



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 14.02.2017

CORAM:

THE HONOURABLE MR. JUSTICE R. SURESH KUMAR

W.P. (MD) No. 3982 of 2013

and M.P. (MD) Nos. 1 and 2 of 2013

C. Lalitha

... Petitioner

Vs.

1. The State of Tamil Nadu,
Rep. by its Secretary,
Department of School Education,
Fort St. George,
Chennai - 600 009.
2. The Director of School Education,
College Road, Chennai - 600 006.
3. The Chief Educational Officer,
Pudukottai - 622 001.
Pudukottai District.
4. The District Educational Officer,
Pudukottai - 622 001.
Pudukottai District.
5. The Chairman,
The Tamil Evangelical Lutheran Church Education Board,
P.B.No.86, Tranquebar House,
Tiruchirapalli - 620 001.
6. The Correspondent,
TELC Higher Secondary School,
Pudukottai - 622 001.
Pudukottai District.

... Respondents

PRAYER: This Writ Petition is filed under Article 226 of the Constitution of India to issue a writ of Mandamus, directing the respondents 1 to 4 to approve forthwith the appointment of the petitioner as PG Assistant in Tamil in the 6th respondent School w.e.f., 15.11.2004 with all attendant benefits including arrears of salary and continuity of service after getting proposal from the 6th respondent school.

For Petitioner

: Mr. K. Ragatheeshkumar
for Mr. T. Cibi Chakraborty

For Respondents 1 to 4

: Mr. V. Muruganantham
Additional Government Pleader

For Respondents 5 & 6

: No appearance

O R D E R

The prayer in the writ petition is for a writ of Mandamus, directing the respondents 1 to 4 to approve forthwith the appointment of the petitioner as PG Assistant in Tamil in the 6th

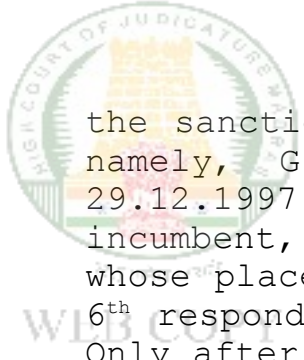


respondent School w.e.f., 15.11.2004 with all attendant benefits including arrears of salary and continuity of service after getting proposal from the 6th respondent school.

2. The case of the petitioner is that the petitioner had been appointed as P.G. Assistant (Tamil) at the 6th respondent school on 15.11.2004 and he had joined at the 6th respondent school and working as such. When the petitioner has been working as P.G. Assistant pursuant to the appointment, during the year 2004 itself the third respondent had passed order dated 29.12.2004, by which certain posts both teaching and non teaching were treated as excess and accordingly one post of Tamil out of two P.G. Assistant (Tamil) has been shown as excess. Thereafter, the third respondent passed order dated 25.11.2005, whereby among other posts one post of Tamil was shown as surplus. Subsequently, on 23.03.2006, the third respondent has passed similar order showing one post of P.G. Assistant (Tamil) as excess. As against those orders detailed objection and representation have been made by the 6th respondent school on 23.03.2006 to the Director of School Education through proper channel and in response to the said objections made by the 6th respondent school, the third respondent has once again passed order dated 30.06.2006, wherein one post of P.G. Assistant (Tamil) had been taken away from the surplus post. The said order of the third respondent taking one post of P.G. Assistant Tamil and other posts have been questioned by the 6th respondent by way of Writ Petition in W.P.(MD) No.5673 of 2006. In the said Writ Petition, this Court on 13.07.2006 passed an interim order in M.P.(MD) No.1 of 2006, whereby, the said order of the 3rd respondent, taking away posts from the 6th respondent school, which includes one post of P.G. Assistant (Tamil), has been stayed. The said writ petition was pending before this Court for some time. During the pendency of the writ petition, the said post of P.G. Assistant (Tamil) has got restored by the proceedings of the 3rd respondent dated 19.05.2010. Since the said post and other connected posts, which were originally taken away by the proceedings dated 30.06.2006, since had been restored by the subsequent proceedings dated 19.05.2010, the said writ petition W.P.(MD) No.5673 of 2006 was withdrawn by the 6th respondent herein, who is the petitioner in the said writ petition. The said writ petition was dismissed as withdrawn on 19.05.2011. In spite of these developments, even though the petitioner had been working as P.G. Assistant (Tamil) from the very date of her appointment i.e., from 15.11.2004, her appointment had not been approved by the third respondent. Therefore, the petitioner has approached this Court with the aforesaid prayer.

