

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31.08.2018

CORAM

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

W.P.No.27151 of 2010

G.Kanakaraj

.. Petitioner

Vs.

- 1.The State of Tamilnadu,
Represented by its Secretary,
Education Department,
Fort St. George,
Chennai - 600 009.
- 2.The Director of Elementary Education,
DPI Campus,
College Road, Chennai - 600 006.
- 3.The District Elementary Education Officer,
Kancheepuram District,
Kancheepuram.
- 4.The Assistant Elementary Education Officer,
Office of the Panchayat Union,
Chitlapakkam,
Chennai.
- 5.Baby Middle School rep. by its,
Manager & Correspondent,
Tambaram,
Chennai - 600 045.

.. Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Mandamus, to direct the respondents, particularly the third and fourth respondents, to pay the salary due to the petitioner for the period he has served in the 4th respondent school from 03.07.1989 to 31.08.1989 together with reasonable interest within a reasonable time.

For Petitioner : Mr.C.Johnson

For Respondents : Mr.R.Govindasamy
Spl. Government Pleader
for respondents 1 to 4

Mr.N.Manokaran
for 5th respondent

ORDER

The petitioner prayed for a Writ of Mandamus, directing the respondents particularly the respondents 3 and 4, to pay the salary due to the petitioner for the period he has served in the 5th respondent school from 03.07.1989 to 31.08.1989 together with reasonable interest within a reasonable time.

2.The brief facts of the case is as follows:

The petitioner has passed B.Sc. Chemistry in the year 1981 and B.Ed., in the year 1983. In the year 1989 (vide Registration No.4875/89), the petitioner registered his name with the Employment Exchange, Kancheepuram. The learned counsel for the petitioner states that there were dearth of Secondary Grade Trained Teachers to be appointed in Panchayat Union and Government Schools. In order to see that education of children studying in such schools do not suffer on account of dearth of Secondary Grade Trained Teachers and also to give relief to the un-employed teachers, the 3rd respondent and his counterparts in other districts suggested the 2nd respondent to pass orders permitting the appointing authority concerned to fill up the vacancies of Secondary Grade Teachers available in Government and Panchayat Union Schools by obtaining the list of B.T./B.Ed. and Tamil Pandits from the respective Employment Exchanges when actually there were no Secondary Grade trained teachers available in the live register of Employment Exchange, subject to certain conditions. सत्यमेव जयते

3.The learned counsel for the petitioner states that the 2nd respondent, after careful examination, accepted the above said suggestions of the 3rd respondent and their counterparts in other districts for appointing persons with B.T./B.Ed. qualification and Tamil Pandits training to the post of Secondary Grade Teachers.

4.It is further states that the 1st respondent issued an Order in G.O.Ms.No.539, Education (M1) Department, dated 21.04.1986 to the above said effect. It has been further directed that in the above said G.O. that those orders be made applicable also to the appointment of Secondary Grade Teachers

in the aided Schools governed by the Tamil Nadu Recognized Private Schools (Regulation) Act, 1973 and the Rules, 1974, framed thereunder.

5.It is further states that accordingly, the petitioner's name was duly sponsored by the Employment Exchange, Kancheepuram (vide their letter X2/387/89, dated 16.06.1989) to the 5th respondent in order to consider the petitioner's case for appointment in the 5th respondent school in consonance with the above G.O.

6.It is further states that consequently, the 5th respondent appointed the petitioner as Secondary Grade Teacher in the leave vacancy from 03.07.1989 to 31.08.1989 and fixed the Pay Scale at Rs.1200-30-1560-40-2040. The petitioner joined on 03.07.1989 and worked in the School till 31.08.1989. The 5th respondent has also given a Service Certificate for the work done by the petitioner as a Secondary Grade Teacher in the leave vacancy for the period commencing from 03.07.1989 and ending 31.08.1989.

7.It is further states that by G.O.Ms.No.510, Education, dated 10.05.1989, the 1st respondent has regularized the appointments of such candidates who were not trained in secondary grade teacher training course.

8.It is further states that during the above period from 03.07.1989 to 31.08.1989, the petitioner was not paid salary by 5th respondent, in spite of repeated requests and demands.

9.It is further states that having failed to receive the salary for the above said period, the petitioner made many representations including representation to the Special Cell of the Hon'ble Chief Minister of Tamil Nadu for getting redressal. It is evident that the 2nd respondent also advised, vide its letter dated 28.06.2004, to furnish the details submitted by the petitioner to the Special Cell of the Hon'ble Chief Minister facilitating him to initiate further proceedings in the matter.

