

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.03.2018

CORAM :

THE HON'BLE MR. JUSTICE M.V.MURALIDARAN

Writ Petition No.7949 of 2011

M.S.Sivakumar

.. Petitioner

Vs.

- 1.The Secretary,
Department of School Education,
Fort St. George,
Chennai - 600 009.
- 2.The Director of School Education,
D.P.I. Campus,
College Road,
Chennai - 600 006.
- 3.The Joint Director of School Education,
(Secondary Education)
D.P.I. Campus,
College Road,
Chennai - 600 006.
- 4.The District Educational Officer,
Chennai North,
Egmore, Chennai - 600 008.
- 5.The Correspondent,
Sir M.Ct.M. Hr. Sec. School,
Purasawalkam,
Chennai - 600 084.

.. Respondents

PRAYER: Petition under Article 226 of the Constitution of India to issue a writ of Certiorarified Mandamus, to call for the records and quash the proceeding dated 11.01.2010 of the 2nd respondent in his proceeding ROC.No.88131/D2/E2/09 and direct the respondents to regularize the service of the petitioner as secondary grade teacher with effect from 09.08.1993 or alternatively to approve the appointment with effect from 01.06.1994 following the expiry of re-employment period of one Mr.T.K.Govindarajan (31.05.1994) and give seniority, monetary

benefits and all other attendant service benefits including pension benefits taking into account the entire service.

For Petitioner : Mr.C.Johnson

For Respondents: Mr.R.Govindasamy (for R1 to R4)
Special Government Pleader

Mr.Najeeb Usman Khan (for R5)

ORDER

The petitioner has filed this writ petition seeking issuance a writ of Certiorarified Mandamus, to call for and quash the proceeding dated 11.01.2010 of the 2nd respondent in his proceeding ROC.No.88131/D2/E2/09 and direct the respondents to regularize the service of the petitioner as secondary grade teacher with effect from 09.08.1993 or alternatively to approve the appointment with effect from 01.06.1994 following the expiry of re-employment period of one Mr.T.K.Govindarajan (31.05.1994) and give seniority, monetary benefits and all other attendant service benefits including pension benefits taking into account the entire service.

2.The case of the petitioner is that the petitioner has passed B.Sc. (Maths), B.Ed., and selected by the Selection Committee following all norms and rules and consequently appointed as a Secondary Grade Teacher by the 5th respondent (The Correspondent, Sir M.Ct.M. Higher Secondary School, Purasawalkam) vide its appointment order in RC.No.F87/93 dated 09.08.1993, under consolidated salary, anticipating the retirement of one Mr.T.K.Govindarajan. The said Mr.T.K.Govindarajan, though retired during June 1993, was re-employed till 31.05.1994 (for the rest of the academic year).

3.The petitioner also submitted that the 5th respondent school is a Government Aided (Recognized) Minority School. Minorities are entitled to establish and administer schools and appoint teachers following their own procedures in the matter of selection and appointment without compromising on merit and in compliance of Tamil Nadu Recognized Private School (Regulation) Act and Rules.

4.The petitioner also submitted that in exercise of powers conferred, the petitioner was appointed by the Correspondent/5th respondent as a Secondary Grade Teacher on merits and immediately the petitioner joined duty on 09.08.1993 itself as a teacher and has been discharging his function as a Teacher to the full satisfaction of all concerned.

5.The petitioner also submitted that the petitioner was appointed anticipating the retirement of the said Mr.T.K.Govindarajan, the initial appointment was made on consolidated pay as usual and 5th respondent agreed and promised that immediately after the retirement of Mr.T.K.Govindarajan, the petitioner's appointment will be regularized on evaluation of certificates by the 4th respondent.

6.The petitioner also submitted that the petitioner ever-since the date of joining i.e., 09.08.1993, has been continuously working and discharging his duties as a Secondary Grade Teacher by taking classes for higher and lower standards. The petitioner's service as a Teacher is being very much appreciated by the 5th respondent, students and teachers. The 4th respondent periodically inspected the school and witnessed the services and made endorsements in the school records and the same evidenced the factum of continuous service of the petitioner.

