



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 09.09.2019

CORAM:

THE HONOURABLE MR.JUSTICE S.S. SUNDAR

W.P.(MD).No.7686 of 2014

WEB COPY

T.Jegathambal

.. Petitioner

Vs.

1.The Director,
Tamil Nadu Elementary School Education,
Chennai - 6.

2.The District Elementary Educational Officer,
O/o. District Elementary Educational Officer,
Virudhunagar.

3.The District Educational Officer,
Virudhunagar.

.. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, for the issuance of Writ of Certiorarified Mandamus, calling for the records relating to the impugned order, dated 21.03.2012 in Na.Ka.No.2845/Aa4/2012 passed by the 2nd respondent and quash the same and consequently direct the respondents to sanction and pay the arrears of salary to the petitioner with effect from 01.08.1989 to 07.07.1993 with interest @ 18% without insisting the condition imposed in the impugned order.

For Petitioner : Mr.S.Jawahar

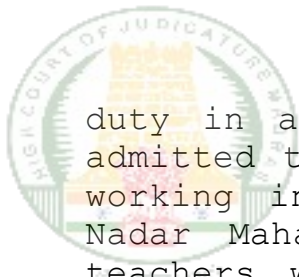
For Respondents : Mr.N.Shanmuga Selvam

Additional Government Pleader

ORDER

This writ petition has been filed for issuance of writ of Certiorarified Mandamus, calling for the records relating to the impugned order, dated 21.03.2012 in Na.Ka.No.2845/Aa4/2012 passed by the 2nd respondent and quash the same and consequently direct the respondents to sanction and pay the arrears of salary to the petitioner with effect from 01.08.1989 to 07.07.1993 with interest at the rate of 18% without insisting the condition imposed in the impugned order.

2.The petitioner was working as a Headmistress of private aided school known as SBM School, Kandiyapuram, from 01.09.1967 to 07.07.1993. It is stated that due to some internal issues, the private school did not function and it is admitted that the school itself was closed on 14.09.1992. Later, it was admitted that the petitioner and another teacher working in the closed school joined



duty in another school as directed by the respondents. It is admitted that a teacher by name A.Saral Santhaseeli who was also working in the SBM school joined in service in Elayirampannai Nadar Mahamai Primary School on 19.10.1992. Since, both the teachers were transferred by same order, the respondents would submit that the petitioner is not entitled to claim salary from the respondents for the period from 19.10.1992 to 07.07.1993.

3.It is stated that the petitioner made a claim before the respondents to pay the arrears of salary due to her, with effect from 01.08.1989 to 07.07.1993. Though it is admitted that the petitioner was working in the school till its closure, the respondent would contend that the petitioner is entitled to salary for the period only if the respondents receive the proposal from the management of the school in which she was working.

4.Going by the admitted facts, it is seen that the school was closed due to some internal problems, in July 1992 and the petitioner and the other teacher were deployed in some other school only after the school was closed by communication, dated 14.09.1992. It is admitted that thereafter the two sanctioned posts in the erst while SBM school were transferred to Elayirampannai Nadar Mahamai Primary School, in which the petitioner joined duty on 07.07.1993. This Court is unable to accept the stand taken by the respondent that the teacher would be entitled to claim salary for the period from 01.08.1989 only if they get the proposal forwarded from the erst while management. It is admitted that the school was closed subsequently and the status of the SBM management is not known. Since it is stated that the school came to be closed in view of the internal dispute in the Educational Agency, this court is of the view that it is highly inappropriate to expect the petitioner to get the proposal forwarded by the erstwhile Educational Agency or School Committee for the purpose of disbursement of salary to the petitioner for the period from 01.08.1989.

5.Though the petitioner is entitled to claim salary for the period from 01.08.1989 to 18.10.1992, the further question arises in this case is that whether the petitioner is entitled to claim salary for the period from 19.10.1992 to 07.07.1993. It is admitted that the other teacher by name A.Saral Santhaseeli joined in Elayirampannai Nadar Mahamai Primary School on 19.10.1992, while the petitioner joined only on 07.07.1993. Therefore, though the respondents are liable to pay the salary for the period from 01.08.1989 to 18.10.1992, the liability can be fastened on the Department for the further period only if the petitioner explain or give valid reasons for the delay in joining the new school. In this case, in the affidavit filed by the petitioner, she has not stated about the communication by which the petitioner was asked



to join in the other school. In the counter affidavit filed by the respondent, they have specifically stated that the petitioner purposely avoided joining in the other school and that she only joined in the new school on 07.07.1993. It is not the case of the petitioner that she was teaching students even after the closure of school in August 1992.

6.The learned counsel appearing for the respondent would submit that the writ petition is liable to be dismissed on the grounds of delay and laches. In the present case, it is not out of place to mention that the petitioner has made several representations one after another right from the year 1993. Even earlier, a writ petition came to be filed in W.P.(MD).No.3627 of 2007. This Court allowed the writ petition without going into the merits of the case and directed the petitioner to submit a fresh representation to the respondent within a period of two weeks from the date of receipt of a copy of the order. Order was passed by this Court on 30.01.2012. The representation was given by the petitioner on 27.02.2012. Since the representation of the petitioner was rejected, with the request to the petitioner to submit the proposal through the erstwhile management, the present writ petition is filed challenging the order dated 21.03.2012. It is unfair in the factual circumstances to plead delay to non suit the petitioner. The plea of laches can be considered only in a case where the respondent is likely to suffer any inconvenience of prejudice on account of such delay. In the present case, the issue is about the salary of the petitioner, for the period during which the petitioner was in service. Hence, serious prejudice is caused only to the petitioner and the delay cannot be cited as a reason to dismiss the writ petition. On account of the delay on the part of the respondent, this Court is justified in awarding interest for the delay in payment.

7.Accordingly, the writ petition is partly allowed and the impugned order, passed by the 2nd respondent, dated 21.03.2012, is quashed. The respondents are directed to pay the arrears of salary to the petitioner calculating for the period from 01.08.1989 to 18.10.1992 with interest at the rate of 6% without any condition to get the proposal forwarded through the erst while management or some thing the petitioner could not comply with in view of the lapse of time. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-I)

// True Copy //

Sub Assistant Registrar (CS)



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To

- 1.The Director,
Tamil Nadu Elementary School Education,
Chennai - 6.
- 2.The District Elementary Educational Officer,
O/o. District Elementary Educational Officer,
Virudhunagar.
- 3.The District Educational Officer,
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