



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 19.03.2018

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THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P(MD)No.13813 of 2013

S.Lorudumary

... Petitioner

Vs

1.The District Elementary Educational Officer,
Sivagangai, Sivagangai District.

2.The Assistant Elementary Educational Officer,
Kalayarkoil, Sivagangai District.

3.The Correspondent,
R.C.Middle School,
Aandichioorani,
Sivagangai District.

... Respondents

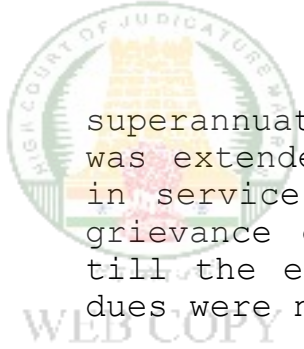
PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, calling for the records relating to the impugned proceedings issued by the second respondent Assistant Elementary Educational Officer in proceedings Oo.Mu.No.256/A1/2013, dated 28.03.2013, quash the same and further direct the respondents 1 and 2 to approve forthwith the petitioner's re-employment period from 01.03.2013 to 31.05.2013 as Secondary Grade Teacher in the 3rd respondent school namely, R.C.Middle School, Aandichioorani, Sivagangai District and disburse the grant-in-aid towards the petitioners salary including all attendant benefits.

For Petitioner	: Mr.T.Cibi Chakraborty for Isaac Chambers
For R1 & R2	: Mr.R.Sethuraman, Special Government Pleader
For R3	: No appearance

ORDER

The order of cancellation of re-employment, dated 28.03.2013 is under challenge in this writ petition. Further, a direction is sought for to grant salary to the writ petitioner.

2.The learned counsel appearing on behalf of the writ petitioner states that the writ petitioner was employed as Secondary Grade Teacher and retired from service on attaining the age of



superannuation on 11.02.2013. However, the benefit of re-employment was extended to the writ petitioner and he was allowed to continue in service till the end of the academic year on 31.05.2013. The grievance of the writ petitioner is that he was allowed to serve till the end of the academic year and in spite of that his salary dues were not settled in accordance with the terms of re-employment.

3. The learned Special Government Pleader appearing on behalf of the respondents 1 & 2 states that the re-employment was already cancelled even before the completion of the academic year on 28.03.2013. Further, the writ petitioner was allowed to continue in service till the end of the academic year by the third respondent School.

4. The fact remains that initially permission was granted for re-employment by the third respondent and the Educational Authorities namely Assistant Elementary Educational Officer. Based on the permission granted by the authorities, the writ petitioner was allowed to continue and during the interregnum period, the re-employment was cancelled vide proceedings, dated 28.03.2013. In spite of the order of cancellation, the writ petitioner was allowed to continue in service till the end of the academic year on 31.05.2013. Therefore, the salary due to the writ petitioner cannot be denied and all other retirement benefits ought to have been settled based on his original date of retirement. In respect of re-employment period, he is entitled for the salary as per the terms and conditions stipulated in the Government Order. In respect of the re-employment, similar circumstances were considered by this Court in W.P(MD)No.4131 of 2008, dated 21.01.2009 and the relevant paragraphs 5 & 6 are extracted hereunder:-

"5. In the case on hand, it is not the case of the educational authorities that the petitioner is facing disciplinary proceedings or that she is not fit enough to hold the post till the end of the next academic year. The only impediment according to the educational authorities is that there is surplus of teachers in the fourth respondent school. The said plea of the educational authorities cannot be accepted, since such plea has not been taken, when the petitioner was in service till she attained the age of superannuation. At the time of re-employment of the petitioner alone, such plea has been taken by the educational authorities. Furthermore, citing the said reason, re-employment cannot be denied. Infact, such view has been taken by the principal Court and the same is reported in 1998 Writ L.R.77 (R.Muthukrishnan vs. The Secretary, Aided Middle School, Korranattu, Karupur, Kumbakonam and others). Paragraph 4 to 6 is usefully extracted hereunder:-

"4) Mr. Rajendran, learned counsel for the first respondent placing reliance on the counter filed by the first respondent states that the request of the petitioner for re-employment



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cannot be considered as there is already surplus of teachers in the first respondent school. Further states that by re-employment of the petitioner, the Government would incur financial loss.

