

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.01.2018

CORAM:

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

THE HON'BLE MR.JUSTICE P.VELMURUGAN

W.A.No.1652 of 2016
and C.M.P.No.20417 of 2016

1.The Chief Educational Officer
Udhagamandalam
The Nilgiris District.

2.The District Educational Officer
Coonoor, The Nilgiris District. ...Appellants/ Petitioners

Vs

1.M.Chella Durai

2.The Correspondent
C.S.I. Higher Secondary School
Ketti Post, Nilgiris District. ...Respondents/ Respondents

Prayer:- Writ Appeal filed under Clause 15 of Letters Patent Act, to set aside the order passed by this Court in W.P.No.11350 of 2016 dated 28.03.2016.

Prayer WP No.11350 of 2016 :

Petition under Article 226 of the Constitution of India
Praying for the issue of a Writ of Mandamus Directing the respondents particularly the first and second respondents to regularize the period of service of the petitioner from 23.02.2007 to 27.01.2010 in the cadre of B.T. Assistant (History) and to confer all consequential service and monetary benefits by considering the proposal dated 21.01.2015 sent by the third respondent within the time limit prescribed by this Court.

For Appellants : Mr.K.Karthikeyan
Government Advocate

For R1 : Mr.P.Ganesan

JUDGMENT

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

The learned Single Judge, taking into account the earlier proceedings initiated by the first appellant and more particularly, the order dated 16 December, 2009 passed by this Court in W.P.No.7899 of 2007 filed by the first respondent, set aside the order dated 22 February, 2007 and directed the appellants to regularise his services for the period from 23 February 2007 to 27 January, 2010 in the cadre of B.T. Assistant and grant him all consequential service and monetary benefits, by considering the proposal dated 21 January, 2015 submitted by the second respondent. Feeling aggrieved, the State has come up with this intra court appeal.

2. The learned Government Advocate would contend that the Government has passed an order dated 22 June, 2015 directing the Management to submit a proposal indicating that the first respondent availed leave on loss of pay for the period from 23 February 2007 to 10 January, 2010 and to regularise the period accordingly. According to the learned Government Advocate, the order dated 22 June, 2015 was not challenged by the first respondent and as such, his subsequent Writ Petition for regularisation of the earlier service ought to have been rejected by the learned Single Judge.

3. The learned counsel for the first respondent on the other hand contended that the order dated 22 February, 2007 transferring the first respondent was challenged in W.P.No.7899 of 2007. This Court, by order dated 02 March, 2007 in W.P.No.7899 of 2007 granted an interim order and on the strength of the said interim order, the first respondent continued.

Since the earlier period was not regularised, the learned Single Judge was correct in issuing the direction.

4. The Writ Petition has got a chequered history. The first respondent was given the benefit of appointment pursuant to the order dated 08 January, 2003 in W.P.No.18900 of 1999 and the related appeal in W.A.No.422 of 2003. Subsequently, by proceedings dated 22 February, 2007, the first respondent was transferred to another institution on the ground that his post was surplus. The said order was challenged before the Writ Court in W.P.No.7899 of 2007. It is the case of the first respondent that he continued to function as Secondary Grade Assistant pursuant to the interim order dated 02 March 2007 in W.P.No.7899 of 2007. The said Writ Petition was ultimately allowed. It is the case of the first respondent that even after allowing the Writ Petition in W.P.No.7899 of 2007, further

action was not taken for regularisation of his service for the period from 23 February 2007 to 27 January, 2010.

5. The order passed by the learned Single Judge indicates that instead of directing the District Educational Officer, Coonoor, a positive direction was given to regularise the services of the first respondent. In fact, the learned Single Judge in paragraph 4 of the order made an observation that the proposal sent by the Management was pending with the Government. Such being the factual position, we are of the view that it was not correct to issue a positive direction to regularise the services of the first respondent. We are also of the view that interest of justice would be subserved by directing the appellants to consider the case of the first respondent for regularisation of his service for the period 23 February, 2007 to 27 January, 2010 in the cadre of B.T. Assistant (History) by taking into account the earlier proceedings. Such exercise shall be completed on or before 23 April 2018.

The intra court appeal is allowed to the extent indicated above. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

gms

To

1.The Chief Educational Officer
Udhagamandalam
The Nilgiris District.

2.The District Educational Officer
Coonoor, The Nilgiris District.

+1cc to Mr.P.Ganesan, Advocate, S.R.No.4446

+1cc to the Government Pleader, S.R.No.5534

W.A.No.1652 of 2016

MR(CO)

RRK(01/02/2018)