

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on :08.08.2019
Pronounced on :30.08.2019

CORAM
THE HONOURABLE Mr. JUSTICE V.PARTHIBAN

W.P.No.20826 of 2018 and
Review Application No.184 of 2018 in
W.P.No.12604 of 2008 and
W.M.P.Nos.24443, 32587, 34277 & 34278 of 2018

W.P.No.20826 of 2018:

R.L.Mary Amudha ... Petitioner
Vs.

1.The District Educational Officer,
Cheyyar, Tiruvannamalai District.

2.The Correspondent,
RCM High School,
Kancheepuram Road,
Vandavasi, Tiruvannamalai District.

3.A.Xavier Raji ... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus after calling for the records from the 2nd respondent in Letter No.18/2018 dated 24.07.2018 and quash the same and consequently direct the 2nd respondent to permit the petitioner to continue in services of the 2nd respondent as B.Ed. Tamil Teacher in RCM High School, Kancheepuram Road, Vandavasi, Tiruvannamalai District with all consequential and other attendant benefits.

For Petitioner : Mr.M.Gnanasekar

For 1st Respondent: Mr.K.Karthikeyan,
Government Advocate

For 2nd Respondent: Dr.Father Xavier Arulraj,
Senior Counsel
For M/s.Father
Xavier Associates

For 3rd Respondent : Mr.S.Baskaran

Review Application No.184 of 2018:

R.L.Mary Amudha

... Review Petitioner

Vs.

1.A.Xavier Raji

2.The District Educational Officer,
Cheyyar, Tiruvannamalai District.

3.The Correspondent,
RCM High School,
Kancheepuram Road,
Vandavasi, Tiruvannamalai District.

... Respondents

Prayer: Petition filed under Order 47 Rule 1 r/w Section 114 of Civil Procedure Code, praying to review the order dated 12.09.2017 made in W.P.No.12604 of 2008 and dismiss the writ petition on merits to issue a Writ of Certiorarified Mandamus to call for the records relating to the impugned order of the 1st Respondent in Na Ka No.12116/A12/05 dated 02.05.2008 and to quash the same and direct the Respondents and reinstate the Petitioner in service with all attendant benefits.

For Petitioner : Mr.M.Gnanasekar

For 1st Respondent : Mr.S.Baskaran

For 2nd Respondent : Mr.K.Karthikeyan,
Government Advocate

For 3rd Respondent : Dr.Father Xavier Arulraj,
Senior Counsel
For M/s.Father Xavier Associates

COMMON ORDER

The petitioner has studied B.Litt. degree in May 1995 and acquired M.A. degree in Tamil in May 2007. She has also passed B.Ed. in 1996. She was fully eligible for appointment as B.T. Assistant in Tamil. In view of her eligibility and qualification, she was appointed as B.T. Assistant in Tamil in the 2nd respondent School, Vandavasi on 04.06.2009. The petitioner was appointed against a regular vacancy caused due to relieving of the 3rd respondent on 07.05.2008. At the time when the petitioner was appointed on 04.06.2009, there was no condition prescribed in the order of appointment about pendency of any litigation at the instance of the 3rd respondent before this Court in regard to the vacancy caused in which the petitioner was appointed. Her appointment was also approved by

the Educational Authority and has been working since 04.06.2009 continuously and discharging her duties as B.T. Assistant (Tamil).

2.While so, the petitioner was informed by the 2nd respondent that the 3rd respondent has challenged the order of termination passed against him on 02.05.2008 by the 1st respondent, District Educational Officer, Cheyyar, Tiruvannamalai District on the ground that he was holding Special Education Certificate which was not equivalent to General Education Certificate and thus, he was not qualified to be a regular B.T. Assistant Teacher. In fact, the 3rd respondent was appointed on 10.11.2005 initially on a consolidated basis and was subsequently regularised on time scale on 18.09.2006 as B.T. Assistant (Tamil). His appointment was accorded approval by the Educational Authority, by proceedings dated 14.11.2006, since the Educational Authority raised objections in regard to the eligibility of the 3rd respondent, ultimately his appointment was terminated on 02.05.2008 by the 1st respondent.