10.It is further states that on 16.07.2004 the petitioner sent a reply to the 2nd respondent furnishing him with all the details, enclosing the copies of the above said two Government Orders and all correspondence and also requested him to initiate appropriate steps for payment of the salary for the period. As there was no response from the respondents for the petitioner's representation, another representation dated 05.07.2007 was given to the Special Cell of the Hon'ble Chief Minister, Tamil Nadu. It is understood that the above said letter was forwarded to the 2nd respondent, who in turn, sent a letter dated 01.08.2007 to the respondents 3 and 4 herein advising to initiate necessary and immediate steps on the representation

made by the petitioner and inform the developments to the petitioner. A copy of the above said letter was marked to the petitioner. Since there was no further development in the matter, the petitioner made another representation to the Special Cell of the Hon'ble Chief Minister during February 2008, appending all the copies of the correspondence. Again the petitioner made representations to the respondents explaining his grievances.

11. In the above writ petition, the respondents 4 and 5 filed counter affidavits and prayed for the dismissal of the writ petition for the reasons stated therein. The respondents 4 and 5 however admitted the very fact that the petitioner was appointed in the said leave vacancy and worked in the 5th respondent school as a Secondary Grade Teacher. Thus there is no quarrel about the appointment of the petitioner in the leave vacancy of the 5th respondent school or with regard to the period served.

12. The 4th respondent who filed counter affidavit on behalf of the respondents 1 to 3 and on his own, also admitted that such appointments can be made under G.O.Ms.No.539, Education (M1) Department, dated 21.04.1986. So also in and by G.O.Ms.No.510, Education Department, dated 10.03.1989 such appointments can be regularized. Further, the above respondents also admitted the fact that salary as claimed by the petitioner for the period worked in a sum of Rs.3,490/- (being the salary due to the petitioner for the period from 03.07.1989 to 31.08.1989) was duly remitted into Government account (by the 5th respondent). However, salary was denied holding that there is no approval for the appointment.

13. I heard Mr.C.Johnson, learned counsel appearing for the petitioner, Mr.R.Govindasamy, learned Special Government Pleader appearing for the respondents 1 to 4 and Mr.N.Manokaran, learned counsel for the 5th respondent and perused the entire materials available on record.

14. It is submitted that when it is admitted by the above official respondents that the necessary amount as claimed towards salary was remitted into government amount by the 5th respondent school, salary cannot be denied. However, the official respondents denied salary to the petitioner on the score that the School Management (5th respondent) failed to get non-availability certificate from the Employment exchange. Such an allegation cannot be legally sustained, especially when the petitioner's name was referred by the employment exchange and the 5th respondent appointed the petitioner in the leave vacancy and allowed him to work. It is also very much relevant to mention here that the leave vacancy could arise only out of regular sanctioned vacancy. As such there is no doubt about the

nature of sanction of vacancy wherein the petitioner was appointed temporarily. The only point to be decided herein is where the petitioner was appointed and worked as stated in the writ petition. Evidently in the counter affidavit the official respondents admitted the factum of appointment as well as period worked as stated in the affidavit.

15. It is submitted that when the Government orders permits such appointments and salaries were paid to such candidates, the denial of salary to the petitioner on the ground that such appointment was not approved is legally unsustainable. Moreover admittedly it is a leave vacancy and as such further sanction is not necessary as stated above. When the petitioner is qualified and appointed through employment exchange, he is entitled for salary and allowances for the period served. It is for the respondents to calculate the period of service and effect payment for the service actually rendered by the petitioner.

16. The lethargic attitude of the respondents are very much visible in the instant case. The attitude of the respondents forcing the teacher to run pillar to post for several years for getting the salary for the period worked cannot be justified on the further reason that the salary earned being a property cannot be delayed or denied. The averments contained in the counter affidavit further affirms the mechanical way of dealings things by the respondents without proper application of mind. Hence it is held that the respondents are liable to pay interest and cost to the petitioner. The respondents are directed to calculate and pay the salary due to the petitioner along with interest at the rate of 6% per annum.

17. In the result:

- (a) the writ petition is allowed;
- (b) the respondents 3 and 4 are hereby directed to pay the salary due to the petitioner for the period he has served in the 4th respondent school from 03.07.1989 to 31.08.1989 together with interest at the rate of 6% per annum;
- (c) the said exercise shall be done within a period of eight weeks from the date of receipt of a copy of this order. No costs.

Sd/-
Deputy Registrar

//True Copy//

Sub Assistant Registrar

To

1. The Secretary to Government,
Education Department,
Fort St. George, Chennai - 600 009.

2.The Director of Elementary Education,
DPI Campus,
College Road, Chennai - 600 006.

3.The District Elementary Education Officer,
Kancheepuram District, Kancheepuram.

4.The Assistant Elementary Education Officer,
Office of the Panchayat Union,
Chitlapakkam, Chennai.

+1cc to Mr.C.Johnson, Advocate, S.R.No.59955

+1cc to Mr.N.Manokaran, Advocate, S.R.No.60357

W.P.No.27151 of 2010

GSP(12/09/2018)



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