

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.07.2018

CORAM

THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

W.P.No.2349 of 2008

and

M.P.No.2 of 2008

M.Alphonsal,

... Petitioner

Vs.

1. The Director of School Education,
College Road, Nungambakkam,
Chennai - 6.
2. The Chief Educational Officer,
Nagercoil, Kanyakumari District.
3. The District Educational Officer
Thuckalay, Kanyakumari District.
4. The Correspondent,
St.Francis Xavier Higher Secondary School,
Manguzhy, Neyyoor - 629 802,
Kanyakumari District. Respondents

Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the order of the 1st respondent in his proceedings in Na.Ka.No.80225/D(J5)/07, dated 26.11.2007 and quash the same, and consequently, direct the respondents to approve the appointment of the petitioner as Physical Education Teacher at the 4th respondent school with effect from 04.06.2001 with salary and other benefits.

For Petitioner : Ms.P.Mahalakshmi
For MrK.Vijeyakumar

For R1 to R3 : Mr.K.Karthikeyan,
Government Advocate

For R4 : Mr.P.Godson Swaminathan

O R D E R

This Writ Petition has been filed to call for the order of the 1st respondent in his proceedings in Na.Ka.No.80225/D(J5)/07, dated 26.11.2007 and to quash the same, and consequently, to direct the respondents to approve the appointment of the petitioner for the post of Physical Education Teacher at the 4th respondent school with effect from 04.06.2001 with salary and other benefits

2. The case of the petitioner is that she had passed S.S.L.C and Certificate Course in Physical Education (C.P.Ed.), and she had been working as a Physical Education Teacher from 01.06.1979 to 02.06.2001 at St.Cabrial R.C.Middle School, Thikkurichi Post, without salary as it was not a sanctioned post. Thereafter, she was appointed as a Physical Education Teacher at the 4th respondent school on 04.06.2001 in a permanent vacancy, which arose due to the retirement of one Mrs.Maria Selvam and the petitioner was also fully qualified for the said post. While so, the 4th respondent had sent a proposal to the department for approval of the appointment through their letter dated 15.06.2001 and the department has to approve the same in the light of G.O.Ms.No.525 dated 29.12.1997, as the 4th respondent school was entitled to appoint the petitioner for the said post, as per the teachers and students ratio of the school. The petitioner had also given a representation on 08.07.2003 seeking for approval of her appointment.

3. The petitioner would contend that though the 1st respondent had stated that the petitioner's appointment was a sanctioned post, she was informed that the approval will be considered only after taking note of the teachers and students ratio earlier to 01.06.1998. Therefore, the petitioner had filed a Writ Petition in W.P.No.12434 of 2004 seeking for a direction to the respondents for approval of her appointment and to regularize her service with effect from 04.06.2001. This Court, while disposing the above Writ Petition, had passed the following order:-

"5.Considering the fact that the petitioner is working without salary from 2001 because of the inaction of the respondents to approve the proposal submitted by the 4th respondent for approval of the appointment of the petitioner, I consider it appropriate to direct the respondents to consider the proposal submitted by the 4th respondent and pass appropriate orders in accordance with law within a period of six weeks from the date of receipt of a copy of this order".

4. The petitioner would also contend that despite the order of this Court, the 3rd respondent, by its proceedings dated 06.06.2006, had erroneously refused to approve the appointment of the petitioner, stating that the 4th respondent school is coming under the Corporate Management of R.C. Diocese of Kottar and therefore, the post in which the petitioner was appointed, during 2001, was found to be surplus among all the schools under the said Corporate Management.

5. The petitioner would further contend that the finding of the 3rd respondent to the effect that the 4th respondent is under the Corporate Management of R.C. Diocese of Kottar, is totally erroneous and against the proceedings of the 1st and 2nd respondents dated 05.03.2005 and 24.02.2007 respectively, wherein, it was stated that the 4th respondent school is only to be treated as a Single Unit, as there was no order obtained from the Government by the said Corporate Management of R.C. Diocese Kottar, for treating it as it is under the control of the Corporate Management of R.C. Diocese of Kottar. Therefore, it is manifestly clear that the reasoning of the 3rd respondent in rejecting the petitioner's proposal are totally erroneous. Further, staff fixation fixed for the 4th respondent school every year even till date shows that the post was a sanctioned post and the same is available for all the academic years commencing from the date of the petitioner's appointment. However, the petitioner, aggrieved against the proceedings of the 3rd respondent dated 06.06.2006, had sent further representation to the 1st respondent on 04.06.2007, requesting to approve her appointment from 04.06.2001. The said representation was also not considered by the respondents, hence, she filed a Writ Petition in W.P.No.26746 of 2007 before this Court, seeking for a direction to the 1st respondent to consider her representation dated 04.06.2007 and to approve her appointment for the post of Physical Education Teacher with effect from 04.06.2001 with salary.

