



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 18.12.2017
PRONOUNCED ON : 22.12.2017

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CORAM:

THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

W.P (MD) No.5029 of 2011
and
W.M.P (MD) No.19556 of 2017

P.Killty

... Petitioner

vs.

1. The State of Tamil Nadu,
Rep. by the Secretary to Government,
School Education Department,
Chennai - 600 009.

2. The Director of School Education,
College Road,
Chennai.

3. The Chief Educational Officer,
Nagercoil,
Kanyakumari District.

... Respondents

PRAYER:- Writ Petition is filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus, to call for the connected and relevant records relating to the order in Na.Ka.No.0913/A4/2009, dated 17.09.2010 passed by the third respondent and direct the respondents to regularise the petitioner's service from his first appointment (ie., from 06.08.1988 instead of 05.10.2004) and pay the petitioner all backwages (ie., backwage salary, service benefits and other benefits).

For Petitioner

: Mr.K.Prabhu for
M/s.Isaac Chambers

For Respondents

: Mr.S.Kumar,
Additional Government Pleader.

ORDER

This Writ Petition has been filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified mandamus to quash the order, in Na.Ka.No.0913/A4/2009, dated 17.09.2010, passed by the third respondent and to direct the respondents to regularise the



petitioner's service from his initial appointment (ie., from 06.08.1988 instead of 05.10.2004) and to pay the backwages (ie., backwage salary, service benefits and other benefits) due and payable to him.

2. The case of the petitioner is that he has completed B.Sc Botany in the year 1985. He has also passed the Higher Examination in Free hand out-line and model drawing at the Government Technical Examination and he has been awarded Technical Examination Higher Grade during May 1984 and also obtained Technical Teacher Certificate in December, 1986, after successfully passing the grade of Technical Examination in free hand out-line and model drawing (Higher) and the theoretical and practical examination and after successfully undergoing Teacher Training Certificate course from 05.05.1986 to 31.07.1986. He has registered in the Employment Exchange at Nagercoil and necessary entries were made after obtaining Technical Teacher Examination. The third respondent requested the District Employment Officer to sponsor the name of the candidates for appointing them as drawing Teachers. The petitioner's name was also sponsored by the District Employment Office, Nagercoil and he was also called for interview, wherein he was duly selected and appointed as a Drawing Master in the Government Higher Secondary School, Nattalam, by the third respondent vide proceeding, dated 31.07.1988 and joined duty in the said School on 06.08.1988. The third respondent, by order, dated 01.09.1988, terminated the petitioner from service without assigning any reason. Aggrieved over the termination, the petitioner filed a Writ Petition in W.P(MD) No.10331 of 1988 before this Court, challenging the order passed by the Chief Educational Officer, Nagercoil, dated 01.09.1988. The same was transferred to the Tamil Nadu Administrative Tribunal at Chennai. The Tribunal, by order, dated 21.03.2001, had set aside the impugned order and passed the following order:

"7. Considering the above points, the impugned order passed by the first respondent is set aside. The respondents are directed to appoint the petitioner in the post of Drawing Master if such category is still exists and if not to the category to which the post of Drawing Master was redesignated or merged, after giving due age relaxation to the petitioner, within a period of six months from the date of receipt of a copy of this order."

3. In spite of submitting necessary application by the petitioner as per the order of the Tribunal, the third respondent had rejected the request of the petitioner and preferred an appeal by way of a writ petition in W.P.No.5901 of 2002 before this Court and the Division Bench of this Court by order, dated 04.07.2002, has passed the following order:-

"The first petitioner is directed to consider the case of the first respondent for being appointed as Drawing Master in permanent vacancy in the second petitioner's School. This exercise shall be made within a period of one month from the date of receipt of a copy of this order. It



is made clear that this order is being passed on the specific understanding that the first respondent shall not claim any back salary. We also make it clear that inasmuch as the first respondent had succeeded in the Tribunal, the appointment shall be made without reference to age qualification. The Writ Petition is disposed of accordingly."

