



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 15.11.2018

CORAM :

WEB COPY

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN
and
THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.A (MD)No.1002 of 2013
against WP(MD)No.10055 of 2010
and MP(MD)No.1 of 2013

1. The Director of Elementary Education,
Chennai - 6.
2. The District Elementary Educational Officer,
Nagercoil, Kanyakumari District.
3. The Assistant Elementary Educational Officer,
Karungal, Kanyakumari District. ... Appellants/Respondents

vs.

- | | |
|---|---|
| 1.S.Jeyakumar Dharmakan | ... Respondent/Petitioner |
| 2.Manager/Correspondent
Lutheran Middle School | ... Respondent/4 th Respondent |

Prayer : Writ Appeal is filed under clause 15 of the Letters Patent, to set aside the order dated 21.09.2011 made in WP(MD)No.10055 of 2010 on the file of this Court.

Prayer in WP(MD)No. 10055 of 2010 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a WRIT OF CERTIORARIFIED MANDAMUS, or any other appropriate Writ or Order of Direction, in the nature of Writ, calling for the records pertaining to the order passed by the 2nd respondent in his proceedings O.Mu.No.3442/A2/2006 dated 12.06.2009 and Quash the same, and direct the Respondents to approve the appointment of the petitioner as Headmaster of Middle School from the date of appointment and confer all the consequential benefits.

For Appellants : Mrs.S.Srimathy,
Special Government Pleader

For Respondents : Mr.V.Panneer Selvam for R1
R2 - No appearance

**JUDGMENT**

(Judgment of the Court was delivered by G.R.SWAMINATHAN, J.)

This intra court appeal is directed against the order dated 21.09.2011 allowing the writ petition filed by the petitioner/first respondent herein. The first respondent was appointed as a Middle School Headmaster in the second respondent school on 01.02.2002. However, the District Elementary Educational Officer, Nagercoil by order dated 12.06.2009 declined to grant approval. Therefore, the first respondent herein filed the aforesaid writ petition. A similar issue arose in WP(MD)No.6975 of 2006 and that it was disposed of in the following terms :

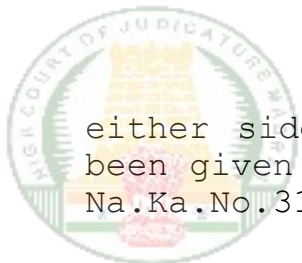
"A similar issue arose before this Court in WP.No.2928 of 1998 and by Judgment dated 25.02.2005, this Court allowed the Writ Petition by stating that the petitioner's appointment shall be approved for a period of five years for BT Assistant, on completion of five years of teaching experience from the date of his initial appointment, the petitioner therein shall be paid the scale of pay for the Middle School Headmaster. Here, in this case, the petitioner was appointed on 04.12.2003, following the said Judgment, the petitioner's appointment from 04.12.2003 shall be approved as BT Assistant for five years and from 04.12.2008, the petitioner shall be paid Middle School Headmaster pay. The arrears of salary as BT Assistant payable to the petitioner from 04.12.2003, till August 2006 shall be paid on or before 18.09.2006 and thereafter, the petitioner shall be paid continuously".

2. Therefore, WP(MD)No.10055 of 2010 filed by the first respondent was allowed in the following terms :

"5. Applying the ratio laid down therein to the facts of the present case, it is clear that the petitioner, who was appointed in the fourth respondent school on 01.02.2002, has completed his five years of service on 01.02.2007, and therefore, he should be treated as a BT Assistant till 01.02.2007, and thereafter, his post as a Middle School Headmaster should be approved from the date of his initial appointment ie., from 01.02.2002, subject to the condition that his salary shall be paid upto 01.02.2007 as BT Assistant, and thereafter, Middle School Headmaster. Accordingly, the impugned order dated 12.06.2009 passed by the second respondent stands set aside and the Writ Petition is allowed with a direction to the second respondent to pass appropriate orders within a period of eight weeks from the date of receipt of a copy of this order".

<https://hcservices.ecourts.gov.in/hcservices/>

3. Questioning the same, this intra court appeal has been filed. When the matter was taken up for disposal, it was submitted on



either side that the order passed by the learned Single Judge has been given effect to by proceedings of the second respondent bearing Na.Ka.No.3119/A2/2010 dated 08.06.2013.

4. This Court makes it clear that the first respondent herein will not be entitled to any benefit as that of Middle School Headmaster for the period from 01.02.2002 to 01.02.2007. The first respondent has been paid salary as B.T Assistant from 01.02.2002 to 01.02.2007. It is made clear that the writ petitioner will be entitled to be treated as a Middle School Headmaster only from 02.02.2007 onwards. To clarify, the first respondent, though appointed as Middle School Headmaster on 02.02.2007 in view of the circumstances obtaining in this case, will be entitled to the benefits of the said post only with effect from 02.02.2007. In other words, even though he was holding the post as a Middle School Headmaster, he was to be treated as only B.T. Assistant for the period from 01.02.2002 to 01.02.2007.

5. The writ appeal is disposed of accordingly. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (RTI)

/True Copy/

Sub Assistant Registrar (CS-IV)

To

1. The Director of Elementary Education,
Chennai - 6.
2. The District Elementary Educational Officer,
Nagercoil, Kanyakumari District.
3. The Assistant Elementary Educational Officer,
Karungal, Kanyakumari District.

+ 1 CC TO SPECIAL GOVERNMENT PLEADER IN SR No. 95820

SKM

TE/BK/SAR-4 : 26/12/2018 : 3P/5C

W.A (MD) No.1002 of 2013 and
MP (MD) No.1 of 2013
15.11.2018