7.The petitioner also submitted that the 5th respondent school was having more than 3,000 students at the relevant point of time and the petitioner was allotted sufficient and more weekly periods (28 periods). Thus the petitioner satisfied all the required norms and Rules for the approval of the appointment made by the 5th respondent in a regular basis and the same is not disputed by the official respondents. The petitioner has made repeated requests and representations to the 5th respondent Management and other official respondents explaining his grievances.

8.The petitioner also submitted that the G.O.Ms.No.539 Education (M1) Department dated 21.04.1986, permitted all schools including aided schools to fill-up Secondary Grade vacancies with B.T./ B.Ed., and Tamil Pandits on contract basis. Such appointments were later regularized vide G.O.Ms.No.510 (Education) Department dated 10.05.1989 and paid regular time scale pay as applicable to Secondary Grade Teachers. Thus the petitioner being a fully qualified meritorious candidate ought to have been regularized with effect from 01.06.1994 (after the expiry of re-employment period of Mr.T.K.Govindarajan).

9.The petitioner also submitted that the 5th respondent sent proposal to the 4th respondent for evaluating the educational certificates of the petitioner and release grand-in-aid so as to enable the petitioner to draw salary as applicable to Secondary Grade Teacher. In spite of reminders and repeated requests the 4th respondent did not release grand-in-aid despite the fact that certificate are genuine and bona-fide.

10.The petitioner also submitted that the ban order in G.O.Ms.No.559 dated 11.07.1995 has no relevancy as the petitioner was appointed as early as 1993 by the competent authority viz., the 5th respondent school. So also G.O.Ms.No.155 dated 03.10.2002, has no relevancy as the petitioner has been working as a Secondary Grade Teacher since 1993 and earned enough experience in handling the children of Secondary Grade. The one month training (Child Psychology) as ordered in the above G.O. has no relevancy and the same is inapplicable to the petitioner.

11.The petitioner also submitted that considering the merit and ability of the petitioner, he was promoted by the 5th respondent as Junior B.T. with effect from 19.01.2004 on consolidated pay of Rs.4,000/-. Thereafter, the service as Junior B.T. Assistant was regularized with effect from 01.06.2006, giving regular time scale as applicable to B.T. Grade. Ever-since the appointment as B.T. Assistant, the petitioner has been rendering his services as a B.T. Teacher to the best of his ability and conscience, following code of conducts and all the norms and Rules as applicable to private school.

12.The petitioner also stated that being aggrieved due to non-regularization with effect from 01.06.1994, filed writ petition in W.P.No.14001 of 2003, and the same was disposed of by this Court on 30.04.2003, directing the respondents to deal with the representations and pass appropriate order in accordance with law and on merits within a period of six weeks from the date of receipt of a copy of this order. The representation dated 02.06.2003, made pursuant to the above order was also rejected by the 4th respondent by its order dated 21.10.2003.

13.The petitioner also submitted that the representation was not considered properly, the writ petitioner again filed a writ petition in W.P.No.16064 of 2009 before this Court praying to regularize the service with effect from 09.08.1993 or from 01.06.1994. The said writ petition was disposed of by this Court on 11.08.2009, directing the Director of School Education, the 1st respondent therein to consider the petitioner's representation dated 12.07.2008 and pass orders on the same, in accordance with law and after affording reasonable opportunity to the 5th respondent, within a period of twelve weeks from the date of receipt of a copy of this order. Pursuant to the order, the petitioner gave a detailed representation on 23.09.2009, and without considering the contentions raised therein, the Director of School Education rejected the claim of the petitioner on untenable and unsustainable grounds. Being aggrieved, the petitioner filed the present writ petition in W.P.No.7949 of

2011, originally with a prayer for Mandamus. Thereafter, the prayer was amended in the year 2011 as Certiorarified Mandamus. The said prayer was again amended in WMP.No.22227 of 2017.

