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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 14.03.2019

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THE HONOURABLE MR.JUSTICE R.MAHADEVAN

W.P(MD)No.14474 of 2015
and
M.P(MD)Nos.1 & 2 of 2015

M.Rexlin Selvam ... Petitioner

Vs.

1.The State of Tamil Nadu,
Represented 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,
Madurai, Madurai District – 625 002.

4.The District Educational Officer,
Madurai, Madurai District – 625 002.

5.The Correspondent,
Sourashtra Co-Educational Higher Secondary School,
Madurai – 625 009,
Madurai District. ... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, to issue a writ of Certiorarified Mandamus to call for the records relating to the impugned proceedings issued by the fourth respondent, District Educational Officer, in R.C.No.11116/A4/2008, dated 20.01.2009 insofar as approving her appointment as BT Assistant in Science with effect from 04.12.2008 (the date of permission for conversion of post granted by the CEO) and his consequential proceedings in Na.Ka.No.1294/A1/2015, dated 10.07.2015 and quash the same and further, direct the third and fourth respondents to approve forthwith the appointment of the petitioner as BT Assistant (Science) with effect from the date of appointment ie., 11.07.2007 in the fifth respondent School namely Sourashtra Co-Educational Higher Secondary School, Madurai and disburse the grant-in-aid towards her salary and other attendant benefits.

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For Petitioner : Mr.T.Cibi Chakraborthy

For RR 1 to 4 : Mrs.S.Srimathy,
Special Government Pleader.

For R – 5 : Mr.H.Thayumanasamy

ORDER

This writ petition has been filed seeking a writ of Certiorarified Mandamus to quash the impugned proceedings issued by the fourth respondent, dated 20.01.2009 and the consequential proceedings, dated 10.07.2015 and further, directing the third and fourth respondents to approve forthwith the appointment of the petitioner as BT Assistant (Science) with effect from the date of her appointment ie., on 11.07.2007 in the fifth respondent School namely Sourashtra Co-Educational Higher Secondary School, Madurai and disburse the grant-in-aid towards her salary and other attendant benefits.

2.It is the case of the petitioner that she is working as B.T. Assistant in the fifth respondent school, which is recognised as aided Minority Institution. According to the petitioner, the actual date of her appointment was on 11.07.2007. However, the fourth respondent, vide proceedings, dated 20.01.2009 and 10.07.2015, approved the appointment of the petitioner as B.T Assistant (Science) with effect from the date of permission granted by the Chief Educational Officer, ie., on 04.12.2008. Challenging the same, the petitioner has filed the present Writ Petition.

3.Upon instructions, the fourth respondent has filed a counter affidavit denying the allegations made by the petitioner and opposed the writ petition as not maintainable and therefore, prayed for the dismissal of the writ petition.

4.The learned Counsel for the petitioner submitted that the case of the petitioner is covered by the order of 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], which was subsequently, upheld by the Division Bench of this Court in W.A.No.2058 of 2010, decided on 21.03.2011. Hence, he prayed for the similar relief to this petitioner also.

5.Per contra, the learned Special Government Pleader appearing for the respondents 1 to 4 contended that the orders impugned herein have been passed by the fourth respondent, after taking into account all the relevant Government Orders and since the petitioner has been appointed as BT Assistant (Science) on 04.12.2008, she cannot claim any benefits prior to that date.

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6.I have considered the submissions made on either side and perused the materials available on record.

7.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 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

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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."

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

9.This Court is the view that the case of the petitioner is squarely covered by the aforesaid order, as she is a similarly placed person like that of the petitioner therein. Hence, the impugned orders passed by the fourth respondent are liable to be set aside and the same are set aside.

10.Accordingly, this writ petition is allowed and the fourth respondent is directed to pass appropriate orders, with regard to the claim of the petitioner, within a period of six weeks from the date of receipt of a copy of this order. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar

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Sub Assistant Registrar

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To

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

3.The Chief Educational Officer,
Madurai, Madurai District – 625 002.

4.The District Educational Officer,
Madurai, Madurai District – 625 002.

5.The Correspondent,
Sourashtra Co-Educational Higher Secondary School,
Madurai – 625 009,
Madurai District.

+1CC TO M/S.ISSAC CHAMBERS, Advocate, Sr No.54231
+1CC TO SPECIAL GOVERNMENT PLEADER, SR NO.54291

W.P(MD)No.14474 of 2015
14.03.2019

ps
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