



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 10.09.2019

CORAM:

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM
and
THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY

W.A(MD).No.928 of 2019
and
C.M.P(MD).No.8336 of 2019

1. The Director of Elementary Education,
Nungambakkam,
Chennai-600 006.
2. The District Elementary Educational Officer,
Madurai, Madurai District.
3. The Assistant Elementary Educational Officer,
North Madurai,
Madurai District. ... Appellants/Respondents

Vs.

1. Fathima Jeyarani,
Headmistress,
Fathima Middle School,
Kasthuribai Nagar, Madurai. ... Respondent No.1/Writ Petitioner
2. The Correspondent,
Fathima Middle School,
Kasthuribai Nagar,
Madurai-625 016,
Madurai District. ... Respondent/Petitioner No.4

PRAYER: Appeal is filed under Clause 15 of the Letters Patent, to set aside the order dated 27.02.2019 passed in W.P(MD).No.9357 of 2018 and dismiss the writ petition.

Prayer in WP(MD). 9357/ 2018 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Certiorarified Mandamus calling for the records relating to the impugned proceedings issued by the 2nd respondent District Elementary Educational Officer in Na.Ka.No.5871/a5/2018 dated 26.02.2018 and the consequential proceedings issued by the 3rd respondent in Na.Ka.No.440/2018 dated 28.02.2018 quash the same and further direct the respondents 1 to 3 to allow re-employment to the petitioner as Headmistress of the 4th respondent school from



01.08.2017 till the end of the academy year 2017-2018 to till 31.05.2018 and disburse the grant-in-aid towards the petitioner's salary including all attendant benefits.

For Appellants : Mrs.S.Srimathy
Special Government Pleader

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JUDGMENT

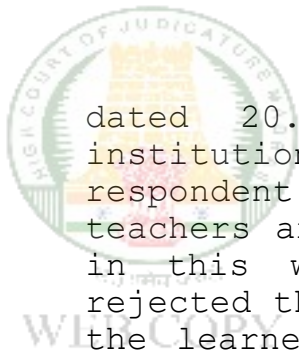
(Judgment of this Court was made by **T.S.SIVAGNANAM, J.**)

We have heard Mrs.S.Srimathy, learned Special Government Pleader appearing for the appellants. In the light of the orders, we propose to pass order in the main appeal and we dispense with notice to the respondents.

2.This appeal filed by the Director of Elementary Education and two others is directed against the order in W.P(MD).No.9357 of 2018 dated 27.02.2019. The first respondent herein, who was the Headmistress of a Middle School, Aided Minority institution, filed the writ petition to quash the order passed by the second appellant dated 26.02.2018 and the consequential proceedings of the third appellant, dated 28.02.2018 and disburse the grant-in-aid for the period of re-employment of the first respondent/writ petitioner in the second respondent School from 01.08.2017 till the end of the academic year 2017-2018 i.e., 31.05.2018. The writ petition was allowed by the impugned order, dated 27.02.2019. The learned counsel for the first respondent/writ petitioner placed reliance on the decision of this Court in ***S.Lorudumary Vs., The District Elementary Educational Officer, Sivagangai, Sivagangai District and 2 others (W.P(MD).No.13813 of 2013, decided on 19.03.2018)*** and the judgment of the Division Bench in W.A(MD).No.127 of 2010 dated 10.01.2011.

3.Taking note of these decisions, the Writ Court opined that the order passed by the second appellant rejecting the claim of the first respondent/writ petitioner is not sustainable.

4.Mrs.S.Srimathy, learned Special Government Pleader appearing for the appellants contended that the first respondent/ writ petitioner has not challenged her relieving order and the direction issued to her to handover charge, but she has challenged the order dated 25.07.2017 and in the writ petition filed by her earlier in W.P(MD).No.22812 of 2017, though she prayed for quashing the orders dated 31.07.2017, 04.10.2017 and 20.10.2017, the Writ Court only directed the representation of the first respondent/writ petitioner to be considered. This was considered in accordance with the prevailing Government Order and has been rejected. It is the further submission of the learned Special Government Pleader that in terms of G.O.Ms.No.261, School Education (Pa.Ka.5(5)) Department,



