



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 21.11.2019
CORAM

THE HONOURABLE MR.JUSTICE S.S.SUNDAR

W.P. (MD) .No.5574 of 2013
and
M.P. (MD) No.1 of 2013

J.Prabaharan

.. Petitioner

Vs.

1.The Director,
School Education Department,
College Road,
Chennai - 6.

2.The Joint Director,
School Education Department,
College Road,
Chennai - 6.

3.The Chief Educational Officer,
Office of Chief Educational Officer,
Collectorate,
Sivagangai District.

4.The Headmistress,
St. Joseph's Higher Secondary School,
Sekkakudi - 630 408,
Thiruvengampathu via,
Sivagangai District.

.. Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus to call for the records pertaining in Oo.Mu.No.612/m3/2013, dated 23.02.2013 on the file of the third respondent and quash the same as illegal, unjust, unconstitutional and without jurisdiction consequently to direct the respondents to release the petitioner arrears of the salary with interest at the rate of 12% per annum from 01.11.2011 to the petitioner.

For Petitioners : Mr.S.A.Ajmal Khan

For Respondents : Mr.N.Shanmugaselvam
Additional Government Pleader



ORDER

This Writ Petition is filed for issuance of a Writ of Certiorarified Mandamus to quash the order of the third respondent dated 23.02.2013 and to direct the respondents to release the arrears of the salary with interest at the rate of 12% per annum from 01.11.2011 to the petitioner.

2.The petitioner was appointed temporarily in the leave vacancy in the fourth respondent school for three different spells i.e., from 17.06.2011 to 30.09.2011 (106 days); from 01.11.2011 to 22.12.2011 (52 days) and from 04.01.2012 to 27.04.2012 (115 days). The grievance of the petitioner is that the salary for the period during which the petitioner was engaged on temporary basis was not disbursed. It is admitted that for the first spell of 106 days the respondents disbursed the arrears of salary to the petitioner and that the salary claimed only for the subsequent spells during which the petitioner was engaged as a Teacher on temporary basis was not paid. When the petitioner approaches the third respondent, the third respondent passed the impugned order rejecting the request on the ground that the petitioner is not entitled to claim salary from the Government when the petitioner is appointed only in the leave place as substitute and that the petitioner is entitled only to get salary from the Management. It is also stated that rules do not provide for granting salary aid for appointing a substitute in leave places. The stand taken by the third respondent in the impugned order is also reiterated by the third respondent in the counter affidavit filed by him. In the counter affidavit, it is further stated that the petitioner has not cleared Teachers' Eligibility Test and that therefore, he is not qualified for the post in which he was engaged by the fourth respondent.

3.It is admitted that the fourth respondent school is a minority institution receiving aid from the Government. It is stated that for the first spell of 106 days salary was wrongly paid to the petitioner and that such erroneous payment cannot be taken as precedent especially when there is no rule which provide for payment of salary to the Teachers who are appointed in leave places on temporary basis.

4.The learned Counsel appearing for the petitioner relied upon a Government Order in G.O.Ms.No.198, Education, Science and Technology (D1) Department, dated 15.03.1995 wherein it is stated as follows:

“4. ஒரு மாதம் அல்லது அதற்குமேல் சம்பளமில்லா விடுப்பில் (Extraordinary Leave

without allowance) ஆசிரியர்களின் பணியிடங்களில் மட்டுமே விடுப்பு, பதிலி

<https://hcservices.courts.gov.in/hcservices/> ஆசிரியர்களை நியமித்து கொள்ளலாம்.”



5.From the terms of G.O.Ms.No.198, Education, Science and Technology (D1) Department, dated 15.03.1995 and the fact that the petitioner admittedly received salary for a period of 106 days, the contention of the third respondent that the payment of salary is not permitted as per rules for a person engaged on leave places by way of substitution cannot be accepted. The fourth respondent school is a minority institution and hence, requirement of Teachers' Eligibility Test cannot be insisted as per the decision of this Court in several judgments. The Hon'ble Supreme Court has held that the right to Education Act is not applicable to minority institution. Though it is stated that the matter regarding requirement of Teachers' Eligibility Test is pending before the Supreme Court, as far as this case is concerned, no reason is given in the order impugned in the Writ Petition as to how the earlier order of this Court cannot be applied in this case. Having regard to the admitted position that the fourth respondent schools is getting aid from the Government and the post is sanctioned, the contention that the management should pay the salary for 167 days may not be appropriate. The petitioner who has been paid salary for 106 days even though subsequent appointment was in tune with the prior appointment, this Court is unable to accept the contention of the third respondent in the impugned order to reject the petitioner's salary for about 167 days.

6.As a result, this Writ Petition is allowed and the impugned order is set aside. The third respondent is directed to disburse the petitioner's salary for 167 days ie., for the period from 01.11.2011 to 22.12.2011 and 04.01.2012 to 27.04.2012. This exercise shall be done within a period of two months from the date of receipt of a copy of this order. If there is any delay in disbursement of salary beyond two months, the petitioner is entitled to get interest at the rate of 12% per annum which should also be paid along with arrears. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (writs)

// True Copy //

Sub Assistant Registrar(CS)

SRM
To

1.The Director,
School Education Department,
College Road,

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



2.The Joint Director,
School Education Department,
College Road,
Chennai - 6.

3.The Chief Educational Officer,
Office of Chief Educational Officer,
Collectorate,
Sivagangai District.

4.The Headmistress,
St. Joseph's Higher Secondary School,
Sekkakudi - 630 408,
Thiruvengampathu via,
Sivagangai District.

+1 CC to SPL GP (SR-100900[F] dated 25/11/2019)

+1 CC to Mr.S.A. AJMAL KHAN, Advocate (SR-100270[F] dated
21/11/2019)

ORDER MADE IN
W.P. (MD) No. 5574 of 2013
21.11.2019

MK (19.12.2019) 4P 7C