

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.08.2018

CORAM:

THE HONOURABLE MR.JUSTICE V.PARTHIBAN

W.P.Nos.23415 & 23416 of 2015
and
M.P.Nos.1 & 1 of 2015

J.Japa Jaya ... Petitioner in W.P.No.23415 of 2015

R.Justin Prema ... Petitioner in W.P.No.23416 of 2015

-vs-

1.The Government of Tamil Nadu
rep.by its Secretary
Department of School Education
Fort St.George, Chennai-600 009

2.The Director of School Education
DPI Campus
College Road, Chennai-600 006

3.The Joint Director of School Education
DPI Campus
College Road, Chennai-600 006

4.The District Educational Officer
The Office of the District Educational Office
Thuckalay, Kanyakumari District

5.The Correspondent
Yettacode Higher Secondary School
Veeyannoor Post
Thiruvattar-629 177
Kanyakumari District

... Respondents 1, 2, 3, 5 & 6
in both W.Ps.

6.The Chief Educational Officer
The Office of the Chief Educational Office
Thuckalay, Kanyakumari District

... 4th Respondent in
W.P.No.23415 of 2015

7.The Chief Educational Officer

The Office of the Chief Educational Office
Nagercoil, Kanyakumari District

... 4th Respondent in W.P.No.
23416 of 2015

PRAYER (in W.P.No.23415 of 2015): Writ Petition is filed under Article 226 of the Constitution of India for issuance of writ of mandamus directing the respondents 1 to 3 to evaluate the Educational Certificates of the petitioner and approve the appointment as Sewing Teacher and also direct the 5th and 6th respondents to release grant-in-aid and to pay the monthly salary regularly to the petitioner from 10.06.2013, as per her appointment order dated 10.06.2013.

PRAYER (in W.P.No.23416 of 2015): Writ Petition is filed under Article 226 of the Constitution of India for issuance of writ of mandamus directing the respondents 1 to 3 to evaluate the Educational Certificates of the petitioner and approve the appointment as P.G.Teacher (Commerce) and also direct the 5th and 6th respondents to release grant-in-aid and to pay the monthly salary regularly to the petitioner from 10.06.2013, as per her appointment order dated 10.06.2013.

For Petitioners : Mr.R.Thiagarajan, Senior Counsel
(in both W.Ps.) for Mr.C.Johnson

For Respondents : Mr.C.Munusamy
(in both W.Ps.) Special Government Pleader for R1 to R5
Mr.R.N.Amarnath for R6

C O M M O N O R D E R

Since the issues involved in both the writ petitions are one and the same, they have been clubbed together, heard together and are being disposed of by this common order.

2. The common facts, which are placed before this Court for consideration are that both the petitioners are qualified for appointment to the posts of Sewing Teacher and P.G.Assistant (Commerce) respectively and appointed as such in the sixth respondent School on 10.06.2013 as against regular and clear vacancies, by the sixth respondent - Correspondent and they were placed in the pay scale of Rs.5,200 - Rs.20,200 and Rs.9,300-

Rs.34,800 respectively. On their appointment in the respective Departments, they have been discharging their duties without any complaint.

3. The sixth respondent - School is a Minority Government Aided School governed by the provisions of the Tamil Nadu Recognized Private Schools (Regulation) Act, 1973 and the Correspondent of the School is the competent authority for making appointment to the post of Teachers in the School. The Educational Authorities are under an obligation to evaluate the certificates for the purpose of sanctioning and releasing grant-in-aid for disbursement of salary to the Teachers so appointed.

4. In these circumstances, the Correspondent of the School has been periodically sending proposals to respondents 1 to 5 and in fact, a specific proposal was sent to the fifth respondent on 22.07.2015 in order to evaluate the certificates submitted by the petitioners for the purpose of releasing grant-in-aid for payment of salary and other allowances etc., to them. The sixth respondent has also been periodically approaching the Educational Authorities concerned to evaluate the educational certificates of the petitioners, like, S.S.L.C., H.S.C., Technical Qualification and Degree Qualification obtained by them. However, no response has been forthcoming in regard to the proposals submitted by the sixth respondent.

5. As a result of non-response by the Authorities concerned, the writ petitioners have been made to work as Teachers in their respective Departments without any salary being paid to them, since their appointment on 10.06.2013. According to the petitioners, they have been regularly taking Classes to the students and the total strength of the students is more than 2400 and there are no excess Teachers in their respective Departments. According to the petitioners, despite the fact that all the norms have been satisfied and all the eligibility criteria have been fulfilled by them, they have been made to work without any salary being paid to them, since their appointment. In view of the inaction on the part of the Authorities concerned, the petitioners have approached this Court by filing the present writ petitions seeking for issuance of writ of mandamus.

