



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.07.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

W.P.Nos.20618 of 2008 and 47464 of 2006
and M.P.Nos.2 and 3 of 2008

K.Samundeeswari

.. Petitioner in both WPs.

Vs.

1. The District Elementary Educational Officer
Thiruvannamalai District.
2. The Additional Assistant Elementary
Educational Officer, Kalasapakkam
Thiruvannamalai District.
3. The Headmaster
Thangavel Udhayar Aided Middle School
Siruvallur, Polur Taluk
Thiruvannamalai District.

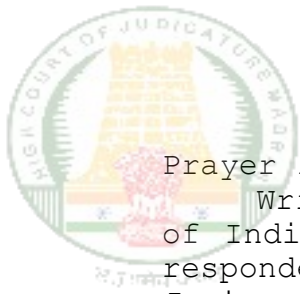
.. Respondent in
W.P.No.20618 of 2008

1. The District Elementary Educational Officer
Thiruvannamalai District, Thiruvannamalai
2. The Additional Assistant Elementary
Educational Officer, Kalasapakkam
Thiruvannamalai District.
3. The Manager
Thangavel Udhayar Aided Middle School
Siruvallur, Polur Taluk
Thiruvannamalai District.

.. Respondent in
W.P.No.47464 of 2006

Prayer in W.P.No.20618 of 2008:

Writ Petition is filed under Article 226 of the Constitution of India, praying to issue a writ of Certiorari calling for the entire records connected with the impugned order passed by the 2nd respondent in Na.Ka.No.998/A4/07 dated 24.07.2008 and quash the same.



Prayer in W.P.No.47464 of 2006:

Writ Petition is filed under Article 226 of the Constitution of India, praying to issue a writ of Mandamus directing the 1st respondent to approve the appointment of the petitioner as a Junior Grade Graduate Teacher in the 3rd respondent school with effect from 28.03.2005 with all consequential benefits.

In both WPs.

For Petitioner : Mr.S.N.Ravichandran

For R1 and R2 : Mr.P.Raja, Government Advocate

For R3 : No appearance

COMMON ORDER

W.P.No.20618 of 2008 is filed for issuance of a writ of Certiorari calling for the entire records connected with the impugned order passed by the 2nd respondent in Na.Ka.No.998/A4/07 dated 24.07.2008 and quash the same.

W.P.No.47464 of 2006 is filed for issuance of a writ of Mandamus directing the 1st respondent to approve the appointment of the petitioner as a Junior Grade Graduate Teacher in the 3rd respondent school with effect from 28.03.2005 with all consequential benefits.

2.The petitioner in both the write petitions is one and the same and the issues involved in both the writ petitions are interlinked and therefore, both the writ petitions are disposed of by this common order.

3(i). The facts necessary to decide the issue are as follows:

The petitioner obtained B.Sc., degree in Mathematics in the year 1992 and B.Ed., degree in the year 1995. A permanent vacancy arose in the 3rd respondent school on 30.11.2004, when one Perumal, Secondary Grade Teacher voluntarily retired. The 1st respondent by his proceedings dated 02.03.2005 upgraded the Secondary Grade post to that of a Junior Grade Graduate Teacher post as per G.O.Ms.No.125, dated 12.11.2003 and obtained permission to fill up the vacancy on certain conditions.

3(ii). A list of suitable candidates for the post of Junior Grade Graduate Teacher was called for from the Employment Exchange and also issued an advertisement in Daily Thanthi edition on 16.03.2005. The petitioner has applied for the said



post on seeing the paper advertisement. The petitioner was called to appear for an interview on 21.03.2005 along with the certificates. The petitioner attended the interview and number of other persons also attended the interview. The petitioner was selected and was appointed by the order dated 23.03.2005 as Junior Grade Teacher on a consolidated salary of Rs.4,000/- per month for a period of five years. The petitioner joined in the 3rd respondent school on 28.03.2005 and executed necessary agreement.

3(iii). The 3rd respondent in W.P.No.47464 of 2006/Manager of the school has forwarded the proposal for approval of the appointment of the petitioner with necessary documents to the 1st respondent on 30.03.2005. The said proposal was returned by the 2nd respondent on 13.04.2005 on untenable reason and raised certain queries. The 3rd respondent in W.P.No.47464 of 2006/Manager of the school on 20.04.2005 answered the queries suitably, but the 2nd respondent has again returned the proposal stating new reasons. The 3rd respondent in W.P.No.47464 of 2006/Manager of the school again answered suitably to the queries raised by the 2nd respondent.

3(iv). The petitioner was working for 17 months, her appointment was not approved and salary was not paid. In such circumstances, the petitioner filed W.P.No.47464 of 2006. While the said writ petition was pending, the 1st respondent by the proceedings dated 25.09.2007 ordered direct payment. Against which, the 3rd respondent in W.P.No.47464 of 2006/Manager of the school filed W.P.No.32261 of 2007. While both the writ petitions are pending, the 3rd respondent in W.P.No.20618 of 2008/Headmaster of the school on 25.07.2008 orally informed the petitioner not to attend the school as her appointment was not approved so far.

