



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 25.06.2019

Delivered on : 28.06.2019

CORAM

THE HONOURABLE MR.JUSTICE **K.RAVICHANDRABAABU**

AND

THE HONOURABLE MR.JUSTICE **SENTHILKUMAR RAMAMOORTHY**

W.A.(MD)No.570 of 2019

and

CMP(MD)No.4715 of 2019

M.Stella

.. Appellant/Petitioner

Vs.

1.The Chief Educational Officer,
Madurai.

2.The District Educational Officer,
Melur,
Madurai District.

3.The Correspondent,
Lourdu Annai Girls Higher Secondary School,
K.Pudur,
Madurai.

.. Respondents/Respondents

PRAYER: Writ Appeal is filed under Clause 15 of Letters Patent, to set aside the order passed in W.P(MD)No.5634 of 2018 dated 01.04.2019.

Prayer in WP(MD) . 5634/ 2018 :

To issue a Writ of Certiorarified Mandamus calling for the records pertaining to the order passed by the 2nd respondent in his proceedings in O.Mu.No.2574/A3/2017 dated 04.01.2018 and quash the same and direct the respondents to approve the appointment of the petitioner as B.T.Assistant Science from the date of appointment i.e. 01.06.2015 with all the consequential benefits.

For Appellant : Mr.V.Panneer Selvam

For Respondents : Mrs.S.Srimathy

Spl. Govt. Pleader (for R1 and R2)

**JUDGMENT****K. RAVICHANDRABAABU, J.**

Appellant is the writ petitioner. She moved the Writ Court and challenged the order of the second respondent, dated 04.01.2018, in refusing to correct the staff fixation done on 01.08.2015 to indicate the surplus of one graduate teacher post with teacher instead of without teacher. Consequently, the petitioner sought for direction to the respondents to approve her appointment as BT Assistant (Science) from the date of her appointment i.e., 01.06.2015. The Writ Court dismissed the writ petition mainly on the reason that the writ petitioner has failed to prove that she was actually appointed on 01.06.2015 and since the staff strength was reduced from 6 Science Teachers to 5 for the academic year 2015-16, the petitioner's claim for regularization or approval cannot be considered. Hence, the present appeal is filed challenging the order of the Writ Court.

2.The case of the appellant, in short, is as follows:-

She passed B.Sc., and B.Ed., and thus, fully qualified for the post of B.T. Assistant. She joined the third respondent school as management staff in the year 2005. One post of B.T. Assistant (Science) became vacant on 31.05.2015 due to retirement of a teacher, by name, D.Daisy Kirubakari. The third respondent school is a minority institution and thus, entitled to have the right of appointment. Accordingly, she was selected and appointed as B.T. Assistant on 01.06.2015 in the above said sanctioned permanent vacancy. Management sent proposal to the second respondent for approval on 22.09.2015. The proposal was resubmitted again for approval on 23.06.2016 and the same was returned by the second respondent on the reason that the same was sent belatedly. As per the staff fixation report for the year 2014-2015, 13 B.T. Assistant posts were sanctioned and the writ petitioner was appointed in one such sanctioned post. For the year 2015-2016, staff fixation report was filed on 30.10.2015, after the date of the writ petitioner's appointment. In the staff fixation for the year 2015-2016, one post of B.T. Assistant was declared surplus. Since the writ petitioner was appointed in a sanctioned post, much earlier to the fixation of staff strength for 2015-2016, she is entitled to get approval of her appointment. However, the second respondent refused to correct the staff strength and thus, the writ petitioner was compelled to move the above writ petition.

3.The Writ Court, going by the staff strength fixed for the academic year 2015-2016 and finding that the staff strength of B.T. Assistant (Science) was reduced from 6 to 5, also by noting that the proposal for approval was sent only on 23.06.2016, rejected the writ petition. In other words, the crux of the order rendered by the Writ Court is to the effect that the writ petitioner has not proved that she was appointed on 01.06.2015,

during which time, admittedly, the staff strength for Science Teachers was fixed as 6.

4. The learned counsel for the appellant/writ petitioner, after inviting our attention to the staff fixation proceedings for the academic year 2014-2015 dated 10.11.2014, submitted that out of 13 posts sanctioned, 6 Science Teachers were available to the third respondent school and the writ petitioner having been appointed on 01.06.2015 in one of such sanctioned post, is entitled to get the approval of her appointment. He further pointed out that the attendance register signed by the petitioner during the relevant period and endorsed by the educational authority would show that the writ petitioner was working from 01.06.2015 in a sanctioned post. He also invited our attention to the original attendance register also by making available copies of the same in the typed set of papers in support of the above contention. Therefore, he contended that subsequent staff fixation done for the academic year 2015-2016, thereby reducing the strength of B.T. Assistants from 6 to 5, cannot stand in the way of the writ petitioner in getting the approval.