3.The 3rd respondent, on learning about the termination of his services on 02.05.2008, approached this Court in W.P.No.12604 of 2008 and this Court, while entertaining the writ petition, has granted interim stay on 20.05.2008. However, the interim order was not implemented by the School and for whatever reasons, the 3rd respondent, who was the petitioner in the above writ petition, did not pursue the interim order granted by this Court in his favour and did not press for implementation of the same. In the result, the petitioner, who was appointed on 04.06.2009 in the vacancy created by relieving of the 3rd respondent, has been continued and her appointment was also approved by the Educational Authority, after the proposal was sent by the School for her approval and continued without any break as a permanent Teacher till 31.07.2018. The petitioner herein was relieved, in pursuance of the notice dated 24.07.2018, on 31.07.2018.

4.The petitioner was relieved in view of the disposal of the Writ Petition No.12604 of 2008 by this Court vide its order dated 12.09.2017. According to the petitioner, when the matter was finally heard by this Court, the appointment of the petitioner herein from 04.06.2009 and her continuance thereafter till 31.07.2018 was not brought to the knowledge of this Court. This Court, while disposing of the writ petition filed by the 3rd respondent, was presumably under the impression that in view of the stay order granted in the said writ petition, the petitioner therein viz., the 3rd respondent herein has been continued and in the said circumstances, this Court was constrained to pass orders as under:

"11. The petitioner, in the form of additional typed set, appended G.O.(Ms.) No.56, Higher Education

(K2) Department, dated 24.04.2012, whereby the Government had decided to accept the recommendation of the Equivalence Committee and accordingly, directed B. Ed.(Special Education) Course awarded by any University to be considered as equal to B. Ed.(General Education) for the purpose of employment in Public Services.

12. The Government in the said G.O. directed that B. Ed (Special Education) Course is equivalent to B. Ed. (General Education) Course for the purpose of employment in Public Services. When the Government itself has already treated B. Ed. (Special Education) as equivalent to B. Ed. (General Education) Course, in my considered opinion, the services of the petitioner need not be interfered with at this stage.

13. In such view of the matter, the writ petition is allowed and the order under challenge is set aside and the petitioner is entitled to all benefits as prayed for. No costs. Consequently, M.P.No.1 of 2008 is closed."

5.While passing the above order, this Court was not aware of the appointment of the petitioner herein on a regular basis which appointment was also approved by the Educational Authority. Therefore, this Court was misled into passing the order as above. Moreover, the petitioner herein, who was affected by the order, was not made party in the writ petition.

6.Since the writ petition filed by the 3rd respondent came to be allowed particularly in view of the subsequent recognition of the Special Education B.Ed. Degree obtained by the 3rd respondent as being equivalent to B.Ed. General Education. His appointment was found to be valid in view of a subsequent G.O.(Ms).No.56, Higher Education (K2) Department, dated 24.04.2012. The 2nd respondent School in order to implement the order passed by this Court dated 12.09.2017 in W.P.No.12604 of 2008 relieved the petitioner herein from service on 31.07.2018. After relieving the petitioner, the 3rd respondent came to be appointed once again on 01.08.2018. Thereafter, it appears that the 3rd respondent has been continued till date.

7.When the petitioner services came to end on 31.07.2018 abruptly, the petitioner herein approached this Court in W.P.No.20826 of 2018 challenged her removal and this Court, while admitting the writ petition, has granted an interim order on 13.08.2018. However, the said interim order of stay could not be complied with as by then, the 3rd respondent was already allowed to rejoin on 01.08.2018. In the said circumstances, the interim order was subsequently modified on 26.04.2019 and this petitioner herein was directed to file a review in W.P.No.12604

of 2008 and a direction was issued to consider the present writ petition along with the review application to be filed. In view of the direction of this Court on 26.04.2019, both the writ petition and the review application have been listed together for disposal.

