



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 19.04.2017

CORAM:

WEB COPY

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM
AND
THE HONOURABLE MR.JUSTICE P.VELMURUGAN

W.A.[MD].No.1076 OF 2013 and 46 OF 2014
and
M.P.(MD) No.1 of 2014

E.Vimala : Appellant in
W.A.No.1076/2013 and
1st respondent in W.A.No.
46/2014

Vs.

1.The District Elementary Educational Officer,
Tirunelveli, Tirunelveli District.

2.The Assistant Elementary Educational Officer,
Palayamkottai Rural,
Palayamkottai,
Tirunelveli District.

: Respondents 1 and 2 in
W.A.No.1076/2013 and
Appellants in
W.A.No.46/2014

3.The Manager/TDTA Primary/Middle Schools,
Tirunelveli Diocese,
CSI Diocese Office,
Palayamkottai, Tirunelveli.

4.The Correspondent,
TDTA Primary School,
Tuckerammalpuram,
Palayamkottai,
Tirunelveli.

: Respondents 3 and 4 in
W.A.No.1076/2013 and
Respondents 2 and 3 in
W.A.No.46 of 2014

COMMON PRAYER: Writ Appeals are filed under Clause 15 of the
Letters Patent against the order dated 05.04.2013 made in W.P.
(MD).No.8007 of 2012, on the file of this Court.



Prayer in WP(MD)No.8607/2012:-

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 records relating to the impugned order of the 2nd respondent dated 18.05.2012 in OMu.No.584/B1/2012 and quash the same and consequently direct the 1st and 2nd respondent to accept the appointment proposal dated 15.03.2012 sent by the 3rd respondent and direct the 1st and 2nd respondent to pay arrears of salary from 18.02.2008 to till date with all other service and monetary benefits.

For Appellant in
W.A.No.1076/2013 and
1st respondent in W.A.No.
46/2014 : Mr.T.A.Ebenezer

For Respondents 1 and 2 in
' W.A.No.1076/2013 and
Appellants in
W.A.No.46/2014 : Mr.S.Chandrasekar, G.A.

Respondents 3 and 4 in
W.A.No.1076/2013 and
Respondents 2 and 3 in '
W.A.No.46 of 2014 : No Appearance

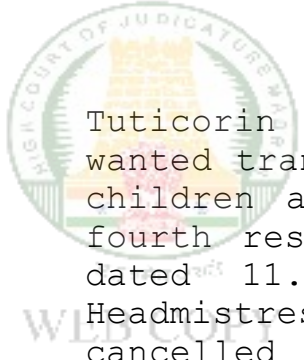
COMMON JUDGMENT

[Judgment of the Court was delivered by T.S.SIVAGNANAM, J.]

Heard Mr.T.A.Ebenezer, learned counsel for the Appellant in W.A.(MD)No.1076/2013 and 1st respondent in W.A.(MD)No.46/2014 and Mr.S.Chandrasekar, learned Government Advocate appearing for Respondents 1 and 2 in W.A.(MD)No.1076/2013 and the appellants in W.A.No(MD).46/2014.

2.Both these appeals are directed against the order dated 05.04.2013 made in W.P.(MD) No.8607 of 2012. The writ petition was filed by the first respondent in W.A.(MD)No.46 of 2014 and the appellant in W.A.(MD) No.1076 of 2013. In this judgment, the parties shall be referred to as per the nomenclature in the writ petition.

3.The writ petitioner filed the writ petition challenging an order dated 18.05.2012 and for a direction to the Assistant Educational Officer to approve her appointment, by considering the proposal sent by the fourth respondent Management. The petitioner joined the Primary School at Mahilchipuram under



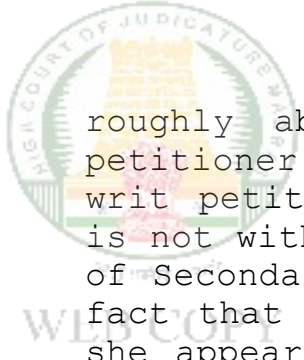
Tuticorin Dioceses as Secondary Grade Teacher on 05.06.1990. She wanted transfer to Tirunelveli for the purpose of education of her children and the Management promoted her as Headmistress of the fourth respondent School and posted at Tirunelveli by an order dated 11.08.2008 and she joined service on 12.08.2008 as Headmistress in the said school. Subsequently, the promotion was cancelled by the Management by an order dated 02.01.2009 and another person by name Serebia Ezhilarasi was appointed as Headmistress of the said School. The petitioner filed W.P.(MD) Nos.8053 of 2008 and 89 of 2009, challenging the cancellation of her promotion and appointment of the other person as Headmistress and both the writ petitions were dismissed by orders dated 30.09.2008 and 18.10.2011 respectively. Thus, the petitioner was faced with the situation of losing the employment, which she had been engaged in since August 2008.

