



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 24.02.2017

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBBIAH
AND

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

W.A. [MD].Nos.1361 and 1362 of 2014
and

M.P. (MD) Nos.3 and 2 of 2014

- 1.The District Elementary Educational Officer,
Thirunelveli,
Thirunelveli District.
 - 2.The Assistant Elementary Educational Officer,
Palayamkottai (Urban),
Tirunelveli District.
- : Appellants/Respondents 1,2 in
both W.As.

Vs.

- 1.S.Mohamed Ismail. : Respondent No.1 in W.A.(MD)No.1361/2014 /
Petitioner in WP(MD).No.15451/2013
- 1.M.Jailani : Respondent No.1 in W.A.(MD)No.1362/2014 /
Petitioner in WP(MD).No.15450/2013
- 2.The Correspondent,
Hameem Middle School,
Melapalayam,
Tirunelveli District. : Respondent 2 / Respondent 3 in
both W.As.

COMMON PRAYER: Writ Appeals are filed under Clause 15 of the Letters Patent against the order of a learned Single Judge of this Court dated 26.02.2014, made in W.P.(MD).Nos.15451 and 15450 of 2013 respectively.

Prayer in WP(MD). 15450/ 2013 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Certiorarified Mandamus, calling for records relating to the order passed by the 1st respondent in his proceedings in O.Mu.No. 3763/A-2/2010 dated 02/07/2010 and the consequential order passed by the 2nd respondent in his proceedings in O.Mu.No. 277/A-1/2012 dated 02/07/2012 and quash the same and consequently direct the respondents to approve the appointment of the petitioner from the date of appointment i.e.from 22/07/2009 with all consequential benefits.

Prayer in WP(MD). 15451/ 2013 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Certiorarified Mandamus, calling for records relating to the order passed by the 1st respondent in his proceedings in O.Mu.No. 6382/a-

2/2010 dated 07/09/2010 and the consequential order passed by the 2nd respondent in his proceedings in O.Mu.No. 277/A-1/2012 dated 02/07/2012 and quash the same and consequently direct the respondents to approve the appointment of the petitioner from the date of appointment i.e. from 01/06/2010 with all consequential benefits.

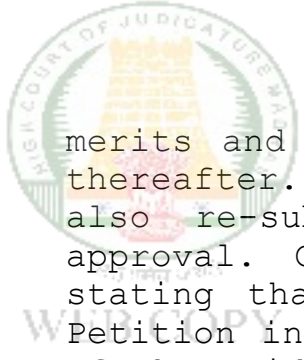
For Appellants : Mr.VR.Shanmuganathan,
in both W.As. Special Government Pleader
For Respondent No.1 : Mr.Panneerselvam
in both W.As.
For Respondent No.2 : Mr.N.Dilip Kumar
in both W.As.

COMMON JUDGMENT

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

These Writ Appeals have been filed as against the order of the learned Single Judge of this Court dated 26.02.2014, made in W.P. (MD).Nos.15451 and 15450 of 2013 respectively.

2 The first respondent in W.A.(MD)No.1361 of 2014 passed 10th standard in 1993, 12th standard in 1995, B.Sc., in 1998 and lastly, B.Ed., in 2006 and as such, he is fully qualified for the post of B.T. Assistant. Similarly, the first respondent in W.A.(MD)No.1362 of 2014 passed 10th standard in 1996, 12th standard in 1998 and Diploma in Teacher Education in 2007 and hence, she is fully qualified for the post of Secondary Grade Teacher. In the second respondent School, the post of B.T. Assistant became vacant on 31.05.2010 due to retirement of one M.N.Kabeep Rahamadullah. Likewise, the post of Secondary Grade Teacher became vacant on 20.07.2009 due to resignation of one Mrs.Kanniammal. Since the second respondent School being a Minority Institution, the Management has got every right of appointment. Thus, the Management selected and appointed the first respondent in both the Writ Appeals as B.T. Assistant and Secondary Grade Teacher respectively. The Management also sent a proposal for approval of their appointment. However, the first appellant returned the proposal on 13.03.2010. Hence, the School Management filed a Writ Petition in W.P.(MD)No.4841 of 2010 challenging the order of the first appellant dated 13.03.2010, returning the proposal for approval. The said Writ Petition was allowed on 20.04.2010 observing that the reason assigned in the impugned order is the pendency of the Writ Petition in W.P.(MD)No.13262 of 2009 which is stated to be due to the imposition of the direct payment of salary to the teachers by the Educational Authorities because of the dispute among the Management. On the fact of it, such dispute has nothing to do with the appointment of the first respondent in both the Writ Appeals in the School. Hence, according to the first respondent in both the Writ Appeals, there is no impediment to approve their appointment. In fact, this Court, in the said order, has observed that if the Management re-presents the entire proposal once again, within a period of one week, the first appellant shall consider the same on



