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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED:04.04.2019

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THE HONOURABLE MR.JUSTICE R.MAHADEVAN

W.P(MD)No.7241 of 2019

and

W.M.P.(MD)Nos.5800 & 5801 of 2019

S.Sreeja

... Petitioner

vs.

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

2.The Chief Educational Officer,
Nagercoil, Kanyakumari District.

3.The District Educational Officer,
Thuckalay, Kanyakumari District.

4.The Correspondent,
St.Maria Goretty Higher Secondary School,
Manalickarai, Kanyakumari District.

... Respondents

PRAYER:Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the records relating to the impugned proceedings issued by the second respondent-CEO in Mu.Mu.No.506/A1/2019, dated 03/02/2009 (insofar as the condition Nos.3 and 4 therein) and the consequential proceedings issued by the third respondent-DEO in Ne.Mu.No.12379/A1/2008, dated 25.02.2009 (insofar as approving the appointment of the petitioner as BT Assistant in science w.e.f. 04.07.2008) and the proceedings of the third respondent-DEO in Oo.Mu.No.1133/A2/2019, dated 08.03.2019, quash the same and further direct the respondents 2 and 3 herein to approve forthwith the appointment of the petitioner as BT Assistant in Science in the fourth respondent school w.e.f. the date of her appointment i.e.04.06.2007 and disburse grant-in-aid towards her salary and other attendant benefits.

For Petitioner : Mr.T.Cibi Chakraborty

For Respondents : Mrs.S.Srimathy
Special Government Pleader
for R1 to R3

**ORDER**

The Writ Petition is filed seeking to quash the impugned proceedings, issued by the second respondent-CEO, in Mu.Mu.No.506/A1/2019, dated 03/02/2009 (insofar as the conditions Nos.3 and 4 therein) and the consequential proceedings issued by the third respondent-DEO, in Ne.Mu.No.12379/A1/2008, dated 25.02.2009 (insofar as approving the appointment of the petitioner as BT Assistant in science w.e.f. 04.07.2008) and the proceedings of the third respondent-DEO, in Oo.Mu.No.1133/A2/2019, dated 08.03.2019 and further direct the respondents 2 and 3 herein to approve forthwith the appointment of the petitioner as BT Assistant in Science in the fourth respondent school w.e.f. the date of her appointment i.e.04.06.2007 and disburse grant-in-aid towards her salary and other attendant benefits.

2. Heard the learned Counsel appearing for the petitioner and the learned Special Government Pleader appearing for the respondents and perused the materials available on record.

3. The learned Counsel appearing for the petitioner submitted that the issue involved herein is covered by the order of this Court dated 04.07.2014, in W.P.(MD)No.14875 of 2010, wherein it is held as follows:

"8. This Court, in *The Manager, RC Schools, Salem Diocese Society (Salem-Namakal Districts, Mary Palace, 63, Thammannan Road, Salem - 636 009 v. The State of Tamil Nadu and others* [W.P.No.19902 of 2008, decided on 30.04.2009], held as follows:

"2. A similar issue came up before this Court, which is reported in 2005-WLR-515 (M.Sivakumar Vs. The Government of Tamil Nadu by Secretary, Education Department, Fort St. George, Chennai - 9 and two others, in which paragraph 7 is relevant and the same is extracted as under:-

"7. A careful perusal of the impugned orders would show that no reasons have been assigned by the Respondents to order salary for the Petitioner only from 28.3.1996 when the Management has very clearly stated that he joined duty as P.G. Assistant History on 25.10.1993 itself and is serving in the said capacity till date. But, neither the second Respondent in his order dated 28.3.1996 nor the third Respondent in his order dated 18.3.1997 have considered this aspect so as to grant the approval as it has been sought for on the part of the Management nor any reason has been assigned for denying the salary to the Petitioner from 25.10.1993 to 27.3.1996



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and granting the same only from 28.3.1996 in spite of the specific case of the school authorities that on the retirement of the erstwhile Headmaster Mr.S.Krishnamoorthy, who was also taking History classes for the Higher Secondary Sections, there was virtually no teacher to take the History Classes in the school and hence the Petitioner who was a M.A.(History), B.Ed. candidate was appointed to cater to the needs of the school. Therefore, both the orders passed by the Respondents 2 and 3, since being inconsistent ones, this Court has to cause its interference into the same and quash the same and grant the relief as sought for on the part of the Petitioner and hence the following order:

In result,

(i) the above Writ Petition succeeds and the same is allowed.

(ii) The order of the second Respondent dated 28.3.1996 made in his K.Dis.No.47458/W6/95 and the consequential order of the third Respondent passed in his Na.Ka.No.1516/95/A1, dated 18.3.1997 are quashed.

(iii) The respondents 2 and 3 are hereby directed to issue necessary orders granting approval of the Petitioner's appointment as P.G. Assistant (History) in Sri Kayilai Subramani Desiga Swamigal Higher Secondary School, Tirupanandal, Thanjavur District w.e.f. 25.10.1993 i.e. from the date of his appointment in the school, within sixty days from the date of receipt of a copy of this order. However, in the circumstances of the case, there shall be no order as to costs."

3. It is also not explained by the Respondents as to why they refused to approve the said conversion with effect from 3.9.2003, despite the admitted fact that the said teacher was appointed to the said post on that date.

4. In view of the said reasons and following the said judgement, this impugned order is set aside, in so far as the same is adverse to the Petitioner is concerned and accordingly, this Writ Petition is ordered, directing the Respondents to disburse the arrears of salary to the concerned teacher within a period of twelve weeks from the date of receipt of a copy of this order. No costs. Consequently, the



connected MPs are closed."

Admittedly, the above said judgment was upheld by the Division Bench of this Court in W.A.No.2058 of 2010, decided on 21.03.2011.

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9. A reading of the aforesaid judgment of this Court would show that the case of the petitioner is squarely covered by the said judgment and the relief as prayed for by the petitioner, could be granted to her. Hence, the impugned order passed by the third respondent in Mu.Mu.No.11568/Aa1/2008, dated 09.03.2009, is liable to be set aside and the same is set aside.

10. Accordingly, this writ petition is allowed in terms of the aforesaid judgment of this Court and the third respondent is directed to pass appropriate orders on the claim of the petitioner within a period of six weeks from the date of receipt of a copy of this order. Consequently, the connected miscellaneous petition is closed. No costs."

4. The learned Counsel for the petitioner prayed for a similar direction in this writ petition also and the learned Special Government Pleader appearing for the respondents has no serious objection towards the same.

5. Taking into consideration the above said decision and also considering the submissions made by the learned Counsel on either side, the impugned orders passed by the respondents are set aside. The second respondent is directed to pass appropriate orders on the claim of the petitioner within a period of six weeks from the date of receipt of a copy of this order.

6. The Writ Petition stands allowed as indicated above. No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (Records)

// True Copy //

Sub Assistant Registrar (CS)

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To

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



2.The Chief Educational Officer,
Nagercoil, Kanyakumari District.

3.The District Educational Officer,
Thuckalay, Kanyakumari District.

4.The Correspondent,
St.Maria Goretty Higher Secondary School,
Manalickarai, Kanyakumari District.

+1CC TO MR.T.CIBI CHAKRABORTHY, Advocate Sr. No.59205

+1CC TO THE SPECIAL GOVERNMENT PLEADER SR.No.59287

W.P(MD)No.7241 of 2019
and

W.M.P.(MD)Nos.5800 & 5801 of 2019
04.04.2019

MR(CO)

TR (23.05.2019) 5P 7C