

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.09.2017

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THE HONOURABLE MR.JUSTICE.M.V.MURALIDARAN

Rev.Application No.131 of 2017
in W.P.No.2700 of 2009

Hilda Mercy

.. Review applicant

Vs.

- 1.State of Tamil Nadu, rep.by
its Secretary to Government,
Education Department,
Fort St.George, Chennai - 9.
- 2.The District Educational Officer,
Arignar Anna Campus,
Colonoor, The Nilgiris District.
- 3.The Headmaster and Correspondent,
St.Antony's Higher Secondary School,
Coonoor 101, The Nilgiris District.
- 4.Arul

.. Respondents

Prayer: This Review Application is filed under Order 47 Rule 1 r/w 114 of Civil Procedure Code praying to review the order passed in W.P.No.2700 of 2009 dated 23.03.2010.

For review applicant : Mr.S.Ganesan for
M/s.C.S.Associates

For Respondents 1 & 2 : Mr.R.Govindasamy
Spl.Govt.Pleader

For R3 & R4 : Mr.Balavijayan

ORDER

This review application has been filed by the review applicant to review the order dated 23.03.2010 passed in W.P.No.2700 of 2009.

2. It is manifested from the records that in fact, for the very same relief, the review applicant has already moved this Court by filing a writ petition in W.P.No.15320 of 2008 seeking for consideration of the petitioner's representation dated 28.04.2008 and to confirm his service. This Court, by an order dated 23.09.2008 has directed the respondents 2 and 3 to consider the grievance of the petitioner as put forth by her, in her representation dated 28.04.2008 on merits and in accordance with law, within a period of six weeks from the date of receipt of a copy of this order. If the representation is not considered, the third respondent shall not appoint any other person in the place of the petitioner. Again, the review applicant has filed the writ petition in W.P.No.2700 of 2009 and the same was dismissed on 23.03.2010 wherein it is

stated that the review applicant has already been considered by this court by disposing of the earlier writ petition. Hence the petitioner cannot again file the writ petition for the very same relief on the ground that the representation of the petitioner was still pending consideration. Therefore, the above said writ petition cannot be entertained and it is not maintainable. Hence the petitioner has filed the present review application.

3. The learned counsel for the review applicant would submit that the second respondent has mis-represented this Court as if that order was passed by him on 14.11.2008 by one Kannan, District Educational Officer, where as he came to the place only in the year 2010. This Court, by an order dated 23.09.2008 made in W.P.No.15320 of 2008 directed the respondents 2 and 3 to pass an order on the representation made by the review applicant dated 28.04.2008. The second respondent did not pass any order. Therefore, the review applicant filed contempt petition before this court in C.P.No.1243 of 2010 and the second respondent produced the order dated 14.11.2008 as if that the order has been passed on 08.11.2008 itself during which time the said Kannan was not at all District Educational Officer, whereas he joined duly only in 2010. The conduct of the respondents 2 and 3 itself is enough to show that

the review applicant has been denied the regularization of the services. Unless the order is reviewed, the review applicant may not get any relief. Therefore, he prays for review application.

4. Notice was served on the respondents and second respondent has filed a counter affidavit and respondents 3 and 4 have also filed the counter affidavit.

5. In the counter affidavit of third respondent, which is extracted here under:

“ 2. I submit that during 2001 to 2007. I was working as Headmaster and Correspondent in the third respondent School. When I was Headmaster in the said school, the Review Applicant was working as Primary School Teacher in the same institution from the year 1998 onwards and subsequently on seeing her performance and diligent service and according to her qualification and experience, the review applicant has been selected and appointed in the third respondent school as B.T.Assistant on an from 01.06.2002 in a regular vacancy in the place of one Sundersingh Premkumar as he was elevated as P.G.Assistant in the same school.

3. I humbly submit that since then, the review applicant was working as B.T.Assistant in the 3d respondent school without any hindrance as she was also signing in the Master Attendance Register from 01.06.2002 onwards. Subsequently, I got transferred to the 4th respondent school in 2007. I submit that while I was in service of the third respondent school, the service of the review applicant was very much satisfactory and very dedicated to her possession. Thereafter, I was transferred back to the present school i.e. 3rd respondent school in 2015 and now presently I am working as Headmaster and correspondent of the 3rd respondent school.

4. I submit that while the Review Applicant was working as B.T.Assistant in the regular vacancy, the papers were forwarded for approval of her appointment since it is sanctioned post. Anyhow, now there is vacancy in the post of B.T. Assistant in the 3rd respondent school and the review applicant can very well be accommodated in the said school.”

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6. The learned Special Government Pleader appearing for the respondents 1 and 2 would submit that the third respondent- Management will

submit the proposals to the second respondent and the second respondent is the approving authority and not the appointing authority.

7. Considering the submissions made by both sides, there shall be a direction to the third respondent to send proposals to the second respondent, within a period of two weeks from the date of receipt of a copy of this order. On receipt of the same, the second respondent is directed to pass appropriate orders on merits and in accordance with law, preferably, within a period of eight weeks thereafter.

8. Accordingly, this review application is allowed. No costs.

12.09.2017

Index : Yes/No
Internet : Yes/No
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To

- 1.The Secretary to Government,
Education Department,
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M.V.MURALIDARAN,J

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