



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : **03.12.2019**
CORAM:

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

W.P (MD) No.19712 of 2013

and

M.P. (MD) .No.1 of 2013

S.Thambi Raj

.. Petitioner

Vs.

- 1.The State of Tamil Nadu,
rep. by its Secretary,
Department of School Education,
Fort St. George,
Chennai - 600 009.
- 2.The Director of School Education,
College Road,
Chennai - 600 006.
- 3.The Chief Educational Officer,
Kanyakumari District at Nagercoil,
Kanyakumari District - 629 001.
- 4.The District Educational Officer,
Thuckalay - 629175,
Kanyakumari District.
- 5.The Correspondent,
L.M.P.C. Higher Secondary School,
Puthalam - 629602,
Kanyakumari District.

.. Respondents

PRAYER: Writ Petition has been filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Mandamus directing the 4th respondent / District Educational Officer to approve forthwith the appointment of the petitioner as Record Clerk from 01.04.2003 to 31.05.2004 and as Junior Assistant from 01.06.2004 to 29.07.2007 in the 5th respondent school viz., LMPC Higher Secondary School, Puthalam and disburse all attendant benefits including the arrears of salary and allowance.

For petitioner : Mr.T.Cibi Chakaravarthi
For respondents 1 to 4 : Mr.S.Dhayalan,
Government Advocate



For 5th respondent : No appearance

ORDER

This writ petition has been filed by the petitioner for issuance of a Writ of Mandamus, to direct the 4th respondent to approve forthwith the appointment of the petitioner as Record Clerk from 01.04.2003 to 31.05.2004 and as Junior Assistant from 01.06.2004 to 29.07.2007 in the 5th respondent school viz., LMPC Higher Secondary School, Puthalam and disburse all attendant benefits, including the arrears of salary and allowance.

2. According to the petitioner, he was appointed as part time sweeper in the 5th respondent school on 03.11.1994 and thereafter, as Record Clerk on 01.04.2003 in the retirement vacancy and the 5th respondent school has submitted proposal to the 4th respondent on 11.04.2003 for the purpose of disbursement of grant-in-aid towards salary, but the 4th respondent did not pass any order. Then, the petitioner was promoted as Junior Assistant with effect from 01.06.2004 and the 5th respondent school submitted a proposal to the 4th respondent on 01.06.2004 for disbursement of grant-in-aid towards salary. The 4th respondent refused to receive the same and directed to resubmit the proposal after the ban on appointment was lifted. However, the 4th respondent approved the appointment of the petitioner as Junior Assistant with effect from 30.07.2007 after obtaining new appointment order from the 5th respondent school. The grievance of the petitioner is that till date the 4th respondent has not approved the appointment of the petitioner as Record Clerk from 01.04.2003 to 31.05.2004 and as Junior Assistant from 01.06.2004 to 29.07.2007 and granted attendant benefits, including the arrears of salary and allowance stating that it was made during the ban period.

3. Heard the learned counsel for the petitioner as well as the learned Government Advocate appearing for the respondents 1 to 4.

4. The only issue to be decided in this writ petition is as to whether the appointment of the petitioner has to be approved from the date of his original appointment or from the date of lifting of the ban order?.

5. When the similar issue arises for consideration, a learned Single Judge of this court in the decision in **Thiruvalluvar Higher Secondary School Palamaner Road, Gudiyattam Vellore District Vs. The Government of Tamil Nadu, rep. by its Secretary, Department of School Education, Fort St. George, Chennai and others**, reported in **2008 (5) CTC 648**, has held in paragraph No.4 to 6 as follows:

"4. Similar issue as to whether after lifting of the ban, approval of appointment of a person appointed in a non-teaching post in an aided school



can be kept pending and whether the said person is entitled to get salary at least from the date on which the ban order was lifted, was considered by me in W.P.(MD).No.484 of 2007, by order dated 30.10.2007 and I have allowed the writ petition and in paragraphs 19 and 20, held as follows:

"19. Similar ban order issued by the Department on the ground that new norms are contemplated are pending the same no appointment in aided schools are to be made was set aside by this Court in W.P.No.10237 of 1994 by order dated 16.08.1999. Since the petitioner was appointed from 05.06.2002 and he is continuously working in the sanctioned post, the respondents may be justified in not approving the appointment of the petitioner from 05.06.2002 to 06.02.2006. The petitioner has got a right to get his appointment approved, once the ban order is lifted. Admittedly, the ban order imposed, not to fill up the posts, was lifted on 07.02.2006. Hence, the petitioner has got every right to get his post approved with salary and other benefits with effect from 07.02.2006. Once the ban order is lifted, the provisions contained in Rule 15(1) and (3) of the Tamil Nadu Recognized Private Schools (Regulation) Act, 1973, comes into operation and the petitioner is deemed to be appointed on regular basis, as he was appointed within the sanctioned post in the fourth respondent school.

