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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 03.07.2018

CORAM

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

W.P.[MD]No.13938 of 2018

and

W.M.P.[MD]No.12669 of 2018

N.Noorjibai Ebenezer

: Petitioner

Vs.

1. The Secretary to Government,
Department of School Education,
St. George Fort, Chennai.

2. The Director of School Education,
School Education Department,
DPI Compound, Chennai.

3. The Chief Educational Officer,
Tirunelveli District,
Tirunelveli.

4. The District Educational Officer,
Tirunelveli Educational District,
Tirunelveli.

5. The Correspondent,
Sarah Tucker Higher Secondary School for Girls,
Palayamkottai, Tirunelveli.

: Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, to call for the records pursuant to the impugned rejection order passed by the fourth respondent in O.Mu.No.597/25/2018 dated 08.05.2018 quash the same and consequently direct the fourth respondent to approve the petitioner's transfer as Headmistress at fifth respondent school and give all other service and monetary benefits.

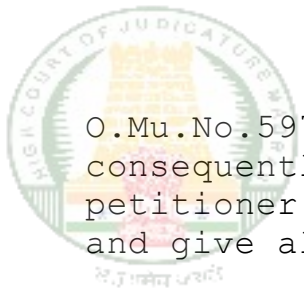
For Petitioner : Mr.S.Chellapandian

For Respondents 1 to 4 : Mrs.S.Srimathy,

Special Government Pleader

O R D E R

The prayer sought for in this Writ Petition is for a Writ of Certiorarified Mandamus, to call for the records pursuant to the impugned rejection order passed by the fourth respondent in



O.Mu.No.597/25/2018 dated 08.05.2018 quash the same and consequently to direct the fourth respondent to approve the petitioner's transfer as Headmistress at fifth respondent school and give all other service and monetary benefits.

2. Heard Mr.S.Chellapandian, learned Counsel appearing for the petitioner and Mrs.S.Srimathy, learned Special Government Pleader appearing for the official respondents.

3. Insofar as the fifth respondent is concerned, since no adverse orders is going to be passed, notice to the fifth respondent is dispensed with.

4. The short facts which are required to be noticed for the disposal of this writ petition are as follows:

4.1. The petitioner was appointed as P.G. Assistant at St. Peter's Higher Secondary School, Ukkirankottai, on 04.10.1995. Thereafter, she was transferred to one Shaffter Higher Secondary School, Tirunelveli in the year 2007. She was further transferred to Sarah Tucker Girls Higher Secondary School ie., the fifth respondent school in the year 2017 as P.G. Assistant (English).

4.2. Thereafter, the petitioner had been promoted by the management of the fifth respondent school as Headmistress and was posted at Samariah Higher Secondary School, Thisaiyanvilai, in the year 2017. However, for some administrative reasons, the management had given transfer to the petitioner to the same school ie., Sarah Tucker Girls Higher Secondary School as Headmistress on 22.07.2017. Pursuant to the said transfer order, the petitioner joined in the said school and has been working for about a year. However, no salary has been paid to the petitioner so far. When enquired, the reason being that, the erstwhile incumbent, who was the Headmistress of Sarah Tucker Girls Higher Secondary School, had already filed a writ petition in W.P.No.13729 of 2017 and because of the pendency of the said writ petition, eventhough, the petitioner had been working in the transferred place, she had not been given the said benefit of salary.

4.3. In the meanwhile, the proposal sent by the fifth respondent school to the fourth respondent was not considered, seeking certain clarification with regard to the relieving order of the erstwhile incumbent and the fifth respondent had complied with the said requirement also, by sending the relieving order of the erstwhile incumbent, where the petitioner has now been placed on 01.02.2018. On receipt of the documents and proposal of the petitioner's transfer and appointment as Headmistress in the fifth respondent school, the fourth respondent has passed the impugned order on 08.05.2018, requiring the fifth respondent management to submit the relieving order of the erstwhile incumbent one Christilda, in whose place only, the petitioner had been posted,



counter signed by the concerned Educational Officer. Challenging the said requirement through the impugned communication, the petitioner has filed this writ petition.

