

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 21.11.2019
Pronounced on : 19.12.2019

CORAM

THE HON'BLE MR.JUSTICE D. KRISHNAKUMAR

W.P.No. 31423 of 2013
and
M.P.No.1 of 2013

S. Ramachandran ..Petitioner
Vs

1. The Director of Elementary Education,
Chennai - 6.
2. The District Elementary Educational Officer,
DEO Office, Thiruvarur District.
- 3.Sri Thiagaraj Aided Middle School
rep. by its Correspondent,
Kidarankondan, Thiruvarur District. ... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India praying to issue a Writ of certiorarified Mandamus calling for the records pertaining to the impugned order through the proceedings O.Mu.No. 11243/G4/2008 dt. 08.05.2008 issued by the 1st respondent and quash the same and consequently direct the 1st and 2nd respondents to approve the appointment of the petitioner as Head Master in the 3rd respondent school with effect from 01.06.2003 with all consequential benefits in view of the CDJ 2008 MHL 6169 .

For Petitioner : M/s. P.Vijendran

For Respondents : Mr. K, Karthikeyan, GA- R1 & R2
No Appearance - R3

O R D E R

The prayer sought for in the writ petition is to call for the records pertaining to the impugned order through the proceedings O.Mu.No. 11243/G4/2008 dt. 08.05.2008 issued by the 1st respondent and quash the same and consequently direct the 1st and 2nd respondents to approve the appointment of the petitioner as Head Master in the 3rd respondent school with effect from 01.06.2003 with all consequential benefits in view of the CDJ 2008 MHL 6169 .

2. Heard the learned counsel appearing for the petitioner and learned Government Advocate appearing on behalf of the respondents 1 & 2 and perused the materials available on records.

3. The learned counsel for the petitioner submitted that the petitioner was appointed as Secondary Grade Teacher in 3rd respondent school in the year 1998 and promoted as Head Master on 01.06.2003 by the 3rd respondent management. In the meantime the petitioner has completed Child Psychology Training for month i.e from 02.05.2003 to 31.05.2003 as per G.O. 155 School Education Department dated 03.10.2012 and after completion of the said training, his services came to be approved and regularised as Secondary Grade Teacher w.e.f 02.06.2003. The 3rd respondent school has sent a letter dated 04.04.2004 to the 2nd respondent for approval to the appointment of the petitioner as Head Master. The said request was rejected by the 1st respondent vide letter dated 08.05.2008, which is impugned in the present writ petition. Subsequently, the petitioner was retired from service on 30.11.2012.

4. It is further submitted by the learned counsel for the petitioner that the 1st respondent without considering the fact that the petitioner was appointed as teacher on 15.04.1998 and after completion of 5 years of service, he was promoted as Head Master on 01.06.2003 by the 3rd respondent. Though the petitioner service as Secondary Grade Teacher was approved on 02.06.2003, he has completed five years of experience as on 15.04.2003 itself, hence he is entitled for appointment of Head Master. Without considering all these aspects, the 1st respondent has passed the impugned order dated 08.05.2008. Hence prayed to allow the writ petition.

5. On the other hand, the respondents have filed their counter affidavit wherein it has been stated that the petitioner has completed his five years of service on 01.06.2008 from the date of approval of the appointment as Secondary Grade Teacher i.e after completion of Child Psychology training. Therefore the petitioner is entitled only Secondary Grade Pay till completion of five years. Hence, the 3rd respondent paid salary to the petitioner in the scale applicable to Middle School Head Master with effect from 02.06.2008. Therefore, the claim of the writ petitioner to grant scale of pay applicable to Middle School Head Master from 01.06.2003 with retrospective effect cannot be granted.

6. Further, it is submitted that the writ petitioner was appointed by the management in the year 1998. At that time of appointment, the petitioner acquired qualification of B.Sc., B.Ed., and there was no provision for the appointment of graduate teachers in the Secondary Grade Teacher vacancy. Therefore, the Government have issued specific orders in G.O. MS. NO. 559 School Education Department, dated 11.07.1995 to

the effect that the graduate teachers should not be appointed as Secondary Grade Teachers in aided Schools. Subsequently, the Government have issued another G.O in G.O. Ms.No. 155, dated 03.10.2002 approving such appointment of graduate teachers in the Secondary vacancy, subject to the condition that they should undergo Child Psychology Training through District Institute of Education and Training (DIET) and on the date of completion of such training their appointments shall be approved and salary shall be paid with effect from the date of approval of appointment in the post of Secondary Grade Teacher. The petitioner underwent Child Psychology Training from 02.05.2003 to 01.06.2003. Consequently, the services of the petitioner have been regularized and approved with effect from 02.06.2003 and completed five years of service only on 01.06.2008. In view of the above, the petitioner is not entitled to seek Secondary Grade Teacher's scale of pay with retrospective effect from 01.06.2003. Hence prayed for dismissal of this writ petition.