6. Mr.R.Thiagarajan, learned Senior Counsel, appearing for the petitioners would, at the outset, contend that the petitioners having been appointed as against regular and clear vacancies and having fulfilled all the necessary norms and

eligibility criteria, they cannot be deprived of their monthly salary and other allowances due to the continued inaction on the part of the Authorities concerned. The first respondent is under an obligation to evaluate the educational certificates submitted by the petitioners at the time of their appointment and only after such evaluation, there could be a sanction of grant-in-aid for payment of salary and other allowances etc., to the petitioners. Unfortunately, for more than five years, no action has been forthcoming from the Authorities concerned towards evaluation of the certificates submitted by the petitioners and no decision has been taken on the proposals submitted by the Correspondent of the School on the same day when they were appointed as Teachers on 10.06.2013.

7. Upon notice, Mr.C.Munusamy, learned Special Government Pleader, entered appearance on behalf of the respondents 1 to 5 and filed counter affidavits and Mr.R.N.Amarnath, learned counsel, entered appearance, on behalf of the sixth respondent.

8. The learned Special Government Pleader appearing for the respondents 1 to 5 would, at the outset, submit that the writ petitions filed before this Court (Principal Seat) is not maintainable, since the sixth respondent - School is located in Kanyakumari District and the petitioners are also residing within the jurisdiction of the Madurai Bench of this Court and therefore, he urged this Court to dismiss the writ petitions as being not maintainable.

9. Apart from the above legal objection as to the maintainability of the writ petitions, the learned Special Government Pleader would submit that the Department has not received any proposal from the Management of the School and therefore, the question of taking action on the proposals said to have been submitted by the Correspondent of the School did not arise. He would further submit that there was an interim order not to make any appointment in the sixth respondent - School in the collateral proceedings pending before this Court during the relevant period and therefore, the question of appointing the petitioners as Teachers during such period cannot be countenanced in law.

10. Moreover, the learned Special Government Pleader would submit that the appointment orders appear to be forged documents and therefore, the appointment of the petitioners are suspected to be a valid appointment or not. Therefore, no action was taken by the respondents 1 to 5 for approving the appointment of

the petitioners, even assuming that such proposals were submitted by the sixth respondents in this regard. Hence, the learned Special Government Pleader would draw the attention of this Court to Paragraph No.6 of the counter affidavit filed in W.P.No.23415 of 2015, which is extracted hereunder:

"6. I submit that this respondent had received a proposal dated 22.07.2015. The appointment order of the petitioner dated 10.06.2013 accompanying the proposal dated 22.07.2015 was shockingly a forged as well as manipulated one. In the said appointments order dated 10.06.2013, there is no letter number but also the 6th respondent had signed the same only on 22.07.2015. But, the appointment order dated 10.06.2013 should have been signed on or before 10.06.2013 by the appointing authority. This would clearly show that there is a possibility that the said appointment order dated 10.06.2013 was clandestinely prepared by the 6th respondent by antedated thereby helping petitioner. Further the appointment order dated 10.06.2013 had been deliberately created only to show as if the petitioner was appointed before the 6th respondent school was come under the direct payment i.e., from 19.05.2014. Further it is not possible to send approval of the petitioner to this respondent on the same day of the said appointment i.e., on 10.06.2013. This is the tip of an iceberg showing the attitude of the petitioner thereby trying to get a approval as a sewing teacher through back door entry."

11. According to the learned Special Government Pleader, the appointment orders, dated 10.06.2013, had been signed by the Correspondent of the School only on 22.07.2015 and therefore, there was a doubt as to the genuineness of the petitioners' appointments. Therefore, he would submit that the entire litigation is not bona fide. As the petitioners have not approached this Court with clean hands, the learned Special Government Pleader would urge this Court to dismiss the writ petitions.

12. At this juncture, the learned Senior Counsel would vehemently submit that the statement made in the counter affidavits, in regard to the act of forgery, cannot be countenanced on facts for the simple reason that all the

documents, which are placed as materials to this litigation, would disclose in unequivocal terms that the petitioners were indeed appointed on 10.06.2013. The learned Senior Counsel would draw the attention of this Court to the Attendance Register maintained by the sixth respondent - School for the period from 10.06.2013 till date, wherein the names of the petitioners herein have been shown and their signatures affixed in the attendance sheets.