20. For all the reasons stated above, the impugned orders are set aside with a direction to the respondents to approve the appointment of the petitioner as Lab Assistant with effect from 07.02.2006. The third respondent is directed to pass orders approving the appointment of the petitioner with effect from 07.02.2006 and pay arrears of salary from 07.02.2006 within a period of four weeks from the date of receipt of a copy of this order."

5. The learned counsel for the petitioner submits that the above order was challenged by the respondent Education Department in W.A.(MD).No.308 of 2008 and the said Writ Appeal was dismissed by a Division Bench of Madurai Bench on 04.08.2008. The Division Bench dismissed the Writ Appeal by observing as follows:

"4. After considering the rival submissions made on either side, following the judgment of the Supreme Court and order of this Court, the learned Judge set aside the orders of the appellants



with a direction to approve the appointment of the respondent/petitioner as Lab Assistant with effect from 07.02.2006 and the third appellant was directed to pass orders approving the appointment of the first respondent with effect from 07.02.2006 within a period of four weeks from the date of receipt of copy of the order.

5. We find no infirmity or illegality in the order of the learned Judge dated 30.10.2007 passed in W.P.(MD).No.484 of 2007. Therefore, the Writ Appeal fails and the same is dismissed."

The learned counsel for the petitioner further submitted that the first respondent in W.A.(MD).No.308 of 2008 filed separate Appeal in W.A.(MD).No.456 of 2008 and challenged the order not giving direction to approve the appointment from the date of appointment till the date of lifting of the ban and the said Writ Appeal was also allowed by the Madurai Bench of this Court on 04.08.2008 by observing as follows:

"2.Heard the learned counsel for the appellant and the learned Special Government Pleader appearing for the respondents 1 to 3.

3. The learned counsel for the appellant submits that the appointment of appellant from the date of appointment should have been approved by the learned Single Judge instead of restricting the prayer.

4.It has been brought to our notice that in similar circumstances the Government has issued orders in respect of similar employees approving their services from the date of their initial appointment. When once the ban is revoked, the Government should have considered and approved the appointment of the petitioner from the date of his initial appointment. Therefore, the orders of the learned Single Judge need to be modified to this extent. Accordingly, the Writ Appeal is allowed modifying the order of the learned Single Judge dated 30.10.2007 made in W.P.(MD).No.484 of 2007 and directing the respondents to approve the appointment of the petitioner from the date of initial appointment."

6. In the light of the above referred judgments of the Division Bench, the impugned order dated 06.03.2003 is set aside with a direction to the fourth respondent to approve the appointment of S.K.Rajasekar working in the petitioner School as



all monetary benefits. Necessary orders to that effect is directed to be passed by the fourth respondent within a period of two weeks from the date of receipt of copy of this order and the arrears of salary payable to the said S.K.Rajasekar is directed to be paid within four weeks therefrom."

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6. As stated earlier, in this case, the appointment of the petitioner has not been approved by the 4th respondent and benefits has not been disbursed only stating that it was made during the ban period. It is seen that the 4th respondent has approved the appointment of the petitioner as Junior Assistant with effect from 30.07.2007, only after obtaining new appointment order from the 5th respondent school. In view of the decision cited supra, this Court is of the view that that would not restrain the relief sought for by the petitioner.

7. Following the decision cited supra, this Court directs the third and fourth respondents to approve the appointment of the petitioner as Record Clerk from 01.04.2003 to 31.05.2004 and as Junior Assistant from 01.06.2004 to 29.07.2007 with all monetary benefits. The third and fourth respondents shall pass necessary orders in this regard within a period of four weeks from the date of receipt of copy of this order. The third and fourth respondents are further directed to pay the arrears of salary payable to the petitioner within four weeks thereafter.

8. This Writ Petition stands disposed of accordingly. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

Sub Assistant Registrar (CS)

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To

1.The Secretary,
Department of School Education,
Fort St. George,
Chennai - 600 009.

2.The Director of School Education,
College Road,
Chennai - 600 006.

<https://hcservices.ecourts.gov.in/hcservices/>



3.The Chief Educational Officer,
Kanyakumari District at Nagercoil,
Kanyakumari District - 629 001.

4.The District Educational Officer,
Thuckalay - 629175,
Kanyakumari District.

+1 CC to SPL GP (SR-103636[F] dated 05/12/2019)

Order made in
W.P (MD) No.19712 of 2013
03.12.2019

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MK (17.12.2019) 6P 6C