8.Mr.M.Gnanasekar, learned counsel for the petitioner in the writ petition and also in the review petition would submit that as regards the 3rd respondent is concerned, he was appointed on a regular basis only in 2006 and within two years, his services came to be terminated on 02.05.2008 on the ground that he did not have a requisite qualification. When the writ petition of the 3rd respondent was taken up for final hearing on 12.09.2017, unfortunately, the School Authorities did not inform the Court about the appointment of the petitioner herein on 04.06.2009 and her continuance thereafter with the approval of the Educational Authority as B.T. Assistant (Tamil) for a period of more than eight years as on 2017. According to the learned counsel, if only this factor had been brought to the knowledge of this Court, the learned Judge would have taken a different course of action, considering the accrual of the right of the petitioner herein as her appointment from 04.06.2009 has been regular and continuous and has also been approved by the Educational Authority. On the other hand, the 3rd respondent appointment was originally found to be illegal as he did not have the requisite qualification and only during the pendency of the writ petition filed by the 3rd respondent, G.O.(Ms).No.56 was issued on 24.04.2012 accepting the recommendations of Equivalence Committee that B.Ed. Special Education Course undertaken by the 3rd respondent was equivalent to B.Ed. General Education Course for the purpose of employment in public services. Therefore, as against the regular appointment of the petitioner herein on 04.06.2009, the 3rd respondent's appointment cannot be countenanced as a regular one. Unfortunately, the 2nd respondent School, which was represented in the earlier proceedings in W.P.No.12604 of 2008, did not bring this crucial fact and in view of the Court being not appraised of the actual position, the order came to be passed on 12.09.2017, which resulted in displacing the petitioner herein unjustly, abruptly and illegally.

9.Having failed to disclose the actual fact before this Court in the earlier proceedings, the School Management, in the guise of implementing the order dated 12.09.2017, has issued show cause notice to the petitioner herein on 24.07.2018 and finally terminated her services with effect from 31.07.2018 and in that place, once again the 3rd respondent herein was reinstated on 01.08.2018. According to the learned counsel, the 3rd respondent's reinstatement though happened with effect from 01.08.2018, his appointment has still not been approved by the

Educational Authority. But, on the other hand, the appointment of the petitioner herein with effect from 04.06.2009 was approved by the Educational Authority. In fact, the learned counsel would submit that on its own, the School management ought to have filed Review Petition to bring the most crucial fact of appointment of the petitioner for a period of nine long years, which appointment was regular and was also approved by the Educational Authority, to the knowledge of this Court in the earlier proceedings. According to the learned counsel, the approved appointment of the petitioner was pitted against irregular appointment of the 3rd respondent and the Management in fact ought to have sought clarification from this Court before displacing the petitioner herein. Unfortunately, failure to furnish correct information to this Court has led to the present piquant situation where two teachers were employed against the same post and terminated. This petitioner cannot be blamed for the present situation. According to the learned counsel, the right of the petitioner herein has to be protected as against the irregular appointment of the 3rd respondent, whose appointment has still not been approved by the authority.

10. Dr. Father Xavier Arulraj, learned Senior Counsel appearing for the 2nd respondent School would admit the above facts. But, he would submit that at the time when the petitioner was appointed, in her own handwriting, she has given undertaking that she would abide by the result of the writ petition filed by the 3rd respondent i.e., W.P.No.12604 of 2008 and she would not claim any salary during the period when the writ petition was pending before this Court. Therefore, when the writ petition was disposed of in favour of the 3rd respondent, the consequence of implementation of the same has resulted in displacement of the petitioner herein and the petitioner cannot be sought to be aggrieved in view of her own undertaking given at the time of her appointment. As regards the non furnishing of the details of the appointment of the petitioner herein between the years 2009 and 2017. The learned Senior Counsel would submit that unfortunately this fact was not placed before the learned Judge for consideration. When the Court confronted the learned Senior Counsel for the School as to what it proposed to settle the rival claims of the petitioner and the 3rd respondent equitably wherein two eligible Teachers as on date competing to stake claim for one post, the learned Senior Counsel would, after getting instruction, filed an affidavit of undertaking stating that the 2nd respondent School is inclined to accommodate the petitioner in any future vacancy arising in the cadre of B.T. Assistant (Tamil) in any one of the Schools which come under the corporate management of the Diocese of Vellore. He would therefore submit that in view of the undertaking, the appointment of the 3rd respondent as on date with effect from 01.08.2018 be protected and the salary which has not been paid

to him since his reinstatement on 01.08.2018 may be directed to be paid.

