

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.01.2018

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA

W.P.No.25749 of 2015

Mrs.R.Sujatha Elizabeth

.. Petitioner

-vs-

1. The Secretary to Government
School Education Department
Secretariat, Chennai-9
2. The Director of School Education
DPI Compound
College Road, Chennai-6
3. The Chief Educational Officer
Vellore
4. The District Educational Officer
Vellore
5. The District Elementary Educational Officer
Vellore
6. The Correspondent
L.K.Scudder High School
Ekambernellore 632 405
Vellore District

.. Respondents

Petition under Article 226 of the Constitution of India, praying for the issue of a Writ of Certiorarified Mandamus, calling for the records of the fourth respondent in Na.Ka.No.3169/B4/2014 dated 26.11.2014 and quash the same in so far as paragraph-2 of the impugned order and consequently direct the fourth respondent to pay the salary of the petitioner for the period from 11.6.2012 to 2.6.2014.

For Petitioner :: Mr.V.Karthikeyan

For Respondents :: Mr.V.Jayaprakash Narayanan
Special Government Pleader
for R1 to 5
No appearance for R6

ORDER

This writ petition is directed against the impugned order dated 26.11.2014 passed by the District Educational Officer, Vellore.

2. Learned counsel for the petitioner submitted that the petitioner had acquired SSLC in April, 1991, HSC in March, 1993, B.Sc.(Zoology) in March, 1996, M.Sc.(Zoology) in April, 1998, B.Ed., in April, 2000. With these qualifications, the petitioner aspired to become a teacher. The Church of South India Diocese of Vellore has appointed the petitioner as B.T.Assistant (Science) on 17.9.2007 in the secondary grade vacant post in M.D.Middle School, Balaiyankuppam. While the petitioner was working in the said post till 8.5.2012, by order dated 8.5.2012, the Church of South India has issued an order of transfer transferring Ms.A.Padmavathi, who was working as Secondary Grade Assistant in the sixth respondent school, to M.D.Elementary School, Ariyur and the petitioner, who was working in M.D.Middle School, Balaiyankuppam, was transferred and posted in the place of Ms.A.Padmavathi. On receipt of the said transfer order, the petitioner joined the sixth respondent school on 11.6.2012 without any delay, as it is a regular vacancy caused by the transfer of Ms.A.Padmavathi. Learned counsel for the petitioner also submitted that till the date of joining the sixth respondent school as B.T.Science/Graduate Teacher, the petitioner was working in M.D.Middle School, Balaiyankuppam. Adding further, he submitted that as per the Tamil Nadu Recognised Private Schools (Regulation) Act and the Rules framed thereunder, the transfer of Ms.A.Padmavathi was approved and consented by the District Educational Officer without any demur, whereas the respondents did not approve the transfer of the petitioner to the sixth respondent school. On enquiry, the petitioner was informed that the post in which she was transferred being surplus, the respondents are not approving her transfer. The impugned order further shows that she has been posted in an unapproved post.

3. Assailing the impugned order, it is stated that the third respondent before passing the impugned order has forgotten the fact that the first respondent in G.O.Ms.No.100, School Education Department dated 27.6.2003, taking note of the fact that the secondary grade teachers who are taking classes between 6 and 8 standards are unable to teach the subjects such as English, Maths and Science, considering their inability, has issued orders that whenever permanent vacancy arises in the post of secondary grade teacher, it is open to the school to appoint B.T.Assistant in such of the post. Moreover, G.O.Ms.No.239 School Education Department dated 22.9.2007 also gives a direction that whenever the post of Secondary Grade teacher fell

vacant in classes 6th to 8th, the same can be considered for the post of B.T.Assistant. Hence the transfer and appointment of the petitioner as Graduate Teacher in the sixth respondent school is in accordance with the rules. Since the respondents have not approved the transfer of the petitioner, she is not paid with the salary for nearly two years, which is illegal. Moreover, the petitioner has been working in the sixth respondent school as B.T.Assistant from 11.6.2012 to 2.6.2014 without any break in service. Besides, during the relevant period, the petitioner was also directed to attend the various training programmes conducted by the respondents 1 & 2 in the interest of the students. Therefore, a request was made to the management to consider her case for transfer to any other school governed and controlled by the Church of South India Diocese of Vellore. Accordingly, she was transferred from the sixth respondent school and posted as B.T.Assistant (Science) in Annegar Ashram Girls Higher Secondary School from 2.6.2014 and the said transfer also was approved in paragraph-1 of the impugned order. However, in paragraph-2 of the impugned proceedings, the fourth respondent refused and denied salary to the petitioner from 11.6.2012 to 2.6.2014, where the petitioner served as Graduate Teacher in the sixth respondent school, which is an approved and sanctioned post. Concluding his arguments, it is stated that when the petitioner has been working in the sixth respondent school from 11.6.2012 to 2.6.2014, the respondents should have paid the salary. Therefore, a direction should be issued to pay the salary to the petitioner by quashing the second paragraph of the impugned proceedings, he pleaded.

