

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 04.09.2018
CORAM:
THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN
W.P.No.12591 of 2010

G.Suganthy

... Petitioner

Vs

- 1.The Secretary,
Ministry of School Education,
Government of Tamilnadu,
Chennai-600 009.
- 2.The Director,
Directorate of School Education,
DPI Compound,
College Road,
Chennai-600 006.
- 3.The District Education Officer,
SLB South Road,
Nagercoil,
Kanyakumari District.
- 4.The Corporate Manager,
Corporate Management Schools,
Kanyakumari Diocese,
Nagercoil,
Kanyakumari District.

... Respondents

Petition is filed under Article 226 of the Constitution of India for the issuance of writ of certiorarified mandamus to call for the records pertaining to the order passed by the Director of School Education, Chennai-6, the second respondent vide his proceedings Mu.Mu.No.22849/D-1/e3/09 dated 24.02.2010 and quash the same as illegal, arbitrary, unreasonable being violative of rules and principles of natural justice and thereby direct the respondents to regularize the service of the petitioner from the date of appointment dated 27.7.2000 and to pay the pending salary arrears as per the Government norms for the period from 27.7.2000 to 5.6.2002.

For Petitioner : Mr.V.Venkatesan

For Respondents : Mr.R.Govindasamy
Spl. Government Pleader
for R1 to R3

Mr.A.R.Nixon
for 4th respondent

O R D E R

This writ petition has been filed by the petitioner seeking a writ of certiorarified mandamus to call for the records of the second respondent dated 24.02.2010 in Mu.Mu.No.22849/D-1/e3/09, to quash the same and to direct the respondents to regularize the service of the petitioner from the date of appointment i.e., on 27.07.2000, and to pay arrears as per the Government norms for the period from 27.07.2000 to 05.06.2002.

2. The petitioner was appointed as B.T.Assistant in Duthie Government Higher Secondary School, Nagercoil on 27.07.2000. According to the petitioner, her service was regularised with effect from 05.06.2002. Her grievance is that her service rendered between 27.07.2000 to 04.06.2002 has not been regularised and salary has also not been paid for the said period. In this regard, she made several representations to the respondent authorities. Since the respondent authorities have not passed orders on the representations of the petitioner, she filed W.P.No.46412 of 2006. By an order dated 13.03.2009, this Court directed the second respondent to consider the representation of the petitioner dated 10.04.2006 within a period of two months from the date of receipt of a copy of this order, after affording opportunity to the fourth respondent. Pursuant to the order of this Court dated 13.03.2009 in W.P.No.46412 of 2006, the second respondent passed the impugned order rejecting the request of the petitioner. Challenging the same, the petitioner has filed the present writ petition.

3, The second respondent has filed counter affidavit stating that the Chief Educational Officer is the authority competent to fix the staff strength based on the strength as on 1st August of the every year in relation to the Government and Aided Higher Secondary Schools. Accordingly, the position of fixation with regard to Tamil Pandit posts pertaining to the present school has been fixed by the Chief Educational Officer, Nagercoil and it was found that 4 Tamil Pandits, who were working in the said school were surplus. Thus, the appointment of the petitioner from 03.08.2000 against the post of Tamil Pandit which fell vacant consequent to promotion of the incumbent as Headmistress is not permissible. According to the second respondent, even though the petitioner was said to be appointed on 03.08.2000, proposal seeking approval for appointment was received by the Department only on 10.02.2003. In such circumstances, the approval for appointment could not be granted. However, as per the revised proposal sent by the Corporate Manager, stating the date of appointment of the petitioner as 05.06.2002, her appointment was approved from 05.06.2002. Since the the petitioner was appointed by the Management on its own volition without reference to the staff fixation done by the Chief

Educational Officer for the academic year 2000-2001, the petitioner is not entitled for approval of appointment with effect from 27.07.2000.

4. I heard Mr.V.Venkatesan, learned counsel for the petitioner, Mr.R.Govindasamy, learned Special Government Pleader appearing for the respondents 1 to 3 and Mr.A.R.Nixon, learned counsel appearing for the fourth respondent and also perused the materials available on record.

5. The learned counsel for the petitioner submitted that the second respondent has failed to consider that the fourth respondent, being a recognized body of the first respondent, and the fourth respondent having given appointment order dated 27.07.2000 as B.T. Assistant to the petitioner, her services ought to have been regularized and paid the salary as per the Government norms from the date of appointment i.e. 27.07.2000. But the second respondent approved the appointment only from 05.06.2002 and rejected the representation of the petitioner dated 10.04.2006, which is violative Article 14 and 39(D) of the Constitution of India.