11. On behalf of the 3rd respondent, Mr. S. Bhaskaran, learned counsel has entered appearance and would submit that originally when the 3rd respondent was terminated from service on 02.05.2008 by the 1st respondent and subsequently, relieved by the management on 07.05.2008, this Court had granted stay of the termination on 20.05.2008 in W.P.No.12604 of 2008 filed by the 3rd respondent. In view of the interim stay granted by this Court, the 3rd respondent herein, who is the petitioner in the writ petition, took it for granted that he was deemed to have continued in the post and ultimately, the writ petition had ended in his favour. However, the learned counsel when confronted by this Court about the non implementation of the stay order passed by this Court, the learned counsel would not come up with any convincing answer. Ultimately, the fact of the matter was that despite getting an interim order of stay, the 3rd respondent did not pursue his remedies effectively and the petitioner herein has been appointed in the vacancy caused by the relieving of the 3rd respondent and the petitioner's appointment on 04.06.2009 has been approved by the Educational Authority and the petitioner has been continued uninterruptedly as B.T. Assistant (Tamil) till she came to be terminated by the management with effect from 31.07.2018.

12. The learned counsel for the 3rd respondent would submit that though his client has been appointed once again on 01.08.2018, for one year no salary has been paid in view of the pendency of both the review as well as the writ petition filed by the petitioner herein. Therefore, he would urge this Court to direct the authorities to grant the salary since the 3rd respondent has discharged his duties as B.T. Assistant (Tamil) in the 2nd respondent School.

13. Considered the submissions made by the learned counsels for the parties, perused the materials and the pleadings placed on record.

14. When the 3rd respondent was terminated from service on 02.05.2008, he was found to be not qualified as his B.Ed. Degree obtained in Special Education was not found to be equivalent to B.Ed. Degree in General Education and therefore, his appointment was seen as illegal which led to his termination on 02.05.2008. In the vacancy created by the termination of the 3rd respondent, the petitioner herein was appointed on 04.06.2009 and the petitioner herein was fully qualified to hold the post as B.T. Assistant (Tamil). It is also an admitted fact that the Educational Authority has approved the appointment of the petitioner herein and the 2nd respondent management has continued

the petitioner from 04.06.2009 as approved Teacher till 31.07.2018. The salaries and allowances have also been paid to the petitioner.

15.While matter stood thus, unfortunately when the writ petition filed by the 3rd respondent in W.P.No.12604 of 2008 came up for hearing on 12.09.2017, the 2nd respondent School failed to bring the most crucial fact viz., the appointment of the petitioner herein as a regular Teacher in the place of the 3rd respondent to the knowledge of the Court. If only the said factum had been brought to the notice of this Court, the learned Judge of this Court would have certainly passed a different order and not the order passed by him on 12.09.2017. In fact, neither the School nor the 3rd respondent, who is the petitioner therein, had whispered anything about the appointment of the petitioner herein and the approval granted by the Educational Authority during the period of pendency of the writ petition before this Court. In view of the failure on the part of both the 3rd respondent as well as the 2nd respondent School in bringing to the knowledge of this Court about the development, the learned Judge of this Court was not properly guided, which resulted in passing of the order on 12.09.2017 and the implementation of the order has further complicated the issue unnecessarily.

16.In fact, when the order was passed, the School Authority ought to have realised about the peculiar circumstances in which the management was placed wherein the management was facing a situation with two eligible Teachers vying for the same post. In fact, the management decision, in the opinion of this Court, ought to have tilted in favour of the petitioner herein, since the petitioner was fully qualified at the time of her original appointment and her appointment has also been approved by the Educational Authority and she has been continued for the period of nine full years. On the other hand, the 3rd respondent was appointed only for a brief period of less than two years between 2006 and 2008 and his original appointment was also found to be defective and only by issuance of G.O.(Ms).No.56, Higher Education (K2) Department, dated 24.04.2012, the qualification of the 3rd respondent was found to be equivalent to the prescribed qualification of the Government. Therefore, by no stretch of legal standard, the claim of the 3rd respondent would outweigh the claim of the petitioner as to who should be preferred out of the competing claims. The balance of convenience, equity, fair play ought to have been exercised in favour of the petitioner as against the claim of the 3rd respondent herein.