4.The Chief Educational Officer, Nagercoil, did not obey the order of this Court. Hence, the petitioner filed a contempt petition in Cont.P.No.1025 of 2003 to punish the contemnors/respondents therein for their deliberate and wilful disobedience of the order of this Court, dated 04.07.2002. After filing of the contempt petition, the third respondent appointed the petitioner as a Drawing Master in the Government High School, Meenakshipuram, vide proceedings in Na.Ka.No.1737/A3/01, dated 04.10.2004. In view of the order passed by the Chief Educational Officer, dated 04.10.2004, the Contempt Petition was closed on 12.10.2004. Accordingly, the petitioner joined duty on 05.10.2004 and his service was regularized with effect from 05.10.2004 by the Chief Educational Officer, Nagercoil, vide proceedings in P.Mu.No.13547/A4/06, dated 30.06.2007.

5.The grievance of the petitioner is that if his service was not terminated, he would have continued in the service from the date of his initial appointment (i.e., 06.08.1988) by getting all benefits. Hence, he sent a representation, dated 12.03.2008 to the third respondent through the Headmaster Government High School Meenakshipuram, Kanyakumari District. However, by the impugned order, dated 17.09.2010, the third respondent rejected the claim of the petitioner. Challenging the same, the petitioner has filed the present Writ Petition.

6.Heard the learned counsel for the petitioner and the learned Additional Government Pleader appearing for the respondents.

7.The third respondent filed a counter-affidavit stating that in the year 1988-1989 four vacancies for the post of Special Teachers (Drawing) arose in Kanyakumari District. The Chief Educational Officer, Nagercoil requested the Employment Officer, Nagercoil, to sponsor suitable candidates for the said post. Based on the said requisition, the Employment Officer, Nagercoil, sent a list of 45 candidates vide letter No.X2/315/88, dated 20.06.1988 and the petitioner's name was found in serial No.9. The candidates sponsored by the Employment Officer were called for interview on 29.09.1988. After conducting the interview, the petitioner was selected and appointed in the Government Higher Secondary School, Nattalam, as a Drawing Master vide proceedings in R.C.No.18683/C5/88, dated 31.07.1988 by the Chief Educational Officer, Nagercoil. In the appointment order, it was clearly mentioned and informed to the petitioner that the appointment was purely temporary under Scale 10(a)(1) of the Tamil Nadu Manual and he may be ousted at any time without any intimation and the



petitioner accepted and joined duty on 06.08.1988. Further, the Employment Officer, Nagercoil, requested the Chief Educational Officer, Nagercoil, to delete the name of the petitioner from the list sponsored by him. The appointment of the petitioner was cancelled on 01.09.1988 by the Chief Educational Officer, Nagercoil and the petitioner was ousted from service on 01.09.1988. The petitioner has challenged the order of termination, before this Court in W.P.No.10311 of 1988. The said Writ Petition was transferred to the Tamil Nadu Administrative Tribunal and re-numbered as T.A.No.243 of 1990 and the said application was allowed. The Chief Educational Officer, preferred an appeal in W.P.No.5901 of 2002 and the Division Bench of this Court, by order, dated 04.07.2002, directed the Chief Educational Officer, Nagercoil, to consider the case of the petitioner for being appointed as Drawing Master in the permanent vacancy in Government Higher Secondary School, Nattalam. Further, it is made clear in the said order that the petitioner should not claim any back salary as the said order was being passed on a specific understanding.

8.Pursuant to the order passed by the Division Bench of this Court, the petitioner was appointed as a Drawing Master in the Government High School, Meenakshipuram, by the Chief Educational Officer, Nagercoil and he joined duty on 05.10.2004.