7. Considering the facts and circumstances of the case, analysing the submissions made by both counsel and perusal of records, it is seen that the petitioner's service was approved on 02.06.2003 as Secondary Grade Teacher i.e after completion of Child Psychology Training as per G.O. Ms. 155, dated 03.10.2002 and he was promoted as Middle School Head Master on 01.06.2003. As per the statutory Rules, he should have completed five years as Secondary Grade Teacher to become eligible to the post of Head Master. The relevant portion of the said Rules is extracted hereunder;

" 1-A. headmaster 1.SSLC (Elementary and Middle 2. T.S.L.C of Secondary Grade or its Schools) equivalent and

3. Should have worked as Secondary Grade Teacher in any recognized School for a period of not less than five years after obtaining the TSLC of Secondary Grade of its equivalent"

8. In view of the above rules, it is clear that the petitioner's service was regularised and approved as Secondary Grade Teacher on 01.06.2003 and completed five years on 31.05.2008. The 2nd respondent sought for clarification with regard to payment of salary in the cadre of Middle School Head Master, the 1st respondent issued orders to the effect that the petitioner is entitled for salary in the cadre of Secondary Grade Teacher up to 01.06.2008 i.e till the date of completion of five years and thereafter in the cadre of Middle School Head Master.

9. In the said circumstances, it is also relevant to refer the decision of this Court on the similar issue in W.P. Nos. 19920 to 19925 of 2013 dated 23.07.2013, wherein this Court by relying upon the decision of the Hon'ble Division

Bench of this Court reported in 2004-2 L.W. 591 had dismissed the writ petitions. The relevant portion is extracted hereunder;

"14. However, the Division Bench in the State of Tamil Nadu and Others V. Pallivasal Primary School, rep by its Correspondent, Mudukulthur, (2004-2 L.W. 591) held that wherever salary was paid by the Government to the B.Ed teachers, who were appointed against Secondary Grade Teacher vacancies contrary to G.O. Ms.No.559, recovery shall not be made.

....

17. Paragraph 8 of the judgment in 2004-2 L.W. 591 is extracted hereunder;

"8. Their right to be regarded as persons eligible for confirmation/approval can be said to arise only after they acquired, after their training, a minimum prescribed qualification. The Government here has shown great concession to them by allowing them to retain their position even without obtaining the requisite diploma or certificate in child psychology by giving to them training in child psychology. We see nothing wrong in the Government directing that their approval/confirmation can only be on and after the date they complete the training. Their past service however shall count for pension."

10. Considering the facts and circumstances of the case and also in the light of the decision of this Court cited supra, I am of the opinion that there is no merit in the writ petition and the petitioner is not entitled to seek relief, as sought for and the same is liable to be dismissed.

11. In fine, the Writ Petition is dismissed. No costs. Consequently, connected Miscellaneous Petitions is closed.

Sd/-

Assistant Registrar (CS-III)

//True Copy//

Sub Assistant Registrar

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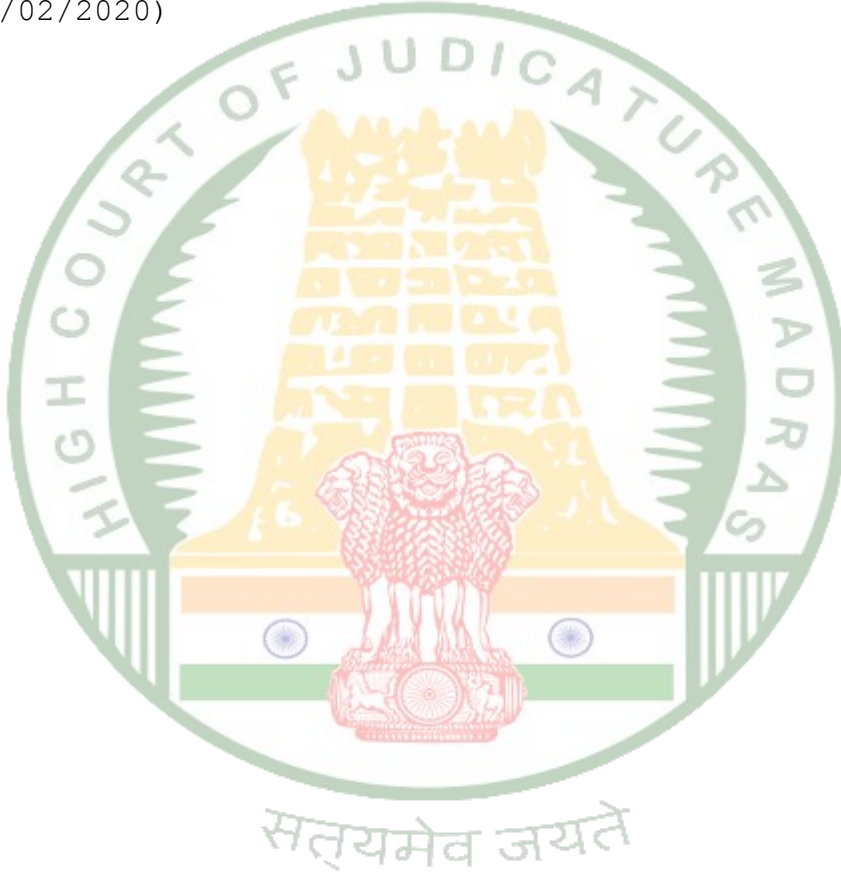
TO

2. The District Elementary Educational Officer,
DEO Office, Thiruvarur District.

+1cc to Mr.P.Vijendran, Advocate, S.R.No. 105759

W.P.No. 31423 of 2013
and M.P.No.1 of 2013

VD(CO)
GN(20/02/2020)



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