merits and in accordance with law, within a period of four weeks thereafter. As per the direction of this Court, the Management also re-submitted the entire proposal to the appellants for approval. Once again, the first appellant has passed an order stating that there is a dispute in the Management and the Writ Petition in W.P.No.13262 of 2009 is pending and after the disposal of the said Writ Petition only, the proposal for approval would be considered. The Management again sent a proposal and also a remainder, but, the second appellant returned the same. Hence, the Writ Petitions.

3. The learned Single Judge, by order dated 26.02.2014, allowed the Writ Petitions and directed the first appellant to approve the appointment of the first respondent in both the Writ Appeals, within a period of eight weeks. It has also been observed that such approval of appointment of the first respondent herein is subject to the result of the pending civil suit. It is made clear that the first respondent in both the Writ Appeals shall not claim any equity, as the approval to be granted is subject to the result of the pending civil suit.

4. When the matter was taken up for consideration, it is the submission of the learned Special Government Pleader appearing for the appellants that the first respondent in both the Writ Appeals were appointed by the earlier Management. Since there was a dispute with regard to the Management of the School, proposal sent by the earlier Management was not approved.

5. However, the learned counsel for the first and second respondents submitted that the appointment of the first respondent in both the Writ Appeals was not objected by anyone and still they are working in the School. Moreover, the dispute with regard to the Management has come to an end. Therefore, there cannot be any impediment in approving the appointment of the first respondent in both the Writ Appeals.

6. Keeping in mind the submissions made on either side, we have also perused the materials available on record carefully.

7. On a perusal of the order impugned in the Writ Appeals, it is seen that the learned Single Judge has given a direction to the first appellant to approve the appointment of the first respondent in both the Writ Appeals only subject to the result of the pending civil suit. Further, in the order, the learned Single Judge has also observed that the first respondent in both the Writ Appeals shall not claim any equity as the approval to be granted is subject to the result of the pending civil suit.

8. Considering the facts and circumstances of the case, the learned Single Judge has rightly dealt with the issue on hand and given certain direction, in which, absolutely, we do not find any infirmity.



9. At this juncture, the learned Special Government Pleader submitted that in W.P.(MD)No.15451 of 2013, the first respondent herein has challenged the inter-departmental communication dated 07.09.2010 sent by the District Elementary Educational Officer to the Assistant Elementary Educational Officer. Since it is an inter-departmental communication, the prayer with regard to quash the said proceedings, cannot be entertained.

10. We find some force in the above said submission made by the learned Special Government Pleader. Therefore, the prayer made by the first respondent herein in W.P.(MD)No.15451 of 2013 to quash the proceedings dated 07.09.2010, which is an inter-departmental communication, is rejected. However, there shall be a direction to the appellants to approve the appointment of the first respondent in both the Writ Appeals, as observed by the learned Single Judge in its order dated 26.02.2014, within a period of four weeks from the date of receipt of a copy of this judgment.

11. The Writ Appeals are disposed of with the above direction. No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS-I)

/TRUE COPY/

Sub Assistant Registrar

+2 cc to M/R.V.PANNEER SELVAM, Advocate, SR.No:11002,11001

sml
sva/skn/14.03.2017/4p/3c

**COMMON JUDGMENT MADE IN
W.A. (MD)Nos.1361 and 1362 of 2014
and
M.P. (MD)Nos.3 and 2 of 2014
Dated: 24.02.2017**