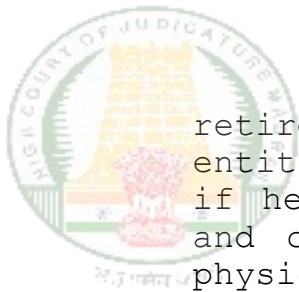
5) I have given a careful consideration and submission of both sides.

6) The Government while passing the G.O.Ms.No.1643 Education Department, dated 27.10.1988 has taken into consideration, the existing strength of the staff as on the date of retirement of the petitioner on superannuation, which includes the post held by the petitioner till he attains his superannuation and also the financial constraints if the petitioner is re-employed till the end of superannuation and passed the said Government Order. While so, I do not see any valid reason to refuse the re-employment of the petitioner particularly when the District Elementary Educational Officer himself has recommended for such re-employment of the petitioner till the end of his superannuation. On the other hand, the grievance of the petitioner is will founded because if the petitioner is denied of his re-employment til the end of the academic year, the petition would be put into hardship and prejudice, particularly when he has served in the first respondent school for nearly 35 years without any stigma. Therefore, I am obliged to allow this writ petition as prayed for.

6.Considering the facts and circumstances and also considering the order referred to above, I am inclined to set aside the impugned order of the third respondent dated 17.02.2006 and also the consequential order of the second respondent dated 02.04.2007."

5. Against the said order, the State preferred an appeal in W.A (MD)No.127 of 2010 and the Hon'ble Division Bench also confirmed the judgement on 10.01.2011 and the relevant paragraphs 2,3 & 4 are extracted hereunder:-

"2.The Chief Educational officer rejected the approval on the ground that the post in which the first respondent was working was found as surplus. The learned Single Judge considered the issue regarding the scope of re-employment permitted by the Government for teacher who is to retire from service in the middle of the academic year. The Government issued orders taking note of the interest of the students in their continuity of education upto the end academic year. The Government orders only state that a teacher reaching age of



retirement during the middle of the academic year is entitled to continue upto the end of the academic year, if he satisfied two conditions, namely (I) the conduct and character are satisfactory; and (ii) he should be physically fit to continue in service.

3. Considering the said two conditions, the management who is the competent authority re-employed the 1st respondent who also served till 31.05.2006. The learned Single Judge, having taken note of the Government Order in G.O.Ms.No.1643, Educational Department, dated 22.10.1988, while setting aside the order of the Chief Educational Officer, directed the appellants herein to settle the entire benefits to the 1st respondent payable within six weeks from the date of the receipt of a copy of the order. The said order is in tune with the Government Order issued, which enables the management to give re-employment. The 1st respondent having working for the period from 01.09.2005 to 31.05.2006 is naturally entitled to get salary for the said period after reducing the pension amount received for the said period.

4. No case is made out to interfere with the order of the learned Single Judge. The writ appeal is dismissed. No costs. The appellants are directed to comply with the order of the learned Single Judge within a period of two weeks from the date of receipt of a copy of this order. Connected M.P(MD)No.2 of 2010 is also dismissed."

6. In view of the judgments and in view of the fact that the writ petitioner had actually served till 31.05.2013 and the benefit of salary cannot be denied even on the ground of equity. This being the factum, the impugned order passed by the second respondent vide proceedings in Oo.Mu.No.256/A1/2013, dated 28.03.2013 is quashed and the respondents are directed to disburse the salary as applicable to the writ petitioner, within a period of twelve weeks from the date of receipt of a copy of this order.

7. Accordingly, the writ petition stands allowed. However, there shall be no order as to costs.

Sd/-

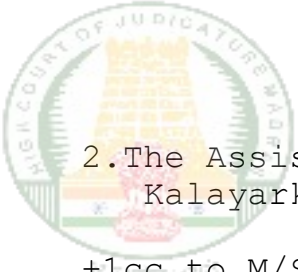
Assistant Registrar (AD-II)

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Sub Assistant Registrar

To

1. The District Elementary Educational Officer,
Sivagangai, Sivagangai District.



2.The Assistant Elementary Educational Officer,
Kalayarkoil, Sivagangai Disrict.

+1cc to M/S.Xavier Rajini, Advocate SR.No. 56501

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JM/SKN RSK/SAR 1/06.04.2018/5P/4C