



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 07.03.2018

CORAM:

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

W.A. (MD) .No.1261 of 2015

and

M.P. (MD) No.1 of 2015

F. Jacintha Mary

... Appellant

Vs.

1.The State of Tamil Nadu,
Rep. By its Secretary,
Department of School Education,
Fort St. George, Chennai-600 009.

2.The Director of School Education,
College Road, Chennai-600 006.

3.The Chief Educational Officer,
Kanyakumari District, Nagercoil- 629 001.

4.The District Educational Officer,
Nagercoil, Kanyakumari District.

5.The Correspondent,
Little Flower Girls Higher Secondary School,
Ramanputhur, Nagercoil,
Kanyakumari District-629 004.

... Respondents

PRAYER:This appeal is filed under Clause 15 of the Letters Patent,
to set aside the order dated 03.09.2015 in W.P. (MD) No.15941 of 2015.

Prayer in WP(MD). 15941/ 2015 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Mandamus directing the respondents to approve the appointment of the petitioner as BT Assistant in Mathematics on 03.06.1986 in the 5th respondent school namely, Little Flower Girls Higher Secondary School, Ramanputhur, Nagercoil as per G.O.Ms.No.950(Education (D1) Department) dated 31.07.1989, and disburse grant-in-aid towards the petitioners salary as BT Assistant in Mathematics from 03.06.1986 to 30.09.1993, and reckon the same period as qualifying service period for pension and other retirement benefits on par with similarly placed persons viz., G.O.(Ms) No.18(Education, Science and Technical Education (D-2) Department dated 09.01.1997 and G.O.(ID) Ms.No.125 (Education (VE) Department) dated 13.04.2010.



For Appellant : Mr.S.Xavier Rajini
For Respondents 1 to 4 : Mr.V.R.Shanmuganathan
Special Government Pleader

JUDGMENT

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

Heard Mr.S.Xavier Rajini, learned counsel appearing for the appellant and Mr.V.R.Shanmuganathan, learned Special Government Pleader appearing for the respondents 1 to 4.

2.This appeal is directed against the order made in W.P.(MD) No.15941 of 2015 dated 03.09.2015. The said writ petition has been filed for issuance of Writ of Mandamus, directing the respondents to approve the appointment of the writ petitioner as B.T. Assistant in Mathematics on 03.06.1986 in the fifth respondent School and disburse grant-in-aid towards the writ petitioner's salary in the said post and reckon the period from 03.06.1986 to 30.09.1993, while working as B.T. Assistant as qualifying service for pension and other retirement benefits. The undisputed facts are that the appellant was appointed as B.T. Assistant in Mathematics on 03.06.1986. On the said date, there was no vacancy in the post of B.T. Assistant in Mathematics in the fifth respondent School. Thus, the appointment of the appellant was in an unsanctioned post.

3.During the year 1989, pursuant to G.O.Ms.No.950 (Education (D1) Department) dated 31.07.1989, approval was granted for the period of three months, subsequently, such approval was not renewed. In the year 1993, the appellant was selected and appointed as Secondary Grade Teacher and served in the said post, promoted as B.T. Assistant and retired from service on 31.05.2014. The learned counsel appearing for the appellant would state that if the decision of the Hon'ble Division Bench in the case of G.Sahadevan Nair, Kanyakumari District v. Government of Tamil Nadu and others reported in (2008) 4 MLJ 289 is applied and the students strength is analysed, it will be clear that one post of B.T. Assistant is required to be sanctioned for the fifth respondent School during the year 1986. If it is found so, then the service of the petitioner from the year 1986 to 1993 can be reckoned for the purpose of computing pension. The writ Court rejected the writ petition on the ground of delay and laches. As against it, the present appeal has been filed.

4.The learned counsel for the appellant would submit that if the decision in G.Sahadevan Nair cited supra is applied to the facts of the case, the appellant would be entitled to full relief.

5.The learned Special Government Pleader appearing for the respondents, on the other hand would submit that Government order referred to by the appellant in G.O.Ms.No.18 (Education Science and Technical Education) dated 09.01.1997, is factually distinguishable. The other Government order in G.O.Ms.No.950 (Education (D1) Department) dated 31.07.1989 is applicable, only to those cases



where no post of P.G. Assistants were sanctioned for the Schools and applying the norms laid down in G.Sahadevan Nair (supra), staff strength was calculated. The learned counsel for the appellant in reply would submit that this Court in the case of Government of Tamil Nadu and another v. Elsi Bai and another in W.A.(MD)No.213 of 2017 dated 06.04.2017, considered a similar case, and while allowing the appeal filed by the Government, directed the decision of the Hon'ble Supreme Court to be made applicable.

6.In our considered view, the appellant need not be punished on the ground of having approached this Court belatedly, since she was working in an aided minority institution and the fifth respondent management has filed a writ petition in W.P.No.3296 of 1998, for the purpose of obtaining approval of the appointment of the appellant as B.T. Assistant in the year 1986 and certain directions were issued. The Management did not follow the matter subsequently, thus the appellant had to remain silent till she attained the age of superannuation.

7.The claim made by the petitioner if considered positively by the Government, atbest would result in granting monetary benefits. Therefore, we are inclined to issue appropriate direction to the respondent to consider the appellant's case.

8.For the above reasons, the writ appeal is allowed and the impugned order is set aside and the appellant is directed to give fresh representation along with a copy of this judgment to the fourth respondent, who shall consider the same and make necessary proposal to the third respondent within a period of three weeks from the date of receipt of copy of such representation. The third respondent shall consider the proposal of the fourth respondent and pass appropriate orders on merits and in accordance of law. No Costs. Consequently, M.P.(MD)No.1 of 2015 is closed.

Sd/-

Assistant Registrar(W)

/True Copy/

Sub Assistant Registrar

To

- 1.The Secretary, State of Tamil Nadu,
Department of School Education, Fort St. George, Chennai-600 009.
- 2.The Director of School Education, College Road, Chennai-600 006.
- 3.The Chief Educational Officer, Kanyakumari District,
Nagercoil- 629 001.
- 4.The District Educational Officer, Nagercoil, Kanyakumari District.
+1CC to Mr.S.Xavier Rajini, Advocate, SR.No. 54204

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