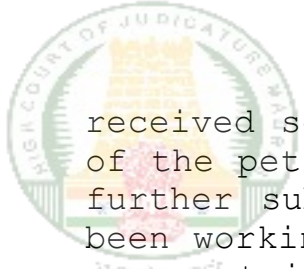
3. Heard both sides.

4. The learned counsel appearing for the petitioner would submit that it is an admitted fact that there are two posts of P.G. Assistant (Tamil) sanctioned to the 6th respondent school and



the sanction is in consonance with the relevant Government Order, namely, G.O.Ms.No.525 School Education (D1) Department dated 29.12.1997. Out of the two P.G. Assistant (Tamil) one working incumbent, namely, one Mr.Kandasamy retired on superannuation, in whose place the petitioner had been appointed on 15.11.2004 by the 6th respondent and from that day the petitioner had been working. Only after the petitioner had been appointed and had been working, in the year 2004 by proceedings dated 29.12.2004 and 25.11.2005, the third respondent has stated that some posts of teaching and non-teaching including one P.G. Assistant (Tamil) post were excess. Subsequently, the 6th respondent school has resisted the same by giving a detailed representation and objection to the Joint Director of School Education through the third respondent and the third respondent in response to the same has passed order dated 30.06.2006, whereby certain posts which were shown as excess had been taken away, which includes one post of Tamil P.G. Assistant and that order was challenged by the 6th respondent herein in W.P.(MD) No.5673 of 2006, wherein interim stay was granted as early as on 13.07.2006. Therefore, the posts which were shown as excess including the post of P.G. Assistant (Tamil), for which the petitioner was appointed, were taken away through the order of the third respondent, was stayed by this Court and the petitioner has been working in the 6th respondent school all along. Subsequently, by way of further proceedings dated 19.05.2010, the third respondent has restored the taken away posts including the post of P.G. Assistant (Tamil). Therefore, there can be no further impediment for the third respondent to approve the post of P.G. Assistant (Tamil), which has been all along enjoyed by the 6th respondent school by way of sanction. Therefore, the non-approval of the appointment of the petitioner on the part of the third respondent is unjust and therefore, the prayer sought for herein has to be allowed.

5.Per contra, the learned Additional Government Pleader appearing for the respondents 1 to 4 would submit that based on the students strength certain posts of teaching and non-teaching staff had been found excess in respect of the 6th respondent school. Therefore, such declaration had been made by the third respondent on two occasions i.e., 29.12.2004 and 25.11.2005 for two academic years i.e., 2004-2005 and 2005-2006. Subsequently, objection has been made by the sixth respondent school and after having considered the same, the third respondent by further proceedings dated 30.06.2006 held that at least two P.G. Assistant and two school assistant posts had been found excess. Out of the two P.G. Assistant one P.G. Assistant (Tamil) had been found excess and therefore, the said post had been taken away from the 6th respondent school. The said order has been stayed by this Court by order dated 13.07.2006 and subsequently the said post had been restored in the year 2010 and the said writ petition also had been withdrawn by the sixth respondent, who was the petitioner in the said writ petition filed in the year 2006. No proposal had been



received so far from the 6th respondent school for the appointment of the petitioner. The learned Additional Government Pleader would further submit that it is claimed by the petitioner that she had been working on that post of P.G. Assistant (Tamil), if that being so, certainly, a proposal ought to have been submitted by the 6th respondent. Unfortunately no such proposal regarding appointment of the petitioner had been received. Therefore, there is no question of approval of the petitioner as claimed by her. Therefore, the petition deserves to be rejected.