4. A detailed counter affidavit has been filed by the respondents. The learned Special Government Pleader for the respondents 1 to 5 submitted that the petitioner was working as Graduate Teacher (Science) at M.D.Middle School, Balaiyankuppam, Vellore District run by the Church of South India Diocese of Vellore with a minority status. On her own request, she was transferred to L.K.Scudder High School, Ekambernellore in the vacant post which fell vacant due to the transfer of Ms.A.Padmavathi, who was transferred to another school run by the same diocese. As per the joint proceeding of the convener of Board for Higher Education, CSI Diocese, the above said transfers have been ordered. Since Ms.A.Padmavathi was working as Secondary Grade Teacher in the secondary grade teacher post, as per G.O.Ms.No.100, School Education Department dated 27.6.2003, whenever a permanent vacancy arises in the Secondary Grade post, it should be converted as Graduate Teacher post. Therefore, a formal order should be obtained to this effect from the authorities prior to filling up of the vacant post. But the management has failed to obtain an order in this regard. Since the management failed to obtain an order to convert the Secondary Grade teacher post to Graduate teacher post, after

filling up the Secondary Grade teacher post by a Graduate teacher, the Correspondent of the sixth respondent school submitted a proposal to the third respondent. However, due to certain defects, the proposal was returned by the third respondent vide letter Dis.No.2223/B2/2013 dated 23.3.2013. Even according to the staff fixation order for the academic year 2012-13, the Secondary Grade teacher post, yet to be converted as Graduate Teacher post, was declared as surplus. By stating the above said fact, the request of the Correspondent was rejected by the fourth respondent vide proceedings in R.C.No.1020/B4/2013 dated 14.8.2013. When the matter stands as above, the petitioner was transferred to Annegar Ashram Girls Higher Secondary School from 2.6.2014. When no order was obtained from the authorities for converting the Secondary Grade teacher post to Graduate teacher post, the Graduate teacher has been transferred to Secondary Grade teacher post. As it is contrary to the Government Orders in force, the transfer of the petitioner was not approved by the fourth respondent, he pleaded.

5. Heard both sides.

6. By order dated 8.5.2012, the Church of South India Diocese of Vellore has issued a transfer order transferring Ms.A.Padmavathi, who was working as Secondary Grade Assistant in the sixth respondent school, to M.D.Elementary School, Ariyur and transferring the petitioner, who was working in M.D.Middle School, Balaiyankuppam, in the place of Ms.A.Padmavathi. When both the transfers were effected through a single proceeding dated 8.5.2012, the petitioner, on receipt of the transfer order, had joined the sixth respondent school on 11.6.2012 without any delay, which is also a regular vacancy caused by the transfer of Ms.A.Padmavathi. Till the date of joining the sixth respondent school as B.T.Assistant/Graduate Teacher, the petitioner has been working. Therefore, when the transfer of Ms.A.Padmavathi, who is the predecessor of the petitioner, has been approved by the educational authorities without any demur, the respondents cannot refuse to accord approval for the payment of salary to the petitioner for the relevant period. A mere technical objection taken in the counter affidavit that a formal order should be obtained from the authorities for converting the Secondary Grade teacher post to Graduate teacher post, is neither valid nor reasonable. The reason is that when the transfers of both the petitioner and Ms.A.Padmavathi were effected through a single proceeding, after accepting the mutual transfer of both the petitioner and Ms.A.Padmavathi, it is not open to the respondents to deny the payment of salary for the relevant period to the petitioner, by raising a technical plea that whenever a permanent vacancy arises in the Secondary Grade teacher post, it should be converted into Graduate teacher post and a formal order should be obtained in this regard. Therefore,

paragraph-2 of the impugned order so far as refusing the payment of salary for the period from 11.6.2012, is alone set aside and the respondents are hereby directed to pay the salary for the relevant period to the petitioner within a period of six weeks from the date of receipt of a copy of this order. The writ petition stands allowed. Consequently, M.P.No.1 of 2015 is closed. No costs.

Sd/-
Assistant Registrar (CS IV)

//True copy//

Sub Assistant Registrar

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To

1. The Secretary to Government
School Education Department
Secretariat
Chennai 600 009
2. The Director of School Education
DPI Compound
College Road
Chennai 600 006
3. The Chief Educational Officer
Vellore
4. The District Educational Officer
Vellore
5. The District Elementary Educational Officer
Vellore

+1cc to Mr.V.Karthikeyan, Advocate SR.No.938
+1cc to Government Pleader SR.No.3413

W.P.No.25749 of 2015

GN(01/02/2018)