

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :20.06.2019

CORAM

THE HONOURABLE Mr. JUSTICE V.PARTHIBAN

W.P.No.4406 of 2018

B.Chennappa

... Petitioner

Vs.

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

2.The Assistant Elementary,
Educational Officer,
Thally Panchayat Union,
Thally, Krishnagiri District.

... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus calling for the records relating to the order of the 2nd respondent made in his proceedings in Na.Ka.280/2016, dated 30.04.2017 and quash the same and direct the respondents to pay the salary of the petitioner for the re-employment period i.e. from 01.09.2016 to 31.05.2017.

For Petitioner : Mr.A.S.Kaizer

For Respondents : Mr.K.Karthikeyan
Government Advocate

ORDER

The petitioner was employed as B.T. Assistant Teacher under the control of the 2nd respondent. He attained the age of superannuation as per the records on 31.08.2016. Since his retirement fell during the middle of the academic year, an order was passed on 26.08.2016 allowing the petitioner to be re-employed till the end of the academic year i.e., upto 31.05.2017.

2.In the meanwhile, the petitioner appeared to have raised a dispute regarding his actual date of birth and submitted a representation on 31.10.2008. Later, his application for alteration of date of birth having been rejected and approached this Court by way of writ petition in W.P.No.20808 of 2009 and the said writ petition was disposed of, directing the authority to consider his representation and in pursuance of the direction, the claim of the petitioner, came to be rejected by

the authorities concerned. Thereafter, it appears that the respondents passed an order on 30.04.2017 cancelling the earlier order passed directing re-employment of the petitioner till the end of the academic year i.e. 31.05.2017. The said order is under challenge in the present writ petition.

3. According to the petitioner, the petitioner having worked for a period of eight months, cannot be denied salary and allowances during the entire period of re-employment from 01.09.2016 to 30.04.2017. The only reason cited on behalf of the respondents was that the authority has rejected the petitioner's claim for change of date of birth.

4. This Court is unable to accept the contention that how rejection of the petitioner's request for change of date of birth has anything to do with the cancellation of his re-employment order passed on 26.08.2016. In any event, the fact of the matter is that the petitioner has worked for a period of eight months from September, 2016 till the end of April, 2017 and he having worked for the said period and discharged his function as Teacher, cannot under any circumstances be denied of him salary for the said period.

5. The retrospective cancellation order passed by the 2nd respondent on 30.04.2017 cannot be countenanced in law and the same is per se illegal, arbitrary and unjust. Once order of re-employment has been ordered by the authorities and in pursuant to which, the petitioner having worked for a period of eight months from September 2016 to April 2017, the petitioner is entitled to all the benefits of re-employment as admissible. It is once again reiterated that the rejection of the petitioner's request for change of date of birth can never be the basis for cancellation of re-employment as the same has got no nexus for the re-employment of the petitioner.

6. In the above circumstances, the Writ Petition is allowed. The impugned order of the 2nd respondent in Na.Ka.280/2016 dated 30.04.2017 is hereby set aside. The respondents are directed to disburse the salary and other allowances as admissible to the petitioner for the re-employed period from September, 2016 till April, 2017 within a period of four weeks from the date of receipt of a copy of this order. No costs.

Sd/-

Assistant Registrar (CCC)

//True Copy//

Sub Assistant Registrar

Sgl

To

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

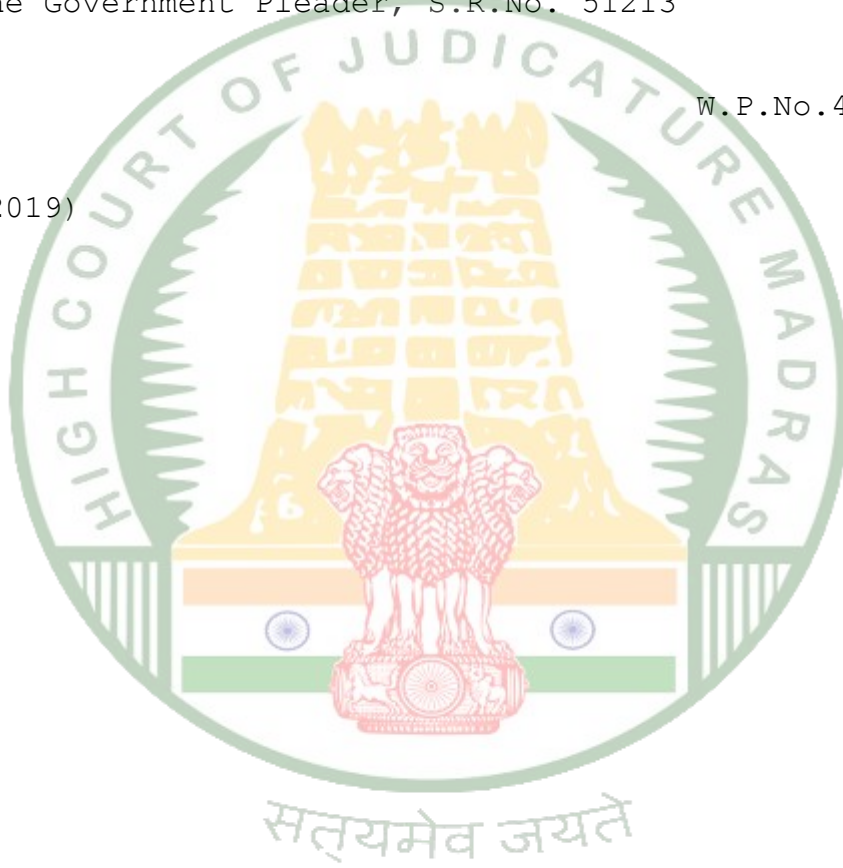
2.The Assistant Elementary,
Educational Officer,
Thally Panchayat Union,
Thally, Krishnagiri District.

+lcc to Mr.A.S.Kaizer, Advocate, S.R.No. 50957

+lcc to the Government Pleader, S.R.No. 51213

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SPD(CO)
GN(19/08/2019)



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