6. Per contra, the learned Special Government Pleader appearing for the respondents 1 to 3 submitted that though the petitioner was stated to be appointed on 03.08.2000, the proposal seeking approval for appointment was received only on 10.02.2003. In such circumstances, the approval for appointment could not be granted. However, as requested by the Correspondent vide a letter dated 07.04.2003 and since the Corporate Manager submitted a revised proposal showing the date of appointment of the petitioner as 05.06.2002, her appointment was approved from 05.06.2002. Therefore, there is no arbitrariness in the impugned order as alleged by the petitioner.

7. The grievance of the petitioner is that she was appointed on 27.07.2000 in Duthie Higher Secondary School for Girls, Nagercoil as B.T. Assistant (Tamil) in the existing permanent vacancy as the incumbent Mrs.N.Deverethnam was promoted as Headmistress to the Hooker Memorial Higher Secondary School, Neyyoor by the Corporate Management of the Kanyakumari C.S.I. Diocese.

8. According to the respondents 1 to 3, at the relevant point of time, there was surplus Tamil Pandits in the school in question the petitioner was said to be appointed on 03.08.2000. It was also stated that the proposal seeking approval was received by the department only on 10.02.2003 after 2 ½ years and therefore, approval could not be granted.

9. It appears that earlier the petitioner had filed W.P.No.46412 of 2006 seeking a writ of mandamus directing the

respondents 1 and 2 to consider the representation dated 10.04.2006 and 05.07.2006 and to regularise the service of the petitioner from the date of appointment dated 27.07.2000 and to pay the pending salary arrears as per the Government norms. By an order dated 13.03.2009, this Court disposed of the writ petition. The operative portion of the order reads thus:

"2. The learned Government Advocate appearing for the respondents 1 and 2 would submit that the second respondent would duly consider the said representation of the petitioner dated 10.4.2006 and pass appropriate orders as expeditiously as possible. She would further submit that whether the petitioner is entitled for regularisation with effect from 27.7.2000, and whether she is entitled for salary for the period between 27.7.2000 and 4.6.2002 would be duly considered by the second respondent in accordance with law.

3. In view of the above position, without expressing any opinion regarding the request of the petitioner made in her representation dated 10.4.2006, the writ petition is disposed of with a direction to the second respondent to consider the said representation of the petitioner dated 10.4.2006 and pass final order within a period of two months from the date of receipt of a copy of this order after affording opportunity to the fourth respondent. Connected miscellaneous petition is closed. No costs."

10. The second respondent issued the impugned order dated 24.02.2010 wherein it has been stated that they have called for remarks from the fourth respondent and in its remarks, the fourth respondent stated that pursuant to the no objection given by the Chief Educational Officer, Nagercoil and as per G.O.Ms.No.1910, they had appointed teachers for the year 2000-2001 before 31.07.2000. It is also stated that the petitioner G.Suganthi has got appointment on 27.07.2000 and requested the second respondent to pay salaries to her.

11. The aforesaid remarks of the Corporate Manager, as stated by the second respondent in the impugned order, would clearly establish that the petitioner was issued with an appointment order as B.T. Assistant (Tamil) from 27.07.2000. According to the second respondent, the proposal seeking approval of appointment of the petitioner dated 27.07.2000 was received by the Department only on 10.02.2003 and therefore, approval of appointment could not be granted as the same was belated.

12. It appears that the second respondent has failed to consider the fact that the Management has sent the proposal belatedly and the petitioner has no role in sending the proposal for approving the appointment. Further, the petitioner cannot be expected to know whether the post is excessive or not even before joining the service and hence, the petitioner cannot be blamed and also cannot be deprived of her salary and also regularisation for the period which she had worked.

13. It also appears from the materials available on record that the petitioner was appointed on 27.07.2000 in the regular vacancy caused due to the promotion of one Mrs.N.Devarathinam, which is evident from the Proceedings of the Corporation Manager, C.S.I. Kanyakumari Diocese, Nagercoil, dated 27.07.2000, wherein it has been stated as under:

"Ref: Minutes of the Board of School Education dated 26.07.2000.

Mrs.G.Suganthi, B.T. Tamil, Waiting List 13/92, is informed that she/he is posted as B.T. Asst. Tamil at Duthie GHSS., Nagercoil with effect from 27.7.2000 vice Mrs.N.Devaretnam, promoted.

He/She should report to the Correspondent of the above school on the forenoon of 27.07.2000 with all his/her certificates in original, failing which this order will be cancelled and his/her name deleted from the waiting list. This is subject to the approval of the department."

