



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 26.02.2018

CORAM:

THE HONOURABLE Mr.JUSTICE T.S.SIVAGNANAM
AND

THE HONOURABLE Mrs.JUSTICE R.THARANI

W.A.(MD).No.215 of 2017

and

C.M.P.(MD).No.2189 of 2017

WEB COPY

1. The State,
Rep by its Secretary,
Department of School Education,
Fort St.George,
Chennai-9.
2. The Joint Director,
The Director of School Education,
College Road,
Chennai-6
3. The Chief Educational Officer,
Kovilpatti,
Thoothukudi District.
4. The District Educational officer,
Kovilpatti,
Thoothukudi District. ... Appellants/Respondents 1 to 4

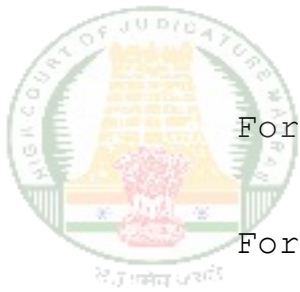
Vs.

1. P.Christopher ... 1 Respondent/Writ petitioner
2. The Correspondent,
Joint the Baptist Hr.Sec. School,
Puthiamputhur-628 402
Thoothukudi District. ...2 Respondent/5 Respondent

PRAYER: This appeal is filed under Clause 15 of the Letters Patent, against the order of this Court dated 30.09.2016 in W.P.(MD). No16941 of 2016.

Prayer in WP(MD). 16941/ 2016 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue of writ in the nature of writ of mandamus or any other appropriate writ of direction the 4th respondent district education officer herein the approve the appointment of the petitioner as office assistant in the 5th respondent school w.e.f. 19.07.2002 with salary and all attendant benefits from the said date.



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

For R1 : M/s.R.Saraswathi

For R2 : No appearance

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JUDGMENT

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

Heard Mr.V.R.Shanmuganathan, learned Special Government Pleader appearing for the appellants and Mr.R.Saraswathi, learned counsel appearing for the first respondent.

2.This appeal filed by the State is directed against the order passed in W.P.(MD).No.16941 of 2016 dated 30.09.2016.

3.The first respondent filed the writ petition to direct the fourth appellant to approve his appointment as Office Assistant in the fifth respondent School with effect from 19.07.2002. The writ petition was allowed by the impugned order. The appellants are before this Court by way of this appeal contending that the first respondent was appointed during the ban period in the year 2006 and therefore, the question of granting approval from 2002 does not arise. Further, the learned Special Government Pleader submitted that there was no sanctioned post of Office Assistant at the relevant time and various Government Orders were issued directing the out-sourcing of such non-teaching post. However, from the records placed before this Court by the appellants, we find that the respondent was appointed on 19.07.2002 as Office Assistant in a retirement vacancy on account of retirement of one Mr.T.Maharaja. Therefore, the facts of the petitioner stand entirely in different footing and the question of any reappointment does not arise in the instant case. Furthermore, the learned counsel for the first respondent pointed out that in respect of similarly placed person in another minority Educational Institution, pursuant to the direction issued in W.P.(MD).No.623 of 2014, dated 15.03.2016, the appointment has been approved from the date of first appointment of the said incumbent.

4.The learned Special Government Pleader appearing for the appellants would further contend that though the post has been sanctioned during the ban period ie., from 29.11.2001 to 07.02.2006 and in the interregnum, the retirement vacancy arose, the Management could not fill up the post by a new incumbent. In our considered opinion, this interpretation would go against the order of the writ Court in filling up the post in a particular School. That apart between the year 2002 and 2006, the appellants did not reject the request made by the Management for approval of



the appointment of the first respondent on the ground that the Management cannot fill up the said post. Therefore, the interpretation sought to be given, on facts, cannot be made applicable. One more contention advanced by the learned Special Government Pleader that the first respondent has approached this Court for seeking such a relief after a period of 9 years. In our considered view, what is sought for is a benefit, which accrued out of service rendered by the first respondent/writ petitioner and the cause of action is deemed to continue till the first respondent/writ petitioner attained the age of superannuation and even thereafter. On these two grounds also, we are not inclined to interfere with the order in the writ petition.

5. Thus, for the above reasons, we find that the appellants have not made out any good ground to interfere with the impugned order. Accordingly, the writ appeal fails and the same is dismissed. No costs. Consequently, connected miscellaneous petition is also closed.

Sd/-

Assistant Registrar(crl side)

/True Copy/

Sub Assistant Registrar

To

1. The Secretary,
Department of School Education,
Fort St. George,
Chennai-9.
2. The Joint Director,
The Director of School Education,
College Road,
Chennai-6
3. The Chief Educational Officer,
Kovilpatti,
Thoothukudi District.
4. The District Educational officer,
Kovilpatti,
Thoothukudi District.

+1cc to M/s.R.Saraswathi, Advocate Sr.No.51429
+1cc to The Spl. Government Pleader Sr.No.51588

NS