6.This Court has considered the rival submissions made by both sides.

7.It is not disputed that the petitioner had been appointed by the 6th respondent as the same can be evidenced from the order of appointment dated 15.11.2004, issued by the 6th respondent and the copy of the same has been annexed in the typed set of documents filed by the petitioner. The other factors regarding the declaration of excess staff made by the third respondent and subsequent objection by the 6th respondent school and subsequent order of the third respondent dated 30.06.2006 and the order passed by this Court staying the operation of the order dated 30.06.2006 of the third respondent and further order during the pendency of the writ petition by the 3rd respondent, are all matters of records. There are no controversy in this regard. Ultimately by order dated 19.05.2010, the one post of P.G. Assistant (Tamil) and the other posts which were taken away from the 6th respondent school, had been subsequently restored. Taking away of P.G. Assistant (Tamil) had been stayed by this Court by order dated 13.07.2006, and the said order of stay had been in operation till the Writ Petition was dismissed as withdrawn on 19.05.2011. Only during the pendency of the writ petition, by order dated 19.05.2010, the third respondent had restored the posts which were taken away from the 6th respondent school, including the post of P.G. Assistant (Tamil). Therefore, there can be no quarrel that the post of P.G. Assistant (Tamil) had been available with the 6th respondent school without any break atleast from 15.11.2004 the date on which the petitioner had been appointed till the said post was restored on 19.05.2010. Therefore, if at all the petitioner had been working on the said sanctioned post of P.G. Assistant (Tamil) at the 6th respondents school and the petitioner had been continuously working in the said post, certainly the petitioner would be entitled to get approval from the concerned authorities.

8.Further, the learned Additional Government Pleader would submit that no such proposal had been received from the 6th respondents school seeking appointment of the petitioner. In this <https://hccasescourts.gov.in/hccases> reference can be made from the averments made in the affidavit filed in support of the writ petition W.P.(MD) No.5673 of 2006 filed by the 6th respondent school, wherein in



paragraph 12 of the affidavit the 6th respondent had stated the following:

"12. It is respectfully submitted that there are no vacant post in the petitioner-school as indicated by the CEO. In the vacancies that arose on account of retirements, the following persons have been appointed and their approval proposals are now pending before the 3rd respondent DEO:

Sl. No.	Post	Retirement/ Promotion	Newly Appointed	W.E.F.
01	PG Assistant	Kandasamy	C.Lalitha	15.11.2004
02	P.G. Assistant	R.L.Mohandoss	V.Joel Kanagaraj	10.02.2006
03	B.T. Assistant	P.Lakshmi	G.Esther Ezhilrani	01.04.2004
04	B.T. Assistant	V.Joel Kanagaraj	J.Sheeba Dhanamani	01.02.2006
05	B.T. Assistant	C.Manuel Manoharan	S.Easter Devavaram	01.06.2006

Therefore, it was observed on behalf of the 6th respondent, the petitioner in the said writ petition, that the petitioner had been appointed on 15.11.2004 as P.G. Assistant (Tamil) in the vacant place due to the retirement of one Kandasamy, the proposal also had been forwarded to the 3rd respondent for approval and the said proposal had been pending before the third respondent. Though such appointment of petitioner and forwarding of proposal by the 6th respondent has been mentioned in the said affidavit, necessary proceedings seeking approval, as claimed by the 6th respondent, is not available before this Court. In spite of the notice having been served, neither the 5th respondent nor 6th respondent appeared before this Court.

