

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.12.2019

CORAM

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

W.P.No.14546 of 2018

I.Roselin

...Petitioner

Vs.

1. The Director of School Education,
College Road, Chennai - 6.
2. The District Educational Officer,
Thiruvallur,
Thiruvallur District.
3. The Correspondent,
T.E.L.C. Kabis Higher Secondary School,
Pandur, Thiruvallur Taluk,
Thiruvallur District.

....Respondents

PRAYER:

Writ petition filed under Article 226 of Constitution of India, seeking a writ of Certiorarified Mandamus, calling for the records pertaining to the order passed by the 2nd respondent in his proceedings No.Na.Ka.2639/A4/2012, dated 19.01.2015 and quash the same and direct the respondents to approve the appointment of the petitioner from the date of initial appointment as Physical Education and confer all the consequential benefits.

For Petitioner : Mr.P.Ganesan

For Respondents : Mrs.V.Annalakshmi,
Government Advocate

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ORDER

This writ petition has been filed challenging the order passed by the 2nd respondent granting approval for the appointment of the petitioner as a Physical Education teacher only with effect from 29.05.2012 and for a consequential direction to grant approval from the year 2008, when the petitioner was appointed in the 3rd respondent school.

2. The case of the petitioner is that the vacancy arose for the post of physical education teacher in the 3rd respondent school due to retirement of the incumbent teacher. The management of the 3rd respondent school had selected and appointed the petitioner as a Physical Education Teacher on 02.06.2008. The 3rd respondent school is a minority aided school.

3. Since there was dispute in the management, the school came under the direct control of the authorities concerned and direct payment was made to the teachers. The 3rd respondent school challenged the same by filing W.P.No.25820 of 2007 before this Court and the writ petition was allowed by an order dated 17.04.2008. This was challenged by the respondents in W.A.No.671 of 2008. The Division Bench of this Court, after considering the entire facts and circumstances of the case, was pleased to set aside the order of the learned Single Judge. The Division Bench also concluded that the direct payment shall continue until the application for recognition is disposed of by the authorities.

4. The proposals on the appointment of the petitioner which was kept pending was ultimately disposed of by the 2nd respondent by his proceedings dated 19.01.2015, wherein the concerned authorities had granted approval only with effect from 29.05.2012. The Authority had found that for the period from 2008 to 2012, the approval cannot be granted since the school was under direct payment and the management did not have the authority to appoint the petitioner as a Physical Education Teacher under the relevant act and rules. This order has now become the subject matter of challenge in the present writ petition.

5. The learned counsel for the petitioner submitted that the petitioner was caught in a cross fire in a fight involving two groups in the management. The learned counsel submitted that the 3rd respondent school was involved in some litigation regarding the management of the school and as a result, the teachers had to suffer.

6. The learned counsel submitted that the petitioner was in fact appointed in the year 2008 and she continues to function as a teacher till today and therefore there is no reason to confine the approval from 2012. The learned counsel submitted that for the period from 2008 to 2012, the 2nd respondent ought to have granted the approval.

7. Mrs.V.Annalakshmi, learned Government Advocate appearing on behalf of the respondents submitted that the relief that has been claimed by the petitioner is not sustainable. The learned Government Advocate submitted that the 3rd respondent school had

appointed the petitioner on 02.06.2008, when the school was under the direct payment. The learned Government Advocate by relying upon Rule 5 and Appendix 4 of the Tamil Nadu Minority Recognised Schools (Regulation and Grant in Aid Act), submitted that during the direct payment period, no appointment can be made by the Correspondent as his powers are freezed.

8. The learned Government Advocate further submitted that the 2nd respondent revoked the order of direct payment of 3rd respondent school by his order dated 29.05.2012. Thereafter, the sanction to the appointment of the petitioner was granted with effect from 29.05.2012. The learned Government Advocate submitted that the order passed by the 2nd respondent is perfectly in accordance with law.

9. This Court has carefully considered the submissions made by either side and materials on record.

10. The only issue that arises for consideration in this writ petition is as to whether the petitioner can be granted approval for appointment from 02.06.2008 onwards. The approval was granted by the 2nd respondent in the impugned proceedings with effect from 29.05.2012. The 2nd respondent refused to grant approval for the period from 2008 to 2012 on the ground that the 3rd respondent school management did not have the authority to appoint the petitioner as a physical education teacher. In order to substantiate the same, the learned Government Advocate had relied upon Rule 5 and Appendix 4 of the Tamil Nadu Minority Recognised Schools (Regulation and Grant in Aid) Act.

11. The 2nd respondent had revoked the direct payment by his proceedings dated 29.05.2012. In the said proceedings, he had sought for the papers to be submitted by the Correspondent of the School to continue with the recognition from 01.06.2012. By virtue of this order, no retrospective effect was given and the fact remains that on the date when the petitioner was appointed, the 3rd respondent school management did not have the authority to do so, since it was under direct payment. It is unfortunate that the petitioner was caught in the cross fire. However, the 2nd respondent has to go by the provisions of law and he cannot take independent decision in this regard. Therefore, after cancellation of direct payment by his order dated 29.05.2012, the 2nd respondent had granted approval for the appointment of the petitioner with effect from 29.05.2012.

12. This Court does not find any grounds to interfere with the order passed by the 2nd respondent. It was informed to this Court that the internal fight in the 3rd respondent school still continues and till now there is no Correspondent and it is being managed by an administrator appointed by this Court. The

petitioner can submit a fresh representation to the administrator and the same can be taken into consideration and a decision can be taken to resubmit the proposal for appointment of the petitioner with effect from the year 2008 onwards. Apart from this, this Court is not inclined to interfere with the order passed by the 2nd respondent.

13. With the above observation, the writ petition is disposed of accordingly. No costs.

Sd/-

Assistant Registrar(CS VI)

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Sub Assistant Registrar

vum

To

1. The Director of School Education,
College Road, Chennai - 6.
2. The District Educational Officer,
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Thiruvallur District.
3. The Correspondent,
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Pandur,
Thiruvallur Taluk,
Thiruvallur District.

+1cc to Mr.P.Ganesan, Advocate, S.R.No.103807
+1cc to the Government Pleader, S.R.No.104529

W.P.No.14546 of 2018

NRL (CO)
CS/24/01/2020

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