



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 07.03.2018

CORAM:

WEB COPY

THE HONOURABLE Mr.JUSTICE T.S.SIVAGNANAM

AND

THE HONOURABLE Mrs.JUSTICE R.THARANI

W.A. (MD) .No.927 of 2016
and
C.M.P. (MD) No.6651 of 2016

1.The Chief Educational Officer,
Kanyakumari District, at Nagercoil,
Kanyakumari District.

2.The District Educational Officer,
Kuzhithurai,
At Marthandam, Kanyakumari District.
Pin-629 165.

... Appellants

Vs.

1.B.Latha Mangesh

2.The Plus XI Higher Secondary School,
Thoothoor,
Kanyakumari District,
Rep. By its Correspondent.

... Respondents

PRAYER:This appeal is filed under Clause 15 of the Letters Patent, to set aside the order dated 07.11.2014 in W.P.(MD)No.650 of 2012.

Prayer in WP(MD). 650/ 2012 :

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 of the 2nd respondent, pertaining to his order in O.Mu.No.10623 A2/2010 dated 01.12.2010 on his file, quash the same, in so far as the same relates to the rejection of the proposal for the approval of the petitioner s appointment in the 3rd respondent school, directing him to approve her appointment as School Assistant in the 3rd respondent school for the period from 07.06.1999 to 05.10.2006.

For Appellants

: Mr.V.R.Shanmuganathan
Special Government Pleader

For Respondent No.1

: Mr.J.Anandhavalli

JUDGMENT

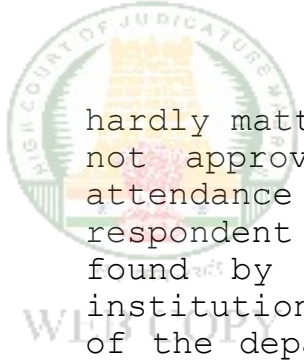
(Judgment of the Court was delivered by T.S.SIVAGNANAM, J)

Heard Mr.V.R.Shanmuganathan, learned Special Government Pleader appearing for the appellants and Mr.J.Anandhavalli learned counsel appearing for the first respondent. Though notice has been served on the second respondent School, none appears for the second respondent.

2.This appeal, by the Chief Educational Officer and the District Educational Officer, is directed against the order made in W.P.(MD)No.650 of 2012 dated 07.11.2014. The first respondent filed the said writ petition, challenging the order passed by the second appellant dated 01.12.2010, rejecting the proposal sent by the Management, seeking for approval of the first respondent as Secondary Grade Teacher in the second respondent School with effect from 07.06.1999 to 05.10.2006.

3.The facts of the present case appears to be quite unique. In the sense, the writ petitioner was appointed as Secondary Grade Teacher on 07.06.1999, in a retirement vacancy caused on account of retirement of one Mr. Oliver who retired on 31.05.1999. After about a year, the second respondent School was brought under the direct Management of the department, as there were internal disputes between the persons who had established the institution. For six long years, the institution remained under the control of department and the Management was allowed to take over only on 30.10.2006. The Management stated that the petitioner has been appointed on 06.10.2006, which was accepted by the department and approval was granted from the said date. The writ petitioner continued to work and after a year or so, she made a representation stating that her appointment has to be approved with effect from 07.06.1999 till 05.10.2006. This representation was rejected by the second appellant by an order dated 01.12.2010, which was impugned in the writ petition. The Writ Court, by the impugned order, allowed the writ petition and directed the approval of the first respondent's appointment from 07.06.1999 to 5.10.2006.

4.The learned Special Government Pleader appearing for the appellants pointed out that there was long delay in approaching the Court and such belated claim made by the first respondent should not be entertained. Secondly by relying upon the written instruction given by the first appellant on 07.03.2018, it is submitted that the first respondent has signed attendance register which was maintained for the teachers whose appointments were approved only from 06.10.2010, earlier she has been signing the other attendance register maintained for unapproved teachers. In our considered view, though it is refuted by the Government, the fact is that the first respondent is working since 1999. However, this is not disputed by the second appellant vide order dated 01.12.2010, which was impugned in the writ petition. The only distinction which is sought to be made is that the petitioner was signing a different attendance register for the earlier period. In our view, this distinction



hardly matters. It is the fact that the petitioner's appointment was not approved. Therefore, obviously she was signing a different attendance register and the test would be from when the first respondent was employed in the second respondent School. The answer found by the writ Court is from 07.06.1999. Thereafter, the institution was under direct management of the department. The case of the department is not that there was no teacher, either for the particular subject nor it was stated that there was any surplus teacher.

5. Therefore, for all practical purposes, it has to be taken that the first respondent, who was working in sanctioned post, appointment should be approved from the date of her first appointment I.e. 07.06.1999. Since her appointment has been approved with effect from 06.10.2006, approval has to be granted for the period from 07.06.1999 to 05.10.2006. Thus, for the above reasons, there are no good ground to interfere with the order passed in the writ petition. The writ appeal fails and is dismissed. The appellants are directed to comply with the above direction within a period of 8 weeks from the date of receipt of copy of this judgment. No Costs. Consequently, C.M.P.(MD)Nos.6651 and 5458 of 2016 are closed.

Sd/-

Assistant Registrar (RTI)

/True Copy/

Sub Assistant Registrar

To

1. The Chief Educational Officer,
Kanyakumari District, at Nagercoil,
Kanyakumari District.
2. The District Educational Officer,
Kuzhithurai,
At Marthandam, Kanyakumari District.
Pin-629 165.

+1CC to Mr.J.Anandhavalli, Advocate, SR.No. 53737

W.A.(MD).No.927 of 2016
07.03.2018

Mrn

AM/JC/SAR 1/30.05.2018/3P/4C