13. The learned Senior Counsel would also specifically draw the attention of this Court to the documents relating to the contribution of the petitioners to C.P.S.Account, i.e. Contributory Pension Scheme, from 10.06.2013 and these documents would disclose the unimpeachable fact that factually the petitioners were appointed as Teachers with effect from 10.06.2013 as against the regular and clear vacancies. He would further produce original appointment orders, dated 10.06.2013, which did not contain any date below the signature of the Correspondent. Therefore, he would submit that the documents filed on behalf of the respondents 1 to 5, particularly, appointment orders are not the genuine copies of the original appointment orders and therefore, the substance of their allegations, as contained in Paragraph No.6 of the counter affidavits, fall flat and the same have to be rejected as being baseless and unfounded.

14. As regards the contention put forth as to the maintainability of the writ petitions before this Court (Principal Seat), the learned Senior Counsel would submit that the prayer in these writ petitions is to direct the respondents 1 to 3 to evaluate the petitioners' educational certificates and the respondents 1 to 3 are within the jurisdiction of this Court (Principal Seat) and therefore, the substantial cause of action arises within the jurisdiction of this Court (Principal Seat) and hence, the writ petitions are maintainable. The learned Senior Counsel would further submit that even the earlier litigation, pointed out by the respondents 1 to 5, was filed before this Court (Principal Seat) and it was entertained. Therefore, he would submit that the objection to the maintainability of the writ petitions does not have any merit and it is liable to be rejected.

15. The learned counsel appearing for the sixth respondent would submit that the Correspondent of the School has immediately sent the proposal of appointment of the petitioners on 10.06.2013 and in fact, he produced a copy of the proposals, wherein the seal of the Authority concerned was affixed.

Although there appears to be some disputes on the date of receipt of the proposal, the fact remains that proposal has been submitted. It is also brought to the knowledge of this Court that originally there was a restraint by this Court in regard to the appointment of Teachers in the sixth respondent - School and the said writ petition (W.P.No.15376 of 2013) was ultimately dismissed on 23.04.2015. Therefore, he would submit that there is no impediment as on date for the respondents 1 to 3 to take forward the proposals and pass final orders.

16. Heard the learned Senior Counsel appearing for the petitioners, learned Special Government Pleader appearing for the respondents 1 to 5 and also the learned counsel appearing for the sixth respondent.

17. As regards the objection to the maintainability of the writ petitions, the learned Senior Counsel has rightly contended that the substantial cause of action, namely, direction sought to the respondents 1 to 3 to evaluate the petitioners' educational certificates, falls well within the jurisdiction of this Court (Principal Seat) and therefore, in terms of the rulings of the Honourable Full Bench of this Court on the subject matter, this Court is of the considered view that the objection to the maintainability of the writ petitions made on behalf of the respondents 1 to 5 has to necessarily fail and the same is overruled.

18. As regards the merits of the petitioners' claim are concerned, the allegations as contained in Paragraph Nos.6 of the counter affidavits, which is extracted supra, are to be held as unfounded and baseless, since on behalf of the petitioners unimpeachable documents have been produced to establish the factum that the petitioners were appointed on 10.06.2013 and continued to discharge their duties as Teachers from the date of their appointment. The attendance register produced would bear ample testimony to the fact that the petitioners were appointed on 10.06.2013 and continued to discharge their duties as Teachers. This position is further fortified by the fact that the petitioners were admitted to the Contributory Pension Scheme from 10.06.2013, as evidenced by the documents filed on behalf of the petitioners. Therefore, this Court has no hesitation in coming to the conclusion that the petitioners were indeed appointed as Teachers in their respective Departments in the sixth respondent - School on 10.06.2013 and continued to discharge their duties from 10.06.2013 till date.

19. The contention, which is put forth on behalf of the respondents 1 to 5, that there appears to be forgery in the appointment orders cannot also be countenanced on facts for the reason that the original appointment orders have been produced in which no date has been mentioned below the signature of the Correspondent of the School. In fact, the learned Senior Counsel took much pain to explain this Court that the Correspondent did not have the habit of mentioning dates under his signature in any of the documents signed by him. Such of those documents, in support of such contention, has been produced before this Court and this Court, on being satisfied with the said explanation, is of the view that the petitioners were validly appointed as Teachers, vide appointment orders dated 10.06.2013, by the sixth respondent - Correspondent. This Court does not understand as to how the Educational Authorities have a different copy of the appointment orders. In any case, the copies submitted on behalf of the respondents 1 to 5 did not match with the original appointment orders and therefore, the same are rejected being not genuine documents.

