



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **08.06.2017**

CORAM:

THE HONOURABLE MR.JUSTICE **T.S.SIVAGNANAM**

AND

THE HONOURABLE MR.JUSTICE **P.VELMURUGAN**

W.A. [MD].No.1127 of 2013

and

M.P. (MD)No.2 of 2013

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

2.The Additional Assistant Elementary
Educational Office, Srivaigundam,
Tuticorin District.

: Appellants

Vs.

1.V.Ponmallika

2.The Secretary,
Hindu Adi Dravidar Primary School,
Srimoolakari,
Tuticorin District.

: Respondents

PRAYER: Writ Appeal is filed under Clause 15 of Letters Patent, praying to set aside the order dated 30.11.2012 in W.P.(MD).No.386 of 2009.

Prayer in WP(MD). 386/ 2009 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Mandamus, directing the respondents to approve the appointment of the petitioner as Secondary Grade Teacher from 01/06/2001 and pay salary to the petitioner upto 31/05/2006 and confer all the consequential monetary benefits.

For Appellants

: Mr. R.Shanmuganathan,
Special Government Pleader

For Respondent No.1

: Mr. V. Panner Selvam
for C.S. Associates

**JUDGMENT**

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

This appeal by the District Elementary Educational Officer, Tuticorin and another is directed against the order passed in W.P. (MD) No.386 of 2009 dated 30.11.2012.

2.Heard Mr.VR.Shanmuganathan, learned Special Government Pleader appearing for the appellants and Mr.V.Panneer Selvam, learned counsel appearing for the first respondent.

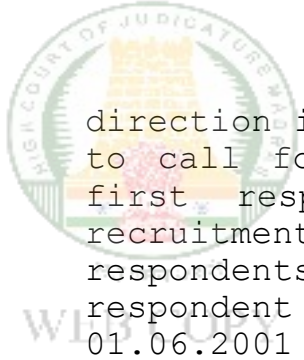
3.The said writ petition was filed by the first respondent herein praying for issuance of a Writ of Mandamus to direct the respondents to approve her appointment as Secondary Grade Teacher from 01.06.2001 and pay salary up to 31.05.2006, on which date she was relieved from service. The learned single Judge, applying the ratio laid down by the Hon'ble Full Bench of this Court in the case of **Director of Elementary Education, Chennai and two others Vs. Tmt.S.Vigila and another (2015 (5) CTC 385)** issued a positive direction to approve the appointment of the first respondent.

4.The learned Special Government Pleader would contend that the said decision would have no application to the facts of the present case, as the permission granted to fill up the vacant post had lapsed at the end of the academic year. Further, it is submitted that the first respondent was appointed by the second respondent without sponsoring names from the employment exchange and without following any recruitment process and hence, the said appointment is illegal.

5.The learned counsel for the first respondent, while seeking to sustain the impugned order, would submit that the post was a sanctioned post and due process of recruitment was followed and list of names of eligible candidates were also called for from the employment exchange and there is no irregularity or illegality in the appointment.

6. We have heard the learned counsel on either side and perused the materials placed on record. The vacancy in which the first respondent was appointed is a vacancy, which arose on account of the promotion of an existing secondary grade teacher namely Tmt.Krishnammal. Therefore, it cannot be stated that the post is not an approved post and the question of the post getting lapsed at the end of the academic year would not be a proper interpretation, because the vacancy arose on account of promotion of a serving incumbent. Having held so, what is required to be seen is whether the second respondent management had followed the procedure. The first respondent would contend that paper publication was effected and list of names were called for from the employment exchange and after following due procedure, the appointment has been made.

7. In the light of the same, we are inclined to modify the



direction impugned in the writ petition. The appellants are directed to call for the entire files relating to the appointment of the first respondent and examine as to whether the process of recruitment was followed and if the same has been done, the respondents are directed to approve the appointment of the first respondent in the second respondent school for the period from 01.06.2001 to 31.05.2006 and pay salary. The above direction shall be complied with by the appellants within a period of eight weeks from the date of receipt of a copy of this order.

8. Accordingly, the Writ Appeal stands disposed of. No costs. Consequently, the connected Miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS-III)

/True Copy/

Sub Assistant Registrar

+1cc to Mr.SPECIAL GOVERNMENT PLEADER in SR. NO.59375
+1cc to Mr.V.PANNEER SELVAM Advocate in SR. No.59517

MR/SSS/NB
JS/GT/SAR.2/20.6.2017/3P-3C

**JUDGMENT MADE IN
W.A. [MD] .No.1127 of 2013
08.06.2017**