



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED 18.01.2017

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBBIAH
and
THE HONOURABLE MRS. JUSTICE J.NISHA BANU

W.A. (MD) No.665 of 2015

and

M.P. (MD) .No.1 of 2015

- 1.The Director of Elementary Education,
College Road, Chennai - 600 006.
- 2.The District Elementary Education Officer,
Trichy District, Trichy. .. Appellants/
Respondents 1 & 2

vs.

- 1.S.Daniel Suresh ... 1st respondent /
Writ Petitioner
- 2.Tamil Evangelical Lurthern Church,
rep. by its Chairman,
Education Board, PB No.86,
Tranquebar House, Trichy -1.
- 3.The Correspondent,
TELC Middle School,
Kalla Theru, Trichy - 8. .. Respondents 2 & 3/
Respondents 3 & 4

Writ Appeal has been filed under Clause 15 of the Letters Patent, against the order dated 15.12.2014, made in W.P.(MD). No.14741 of 2014 by a learned Single Judge of this Court.
Prayer in WP(MD). 14741/ 2014 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Certiorarified Mandamus, to call for the records on the file of the 1st Respondent in connection with the impugned order of rejection passed by him in his Proceedings in Na.Ka.NO. 28567/G2/2013 dated 04.04.2014 and quash the same as illegal and consequently direct the 1st respondent to approve and pay arrears of salary with interest for the period from



01.10.2011 onwards within the time limit that may be stipulated by this Honourable Court and pass such other or further orders.

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For appellants

: Mr.S.Chandrasekar,
Government Advocate

For 1st respondent

: Mr.G.Thalaimutharasu

For respondents 2 & 3

: No appearance

JUDGMENT

(Judgment of the Court was delivered by **R.SUBBIAH, J.**)

This writ appeal has been filed by the State as against the order, dated 15.12.2014, passed by a learned Single Judge of this Court in W.P.(MD).No.14741 of 2014, whereby and whereunder the impugned order passed by the first appellant rejecting the request of the first respondent to approve his post and disburse salary from 01.10.2011, was set aside.

2.The brief facts of the case which are necessary to decide the writ appeal are as follows;

(a) The first respondent was appointed by the second respondent as B.T. Assistant in one of its School viz., TELC Middle School, Mayiladuthurai on 28.07.2008 in the vacant place of Mr.C.Samuel Chelladurai and the same was also approved by the District Elementary Educational Officer, Nagapattinam on 16.12.2008. While so, on 03.10.2011, he was transferred from the said school to TELC Middle School, Trichy, viz., the third respondent herein in the vacancy arose due to the retirement of one H.C.Daisy and accordingly, he joined in the transferred place on 13.10.2011. The third respondent school also approved the transfer order of the first respondent by passing a resolution. The said transfer was also approved by the Elementary Educational Officer, Nagapattinam, vide his proceedings in O.Mu.No.5676/A2/2011, dated 06.01.2012. Subsequently, the first and third respondents submitted a petition to the second respondent to approve the transfer of the first respondent and to disburse salary. But, the same was rejected by the 2nd appellant on 17.10.2012 stating that there is surplus staff. Another representation made, in this regard, was also rejected for the very same reason by the second appellant on 05.04.2013.

(b) While so, the first respondent has made a representation to the first appellant on 28.09.2013. Since there was no response to the same, the first respondent has approached this Court in W.P.(MD).No.5676 of 2014 and this Court, vide order dated 10.01.2014, directed the first appellant to consider the said



representation of the first respondent and pass orders. In pursuance of the same, by the impugned order, dated 04.04.2014, the first appellant has rejected the claim of the first respondent on the ground that the post of B.T. Assistant was not vacant and therefore, the post cannot be approved. But, the first appellant failed to consider the approval for transfer given by the District Elementary Educational Officer, Nagapattinam, dated 06.01.2012 as well as G.O.Ms.No.144, School Education (D1) Department, dated 04.07.2008. Hence, the first respondent has filed the writ petition challenging the order dated 04.04.2014 and also for consequential direction to the first appellant to approve and pay arrears of salary with interest for the period from 01.10.2011 onwards. After hearing both sides, the learned Single Judge has allowed the writ petition. Aggrieved over the same, the State has filed the present writ appeal.

3.We have heard the learned Special Government Pleader appearing for the appellants and the learned counsel appearing for the first respondent and we have also perused the records carefully.

4.The main submission of the learned counsel for the appellants is that while passing the order, the learned Single Judge has failed to see that the transfer of the first respondent was made in the Secondary Grade vacancy, without any permission for conversion and the said Secondary Grade post has already been surrendered as surplus. Admittedly, the District Elementary Educational Officer, Nagapattinam has granted approval to the transfer order given to the first respondent. As rightly held by the learned Single Judge, when the transfer of the first respondent to TELC Middle School, Trichy, has been approved by the District Elementary Educational Officer, Nagapattinam, they cannot deny to pay salary to the first respondent. This Court does not find any infirmity or illegality in the order passed by the learned Single Judge.

5.In the result, this writ appeal is dismissed. No costs. Consequently, connected miscellaneous petition is also dismissed.

Sd/-

Assistant Registrar

/True Copy/

Sub Assistant Registrar

TO

1.The Director of Elementary Education,

<https://hcservices.education.tn.gov.in/Services/> Chennai - 600 006.



2.The District Elementary Education Officer,
Trichy District, Trichy.

+1 cc to Mr. G.THALAI MUTHARASU, Advocate, Sr.No: 3449

+1cc to M/S Special Government Pleader, Sr No. 3068

gcg

MAS/RSK/SAR1:23.02.2017:4P/5C

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