6. Furthermore, the petitioner would contend that this Court, by an order dated 09.08.2007, had directed the 1st respondent to consider the petitioner's representation and to pass orders within a period of six weeks from the date of receipt of a copy of the order. Despite the order of this Court, the 1st respondent has not passed any orders, hence, the petitioner has filed Contempt Petition No.1717 of 2007 before this Court. After initiation of the Contempt proceedings, the 1st respondent immediately passed an order by proceeding in Na.Ka.No.80225/D(J5)/07, dated 26.11.2007 and rejected the petitioner's representation erroneously. Based on the order passed by the 1st respondent, this Court has also closed the Contempt Petition and therefore, the petitioner, with no other alternative, has filed this Writ Petition to quash the

proceedings in Na.Ka.No.80225/D(J5)/07, dated 26.11.2007 and to direct the respondents to approve the appointment of her for the post of Physical Education Teacher at the 4th respondent school with effect from 04.06.2001 with salary and other benefits.

7. The petitioner would further contend that salary fixation, sending of post approval proposals, issuing of appointment orders, claiming salary bills to the teachers and staff, implementing the Government and Department orders, sending pension proposals, sending selection grade proposals, school recognition and renewal proposals are all done by the Correspondent of the 4th respondent school independently, and therefore, it is manifestly clear that the school is a single unit and not coming under the Corporate Management.

8. The petitioner would also contend that the 1st respondent has not given any reason in its impugned order to claim that the 4th respondent school is coming under the Corporate Management of R.C. Diocese of Kottar. Further, It has failed to note his own proceedings dated 05.03.2005 and the proceedings of the 2nd respondent dated 24.04.2007, which categorically shows that the 4th respondent is a single unit and not coming under the Corporate Management. Hence, the impugned order is liable to be set aside.

9. Supporting the case of the petitioner, the 4th respondent has filed a counter, wherein, it has been stated that the 4th respondent school was one among the numerous schools established and administered by the erstwhile unified Roman Catholic Diocese of Kottar. Later, in the year 2014, it was bifurcated into two Dioceses, namely, Roman Catholic Diocese of Kottar and Roman Catholic Diocese of Kuzhithurai, and the 4th respondent school is presently administered by the Roman Catholic Diocese of Kuzhithurai.

10. The fourth respondent would further contend that the petitioner herein was initially appointed as a Physical Education Teacher in one of the 4th respondent schools, namely, St.Gabriel's RC Middle School, Thikkurichi, Kanyakumari District with effect from 01.06.1979. Since grant-in-aid was not released by the Government to the teachers working in the school, the school authorities have filed a Writ Petition in W.P.No.3680 of 1986 before this Court. Later, the Writ Petition was disposed of by this Court on 09.02.1996, directing the Government to sanction grant-in-aid. Despite the order of this Court, the respondents have not sanctioned grant-in-aid, hence, the school authorities have sent several representations dated 09.03.1998 and 11.07.1998 to the officials of the respondents to release grant-in-aid by sanctioning posts, but, there was no response from the respondents.

11. The respondent would also contend that to give relief to the petitioner, on 04.06.2001, the management of the school has appointed the petitioner in another school under the same management, namely, St. Francis Xavier Higher Secondary School, Manguzhi, Neyyoor - 629 802,. The said appointment was arose due to the retirement of the previous incumbent Mrs. Maria Selvam. Further, the appointment was made within the two posts of Physical Education Teacher fixed by the District Educational Officer for the year 2001-2002 vide his proceedings in Na.Ka.No.7051/A2/01 dated11.2001. In the staff fixation order for the year 2002-2003 also two posts of Physical Education Teacher were fixed for the school by the 3rd respondent, the District Educational Officer, vide his proceedings in Na.Ka.No.7399/A2/02 dated9.2002. Also, for the year 2003-2004 vide proceedings in Na.Ka.No.7399/A2/02 dated 23.10.2003, for the year 2004-2005 vide proceedings in Na.Ka.No.6471/A2/04 dated 16.09.2004, for the year 2005-2006 vide proceedings in Na.Ka.No.8249/A2/2005 dated 03.11.2005, for the year 2006-2007 vide proceedings in Mu.Mu.No.7542/A2/2006 dated 15.11.2006 and for the year 2007-2008 vide proceedings in Na.Ka.No.7406/A2/2007 dated 18.12.2007.

