



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 02.08.2017

CORAM:

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

W.A. (MD) No.311 of 2013

S.Sathi Kumari Amma .. Appellant/Petitioner

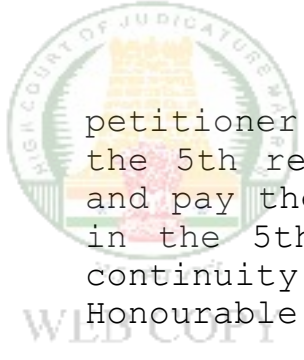
Vs.

1. The State of Tamil Nadu.
Rep.by its Secretary,
Education Department,
Fort.St.George, Chennai -9.
2. The Director of School Education,
(Higher Secondary Schools)
D.P.I.Compund,
College Road, Chennai - 600 006.
3. The Chief Educational Officer,
Kanyakumari District,
Nagercoil.
4. The District Educational Officer,
Kuzhithurai Educational District,
at marthandam,
Kanyakumari District.
5. The Secretary,
Sree Devi Girls Higher Secondary School,
Kollencode Post,
Kanyakumari District - 629 160. .. Respondents/Respondents

PRAYER: Petition filed under Clause 15 of Letters Patent Act, against the order dated 04.02.2013 made in W.P.(MD).No.3210 of 2012 and M.P.(MD).N0.1 of 2012, on the file of this Court.

Prayer in WP(MD). 3210/ 2012 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Mandamus, directing the Respondents 1 to 5 herein to sanction the post of Post Graduate Assistant in Chemistry in the 5th Respondent School for the period from 07.10.92 till 31.07.99 approving the



petitioner's appointment as P.G. Assistant (Chemistry) Teacher in the 5th respondent school w.e.f. 07.10.1992 instead of 01.08.1999 and pay the arrears of salary for the period the petitioner served in the 5th respondent school from 07.10.1992 to 31.07.1999 with continuity of service within a stipulated time as fixed by this Honourable Court.

For Appellant : Mr.K.N.Thampi

For Respondents 1 to 4 : Mr.T.S.Mohammed Mohideen,
Additional Government Pleader

For Respondent 5 : No appearance

JUDGMENT

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

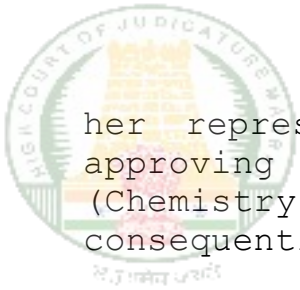
The unsuccessful writ petitioner is on appeal challenging the order dated 04.02.2013 made in W.P.(MD).No3210 of 2012.

2.The writ petitioner was appointed as P.G. Assistant (Chemistry) on 07.10.1992 in the fifth respondent school. It is an admitted fact that though the post of P.G. Assistant (Chemistry) was sanctioned for the said school on 20.08.1980, because of the non utilisation of the said post, the same was resumed on 13.03.1981. This was on account of certain internal disputes in the school management.

3.It is admitted that the said post of P.G. Assistant (Chemistry) was re-allotted to the fifth respondent school only on 18.08.1999 vide G.O.Ms.No.257, School Education (Hr.Sec.Edn.2) Department. The writ petitioner's appointment was therefore approved only with effect from the said date i.e. on 01.08.1999. The writ petitioner aggrieved by the non approval of her service from 07.10.1992 till 31.07.1999 filed W.P.(MD).No.3210 of 2012. The said writ petition was dismissed on 04.02.2013. Aggrieved by the same, this intra- Court appeal has been filed.

4.The writ petitioner was allowed to amend the prayer in the writ petition during the pendency of this writ appeal, but grant of such permission to amend the writ prayer during the pendency of the writ appeal will not improve the case of the appellant. The fact remains that when she was appointed as P.G. Assistant (Chemistry) , there was no sanctioned post.

5.The sanction for the post came only in the year 1999. In <https://hcservices.ecm.hisec.in/hcservices/> had already attained finality in W.P.No.10862 of 2001. The said writ petition was filed by the appellant herein and by order dated 26.06.2001, a direction was given for considering



her representation dated 18.08.1999 and pass necessary orders approving her appointment to the post of P.G. Assistant (Chemistry) with effect from 01.08.1999 and grant all consequential benefits from the said date.

6.The rights of the writ petitioner are governed by the said G.O.Ms.No.257 dated 18.08.1999. She cannot travel beyond it. Therefore, the claim of the writ petitioner for direction to sanction the post of P.G. Assistant (Chemistry) in the fifth respondent school for the period 07.10.1992 till 31.07.1999 is clearly not maintainable. Admittedly there was no challenge of G.O.Ms.No.257, dated 18.08.1999.

7.This Court will have to take into account the position that prevailed when the writ petitioner was appointed originally. The writ petitioner / appellant would fairly concede that at the time of her appointment there was no sanctioned post of P.G. Assistant (Chemistry), but, sought for sanctioning of such post from the date of her appointment. Only if sanctioned post was there, the writ petitioner can derive any right. When the sanctioned post was not there, the writ petitioner cannot claim any such right.

8.We concur with the reasons assigned by the learned single Judge for dismissing the writ petition and we find no merit in the writ appeal. Therefore, this writ appeal is dismissed. No costs.

Sd/-
Assistant Registrar(P&A)

/True Copy/

Sub Assistant Registrar

To

1.The Secretary to the State of Tamil Nadu.
Education Department,
Fort.St.George, Chennai -9.

2.The Director of School Education,
(Higher Secondary Schools)
D.P.I.Compound,
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3.The Chief Educational Officer,
Kanyakumari District,
Nagercoil.



4.The District Educational Officer,
Kuzhithurai Educational District,
at marthandam,
Kanyakumari District.

+1cc to Mr.K.N.Thampi, Advocate in SR.No.69895

dsk

AE/JC/SAR3/29.08.2017/4P/6C

W.A. (MD) No.311 of 2013
02.08.2017