5. I have heard the learned Counsel for the petitioner, who would submit that, the petitioner had been properly given promotion as Headmistress and after giving promotion, she was posted in Samariah Higher Secondary School, Thisaiyanvilai in the year 2017, under the same management. Subsequently, due to administrative reasons, the fifth respondent school management had re-transferred the petitioner to the fifth respondent and accordingly, the petitioner joined as Headmistress on 22.07.2017 and has been continuously working till date.

6. Insofar as the requirement of the relieving order of the erstwhile incumbent with the endorsement of the District Elementary Educational Officer concerned, the learned Counsel for the petitioner would submit that, the erstwhile incumbent though had filed a writ petition which was pending before this Court had attained superannuation on 31.12.2017 and therefore, the question of her relieving order for consideration at this juncture, does not arise. Assuming that the said relieving order was necessitated or required for the consideration of the approval of the petitioner's appointment, even the said relieving order in respect of the erstwhile incumbent had already been forwarded by the fifth respondent school on 01.02.2018 and therefore, at any rate, the present requirement once again made by the fourth respondent through the impugned communication is not only unwarranted but also unjustifiable. Hence, the impugned order deserves to be quashed and remanded back to the fourth respondent for fresh consideration.

7. I have heard the learned Special Government Pleader appearing for the official respondents, who would submit that, in view of the fact that the erstwhile incumbent has already reached superannuation and retired from service on 31.12.2017, the requirement as has been sought for now, by the fourth respondent may not be required at this juncture. Therefore, instead of insisting upon the said certificate, the fourth respondent can independently consider the proposal of the petitioner's appointment and posting as Headmistress in the fifth respondent school and in this regard a suitable direction may be given.

8. I have considered the said submissions made by both sides and perused the materials placed before this Court.

9. As has been rightly pointed by the learned Counsel for the petitioner, the relieving order through the impugned order has been annexed and communicated to the fourth respondent by the fifth respondent school on 01.02.2018.



10. That apart, the fact remains that the erstwhile incumbent ie., Christilda is concerned, she attained superannuation on 31.12.2017. Therefore, beyond 31.12.2017, she cannot have any other claim whatsoever assuming that ultimately, the writ petition filed by her is decided in her favour.

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11. Therefore, the present reason cited by the fourth respondent, requiring the relieving order of the erstwhile incumbent with the endorsement of the District Elementary Educational Officer concerned may not be required at this juncture, as the petitioner has now been working from July 2017 at the fifth respondent school and in this regard, the fifth respondent had already given necessary relieving order of the erstwhile incumbent to the fourth respondent for consideration and also the fact that the erstwhile incumbent has already reached superannuation. Therefore, the fourth respondent need not detain the proposal for the petitioner's appointment and approval as Headmistress of the fifth respondent school, any more. Hence, the present reason cited in the impugned order, in the opinion of this Court, is not only unwarranted, but also unjustifiable. Hence, it is liable to be interfered with.

12. In the result, the impugned communication is quashed and the matter is remitted to the fourth respondent ie., The District Educational Officer, Tirunelveli, who shall reconsider the proposal sent by the fifth respondent management with regard to the transfer and appointment of the petitioner as higher secondary school Headmistress at the fifth respondent school from July 2017 and pass necessary orders for granting salary to the petitioner from 01.01.2018, as there can be no impediment for releasing that salary from 01.01.2018, in view of the fact that the erstwhile incumbent admittedly reached superannuation on 31.12.2017. The needful as indicated shall be undertaken by the fourth respondent, within a period of two weeks from the date of receipt of a copy of this order.

13. The Writ Petition stands disposed of, accordingly. However, there shall be no order as to costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CO)

/True Copy/

Sub Assistant Registrar(CS-I)

To

1. The Secretary to Government,
Department of School Education,
St. George Fort, Chennai.



2. The Director of School Education,
School Education Department,
DPI Compound, Chennai.

3. The Chief Educational Officer,
Tirunelveli District,
Tirunelveli.

4. The District Educational Officer,
Tirunelveli Educational District,
Tirunelveli.

+1cc to Spl.Government Pleader Sr.No.70982

+1cc to Mr.S.Chellapandian, Advocate Sr.No.70886

MR

VB/SKN/SAR1/11.08.2018/5P/7C

ORDER MADE IN
W.P. [MD]No.13938 of 2018
03.07.2018