9. In this regard the learned counsel appearing for the petitioner would further contend that the entire management of the 6th respondent school, which is part of the Tamil Evangelical Lutheran Church management had been entrusted to the former Judge of this Court as per the order of appointment of Administrator made in the relevant proceedings. Therefore, the educational institutions including the 6th respondent school is under the control of the said Administrator and there is no Secretary presently functioning at the 6th respondent school. In order to express her grievance, the petitioner has approached the Administrator of the 6th respondent school and the said Administrator vide his proceedings dated 05.07.2016 has passed the following order:

<https://hcservices.ecourts.gov.in/hcservices/>

I have considered all the aspects of the case and pendency of the Writ Petition 3982 of 2013. Since the said



Writ Petition is pending I had a doubt whether I should consider the claim of the petitioner. However, I am of the opinion that on the facts as furnished by the petitioner I could grant some relief subject to the result of the Writ Petition. The High Court will certainly in a better position to dispose off the case because they will have the facts correctly furnished by the Learned Government Pleader on behalf of the Education department. In this view of the matter I consider the case of the petitioner as presented to be, but my decision will be subject to the result of the Writ Petition. I have already pointed out that the post of P.G. Assistant - Tamil in the school was originally declared as surplus but later corrected and the two posts of PG Assistant in Tamil was retained. If this is so the petitioner cannot be dislodged from the school because she had been appointed as PG Assistant in the vacancy caused by one P.Kandasamy on 31.10.2004. The petitioner was appointed as PG Assistant in Tamil with effect from 15.11.2004. In as much as post of PG Assistant (Tamil) was retained in the school by the CEO, the petitioner cannot be driven away from the school and her appointment on 30.11.2004 has to be confirmed. I direct the Correspondent to take note of this position and retain her in the school, give her proper work and also approve the payment of her salary. I direct the Correspondent and the Headmaster of the School to give effect to his order immediately. If however the post of PG Assistant in Tamil is not available in this school the parties should have redress in the High Court in the pending Writ Petition W.P.No.3982 of 2013."

10. In view of the said order passed by the present Management of the 6th respondent school, in the absence of the Correspondent to look after the administrative affairs of the 6th respondent school, the particulars of the proposal, which is claimed to have been sent by the 6th respondent, as referred to above in the earlier round of litigation, can very well be available only from the files of the 6th respondent Management.

11. In view of the above said facts and circumstances, this Writ Petition is disposed of with the following directions:

(i) The petitioner shall make a request to the headmaster of the 6th respondent school, giving all the details right from her appointment, for her appointment proposal to be forwarded to the third respondent, for necessary approval within a period of two weeks from the date of receipt of a copy of this order.

(ii) On receipt of such request from the petitioner, the Headmaster concerned of the 6th respondent school, after scrutinising the same, forward it along with the relevant documents and materials at the 6th respondent school, to the Hon'ble Administrator of the 6th respondent School at the Administrative Office of the Tamil Evangelical Lutheran Church, within a period



of two weeks thereafter.

(iii) Once such proposal forwarded by the Headmaster of the 6th respondent is received, the Administrative Office of the 6th respondent School at Tiruchirappalli shall forward the same to the third respondent through the fourth respondent for necessary approval, within a period of two weeks thereafter.

(iv) On receipt of such proposal from the Administrative Office of the 6th respondent, Tiruchirappalli as directed above, the third respondent shall consider the same and pass necessary orders regarding granting of approval of appointment to the petitioner, from the date of her original appointment i.e., 15.11.2004.

(v) It is needless to state that once the order of approval is passed by the third respondent, the salary due payable to the petitioner from the date of appointment till date, shall also be calculated and paid to her.

(vi) The endeavour as directed above shall be completed within 8 weeks from the date of receipt of such proposal as forwarded by the Administrative Office of the 6th respondent school.

12. With these directions, this Writ Petition is disposed of. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar(RTI)

/True Copy/

Sub Assistant Registrar

To

1. The Secretary,
Department of School Education,
State of Tamil Nadu,
Fort St. George,
Chennai - 600 009.
2. The Director of School Education,
College Road, Chennai - 600 006.
3. The Chief Educational Officer,
Pudukottai - 622 001.
Pudukottai District.
4. The District Educational Officer,
Pudukottai - 622 001.
Pudukottai District.

+1cc to SPECIAL GOVERNMENT PLEADER in SR. No.8372

+1cc to M/s. T.CIBI CHAKRABORTHY Advocate in SR. No.8277

SJ

JS/JC/SAR, 1/26.05.2017/7P-7C

<https://hcservices.ecourts.gov.in/hcservices/>

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