9.The learned Additional Government Pleader appearing for the respondents submitted that initially, the petitioner was appointed on 06.08.1988 and he was terminated from service on 01.09.1988. The mistake was due to the Employment Officer, Nagercoil. But the Employment Officer, Nagercoil had not been added as a respondent in this Writ Petition. The petitioner was appointed again in service as per the order, dated 04.07.2002 passed in W.P(MD)No.5901 of 2002 on 05.10.2004. The petitioner was not in service from 02.09.1988 to 04.10.2004. Hence, the petitioner was not eligible for salary and other backwages for the said period, as per the order of the Division Bench of this Court in W.P.No.5901 of 2002, dated 04.07.2002 and prayed for dismissal of the Writ Petition.

10.The learned counsel appearing for the petitioner submitted that the petitioner has made representations to the respondents claiming regularisation and all other service benefits including back wages with effect from the date of initial appointment ie., from 06.08.1988 and filed the present Writ Petition. Further, the learned counsel for the petitioner submitted that due to inadvertence, the petitioner has filed the Writ Petition with a prayer for the issuance of a Writ of Certiorarified Mandamus, to call for the connected and relevant records relating to the order in Na.Ka.No.0913/A4/2009, dated 17.09.2010 passed by the third respondent and direct the respondents to regularise the petitioner's service from his first appointment (ie., from 06.08.1988 instead of 05.10.2004) and pay the petitioner all backwages (ie., backwage salary, service benefits and other benefits). When the matter was taken up on 15.12.2017, this Court asked a question to the learned



counsel appearing for the petitioner that why the petitioner has not challenged the regularization order dated 30.06.2017, the learned counsel sought for adjournment of the case, but on the same day itself, he has filed a Miscellaneous Petition in W.M.P(MD)No.19556 of 2017 seeking to amend the prayer, as follows:-

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*"Writ of Certiorarified Mandamus calling for the records relating to the impugned proceedings issued by the third respondent CEO in Na.Ka.No.0913/A4/2009, dated 17.09.2010, **quash the same** and further direct the respondents herein to regularize the service of the petitioner from the date fixed by this Court (ie., the date on which one month expired after the receipt of the order, dated 04.07.2002 in W.P.No.5902 of 2002 viz., 12.08.2002) with all attendant benefits including salary."*

11.From the perusal of the materials available on record, it is seen that the petitioner was selected and appointed in the Government Higher Secondary School, Nattalam, as a Drawing Master, by the Chief Educational Officer, Nagercoil, dated 31.07.1988 and it was informed to the petitioner that the appointment was purely Temporary under Scale 10(a)(1) of the Tamil Nadu Manual and he may be ousted at any time without any intimation and the petitioner joined duty on 06.08.1988 and the petitioner was ousted from service on 01.09.1988. The petitioner has challenged the order of termination, before this Court in W.P.No.10311 of 1988. The said Writ Petition was transferred to the Tamil Nadu Administrative Tribunal and re-numbered as T.A.No.243 of 1990 and the said application was allowed. The Chief Educational Officer, preferred an appeal in W.P.No.5901 of 2002 and the Division Bench of this Court, by order, dated 04.07.2002, directed the Chief Educational Officer, Nagercoil, to consider the case of the petitioner for being appointed as Drawing Master in permanent vacancy in Government Higher Secondary School, Nattalam. Further, it was made clear that the said order was being on a specific understanding that the petitioner should not claim any back salary. Pursuant to the order passed by the Division Bench of this Court, the petitioner was appointed as a Drawing Master in Government High School, Meenakshipuram, by the Chief Educational Officer, Nagercoil. The petitioner joined duty on 05.10.2004. From 02.09.1988 to 04.10.2004 the petitioner was not in service. Further, the petitioner was not eligible for backwages, as per the order of the Division Bench of this Court in W.P.No.5901 of 2002, dated 04.07.2002.

