



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: **04.08.2017**

CORAM:

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

W.A.(MD)No.136 of 2017
and
C.M.P.(MD) No.1370 of 2017

- 1.The Joint Director of Elementary Education,
College Road, Chennai 600 006.
- 2.The Chief Educational Officer,
Thirunelveli.
- 3.The District Educational Officer,
Tenkasi, Thirunelveli District. .. Appellants

Vs.

- 1.Getzy Roopala
- 2.The Manager,
TDTA Higher Secondary and
Secondary and Special Schools,
Diocesan Office, Palayamkottai.
- 3.The Correspondent,
Barenbruck Higher Secondary School,
Bungalow Surandai - 627 359. .. Respondents

PRAYER: Writ Appeal filed under Clause 15 of Letters Patent Act,
to set aside the order dated 24.03.2014 in W.P.(MD).No.1988 of
2010.

Prayer in WP(MD). 1988/ 2010 :

Writ Petition is filed under Article 226 of the
Constitution of India, praying this Court to issue a WRIT OF
CERTIORARIFIED MANDAMUS, calling for the entire records connected
with the impugned order passed by the 3rd respondent in
O.Mu.No.5286/A5/2001, dated 04-01-2002 and consequential order of
the 4th respondent dated 25-04-2005 and quash the same and direct
the 3rd respondent to approve the appointment of the petitioner as
Physical Education Teacher in the 5th respondent School with
effect from 08-06-2001 to 19-04-2005 with all consequential and
monetary benefits.

For Appellants : Mr.T.S.Mohammed Mohideen,
Additional Government Pleader
For Respondent 1 : Mr.K.K.Kannan
For Respondents 2 and 3 : Mr.S.Chellapandian



JUDGMENT

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

WEB COPY This writ appeal is directed against the order dated 24.03.2014 allowing W.P.(MD).No.1988 of 2010 filed by the first respondent herein.

2.The case of the first respondent is that a vacancy arose in the post of Physical Education Teacher in Barenbruck Higher Secondary School, Surandai, on 08.06.2001 due to transfer of the incumbent teacher. The writ petitioner was appointed as Physical Education Teacher by the Management, TDTA Higher Secondary and Secondary and Special Schools, Diocesan Office, Palayamkottai on 08.06.2001.

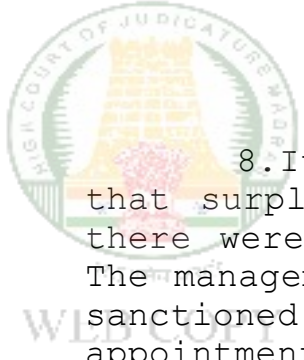
3.The employer forwarded the proposal to the department for approval of the writ petitioner's appointment with effect from 08.06.2001, but the same was rejected by order dated 04.01.2002, on the ground that school was coming under the management of second respondent herein, where there were already surplus of Physical Education Teachers and that therefore the appointment of the writ petitioner could not be approved. Following the cancellation of writ petitioner's appointment, she was appointed as Physical Education Teacher in another private institution as a regular staff.

4.Since the writ petitioner was not paid any salary for the period when she worked in the second respondent Barenbruck Higher Secondary School, Palayamkottai i.e from 08.06.2001 to 19.04.2005, she represented to the authorities. She then filed W.P.(MD). No.1988 of 2010, questioning the order dated 04.01.2002 passed by the District Educational Officer, Tenkasi, Tirunelveli District, declining to approve her appointment and the consequential order dated 25.04.2005 passed by the private school management. The said writ petition came to be allowed by the learned single Judge. Questioning the same, this writ appeal has been filed.

5. Heard the learned counsel for the parties.

6.On the very face of it, writ petition is hit by delay and latches. The writ petitioner was appointed in the year 2001. Approval was declined by the department on 04.01.2002. The same was challenged after a lapse of eight years only in the year 2010.

7.If the writ petitioner's grievance is that she was not paid any salary for the period between 08.06.2001 and 19.04.2005, <https://hcservices.mca.gov.in/hcservices/> the same from the management. The department had assigned appropriate reasons for declining to approve the writ petitioner's appointment.



8. It is seen from the order impugned in the writ petition that surplus teachers were working in the same management. When there were surplus teachers they had to be redeployed elsewhere. The management cannot make further appointment. Unless there is a sanctioned vacancy, it is not open to the management to make appointment. If the management makes such appointment, it is for them to pay the appointees out of their own resources and the government cannot be saddled with liability for such illegal appointment of teachers.

9. Therefore, the order allowing the writ petition is set aside. This writ appeal stands allowed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS-III)

/Truecopy/

Sub Assistant Registrar

To

+1cc to the Special Government Pleader, SR.No. 71352

dsk

MAS/JC/SAR2:23.08.2017:3P-2C

W.A. (MD) No.136 of 2017
04.08.2017