17.In fact, when the 3rd respondent came to be appointed once again on 01.08.2018, his appointment has still not been approved

by the Educational Authority. Therefore, as on date, the 3rd respondent appointment is not approved, whereas the appointment of the petitioner herein was approved by the Educational Authority. Unfortunately, the 2nd respondent management once again committed another crucial mistake of appointing the 3rd respondent on 01.08.2018 by terminating the services of the petitioner on 31.07.2018. The present affidavit of undertaking given by the 2nd respondent management, in the opinion of this Court, ought to be in read against the 3rd respondent and not against the petitioner herein.

18. This Court is of the considered view that in view of the above narrative that the right of the petitioner herein to be continued as B.T. Assistant would far more outweigh the right of the 3rd respondent to be re-accommodated as B.T. Assistant (Tamil). The petitioner herein having been employed for nine years continuously being approved as regular appointee, her rights cannot be nullified to be continued as a Teacher as against the right of the 3rd respondent, whose appointment is still yet approved by the Educational Authority. Further, the 3rd respondent's original appointment was defective and his appointment could at best become regular only after the G.O. was passed on 24.04.2012 [G.O.(Ms.)No.56, Higher Education (K2) Department] whereas the appointment of the petitioner herein on 04.06.2009 was regular in all respects and was also approved by the Educational Authority. Therefore, looking at the circumstances from any angle, an irresistible conclusion that could be drawn is that the petitioner has a better right to be preferred to the 3rd respondent herein. The only issue which weighed with the School Authority, while re-appointing the 3rd respondent as B.T. Assistant (Tamil) was on 01.08.2018, was the order passed by this Court on 12.09.2017 in W.P.No.12604 of 2008. This Court is of the considered view that if only a timely representation had been made bringing about the appointment of the petitioner herein as approved Teacher and continuance of her from 04.06.2009 and till the date when the writ petition was disposed of, the entire complexion of the order could have been different and the present predicament in which the School management is placed could have been very much avoided.

19. In the above circumstances, the School Authority has to blame themselves for bringing about such an unenviable position upon themselves. Therefore, in the considered opinion of this Court, the affidavit of undertaking given by the School management should be read as against the right of the 3rd respondent, but not against the right of the petitioner herein. This Court appreciates that the 3rd respondent is also eligible and his original termination from service in 2008 could not be continued after 2012 in view of the Equivalence Committee decision to recognise the qualification of the 3rd respondent. In

view of the same, this Court is of the considered view that the 3rd respondent right to be considered for appointment in any of the future vacancies in any of the Schools run by the Diocese of Vellore, as per the undertaking filed by the School Authority dated 4th August 2019 can be protected instead of the petitioner herein.

20. In view of this Court holding that the right of the petitioner herein far outweighs the right of the 3rd respondent, the present Writ Petition filed by the petitioner herein is liable to be allowed. Accordingly, the impugned order of the 2nd respondent in Letter No.18/2018 dated 24.07.2018 is hereby set aside and the School management is directed to reinstate and continue the service of the petitioner as B.T. Assistant (Tamil) with all consequential and attendant benefits. The School management is also directed to implement this order within a period of two weeks from the date of receipt of a copy of this order.

21. In view of the Writ Petition being allowed, the Review Application is also allowed and the order passed by the learned Judge of this Court in W.P.No.12604 of 2008 dated 12.09.2017 is hereby recalled. However, in the interest of justice and fairness, the 2nd respondent/School Authority is directed to consider the claim of the 3rd respondent herein also for appointment as B.T. Assistant (Tamil) in any one of the vacancies which arise immediately in future in the Schools governed by the Diocese of Vellore. The affidavit of undertaking filed on behalf of the School management on 04.08.2019 shall be given effect to in order to accommodate the 3rd respondent herein instead of the petitioner herein. In view of the fact that the 3rd respondent has not been paid salary and allowances from the date of his reappointment on 01.08.2018 and till date, the respondents 1 and 2 are directed to release the salary and allowances admissible to the 3rd respondent for the period in question.

22. The Writ Petition and the Review Application are allowed as above. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sgl

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1.The District Educational Officer,
Cheyyar, Tiruvannamalai District.
Tiruvannamalai - 606 604.

2.The Government Advocate,
High Court, Madras.

+lcc to Mr.S.Baskaran, Advocate, SR.No.75976

W.P.No.20826 of 2018 and
Review Application No.184 of 2018

Kak(10/09/2019)



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