



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 27.03.2018

CORAM:

THE HONOURABLE Mr.JUSTICE T.S.SIVAGNANAM
AND
THE HONOURABLE Mrs.JUSTICE R.THARANI

W.A.(MD).No.93 of 2018
and
C.M.P.(MD)No.447 of 2018

- 1.The Director of Elementary Education,
College Road, Chennai-600 006.
 - 2.The Chief Educational Officer,
Pudukottai District,
Pudukottai.
 - 3.The District Educational Officer,
Aranthangi,
Pudukottai District.
- ... Appellants

Vs.

Rani

... Respondent

PRAYER:This appeal has been filed under Clause 15 of the Letters Patent, to set aside the order dated 22.02.2017 made in W.P.(MD) No.5935 of 2013.

Prayer in WP(MD). 5935/ 2013 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, calling for the records pertaining to the Impugned Order passed by the 3rd respondent in Na.Ka.No.880/A1/2010 dated 02.01.2013 and quash the same and consequently direct the respondents to regularize my service from the date of my initial appointment on 15.04.1996. (Prayer amended vide court order dt.26/10/16 in WMP(MD)14237/16 by MVMJ)

For Appellants : Mr.V.R.Shanmuganathan
Special Government Pleader

For Respondent : Mr.B.S.Meltiue

JUDGMENT

(Judgment of the Court was delivered by T.S.SIVAGNANAM, J)

Heard Mr.V.R.Shanmuganathan, learned Special Government Pleader appearing for the appellants and Mr.B.S.Meltiue, learned counsel appearing for the respondent.



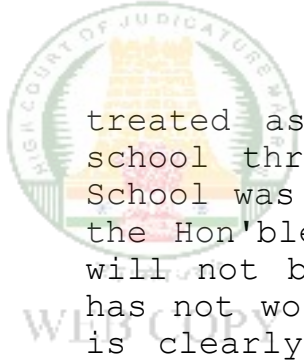
2.This appeal by the State is directed against the order made in W.P.(MD)No. 5935 of 2013, dated 22.02.2017.

3.The said writ petition was filed by the respondent herein, challenging the order passed by the third appellant dated 02.01.2013, seeking a direction to the appellant to regularise the service of the respondent/writ petitioner from the date of her initial appointment on 15.04.1996. The Writ Court, after taking into consideration the facts and circumstances of the case, and the submission made on either side, and the decision, which was rendered by the Division Bench on similar issue, allowed the writ petition by setting aside the impugned order and directed the appellants to regularise the service of the respondent/writ petitioner from the date of her initial appointment when she had completed 10 years of service and fixed the time frame within which the direction should be complied with.

4.The learned Special Government Pleader placed reliance on the decision of the Hon'ble Supreme Court in the case of Secretary to Government Commercial Taxes and Registration Department, Secretariat and another v. A.Singamuthu reported in AIR 2017 SUPREME COURT 1304 and submitted that G.O.M.s.No.22 dated 28.02.2006, will have no application to the case where the employees are Part Time Employee and that by applying the decision to the facts of this case, the writ petition is liable to be dismissed. The learned Special Government Pleader referred to various Government Orders and decisions to support his contention.

5.The learned counsel for the respondent submitted that there are several decisions which have been passed by this Court in identical cases where the appointments in a sanctioned post was mentioned as Part Time Employee and appointment orders were issued. Even in the case of the respondent/writ petitioner, the approval was granted on 06.09.1996 but it is mentioned as if the writ petitioner is a Part Time Employee. To set right the factual position, the writ petitioner has produced Service Certificate from his employer, which shows that this writ petitioner is employed as full time employee.

6.We have considered submission on either side and perused the material placed on record and decision of various Courts relied on by the learned counsels. The undisputed fact is that the respondent/writ petitioner has been appointed in a sanctioned post, therefore, there is no allegation that the writ petitioner was appointed in an unauthorised vacancy. The next question would be whether there can be any Part Time Employment in the sanctioned post. The answer to the question should be negative-against the appellant and in favour of the management appointed Teacher. This is so because in the sanctioned post, there cannot be a temporary appointment without prior approval of the department, there cannot be a Part Time Employee. The service particulars furnished by the writ petitioner clearly shows that all along the writ petitioner was



treated as full time employee and continued to function in the school through out the year and had sufficient work because the School was a Higher Secondary School. In the case of A. Singamuthu, the Hon'ble Supreme Court pointed out that the Part-time employees will not be entitled to claim regularisation particularly when he has not worked in the sanctioned post. Therefore, the case on hand is clearly distinguishable on facts. The learned counsel for the appellant-State before the Hon'ble Supreme Court contended that the respondent therein had worked only for 2 to 3 hours per day regularisation granted to such Masalchi was one time scheme to bring it on time scale and such regularisation can be only from the date of issuance of the particular decision. The decision in the case of A.Singamuthu cannot be applied to the facts and circumstances of the present case.

7.Thus we are satisfied that the petitioner had been working on the temporary basis in a sanctioned post and had completed 10 years of service on 15.04.2006 and from the said date, the writ petitioner is entitled to get his service regularised. With regard to past period, 50% of the same shall be reckoned for the purpose of computing the length of service and for calculating the pension. With the above observation, this writ appeal filed by the State is dismissed. No Costs. Consequently, C.M.P.(MD)No.447 of 2018 is closed.

Sd/-
Assistant Registrar(C.O.)

/True Copy/

Sub Assistant Registrar

To

1.The Director of Elementary Education,
College Road, Chennai-600 006.

2.The Chief Educational Officer,
Pudukottai District,
Pudukottai.

3.The District Educational Officer,
Aranthangi,
Pudukottai District.

+1CC to Mr.B.S.Meltiue, Advocate, SR.No. 58598

W.A. (MD) .No.93 of 2018
27.03.2018

Mrn

AM/KKR/SAR 4/30.05.2018/3P/5C

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