12.Further, on perusal of the records, it is seen that the petitioner was appointed by order dated 04.10.2004 and his service was regularised on 30.06.2007 with effect from 05.10.2004. But he has not challenged the said order and he has only sent a representation to the respondents, dated 12.03.2008 seeking all backwages and service benefits from the date of first appointment and there is no acknowledgment found in the typed-set of papers. In the said representation dated 12.03.2008, the petitioner has stated



as follows:-

"The Hon'ble High Court at Madras by its order dated 04.07.2002 again directed the Chief Education Officer, Nagercoil to appoint me as Drawing Master, this exercise shall be made within a period of one month from date of receipt of a copy of this order. Wherein it has been stated that the first respondent cannot claim any back salary. I humbly submits that I have not made any undertaking to this effect. The Chief Educational Officer, Nagercoil was not obeyed the order of the Honourable High Court, Madras."

The third respondent has passed the impugned order on 17.09.2010. Vide order dated 04.07.2002, made in W.P.No.5901 of 2002, this Court observed as follows:-

"4. From the arguments, it is made out that there is one post of Drawing Master in the Government Higher Secondary School, Nattalam of Kanyakumari District. The First petitioner is directed to consider the case of the first respondent for being appointed as Drawing Master in permanent vacancy in the second petitioner's school. This exercise shall be made within a period of one month from the date of receipt of a copy of this order. It is made clear that this order is being passed on the specific understanding that the first respondent shall not claim any back salary. We also make it clear that in as much as the first respondent has succeeded in the Tribunal, the appointment shall be made without reference to age qualification."

If at all the petitioner is aggrieved by the order of the Division Bench in W.P.No.5901 of 2002, dated 04.07.2002 and if the petitioner has not given any undertaking to the effect that he shall not claim any back salary, he ought to have challenged that order. But he has not done so, hence, the order of the Division Bench in W.P.No.5901 of 2002, dated 04.07.2002 becomes final. In spite of the order passed in W.P.No.5901 of 2002, dated 04.07.2002, which is made clear that on a specific understanding that the petitioner shall not claim any backwages, now, the petitioner has filed this Writ Petition claiming backwages and regularization from the date of his first appointment i.e., from 06.08.1988 instead of 05.10.2004. The petitioner has not challenged the regularization order dated 30.06.2007, wherein the petitioner's service was regularized with effect from 05.10.2004, and there was no prayer in the Writ Petition to quash the impugned order dated 17.09.2010. When it was pointed out by this Court, the petitioner has filed the amendment petition claiming to quash the impugned order dated 17.09.2010 and also seeking direction to the respondents to regularize the service of the petitioner from the date on which one month expired after the receipt of the order dated 04.07.2002 made in W.P.No.5901 of 2002, ~~which is a case in law and the same cannot be accepted.~~ The amendment petition is not maintainable on the ground of laches also. Mainly, the petitioner ought to have challenged the



regularization order. Till date, the regularization order dated 30.06.2007 is not challenged by the petitioner. Therefore, the writ petition is not maintainable and the same is liable to be dismissed.

13. In the result, the Writ Petition fails and the same is dismissed with costs. The petitioner is directed to pay a sum of Rs.5,000/- (Rupees Five Thousand Only) to the Chief Justice Relief Fund within a period of two weeks from the date of receipt of a copy of this order. The amendment petition is also dismissed.

Sd/-
Assistant Registrar (RTI)

/True Copy/

Sub Assistant Registrar

To

1. The Secretary to Government,
State of Tamil Nadu,
School Education Department,
Chennai - 600 009.
2. The Director of School Education,
College Road,
Chennai.
3. The Chief Educational Officer,
Nagercoil,
Kanyakumari District.

Copy To:-

The Section Officer,
Accounts Section,
Madurai Bench of Madras High Court,
Madurai.

- + 1 CC TO M/s.ISAAC CHAMBERS, IN SR No. 94641
- + 1 CC TO SPECIAL GOVERNMENT PLEADER IN SR No. 94739

PS

TE/JC/SAR-3 : 06/02/2018 : 7P/7C

Order made in
W.P(MD)No.5029 of 2011 and
W.M.P(MD)No.19556 of 2017
22.12.2017