5. On the other hand, the learned Special Government Pleader appearing for the respondents 1 and 2 contended that the proposal was sent by the school only on 23.06.2016 enclosing an appointment order dated 01.06.2015. Therefore, she contended that the staff fixation done in the meantime on 30.10.2015 reducing the strength of B.T. Assistant from 6 to 5 would disentitle the writ petitioner from getting the approval of her appointment.

6. We have given our careful consideration to the rival submissions made by the respective parties and also perused the materials placed before us. The original file produced by the Special Government Pleader as well as the attendance register placed in the typed set of papers were also perused.

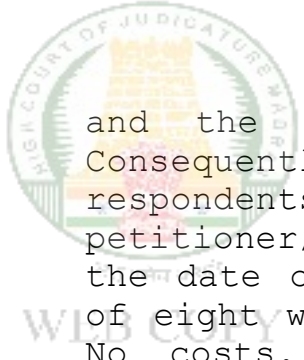
7. There is no dispute to the fact that the third respondent school was originally sanctioned with 13 posts in pursuant to the staff fixation done on 10.11.2014 for the academic year 2014-2015. Out of those 13 posts, 6 are for science teachers. There is no dispute to the fact that one science teacher, by name, D. Daisy Kirubakari retired on 31.05.2015 and consequently, the said sanctioned post became vacant on the said day. There is no dispute to the fact that the third respondent school is a minority institution and consequently entitled to make appointment in the sanctioned post without getting prior approval/permission from the educational department. It is claimed by the appellant/writ petitioner that she was appointed in the said sanctioned vacancy on 01.06.2015. The respondents are disputing the date of appointment of the appellant/writ petitioner. Therefore, the only point for consideration in this appeal is as to whether the writ petitioner was appointed on 01.06.2015 as claimed by her or not?. If it is found that she was appointed on 01.06.2015, admittedly, on the date of the said appointment, there were 6



science teacher posts sanctioned by the department and consequently, she is entitled to get approval of such appointment. 8. On perusal of the materials placed before this Court, we find that a communication was sent by the third respondent school to the District Educational Officer, Melur, dated 31.05.2015 informing that the said D.Daisy Kirubakari retired from service on 31.05.2015 and consequently, she was relieved from service. It is claimed by the writ petitioner as well as the third respondent school that another communication was sent to the department on 22.09.2015 informing that the writ petitioner was appointed in the said sanctioned vacancy post. The department disputed that no such communication was ever sent. Even otherwise, it is admitted by the department that the school has sent a communication to the District Educational Officer, Melur, dated 01.06.2016, informing that the writ petitioner was appointed on 01.06.2015 in the sanctioned vacancy created due to the retirement of the said D.Daisy Kirubakari. The said communication dated 01.06.2016 is found in the original file submitted by the respondents. Therefore, it is evident that in the very said communication dated 01.06.2016, it is claimed by the third respondent school that the writ petitioner was appointed on 01.06.2015 itself. The above claim of the third respondent school with regard to the date of appointment of the writ petitioner is further supported by the entries made in the attendance register during the relevant period. Perusal of the attendance register would show that the writ petitioner, who was appointed from 01.06.2015, has signed attendance register from the date of her appointment. It is pertinent to note that the said attendance register was endorsed by the Chief Educational Officer on 23.06.2015. Needless to state there is a presumption that the inspecting authority, namely, Chief Educational Officer, who made such endorsement in the attendance register on 23.06.2015, is satisfied with the entries made therein and its genuineness. Therefore, it is evident that the writ petitioner was appointed on 01.06.2015 and she is also continuously signing the attendance from the said date onwards. This overwhelming evidence proves the case of the writ petitioner that her appointment was made on 01.06.2015, on which day, the third respondent school was sanctioned with six science teacher posts, out of which, one teacher retired and that the writ petitioner was appointed only in that sanctioned retirement vacancy. Therefore, we find that subsequent reduction of staff strength for the academic year 2015-2016, made on 30.10.2015, will not disentitle the writ petitioner from getting her appointment approved, as we found that her very appointment was made on 01.06.2015 much earlier to the staff fixation done for the academic year 2015-2016. Unfortunately, the Writ Court has failed to consider this aspect, which has resulted in dismissing the writ petition.

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

9. Accordingly, we find that the writ petitioner is entitled to succeed in the writ petition. Thus, the Writ Appeal is allowed



and the order of the learned Single Judge is set aside. Consequently, the Writ Petition is allowed. The official respondents are directed to approve the appointment of the writ petitioner/appellant and pay her all the monetary benefits from the date of her appointment, namely, 01.06.2015, within a period of eight weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (AE)

// True Copy //

Sub Assistant Registrar(CS)

skn

To

1.The Chief Educational Officer,
Madurai.

2.The District Educational Officer,
Melur,
Madurai District.

+1cc to M/S SPECIAL GOVERNMENT PLEADER, Sr.No. 72424

+1 CC TO Mr.V.PANNEER SELVAM, Advocate, Sr.No. 72515

Judgment made in

W.A. (MD) No.570 of 2019

and

CMP (MD) No.4715 of 2019

28.06.2019

BUC(12.07.2019) 5P 5C