

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.06.2019

CORAM:

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN
AND
THE HONOURABLE Ms.JUSTICE P.T.ASHA

W.A.No.2003 of 2018

1.The Secretary,
State of Tamil Nadu,
Department of School Education,
Fort St.George,
Chennai 9.

2.The Director of School Education,
Chennai 6.

3.The District Educational Officer,
North Chennai, Chennai 8.

4.The Chief Educational Officer,
Panagal Building,
Saidapet, Chennai 15

... Appellants

Vs

1.N.Kumaravel

2.The Secretary,
Motilal Fomra Sahatara Dharma Hr.Sec School,
No.26, Mangappan St.,
Sowcarpet, Chennai-79

... Respondents

Appeal filed against the order passed by this Court dated 3.3.2015 in WP No.36545 of 2007.

W.P.No.36545 of 2007:

Writ Petition filed under Article 226 of the Constitution of India for a Writ of Certiorarified Mandamus, calling for the records of the respondents resulting in the third respondents communication Na.ka.No. 2965 A1/07 dated 06.09.2007 and to quash the same "as far as the rejection of the claim of the petitioner for the approval of his post from 18.06.1999 in concerned" and direct the respondents 1 to 4 to regularise the service of the petitioner since the date of joining in service i.e. 18.6.99 by giving approval for his appointment as

P.G.Assistant (Biology) and further directing the Respondents to pay the arrears of Salary of a sum of Rs. 3.42,621/- to the Petitioner.

For appellant : Mr.C.Munusamy, Spl.G.P.

For Respondents : Mr.K.Bhaskar

R2 : No Appearance

J U D G M E N T

This intra court appeal is directed against the order dated 3 March 2015 in W.P.No.36545 of 2007 whereby and whereunder, the learned Single Judge after quashing the adverse order passed by the appellants, directed the State to pay salary to the 1st respondent from 18 June 1999 to 1 August 2002, taking into account his initial appointment.

2. The State has come up with this appeal with a principal contention that the post of Post Graduate Teacher (Biology) was declared surplus in the year 1999-2000 and as such, the management has no right to appoint the 1st respondent as P.G. Teacher on 18 June 1999.

3. We have heard the learned counsel for the parties.

4. There is absolutely no dispute that there was a post of P.G. Teacher Biology in Motilal Fomra Sahatara Dharma Higher Secondary School, Sowcarpet, Chennai. It so appears that the post of Post Graduate (Biology) was shown as surplus in the year 1999-2000. The staff fixation made by the Chief Educational Officer on 2 December 1999 in respect of the said school shows that the post was declared surplus.

5. The respondent was appointed on 18 June 1999. The appellants have no case that a transparent process was not followed by the management in the matter of appointment. It was only in the proceedings dated 2 December 1999, the post was shown as surplus. The appointment was made even before the said proceedings. The post in question was duly sanctioned by the Education Department. The only problem appears to be the declaration that the post of P.G. (Biology) was surplus.

6. The Education Department pursuant to the representation submitted by the management reallocated the post of P.G. Biology to the college by order dated 10 July 2002. The order was communicated to the management by the Chief Educational Officer by proceedings dated 31 July 2002. The appointment of the first

respondent was therefore approved with effect from 1 August 2002.

7. We are in agreement with the views expressed by the learned Single Judge that the appointment should relate back to 18 June 1999, the date on which, the first respondent was initially appointed. However, we are of the view that there is no liability to the Government to pay the salary for the period from 18 June 1999 to 1 August 2002 for the simple reason that the post was shown as surplus and the approval was given only from 1 August 2002.

8. We make it clear that for all practical purposes, the appointment of the first respondent would be counted from 18 June 1999. The period would be included for pension. However, the first respondent would not be entitled to the monetary benefits from the said date.

9. The intra court appeal is partly allowed with the above modification in the order passed by the writ court. No costs. Consequently, C.M.P.No.15892 of 2018 is closed.

s/d-
Assistant Registrar(CS VIII)

True Copy

Sub-Assistant Registrar

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To

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Panagal Building,
Saidapet, Chennai 15

+1 CC to The Govt. Pleader sr 51206.

W.A.No.2003 of 2018

SS(CO)
SP(22/08/2019)