20. From the materials and the pleadings available on record, it could be seen that the petitioners have been unjustly made to work as Teachers for all these years without any salary being paid to them because of the continued inaction on the part of the Educational Authorities. Though the Educational Authorities are under obligation to evaluate the educational certificates of the Teachers, who are appointed by the Schools governed by the Tamil Nadu Recognized Private Schools (Regulation) Act, 1973 for the purpose of releasing grant-in-aid, the non-evaluation of the educational certificates submitted by the petitioners on the stated norms cannot be countenanced either in law or on facts. In fact, only in the counter affidavits, the stand of the Department is disclosed. But, despite the fact that the proposals have been sent to the competent authority immediately after the appointment of the petitioners, the proposals have not evoked any response for no valid reasons. Such an inaction on the part of the competent authority had unfortunately resulted in depriving of the livelihood of the petitioners, though they were appointed as against regular and clear vacancies on the basis of their qualification and eligibility criteria. Such a callous attitude, on the part of the competent authority, does not advance the cause of good administration, since the right of the petitioners to receive salary for discharging their duties stood negated unjustly.

21. This Court, for all the above stated reasons, is of the view that the petitioners have made out a case in all fours and therefore, this Court directs the respondents 1 to 3 to evaluate the educational certificates of the petitioners, approve the same, if they are otherwise in order and approve their appointments as Teachers in their respective Departments and direct the respondents to release grant-in-aid and pay monthly salary and allowances due to the petitioners with arrears from 10.06.2013. The petitioners are also entitled to all other attendant benefits on such approval of their appointment from 10.06.2013. The respondents 1 to 3 are directed to pass appropriate orders within a period of eight weeks from the date of receipt of a copy of this order.

22. In the result, the writ petition stands allowed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

krk

To:

- 1.The Secretary,
Department of School Education,
Fort St.George, Chennai-600 009.
- 2.The Director of School Education,
DPI Campus,
College Road, Chennai-600 006.
- 3.The Joint Director of School Education,
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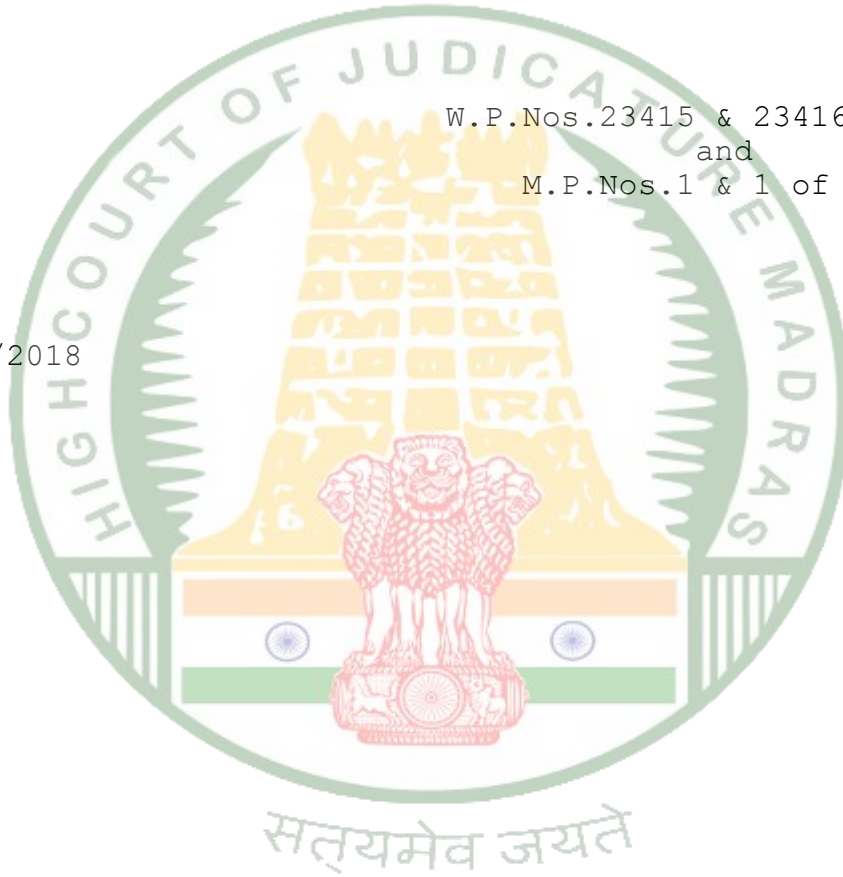
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6.The District Educational Officer,
The Office of the District Educational Office,
Thuckalay, Kanyakumari District.

+2cc to Mr.C.Johnson, Advocate Sr.53483 & 53484
+2cc to Mr.R.N.Amarnath, Advocate sr.54186 & 54187
+1cc to the Government Pleader Sr.54077

W.P.Nos.23415 & 23416 of 2015
and
M.P.Nos.1 & 1 of 2015

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