14.Counter affidavit has been filed by the 4th respondent denying the claim of the writ petitioner. However, the 4th respondent has admitted the minority status of the 5th respondent school at the relevant point of time. So also the 4th respondent admitted the authority of the 5th respondent, being a minority institution to appoint teachers of its choice. The 4th respondent also admitted specifically the appointment of the petitioner with effect from 09.08.1993. But only contended that the petitioner was appointed on consolidated pay as a Management Teacher. The 4th respondent has not denied the appointment of the petitioner as well as his continuous service as a Teacher from the date of appointment and thereafter. As the petitioner has sincerely and satisfactorily worked, he was considered for promotion and promoted as B.T. Junior Grade from 19.01.2004. Therefore, the service of the petitioner is very much meritorious. Moreover, there is no Management teacher category at the relevant point of time and management cannot keep the regular post reserved for somebody especially when a suitable person was appointed and very much working in the said post.

15.I heard Mr.C.Johnson, learned counsel appearing for the petitioner and Mr.R.Govindasamy, learned Special Government Pleader appearing for the respondents 1 to 4 and Mr.Najeeb Usman Khan, learned counsel appearing for the 5th respondent and perused the entire records.

16.The petitioner has filed rejoinder substantiating and legally justifying all the averments, contentions and grounds raised in the writ petition. The writ petitioner categorically reiterated and confirmed his original appointment as a secondary grade teacher on 09.08.1993 in the 5th respondent school which is recognized minority institution. Being a minority institution, the management is fully competent to appoint the candidate of its choice having required educational qualifications. Admittedly the petitioner is fully qualified and the rules permitted his appointment as a Secondary Grade Teacher though he is more qualified. When such an appointment is made, the 4th respondent District Educational Officer, a competent authority to evaluate the certificates is left with no option but to verify and evaluate such certificates and release grant-in-aid if certificates are genuine.

17.In the case on hand, all the official respondents admitted the claim of the petitioner with regard to every and all other requirements but deny on the sole ground that the appointment was made under consolidated pay.

18.It is pertinent to point out here that private schools are governed by the Tamil Nadu Recognized Private Schools (Regulation) Act and Rules made thereunder. Under the Act and Rules, there is no provision enabling the management to appoint in a method which is not approved. Obviously the petitioner was appointed anticipating the retirement of one Mr.T.K.Govindarajan, who was due to retire on 31.05.1994. Thus in all possible manner when the petitioner was appointed on 09.08.1993 and admittedly taking classes upto middle school, following and satisfying all rules and norms, would have been regularized at least from 01.06.1994 (Mr.T.K.Govindarajan retired and relieved after re-employment period i.e., on 31.05.1994). The non-regularization cannot be justified by the official respondents especially when there was a sanctioned vacancy due to the retirement of the said Mr.T.K.Govindarajan and the petitioner alone was duly appointed and awaiting for regularization. The act of the official respondents in corroboration with the management cannot be appreciated and it must be seen as act of victimization of a poor teacher by protracting the regularization on one pretext or the other. When the petitioner is legally entitled to get his post regularized against the immediate vacancy, the non-regularization on untenable grounds cannot draw appreciation. Further the delay in regularization cannot be appreciated for the simple reason that there was a sanctioned vacancy at the relevant point of time due to the retirement of the said Mr.T.K.Govindarajan. It is also clear that the petitioner is vigilant all through and has given various representations to the official respondents insisting for his regularization with effect from 01.06.1994. As the representations were not considered, the petitioner filed W.P.No.14001 of 2003 and this Court directed the official respondents to deal with the representations dated 31.10.2002 and 03.12.2002 and pass appropriate order in accordance with law by its order dated 30.04.2003. It seems pursuant to the order, the petitioner again given representation on 02.06.2003 requesting to regularize the services on and from 01.06.1994. Though the District Educational Officer/4th respondent received the representation, passed an order, rejecting the claim of the petitioner without considering the relevant materials and provisions of the Tamil Nadu Recognized Private School (Regulation) Act.