3(v). On the petition filed by the petitioner under Right to Information Act, the 3rd respondent in W.P.No.20618 of 2008/Headmaster of the school furnished the copy of the proceedings of the 2nd respondent dated 24.07.2008, whereby the 3rd respondent in W.P.No.20618 of 2008/Headmaster of the school was instructed by the 2nd respondent not to allow the petitioner to sign the attendance register and not to permit the petitioner to attend the school.

3(vi). The respondents 1 and 2 have no power to appoint, remove or dismiss a person working in a private school and only management of the private school has such a power. The order of the 2nd respondent is void ab-initio. Further, W.P.No.47464 of 2006 filed by the petitioner for approval of her appointment is pending. The 2nd respondent has no jurisdiction to pass the order dated 24.07.2008. In such circumstances, the petitioner has



4. The learned counsel appearing for the petitioner contended that the failure on the part of the respondents 1 and 2 to approve the appointment of the petitioner, when she was appointed as per the procedure and when the management has submitted a proposal with necessary documents, is invalid and the respondents 1 and 2 must be directed to approve the appointment of the petitioner. As far as the impugned order in W.P.No.20618 of 2008 is concerned, the reason given by the 2nd respondent for passing the impugned order is invalid. Without filing any counter affidavit in W.P.No.47464 of 2006 and while the writ petition challenging the direct payment is pending, the 2nd respondent has no jurisdiction to pass the impugned order dated 24.07.2008 and prayed for allowing both the writ petitions.

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valid and legal and prayed for dismissal of both the writ petitions.

6. Though notice was served on the 3rd respondents in both the writ petitions and their names are printed in the cause list, there is no representation on behalf of them either in person or through counsel.

7. Heard the learned counsel appearing for the petitioner as well as the learned Government Advocate appearing for the respondents 1 & 2 and perused the materials available on record.

8. It is the contention of the learned counsel appearing for the petitioner that the petitioner was appointed by following the procedures in the school on consolidated pay. The 1st respondent on untenable grounds failed to approve the appointment of the petitioner and order of 2nd respondent not permitting the petitioner to sign the attendance register and attend the school is invalid and without jurisdiction. Both the contentions are without merits and contrary to the facts. The contention of the learned Government Advocate appearing for the respondents 1 and 2 that there was a dispute between both the brothers with regard to management of the school, suit O.S.No.265 of 2002 on the file of the District Munsif Court, Polur, was ended in compromise and as per the compromise, T.Rajendran was the Secretary and Subash was the Manager of the school. The school committee was approved and subsequently, the Manager in the absence of Secretary reconstituted the committee even before the expiry of the committee approved by the District Elementary Educational Officer. The reconstituted committee was not appointed by authority. The petitioner was appointed by the Manager in the absence of Secretary. The proposal for approval was returned to Manager of the school/3rd respondent in W.P.No.47464 of 2006 directing him to resubmit the proposal signed by the Secretary. It is not the case of the petitioner that the proposal was resubmitted duly signed by the Secretary. Further, the 3rd respondents/Headmaster and manager of the school even though served in both the writ petitions have not entered appearance and they have not denied the averments made by the respondents 1 & 2 in the counter affidavit filed in W.P.No.20618 of 2008 that due to dispute between the brothers with regard to management, the strength of the school was reduced, management surrendered two posts and there is no vacancy in the 3rd respondent school.

9. It is seen from the materials available on record that the petitioner was not appointed by a committee approved by the authority and proposal for approval of the petitioner's appointment was signed only by the Manager of the school. The Secretary of the school has not signed the said proposal and the



petitioner was appointed in the absence of Secretary. The proposal for approval of the petitioner's appointment was not resubmitted by the management. Further, the management has surrendered two posts of teachers and there is no vacancy available in the school.

10. For the above reasons, both the writ petitions are dismissed. The petitioner was appointed as Junior Graduate Teacher in the 3rd respondent school on 23.03.2005 and joined duty on 28.03.2005. According to the petitioner, she was not paid salary while she was working. It is open to the petitioner to work out her remedy to get the salary from 3rd respondent in W.P.No.47464 of 2006. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(Insp.Cell)

//True Copy//

Sub Assistant Registrar

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To

1. The District Elementary Educational Officer
Thiruvannamalai District, Thiruvannamalai
2. The Additional Assistant Elementary
Educational Officer,
Kalasapakkam, Thiruvannamalai District.
3. The Headmaster,
Thangavel Udhayar Aided Middle School
Siruvallur, Polur Taluk, Thiruvannamalai District.
4. The Manager
Thangavel Udhayar Aided Middle School
Siruvallur, Polur Taluk,
Thiruvannamalai District.

+1cc to Mr.S.N.Ravichandran, Advocate, S.R.No.57545
+1cc to the Government Pleader, S.R.No.58026

W.P.Nos.20618 of 2008 and 47464 of 2006
and M.P.Nos.2 and 3 of 2008

PPA (CO)
CS/13/09/2019
CS/25/09/2019