



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 14.08.2019

CORAM

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THE HONOURABLE MR.JUSTICE **S.M.SUBRAMANIAM**

W.P. (MD)No.14618 of 2014

and

M.P. (MD)No.2 of 2014

S.S.Syed Mohammed Buhari

... Petitioner

-Vs-

1.The State of Tamil Nadu,
represented by its Secretary to Government,
Education Department,
Fort St.George, Chennai - 600 009.

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

3.The District Educational Officer,
Tirunelveli Educational District,
Tirunelveli, Tirunelveli District.

4.The Correspondent,
The Muslim Higher Secondary School,
Melapalayam,
Tirunelveli District- 627 005.

...Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the records relating to the order passed by the third respondent, dated 08.08.2012 in his OO.Mu.No.2803/A5/2012 and quash the same and to direct the respondents 1 to 3 to pay the salary for the period from 31.03.1998 to 01.06.2003 to the petitioner and to pay the other benefits, namely, Selection Grade, etc.

For Petitioner : Mr.K.Vadivelu

For R1 to R3 : Mrs.S.Srimathy

Special Government Pleader

For R4 :No Appearance



ORDER

The order passed by the third respondent in proceedings dated 08.08.2012, in respect of the rejection of the petitioner's claim in payment of salary with effect from the date of his appointment, is under challenge in this writ petition.

2.The learned counsel appearing on behalf of the writ petitioner states that he was initially appointed as Secondary Grade Teacher on 31.03.1998 with the fourth respondent-School, which is an Aided School.

3.The grievance of the writ petitioner is that the approval was granted by the authority competent on 17.12.2003. However, the arrears of salary due to the writ petitioner from the date of his appointment has not been paid. The representation submitted by the writ petitioner in this regard was rejected by the third respondent in proceedings dated 08.08.2012 stating that the order passed by this Court in W.P.No.28647 of 2015, dated 11.09.2015 is not applicable to the writ petitioner. However, the matter went by way of an appeal before the Hon'ble Division Bench passed an order in W.A.(MD)Nos.74 of 2015 and 957 of 2016 on 21.03.2018. The relevant portion of the Judgment is extracted hereunder:-

"10.The learned counsel for the respondents/writ petitioners relied on certain other orders passed by various Single Benches including one of us (TSSJ) and on perusal of the same, we find that in none of those decisions, the full effect of G.O.Ms.No.155 and the conditions therein have been thoroughly examined. Apart from that, the decision in the case of Pallivasal Primary School has not been specifically noted. Therefore, we are of the considered view, that those decisions cannot be referred to advance the case of the respondents/writ petitioners, though some of them have attained finality. Needless to state that if there has been a wrong decision, it cannot be treated as precedent.

11.In the light of the above reasoning, we are of the considered view that the order passed by the Writ Court directing disbursement of salary from the date of original appointment, cannot be sustained, in the light of explicit condition imposed in G.O.Ms.No.155, which was upheld by the Division Bench in a Public Interest Litigation. Thus, for the above reasons, the writ appeals filed

by the respondent department has to be allowed.



12.The learned counsel for the respondents submitted that though there were about 3000 Teachers who were appointed in such improper manner as of now 300 Teachers would be entitled to monetary benefits and as remaining persons were already paid and they were protected by the Division Bench order from the effect of recovery, the learned counsel submitted that the respondent should be permitted to approach the Government by way of representation.

13.We make no positive observation on this request. But it is always open to the respondents/writ petitioner to approach the Government, if they so desire. For the above reasons the writ appeals are allowed and the impugned orders are set aside and consequently, the writ petitions are dismissed. No costs. Consequently, M.P. (MD)Nos.1 and 2 of 2015 and C.M.P. (MD)No.5749 of 2016 are closed."

4.In view of the Judgment of the Hon'ble Division Bench, cited supra, the case of the writ petitioner is to be reconsidered with reference to the facts and circumstances. Accordingly, the second respondent is directed to reconsider the case of the writ petitioner in the light of the judgment, cited supra, and pass orders on merits and in accordance with law, within a period of twelve weeks from the date of receipt of a copy of this order. The writ petitioner is permitted to submit a fresh representation and all other relevant documents along with the order passed in this writ petition.

5.Accordingly, the writ petition stands disposed of. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (AS)

// True Copy //

Sub Assistant Registrar (CS)

To

1.The Secretary to Government,
The State of Tamil Nadu,
Education Department,

Fort St. George, Chennai - 600 009.

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



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

3.The District Educational Officer,
Tirunelveli Educational District,
Tirunelveli, Tirunelveli District.

+1 CC to M/s.A.S.MUJIBUR RAHMAN, Advocate (SR-81896[F] dated
16/08/2019)

+1 CC to M/s.SPL GP (SR-82011[F] dated 16/08/2019)

CMR

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14.08.2019

KM/ (03.09.2019) 4P 6C