



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 27.02.2017

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THE HON'BLE MR.JUSTICE S.VAIDYANATHAN

W.P. (MD) No.2290 of 2014

K.Sam Asir

... Petitioner

-vs-

1. The Secretary,
Department of School Education,
Tamil Nadu Secretariat,
St. George Fort, Chennai.
2. The Director,
Department of School Education,
DPI Compound, Chennai.
3. The District Educational Officer,
Tirunelveli Educational District,
Tirunelveli.
4. The Correspondent,
St. Johns Higher Secondary School,
Palayamkottai,
Thirunelveli District.

... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorarified Mandamus, calling for the records pertaining to the 3rd respondent in Na.Ka.No.786/A3/2013 dated 10.09.2013 and quash the same and consequently direct the 3rd respondent to approve the represented transfer proposal dated 19.2.2013 and disburse all other service and monetary benefit to the petitioner from 5.6.09 to pass such further or other orders as this Honble Court may deem fit.

For Petitioner	: Mr.S.Chella Pandian
For R1 to R3	: Mr.M.Rajarajan Govt. Advocate
For R4	: No Appearance

O R D E R

<https://hcservices.ecourts.gov.in/hcservices/>
This petition has been filed, seeking to quash the impugned order dated 10.09.2013 passed by the 3rd respondent in Na.Ka.No.786/A3/2013, by which, his transfer proposal was declined.



The petitioner also sought a direction to the 3rd respondent to approve the re-presented transfer proposal dated 19.2.2013 and disburse all other service and monetary benefits to the petitioner from 05.06.2009 .

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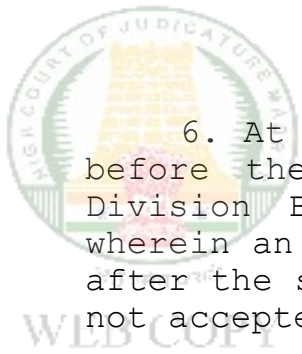
2. The case of the petitioner is as follows:

i) He was appointed as P.G.Assistant on 15.06.1989 initially in Bishop Asaria memorial Higher Secondary School, Vallvanvalai, which is administered by CSI Diocese, Tirunelveli and his appointment was approved on 14.03.1990; that when he was working in Walker Higher Secondary School, Donur, he was transferred to the 4th respondent school in the sanctioned post by order dated 04.06.2009; that pursuant to which, he was relieved from the said school and permitted to join the 4th respondent school in the place of one Manonmaniam; that one Sanki John, who was appointed in the place of Manonmaniam by an incompetent authority was ousted from the said post by the Management, against which, he filed a writ petition in W.P.No.8132 of 2008 and this Court upheld the order and dismissed the writ petition; that again the said Sanki John preferred an appeal in W.A.254 of 2009, which was subsequently allowed by the Division Bench of this Court, against which, the 4th respondent herein filed SLP No.16705-16710/10 before the Supreme Court, wherein an interim order of status quo was granted; that the petitioner has been working in the school without salary for the last five years and after obtaining interim orders from the Apex Court, the 4th respondent re-presented his proposal for fresh consideration along with necessary answers to the query and that after a lapse of four years, the present impugned order came to be passed, rejecting to approve the proposal on the ground of pendency of case before the Apex Court.

3. Learned counsel for the petitioner would submit that the petitioner has been all along working in the sanctioned post for more than 10 years as P.G.Assistant and the act of the 3rd respondent in not accepting his transfer order and not disbursing the salary is utter violation of Article 21 of the Constitution of India, which is unjust and unfair and liable to be set aside.

4. Heard the learned counsel on either side.

5. A careful reading of the averments raised in the affidavit filed in support of the petition would unfold the fact that pursuant to the vacancy on account of retirement of one Manonmaniam, at a normal course, the petitioner was transferred to the 4th respondent school from Walker Higher Secondary School, Donur by order dated 04.06.2009, which ultimately ended up in a dispute, because in the place of the said Manonmaniam, another employee by name Sank John was appointed, but subsequently, he was ousted from the post on the ground of appointment by an incompetent person. Later on, in a hasty manner, the petitioner was transferred to the said place and has been made as a scapegoat.



6. At last, the 4th respondent filed SLP No.16705-16710 of 2010 before the Supreme Court, challenging the order of the Hon'ble Division Bench of this Court, which was favouring Sanki John, wherein an order of status quo was ordered to be maintained and even after the said interim order, the petitioner's transfer proposal was not accepted, which forced him to file the present petition.

7. This Court, while dealing with the similar circumstances in the case of **D.Samuvel Raja Singh vs. The Secretary, Department of School Education, Tamil Nadu Secretariat, St.George Fort, Chennai [W.P.(MD) No.8368 of 2014] decided on 23.06.2016,** has been pleased to hold as under:

"4. Although a detailed counter affidavit has been filed in an effort to support the impugned order, this Court keeping in mind that the order passed by the Hon'ble Apex Court in SLP.Nos.16701-16705 of 2010 dated 14.07.2010 granting an order of status-quo which has given rise to the reinstatement of the petitioner to the post of Tamil Pandi, has to be obediently followed till the disposal of the pending SLP, is inclined to direct the respondents to comply with the order of status quo granted by the Apex Court. While maintaining the status quo, the 3rd respondent shall continue to pay the salary since the petitioner has been working. The arrears of salary shall be paid to the petitioner within a period of four weeks from the date of receipt of a copy of this order.

For the reasons mentioned above, the impugned order is set aside and the writ petition is allowed. No costs. It is made clear that this order is subject to the result of the pending SLP. Consequently, M.P.(MD) Nos.1 to 3 of 2014 are closed."

8. In the light of the above and also finding that the judgment referred to supra is squarely applicable to the present issue on hand, in which the interim order of status quo granted by the Hon'ble Supreme Court is in existence, this Writ Petition is allowed and impugned order dated 10.09.2013 is set aside. The third respondent, while maintaining the status quo as ordered by the Hon'ble Apex Court, shall continue to pay the salary to the petitioner, as it is an admitted fact that he has been working in the 4th respondent school ever since the date of his transfer. The arrears of salary shall be paid to the petitioner within a period of four weeks from the date of receipt of a copy of this order. It goes without saying that this order will be subject to the outcome of the result in the pending SLP. No costs.

Sd/-

Assistant Registrar (CO)



To:

1. The Secretary,
Department of School Education,
Tamil Nadu Secretariat,
St. George Fort, Chennai.
2. The Director,
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3. The District Educational Officer,
Tirunelveli Educational District,
Tirunelveli.
4. The Correspondent,
St. Johns Higher Secondary School,
Palayamkottai,
Thirunelveli District.

+ 1 CC TO Mr.S.CHELLAPANDIAN, ADVOCATE IN SR No. 11137
+ 1 CC TO SPECIAL GOVERNMENT PLEADER IN SR No. 11158

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TE/SKN-RSK : 23/03/2017 : 4P/7C

W.P. (MD) No.2290 of 2014
27.02.2017