

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.04.2018

CORAM:

THE HONOURABLE Dr. JUSTICE S.VIMALA
and
THE HONOURABLE Mrs. JUSTICE S.RAMATHILAGAM

W.A.Nos.584 to 586 of 2014
and M.P.Nos.1, 1 and 1 of 2014

W.A.No.584 of 2014
St. Antony's Middle School,
Basilica of Our Lady of Health,
Rep. By Rev. Fr. A.Micheal,
Secretary & Correspondent,
Velankani, Nagapattinam District. Appellant

versus

M.Bosco Respondent

W.A.No.585 of 2014

Our Lady of Health Higher Secondary School,
Basilica of Our Lady of Health,
Rep. By Rev.Fr.A.Micheal,
Secretary & Correspondent,
Velankani, Nagapattinam District. Appellant

versus

S.Anitha Mercilin Mary ... Respondent

W.A.No.585 of 2014

Our Lady of Health Higher Secondary School,
Basilica of Our Lady of Health,
Rep. By Rev.Fr.A.Micheal,
Secretary & Correspondent,
Velankani, Nagapattinam District. Appellant

versus

A.Francis Xavier ... Respondent

Appeal filed under clause 15 of the Letters of Patent
against the order dated 27.02.2014 made in W.P.No.37045 of 2007.

Appeal filed under clause 15 of the Letters of Patent
against the order dated 27.02.2014 made in W.P.No.37046 of 2007.

Appeal filed under clause 15 of the Letters of Patent against the order dated 27.02.2014 made in W.P.No.37047 of 2007.

W.P.No.37045 to 37047/2007:

Petitions filed under Article 226 of the constitution of India for issuance of a Writ of Certiorarified Mandamus calling for the records of the respondent in his proceedings in 1) R.C. 10/2007-2008 dated 27.08.2007 2) R.C. No. 10/2007-08 dated 28.08.2007 and 3) R.C. No. 10/2007-08 dated 27.08.2007 respectively and quash the same and consequently directing the Respondent herein to pay the full wages to the petitioner for the period from 1) 28.11.2001 to 29/11/2005 2) 29.11.2009 to 13.10.2005 and 3) 29/11/2001 to 02/11/2004 during which the Petitioner was working as a Secondary Grade Teacher amounting of 1) Rs. 2,32,569/- 2) 2,20,243/- and Rs. 1,22,233/- at an early date respectively.

For Appellants in all W.As : Mr.M.S.Palanisamy
For Respondents in all W.As : Mr.M.Sivarathanan

COMMON JUDGMENT

Dr.S.VIMALA, J.

W.A.Nos.584, 585 and 586 of 2014 have been filed challenging the orders passed in W.P.Nos.37045, 37046 and 37047 of 2007 respectively, in and by which, the writ petitions filed by the respective petitioners have been allowed vide order dated 27.02.2014.

2. As there is a common question of law arising in all these cases, they were heard together and disposed of by this common judgment.

3. The petitioner in W.P.No.37045 of 2007 has prayed for full wages for the period from 28.11.2001 to 29.11.2005, during which, the petitioner was working as a Secondary Grade Teacher, amounting to Rs.2,32,569/-, while seeking to quash the order dated 27.08.2007 passed in proceedings No.RC No.10/2007-2008.

4. The petitioner in W.P.No.37046 of 2007 has prayed for full wages for the period from 29.11.2001 to 13.10.2005, during which, the petitioner was working as a Secondary Grade Teacher, amounting to Rs.2,20,243/-, while seeking to quash the order dated 28.08.2007 passed in proceedings No.RC No.10/2007-2008.

5. The petitioner in W.P.No.37047 of 2007 has prayed for full wages for the period from 29.11.2001 to 02.11.2004, during which, the petitioner was working as a Secondary Grade Teacher, amounting to Rs.1,22,233/-, while seeking to quash the order dated 27.08.2007 passed in proceedings No.RC No.10/2007-2008.

6. As the issue involved in all the appeals is one and same, suffice to give the details furnished in one of the writ petitions.

7. The appointment order has been issued by the Correspondent of the School appointing the petitioner as Secondary Grade Teacher with effect from 29.11.2001(F.N.) in the scale of pay 4500-125-7000 @ 4500 + other allowances subject to the conditions that a) the candidate should be physically fit, b) the release of monthly salary being subject to approval of the education department, and c) liable to be transferred to any of the schools in Thanjavur diocese for administrative reason.

8. After the appointment, it is evident from the records that there have been three rounds of litigation. In the first round, this Court has directed the school authorities to consider the representation of the respective petitioner in each of the case on merits and in accordance with law, within a limited time frame.

9. The proposal to approve the appointment of each of the petitioner as secondary grade teacher was rejected by the District Elementary Educational Officer, Nagapattinam, vide his order dated 25.09.2006. This order was challenged by way of filing a writ petition, which is the second round of litigation. By order dated 03.04.2007, it was held that the appellant, as a minority educational institution, the entire control of administration vested with the BISHOP and not with the correspondent and, therefore, the appointment was not valid.

10. Placing reliance on this order, the appellants came to the conclusion that the appointment is invalid and the respective petitioners are not entitled to full pay as per the Government norms, as the Government has not approved the appointment. As the post was not approved, the employment of the petitioners were considered as part-time employees entitled to a consolidate pay of Rs.1,800/- p.m. The petitioners were relieved from the post on 29.11.2005.

11. Raising wage dispute, inter alia, seeking to quash the order of the appellant, the third round of litigation has been filed.