14. In the letter dated 05.08.2000 addressed by the Corporate Management Schools, Kanyakumari Diocese C.S.I. to the petitioner, it has been stated as under:

"You are asked to meet the Corporation Manager, Diocese Schools, Nagercoil at 10.00 AM on Tuesday, the 8th August 2000 and to get the appointment order."

15. From the above, it is seen that the Corporate Management had appointed the petitioner as B.T. Assistant (Tamil) with effect from 27.07.2000 in the existing vacancy and the petitioner was directed to report on 27.07.2000 with all certificates. Accordingly, the petitioner had also reported for duty and was working with effect from 27.07.2000. The said fact was also admitted by the fourth respondent.

16. Though the fourth respondent appointed the petitioner on 27.07.2000, they have not sent the proposal for approval to the Department immediately and only after a delay of 2 ½ years on 10.02.2003, the fourth respondent sent the proposal for approval of appointment of the petitioner to the respondent authorities. Since the proposal was sent by the fourth respondent belatedly, the Department has not granted approval. Thereafter, on

07.04.2003, the fourth respondent issued a modified proceedings to the petitioner, by marking copy to the Bishop, CSI Kanyakumari Diocese, the District Educational Officer, Nagercoil and the Correspondent, Duthie Girls Higher Secondary School, Nagercoil, stating as under:

"In partial modification to the orders issued vide this office letter No.CM 39 A/2000/2001 dated 27.7.2000, the following revised orders are issued. Tmt.G.Suganthi, B.T. Tamil WL 13/92 is informed that she is posted as B.T. Assistant (Tamil) in Duthie Girls Higher Secondary School, Nagercoil with effect from the forenoon of 5.6.2002 vice Tmt.N.Devaretnam promoted."

17. Since there was a delay on the part of the fourth respondent in sending the proposal to the respondent authorities, subsequently, they had issued a revised modification order stating that the petitioner was posted as B.T. Assistant (Tamil) in Duthie Girls Higher Secondary School, Nagercoil with effect from 05.06.2002, the same cannot be accepted for the reason that the fourth respondent themselves admitted that the petitioner was appointed on 27.07.2000, which is evident from their appointment order dated 27.07.2000. The main grievance of the petitioner is that she should be regularised from 27.07.2000 and not from 05.06.2002. Admittedly, the petitioner had worked in the school in question for a period of nearly 22 months without salary.

18. No contra records have been produced before this Court to show that the petitioner had not worked from 27.07.2000. Though in the impugned order it has been stated that the Management of the school had committed a mistake in appointing the petitioner in the surplus post with effect from 27.07.2000, nothing has been produced by the respondent authorities to show that her appointment was illegal. In fact, in the remarks submitted to the second respondent, the fourth respondent has clearly stated that the petitioner has got the appointment from 27.07.2000. There was also no record to show that the petitioner was appointed in a non-sanctioned post. Therefore, when the petitioner was duly appointed with effect from 27.07.2000 and pursuant to the appointment order, she had rendered service from 27.07.2000, the petitioner is entitled to get her regularisation of her service with effect from 27.07.2000 and also arrears of salary for the period from 27.07.2000 to 04.06.2002.

19. On a cursory reading of the impugned order, this Court finds that while considering the representation of the petitioner, the second respondent has not looked into the factual aspects that there was no fault on the part of the petitioner and only the Management of the school delayed in

sending the proposal to the respondent authorities. In view of the aforesaid facts, this Court is of the view that the second respondent has failed to consider the facts and circumstances of the case of the petitioner and has mechanically passed the impugned order rejecting the representation of the petitioner and the same is liable to be set aside.

20. In the result, the writ petition is allowed and the impugned order of the second respondent dated 24.02.2010 is set aside. The respondent authorities are directed to regularize the services of the petitioner from the date of her appointment dated 27.07.2000 and to pay arrears of salary as per the Government norms for the period from 27.07.2000 to 05.06.2002. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Deputy Registrar

//True Copy//

Sub Assistant Registrar

vs

To

- 1.The Secretary,
Ministry of School Education,
Government of Tamilnadu,
Chennai-600 009.
- 2.The Director,
Directorate of School Education,
DPI Compound,
College Road,
Chennai-600 006.
- 3.The District Education Officer,
SLB South Road,
Nagercoil,
Kanyakumari District.

+1cc to Mr.A.R.Nixon, Advocate, S.R.No.61613

rrs 18/09/2018

W.P.No.12591 of 2010