dated 20.12.2018, such re-employment is not permissible in institutions, where there are surplus Teachers and the second respondent institution is one such School, where there are surplus teachers and the second appellant, while passing the order impugned in this writ petition, applied the said Government Order and rejected the case of the first respondent/writ petitioner. Further, the learned counsel pointed out that in the State of Tamil Nadu, there are large number of surplus teachers in Elementary Education Department to the tune of 1079 and 5200 surplus teachers in the School Education Department and there is a severe drain on the Government exchequer and the Government is spending a sum of Rs.444/- crores per annum under this head. Further, it is submitted that there are several decisions of the Division Bench of this Court, wherein it has been held that there is no right to seek for re-employment and teacher, who has attained the age of retirement, cannot compel the Government that he/she should be granted re-employment. Further, it is submitted that an anomalous situation had occurred in the second respondent School, wherein two Headmistress i.e., the first respondent/writ petitioner and another. It is submitted that the order issued in this writ petition should be interfered in this appeal.

5. After we have elaborately heard the learned Special Government Pleader and carefully considered the materials placed on record, we are of the definite opinion that the appeal filed by the department is devoid on merits. In support of our conclusion we assign the following reasons.

6. A technical plea has been raised by the appellants in this appeal that the first respondent/writ petitioner had not challenged the order dated 25.07.2017, by which, she was directed to handover charge and in the writ petition filed earlier, a direction was issued only to consider the representation and it has been considered and rejected. Therefore, the appellants seek non-suit the first respondent/writ petitioner on the technical ground that the orders not permitting the first respondent/writ petitioner to continue as Headmistress had not been questioned. We do not accept the said submission, because the prayer sought for in the earlier writ petition was to quash the orders dated 31.07.2017, 04.10.2017 and 20.10.2017. Though the first respondent/writ petitioner prayed for larger relief, the Writ Court had granted only a limited relief by directing the authority to dispose of her representation. This order and direction has been complied with by the second appellant and he has passed an order dated 26.02.2018, which was impugned in the writ petition. Since the said writ petition was allowed, as against which, the present appeal has been filed, the technical ground raised by the appellants does not merit reconsideration. With regard to the applicability of G.O.Ms.No.261, School Education (Pa.Ka.5(5)) Department, dated 20.12.2018 is concerned, the appellants would admit that they had taken a decision not to permit the first respondent/writ petitioner to continue till the end of the



academic year considering the prevalent situation. However, the Government Order imposing such of conditions came to be passed much after the first respondent/writ petitioner attaining the age of retirement and the Government Order was subsequent to the filing of the earlier writ petition by the first respondent/writ petitioner. Therefore, in our considered view, the same cannot be put against the first respondent/writ petitioner to deny her entitlement.

7.The learned Special Government Pleader is right in her submission that no teacher can claim re-employment as a matter of right or in other words, there is no vested right for a teacher to claim re-employment till the end of the academic year. However, it a practice, which has been followed by the Educational Department in the State of Tamil Nadu from time imemorial to continue the services of a teacher till the end of the academic year bearing in mind the interest and welfare of the students. Re-employment was denied, where a teacher suffers delinquencies, lost the confidence of the management, the teachers and the students etc. The reason assigned by the second appellant/second respondent in the order impugned in this writ petition, is absolutely not justified and that could not have a reason to deny re-employment.

8.For the above reasons, we find the appellants has not made out any ground to interfere with the order and direction issued in the writ petition. Accordingly, the writ appeal fails and the same is dismissed. The Writ Court directed the respondents for disbursement of salary to the first respondent/writ petitioner for the period of re-employment, within a period of twelve weeks from the date of receipt of a copy of the order of the writ petition. The time stipulated by the Writ Court is extended from the date of receipt of a copy of the judgment of this Writ Appeal. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (writs)

// True Copy //

Sub Assistant Registrar(CS)

To

1. The Director of Elementary Education,
Nungambakkam,
Chennai-600 006.
2. The District Elementary Educational Officer,
Madurai, Madurai District.



3. The Assistant Elementary Educational Officer,
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