohideen
Addl. Government Pleader

For R1 : Mr.T.Selvan
For R2 : No appearance

**J U D G M E N T****(Order of the Court was delivered by G.R.SWAMINATHAN, J.)**

This writ appeal is directed against the order dated 20.02.2014 allowing W.P(MD).No.10319 of 2010 filed by the first respondent herein.

2.The first respondent was appointed by the second respondent herein on 11.03.2008 as Vocational Instructor in Tailoring subject. The management forwarded the proposal for approving her appointment. But no action was taken. Therefore, she filed W.P(MD).No.7779 of 2010. A direction was given for passing orders. But, the Additional Assistant Elementary Educational Officer, Tuticorin Union, passed an order of rejection by order dated 08.04.2010. This was challenged by the first respondent in W.P(MD).No.10319 of 2010. She also sought a direction for approving her appointment as Vocational Instructor in Tailoring subject with effect from 11.03.2008 and for conferment of all consequential benefits. The appellants herein filed a detailed counter affidavit. It was submitted that there was no sanctioned post of Pre-Vocational Instructor in the said school. One Mrs.Indra Eben was working as a part time Vocational Instructor. To enable the qualified part time Vocational Instructor to become full time Pre Educational Instructor, the Government issued G.O.M.S.No.224, Education Science and Technology Department, dated 24.03.1994. It was made clear that the part time Pre-Vocational Instructors on being upgraded as full time instructor in a phased manner will be absorbed as Secondary Grade Teachers. But the posts held by them will extinguish automatically on their reaching the age of superannuation. Thus when Tmt.Indira Eben retired from service, the post also automatically got extinguished. There was no post in which the first respondent could have been appointed. Even though such a specific stand was taken in the counter affidavit, the learned judge chose to allow the writ petition.

3.We are of the view that the appellants can be directed to



pay salary for a teaching staff working in an Aided School only if the candidate is holding a sanctioned post. If there is no sanctioned post, the question of issuing a direction to the department to approve the appointment will not arise. In this case, the appellants have convincingly demonstrated that there was no post of Vocational Instructor. When the first respondent was appointed, the post held by the previous incumbent namely, Tmt.Indira Eben had already got extinguished. Without considering this vital aspect, the writ petition has been erroneously allowed. The second respondent school management was not justified in appointing the first respondent. We therefore set aside the order dated 20.02.2014 made in W.P(MD).No. 10319 of 2010.

4.This writ appeal stands allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS-III)
/True Copy/

Sub Assistant Registrar

To

1.The District Elementary Educational Officer,
Tuticorin District,
Tuticorin.

2.The Additional Assistant Elementary Educational Officer,
Pudukottal Range, Tuticorin-628 103.

+1cc to THE SPECIAL GOVERNMENT PLEADER in SR. No. 73068

+2cc to Mr.T.SELVAN Advocate in SR. No. 73161

RMK

JS/KP/SAR.4/8.12.2017/3P-6C

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