4.The petitioner is said to have made a representation to the Management to consider her case. The Management took note of the fact that the fourth respondent School is a 2 Teachers school i.e. 1 Headmaster and one Teacher, appointed her in the post of Secondary Grade Teacher, with effect from 12.08.2008, which was vacant. Accordingly, a proposal was sent to the department for approval, which was rejected by an order dated 18.05.2012, which was impugned in the writ petition.

5.The writ Court, by the impugned order, disposed of the writ petition, by directing the department to approve the petitioner's appointment as Secondary Grade Teacher, because, in the interregnum one D.Sali Roseline was appointed as Secondary Grade Teacher on 10.03.2010. However, the said Teacher submitted her resignation and relinquished all her claims in 2012 and consequently, the petitioner was reappointed on 15.03.2012. Therefore, the learned Single Judge opined that the only relief the petitioner can get is to get her appointment approved from 15.03.2012. The respondents/ department have preferred separate appeal, challenging the order passed in the writ petition in its entirety, while the writ petitioner aggrieved by only that portion of the order restricting the approval from 15.03.2012.

6.The learned Government Advocate referred to the factual matrix and submitted that the fourth respondent school is a private school of the TDTA group of schools and it is a Corporate Management running 247 Primary schools and 73 Middle Schools totally 312 schools and there are surplus posts with the Corporate Management and therefore, they ought to have redeployed the surplus teachers to the fourth respondent school. To test the correctness of the said contention, we need to examine the reason for rejection of approval of the petitioner's appointment vide order dated 18.05.2012 (the impugned order in the writ petition).

7.On a perusal of the said order, we find that the only reason <https://hcservices.gov.in/hcservices/> department for rejection of the approval of the petitioner's appointment was on the ground that another Headmistress was appointed by the Management in the same school



roughly about the same time and this was challenged by the petitioner in W.P.(MD) No.8053 of 2008 and 89 of 2009 and both the writ petitions were dismissed. However, the present controversy is not with regard to the post of Headmistress. But, it is a post of Secondary Grade Teacher. The petitioner has reconciled to the fact that she cannot be appointed as Headmistress and therefore, she appears to have approached the Management to appoint her as Secondary Grade Teacher in an existing approved vacancy with effect from 12.08.2008. While she was functioning, all of a sudden, another Teacher by name Sali Roseline was appointed as Secondary Grade Teacher on 10.03.2010. When this proposal was sent to the department for approval, it was rejected in the same order stating that it is against rules and consequently, it was held that the petitioner's appointment cannot be approved. As of now, the impediment with regard to the appointment of Smt.Sali Roseline is not there as she resigned the post and relinquishing all her claims. Thus, for all practical purpose, the petitioner is deemed to have functioned as Secondary Grade Teacher with effect from 12.08.2008, though for a brief period, as she shall be put as Headmistress, which aspiration turned futile as both the writ petitions filed by her were dismissed.

8.Thus, for all the above reasons, we are of the view that the appointment of Secondary Grade Teacher should be approved from 12.08.2008 and consequently, the appeal filed by the department is rejected and the appeal filed by the writ petitioner is allowed. The respondent department is directed to consider the petitioner's case for approval with effect from 12.08.2008 and pass necessary orders on merits and in accordance with law, within a period of three months from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is also dismissed.

Sd/-

Assistant Registrar(Records)

/True Copy/

Sub-Assistant Registrar

To

- 1.The District Elementary Educational Officer,
Tirunelveli, Tirunelveli District.
 - 2.The Assistant Elementary Educational Officer,
Palayamkottai Rural, Palayamkottai, Tirunelveli District.
- +One cc to Mr.T.A.Ebenezer, Advocate, SR.No.52852
+One cc to The Special Government Pleader, SR.No.53090

Arul

RL/5C/4P/MR/3.5.2017

JUDGMENT MADE IN
W.A.[MD].No.1076 OF 2013 and 46 OF 2014
and
M.P.(MD) No.1 of 2014
19.04.2017