IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.02.2018

CORAM:

THE HON'BLE MR.JUSTICE K.K.SASIDHARAN
AND
THE HON'BLE MR.JUSTICE P.VELMURUGAN

W.A.No.2844 of 2012
and M.P.No.1 of 2012

1.The Director of Elementary Education
College Road, Nungambakkam
Chennai.

2.The District Elementary Educational Officer
Melaran Salai, Trichirappalli (Taluk)
Perumpidugu Mutharayar (Trichy) District.

3.The Additional Assistant Educational
Officer, Manaparai, Manaparai (Taluk)
Perumpidugu Mutharayar (Trichy) District.

...Appellants

Vs

N.Venkatashthiri ...Respondent

Prayer:- Writ Appeal filed under Clause 15 of Letters Patent Act, to set aside the order passed by this Court in W.P.No.28521 of 2006 dated 18.06.2008.

Prayer in WP.28521 of 2006: Writ petition filed under Article 226 of the Constitution of India on being transferred to this court on the abolition of the Tamil Nadu administrative Tribunal praying for this issuance of a Writ of Mandamus as stated therein.

For Appellants : Mr.K.Karthikeyan
Government Advocate (Education)

For Respondent : Mr.A.Suresh
for Mr.V.Thirupathi

JUDGMENT
(Judgment of the Court was delivered by K.K.SASIDHARAN, J.)

The respondent functioned as Higher Grade Teacher till 08 September, 1969. Subsequently, he was appointed as a Secondary

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Grade Teacher with effect form 09 September, 1969, which was in the nature of upgradation. The respondent claimed that he is entitled to the salary as Secondary Grade Teacher for the period from April 1967 to 08 September, 1969.

2. The writ petition filed by the respondent was allowed by the learned Single Judge by quoting an earlier order dated 08 May, 1996 in O.A.Nos.282, 283 and 3441 of 1993 on the file of the State Administrative Tribunal. Feeling aggrieved by the direction given by the learned Single Judge to recognise the service of the respondent from April 1967 to 08 September, 1969, the appellants have come up with this intra court appeal.

3. We have heard the learned Government Advocate on behalf of the appellants. We have also heard the learned counsel for the respondent.

4. The claim made by the respondent on the basis of his possession of qualification to take classes for Secondary Grade classes was allowed by the learned Single Judge solely on the ground that he was in possession of the necessary qualification for such appointment. The fact that the respondent was having the qualification would not give him a right to claim the salary for the post in question, unless it is demonstrated that he was either upgraded or appointed to the post of Secondary Grade Teacher. The fact that under similar circumstances another order was passed by the State Administrative Tribunal cannot be a reason to extend the benefit to the respondent without adjudicating the facts of the case.

5. There is no dispute that the respondent worked as a Higher Grade Teacher till 08 September, 1969. It was only on 08 September, 1969 the post was upgraded as Secondary Grade Teacher. The respondent was given the due benefits taking into account the upgrading of post from Higher Grade Teacher to Secondary Grade Teacher. Since there was no occasion for the respondent to work as a Secondary Grade Teacher for the period in question, the learned Single Judge was not correct in directing the appellants to pay the wages for the relevant period. We are, therefore, of the view that the order passed by the Writ Court is liable to be set aside.

6. The learned counsel for the respondent submitted that the appellants have complied with the order passed by the learned Single Judge and only after making payment to the respondent, the writ appeal was filed. The learned counsel further submitted that the respondent had attained the age of superannuation and retired from service.

7. Since the appellants have already paid the emoluments to

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the respondent and taking into account the fact that the respondent is no more in service, we are of the view that the interest of justice would be subserved by directing the appellants not to recover the wages paid to the respondent.

The intra court appeal is allowed with the above direction. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS III)

//True copy//

Sub Assistant Registrar

gms

To

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+1cc to Mr.V.Thirupathy, Advocate SR.No.11105

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RR(CO)
GN(08/03/2018)

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