12. Furthermore, the fourth respondent would contend that the 3rd respondent, despite fixing two posts of Physical Education Teachers for the 4th respondent school, had not approved the appointment of the petitioner and had not granted salary to her. Hence, the management of the 4th respondent school has sent several representations in this regard, including the representation dated 16.05.2006 and thereafter, the petitioner's appointment was approved by the 3rd respondent with effect from 01.06.2007 vide proceedings in Ni.Mu.No.13711/A2/08 dated 28.01.2009 and her salary was also released, and later, she was retired from service on 31.05.2011.

13. The third respondent, namely, the District Educational Officer has also filed a counter, wherein, it has been stated that the 4th respondent school comes under the Corporate Management of Roman Catholic Schools Kottar Diocese, hence, the vacancy has to be filled up from the surplus Physical Education Teachers working in the Diocese. So the appointment itself is against the G.O's now in force. Since there was a surplus of six Physical Education Teachers posts in the Kottar Diocese, this vacancy has to be filled up from the surplus posts and new posts cannot be sanctioned in the 4th respondent school.

14. The respondent would further contend that the 4th respondent had sent a proposal for approval of the appointment of the petitioner. Since the 4th respondent school comes under Roman Catholic Corporate Schools Kottar Diocese, the third respondent, according to rules and regulations then in force,

asked to send particulars of total Physical Education Teachers working in Roman Catholic Corporate School Kottar Diocese. As per the staff fixation for the year 2003-2004, there was a surplus of six Physical Education Teachers posts in Roman Catholic Corporate Schools Kottar Diocese, hence, the 3rd respondent cannot approve a new appointment.

15. The third respondent would also contend that since the 4th respondent school comes under Roman Catholic Corporate Kottar Diocese and the proposal for approval of appointment was against the G.O's now in force, the 1st respondent had carefully applied his mind and passed an order confirming the rejection of the application for approval of appointment of the petitioner by the 3rd respondent.

16. Heard the learned counsel for the petitioner and learned counsel for the respondents, and perused the materials available on record.

17. On perusal of G.O.Ms.No.525 dated 29.12.1997, it could be seen that, in every school, the ratio of 1:40 will be followed for sanction of posts. As per the same, when the strength in classes VI to X in High Schools exceeds 250, one post of Physical Education Teacher will be sanctioned and for every additional strength of 300, one additional post of Physical Education Teacher will be sanctioned subject to maximum of 3. Accordingly, in the said school, namely, St.Francis Xavier Higher Secondary School, sanction post of Physical Education Teacher, was fixed as 2 from 2001 onwards. The staff fixation is done in every school only on the basis of teacher - pupil ratio as prescribed in the norms of the Government. Hence, if any surplus have been found, the department officials ought to have taken action only against the said school and not against the petitioner.

18. The petitioner's appointment in the said school, was arose only due to the retirement of the teacher, who was working as a Physical Education Teacher. Hence, the petitioner's claim that she ought to have been paid salary from 04.06.2001 is valid. Further, no objection certificate issued in the year 2007 by the Chief Educational Officer, is erroneous and the petitioner ought to have been given the same from 2001.

19. As per the norms issued by the Education Department, the post on which the petitioner was appointed in the year 2001, is a approved one and she has to be paid salary from the date on which she has been due. Hence, this Court is inclined to quash the order of the 1st respondent, passed in Na.Ka.No.80225/D(J5)/07, dated 26.11.2007 and to direct them to approve the appointment of the petitioner for the post of Physical Education

Teacher at the 4th respondent school with effect from 04.06.2001 with salary.

20. Accordingly, the order of the 1st respondent dated 26.11.2007 is hereby quashed and the 1st respondent is directed to approve the appointment of the petitioner for the post of Physical Education Teacher at the 4th respondent school with effect from 04.06.2001 with salary.

21. With the above direction, the Writ Petition is Allowed. No Costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

raja

To

1. The Director of School Education,
College Road, Nungambakkam,
Chennai - 6.
2. The Chief Educational Officer,
Nagercoil, Kanyakumari District.
3. The District Educational Officer
Thuckalay, Kanyakumari District.

+lcc to Mr.P.Godson Swaminathan, Advocate, S.R.No.49190

+lcc to Ms.P.Mahalakshmi, Advocate, S.R.No.48674

+lcc to the Government Pleader, S.R.No.49418

W.P.No.2349 of 2008

and

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VBA(CO)
CS/26/12/2018

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