12. The learned single Judge accepted the case of the petitioners and held that the petitioners are entitled to full salary for the period they worked in the appellant school. The learned single Judge also noted that after the order of appointment, till June 2003, the appellant was paid salary of Rs.6795/-, i.e. as per the order of appointment. It was also pointed out that in the writ petition filed (W.P. Nos.41088,

41087 and 24895 of 2006) even though the relief sought for seeking direction to the authorities to approve the appointment was refused, the management was directed to pay full salary to the petitioners. The learned single Judge pointed out that the appellants did not prefer any appeal challenging the order dated 03.04.2007 and that the maintainability of the writ petition was not an issue raised in the earlier writ petition and that the appellant should not have taken the risky argument of non-maintainability in present writ petitions.

13. The order of the learned single Judge is based upon the decision of the Division Bench of this Court reported 2006 Writ Law Reporter 845 (Bharathi Primary School vs. Paul Durai and others). That was a case where the non-approval was on account of lack of minimum experience. Even in that case, full salary has been ordered to be paid.

14. So far as this case is concerned, disqualification or want of qualification is not a ground for non-approval. Further, the refusal to grant approval was not account of any mistake committed by the writ petitioners. The non-grant of approval is only on account of the mistake committed by the appointing authority. It was purely on account of internal dispute in the management itself between the BISHOP and the Correspondent. It is highly unbelievable that the Correspondent has made appointment without consent of BISHOP. In any event, for the act of an agent, it is the principal who is responsible ultimately.

15. However, there being a finding that the appointment is invalid, this Court is not inclined to probe further in the matter.

16. So far as the maintainability of the writ petition is concerned, as rightly pointed out by the learned single Judge, this stand has been taken belatedly. However, it would be appropriate to quote the decision of the Supreme Court reported in (2003) 10 SCC 733 (Federal Bank Ltd. Vs. Sagar Thomas and Others) regarding the maintainability of a writ petition. The relevant observation reads as under:

"18. From the decisions referred to above, the position that emerges is that a writ petition under Article 226 of the Constitution of India may be maintainable against (i) the State (Govt); (ii) W.P.(C) No. 3075/2014 Page 22 of 42 Authority; (iii) a statutory body; (iv) an instrumentality or agency of the State; (v) a company which is financed and owned by the State; (vi) a private body run substantially on State funding; (vii) a private body discharging public duty or positive obligation of public nature (viii) a person or a body under liability to discharge any function under any

Statute, to compel it to perform such a statutory function".

17. So far as the present case is concerned, even though the dispute appears to be between the employer and employee, it is really not so. The non-approval of the appointment would have a telling effect in the mind of the teacher, which would, in turn reflect in the quality of education imparted. Thus, it is touching the public function of maintaining quality of education of the student community and it is not a mere question of payment of salary.

18. Contending that Court cannot issue a writ of mandamus, directing a private educational institution to pay the salary and allowances equal to the salary and allowances payable to teachers of Government School or Govt. Aided school, the Full Bench decision of this Court in the case of the Correspondent / Principal, Arokiamada Matriculation Higher Secondary School, Udumalai Road, Pollachi vs. Tmt. T.Sorubarani (deceased), N.Thirugnasambandam and others, dated 15.10.2015 is relied upon.

19. So far as this case is concerned, it is not a question of payment of salary to the petitioners on par with pay and allowances to teachers of Government Schools. It is a question of payment of salary to a teacher, who has been appointed in a specific time-scale of pay. It is a question of paying salary as per the salary structure indicated in the order of appointment. No doubt, in the order of appointment it has been stated that the payment of salary is subject to approval. This clause can be enforced only if approval is not granted on account of the default committed by the teacher. It is on account of mistake committed by the management the post having not been sanctioned, that definitely cannot be put against the petitioner. Further, the management having taken full time work from the petitioners, the petitioners are entitled to salary as per the structure of pay reflected in the appointment order. It is incumbent on the management to pay the teachers for the work discharged by them and the management cannot take a stand that since the posts have not been approved, they cannot make payment as per the pay structure shown in the appointment order, more so after extracting the work from the petitioners.

20. Reliance placed on the decision in 2007 (1) CTC 649 (The Correspondent, M.M.Higher Secondary School, Bethelpuram, Kanyakumar District and others), by the appellant will not come to its aid as in that case, the person, who was appointed to the post, which was not sanctioned by the Government, was paid only a sum of Rs.1,000/- per month for rendering two hours of teaching service every day. The appointment order itself specifically mandated that regular scale of pay would be

provided only after sanction of the post and till such time, the petitioner therein was paid compensation at Rs.1000/- per month. However, in the case on hand, as has been held by the learned single Judge, the petitioners were paid wages in the time scale of pay till June, 2003. That can only mean that the petitioners were full-time faculty in the school, but for the error committed by the school, sanction would have been accorded by the Government. The petitioners having been paid full salary as reflected in the appointment order in the time scale of pay, denying the petitioners their salary for the period of work done by them would be wholly unjustifiable.

21. For the reasons aforesaid, this Court finds no infirmity in the order passed by the learned single Judge and, accordingly, the writ appeals fails and the same are dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

-s/d-

Assistant Registrar(CS-II)

True Copy

Sub-Assistant Registrar

ogy/GLN

To

1. Secretary & Correspondent,
St. Antony's Middle School,
Basilica of Our Lady of Health,
Velankani, Nagapattinam District.
2. Secretary & Correspondent,
Our Lady of Health Higher Secondary School,
Velankani, Nagapattinam District.

+3 CCS to Mr.M.S. Palani Samy, Advocate sr 30775.

+3 CCS to Mr.Sivavarthan, Advocate sr 29877.

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W.A.Nos.584 to 586 of 2014

NM(CO)
SP(18/07/2018)