19.As the petitioner's service was not regularized, being aggrieved, the petitioner again filed W.P.No.16064 of 2009, praying for regularizing his services with effect from 01.06.1994 as a Secondary Grade Teacher. The said writ petition was disposed of by this Court on 11.08.2009, directing the Director of School Education to consider the representation dated 12.07.2008, and pass orders on merits. In spite of the specific direction, the Director of School Education did not

consider the representation dated 12.07.2008, in the manner prescribed under relevant rules and simply rejected the claim of the petitioner mechanically.

20. Being aggrieved of the rejection order, the present writ petition is filed with the prayer for Mandamus. Realizing the mistake, the petitioner filed an amendment petition to amend the prayer as a Writ of Certiorarified Mandamus in and by amendment petition dated 08.04.2011, along with additional grounds. After hearing the parties this Court allowed the amendment petition.

21. Thereafter, again an amendment petition was filed on 08.08.2017, seeking for all attendant and monetary benefits with effect from 01.06.1994. This Court allowed the amendment petition upon hearing parties by its order dated 18.08.2017. It is an admitted fact that the petitioner has been working continuously ever since the date of his appointment as a Secondary Grade Teacher until he was promoted as a Junior B.T. in the year 2004. It is also evident that only appreciating the good service rendered by the petitioner, he was promoted as a Junior B.T. by the 5th respondent. Thus the services of the petitioner is not only continuous but also worth for promotion. When the management has chosen to promote the petitioner considering his meritorious service, now cannot turn back and say 'no' to his regularization. The management is now estopped from saying so. The allegation of the management that the petitioner is acting against the interest of the management is only an afterthought. The attitude of the management's view from any angle cannot draw appreciation.

22. Now the petitioner has challenged the impugned order dated 11.01.2010, passed by the Director of School Education/2nd respondent rejecting the regularization of the petitioner. The cursory reading of the order impugned makes it clear that the 2nd respondent passed such an order without application of mind. The petitioner was originally appointed as a Secondary Grade Teacher and not as a High School Teacher as stated in the said order. Further, when the official respondents evaluated the certificates and released grant-in-aid (approving the appointments) relating to other teachers, junior to the petitioner, the non-release of grant-in-aid to the petitioner cannot be justified. The pick and choose method and arbitrary exercise of power is very much visible in the instant case.

23. The grounds, averments and argument advanced by the petitioner substantiated the claim of the writ petitioner, as no prior permission is necessary for minority institutions for making appointments. The contentions contended in the counter could not support and justify the cause of the official respondents. The order of the 2nd respondent as such is liable to

be set aside and accordingly set aside. Therefore, this Court has no hesitation to allow this writ petition.

24. In the result:

(a) this writ petition is allowed and the impugned proceeding of the 2nd respondent in ROC.No.88131/D2/E2/09, dated 11.01.2010, is set aside;

(b) the respondents 1 to 4 are directed to approve the appointment of the petitioner with effect from 01.06.1994 with all attendant and monetary benefits;

(c) the said exercise shall be done within a period of 12 weeks from the date of receipt of a copy of this order. No costs.

Sd/-
Assistant Registrar(CS-V)

//True Copy//

Sub Assistant Registrar

vs
To

1. The Secretary,
Department of School Education,
Fort St. George,
Chennai - 600 009.
2. The Director of School Education,
D.P.I. Campus,
College Road,
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3. The Joint Director of School Education,
(Secondary Education)
D.P.I. Campus,
College Road,
Chennai - 600 006.
4. The District Educational Officer,
Chennai North,
Egmore, Chennai - 600 008.

+ 1 cc to MR. Najeeb Usman Khan, Advocate Sr.18569
+ 1 cc to MR. C. Johnson, Advocate SR.18190

Writ Petition No.7949 of 2011

(CS-V)
EU(23/03/2018)