



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 27.07.2017

CORAM:

WEB COPY

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

W.A. (MD) No.1013 of 2017
and
C.M.P. (MD) .No.6918 of 2017

S.Sebestina Anci Lerins :Appellant/4th Respondent

Vs.

1.T.Nirmala Devi :1st Respondent / writ petitioner

2. The District Elementary Educational Officer,
Sivagangai, Sivagangai District.

3. The Assistant Elementary Educational Officer,
Ilayangudi, Sivagangai District.

4.The Correspondent,
Nooria Elementary School,
Sothugudi,
Sivagangai District. : Respondents 2 to 4/Respondents
1 to 3

PRAYER: Writ Appeal filed under Clause 15 of the Letters Patent Act to allow the writ Appeal to set aside the order dated 24.11.2016 in W.P.(MD).No.5583 of 2010 on the file of this Court.

Prayer in WP(MD). 5583/ 2010 :

Writ Petition is filed under Article 226 of the Constitution of India for issuance of a WRIT OF CERTIORARIFIED MANDAMUS calling for the records pertaining to the order passed by the first respondent in his proceedings Na.Ka.No. 1474/A1/2009 dated 8.4.2009 and the consequential order passed by the third respondent in his proceedings Nil dated 14.2.2010 and cancel the promotion of the 4th respondent and the consequential order passed by the 1st respondent in his proceedings in Mu.Mu.No.6544/A/2010 dated 18.01.2011 and quash the same and further direct the respondents to approve the promotion of the petitioner as Head Master of Elementary School with effect from 01.07.2008 and confer all the consequential benefits.

<https://hcservices.ecourts.gov.in/hcservices/>

[Prayer amended as per order dt.19.08.14 in mp.2/14]



For Appellant : Mr.T.Cibi Chakraborty
For Respondent No.1 : Mr.V.Paneerselvam
For R2 & R3 : Mr.M.Govindan
Special Government Pleader

WEB COPY

JUDGMENT

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

This writ appeal has been filed questioning the order dated 24.11.2016 made in W.P.(MD).No.5583 of 2010, filed by the first respondent herein.

2.The first respondent herein joined Nooria Elementary School, Sothugudi, Sivagangai District, as a Secondary Grade Teacher on 08.02.1990. When vacancy arose in the post of Headmaster in the said school in the year 1999, the first respondent herein voluntarily relinquished her right to promotion. Subsequently, when vacancy arose in the said post of Headmaster in the year 2007, the school management promoted the first respondent herein to the said post on 01.07.2008. But, when the papers were forwarded to the department for approval, the same was rejected on the ground that the writ petitioner / the first respondent herein had already relinquished her right to promotion. According to the first respondent herein, the Management directed her to give a letter that she was not willing to continue as a Head Mistress and that she had to comply with the said directive.

3.Thereafter, the appellant herein was appointed as the Head Master of the said school. In these circumstances, the first respondent herein filed W.P.(MD).No.5583 of 2010, questioning the proceedings dated 08.04.2009, issued by the District Elementary Educational Officer, Sivagangai, returning the proposal for promoting the first respondent herein for the post of Head Master. The first respondent herein also questioned the consequential order passed in favour of the appellant herein. She sought a direction for approving her promotion as the Head Mistress of the school with effect from 01.07.2008 with all consequential benefits.

4.The learned Judge allowed the writ petition by order dated 24.11.2016. Aggrieved by the same, the appellant herein, who was impleaded as the fourth respondent in the writ proceedings, has filed this writ appeal.

<https://hcservices.ecourts.gov.in/hcservices>
5. Heard by Mr.T.Cibi Chakraborty, learned Counsel appearing for the appellant and Mr.V.Paneerselvam, learned Counsel for the

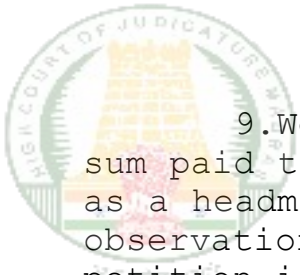


contesting first respondent and Mr.M.Govindan, learned Special Government Pleader appearing for the second and third respondents.

6.It is relevant to note that neither the school management nor the department has assailed the order passed by the learned Judge allowing the writ petition. It is only the fourth respondent in the writ petition, who was promoted as Head Master of the school, who has filed this intra-Court appeal.

7.The learned counsel appearing for the appellant forcefully contended that the Service Rules contemplated temporary relinquishment as well as permanent relinquishment. In the present case, the first respondent herein / writ petitioner has written a letter permanently relinquishing her claim for being promoted to the post of Head Mistress. Therefore, the order promoting the appellant herein and the order declining to grant approval for promotion of the first respondent herein, ought not to have been interfered with by the learned Judge. We went through the service register. It could be seen that the writ petitioner/ first respondent herein had made an endorsement of relinquishment in the year 1999. But the said relinquishment was not permanent in nature. Therefore, the explanation given by the writ petitioner that she was directed to execute the letter of permanent relinquishment at the instance of the management is quite probable. It is true that the writ petitioner for certain reasons relinquished her claim for being promoted as Head Mistress in the year 1999. But, when vacancy arose in the year 2007, the writ petitioner changed her mind and the management also granted her promotion. Therefore, the department had absolutely no justification for returning the proposal promoting the first respondent. The learned Judge rightly interfered with the order passed by the District Elementary Educational Officer, Sivagangai. That apart the writ petitioner is senior to the appellant herein by twelve years. The writ petitioner has been working in the school since 1990. On the other hand, the appellant herein joined the fourth respondent school only in the year 2002.

8.The learned Single Judge has given convincing reasons for allowing the writ petition. It was rightly held that the concept of permanent relinquishment cannot be imported in the case of Teachers working in the private Schools. Right to be considered for promotion is a fundamental right. There can never be a permanent waiver of such a fundamental right. That is why the non-approval of the appointment of the writ petitioner as a Headmistress was held to be unsustainable. We find no ground to interfere with the order passed by the learned Single Judge. We sustain the same. At this stage, the learned Counsel appearing for the respondent expressed his apprehension that the appellant may be saddled with an order of recovery.



9. We make it clear that there shall be no recovery of any sum paid to the appellant herein for the period in which he worked as a headmaster. This Writ Appeal is dismissed with the aforesaid observation. No costs. Consequently, connected miscellaneous petition is dismissed.

WEB COPY

Sd/-

Assistant Registrar (Crl side)

/True Copy/

Sub Assistant Registrar

To:

1. The District Elementary Educational Officer,
Sivagangai, Sivagangai District.
2. The Assistant Elementary Educational Officer,
Ilayagudi, Sivagangai District.

+1cc to Mr.T.Cibi Chakraborty, Advocate in Sr.No.68557
+1cc to Mr.V.Panneer Selvam, Advocate in SR.No.68616
+1cc to The Special Government Pleader in SR.No.68968

tsg/Ns

AE/SKN RSK/SAR3/17.08.2017/4P/6C

Judgment made in
W.A. [MD] No.1013 of 2017
Dated : 27.07.2017