



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 23.07.2019

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P[MD]No.9758 of 2014

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V.Lazer

... Petitioner

Vs.

- 1.The District Elementary Educational Officer,
Nagercoil,
Kanyakumari District.
- 2.The Assistant Elementary Educational Officer,
Nagercoil,
Kanyakumari District.
- 3.The Secretary,
Kanyakumari C.S.I. Diocese,
Nagercoil,
Kanyakumari District.
- 4.The Corporate Manager,
CSI Corporate Schools,
Kanyakumari C.S.I. Diocese,
Nagercoil,
Kanyakumari District.
- 5.The Correspondent,
C.S.I. Middle School,
Corrimony,
Kanyakumari District.
- 6.The Secretary to Government,
School Education Department,
Fort St. George,
Chennai.

... Respondents

[R6 is Suo Motu impleaded by order dated 23.07.2019]

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Mandamus, directing the respondents to pay the salary of the petitioner for his service at the fifth respondent school for a period from the date of appointment ie., 12.10.2009 to the date of approval ie., 14.06.2011.



For Petitioner : Mr.K.Samidurai
For Respondents 1&2 : Mrs.S.Srimathy
Special Government Pleader
For Respondents 3&5 : No appearance
For Respondent No.4 : Mr.P.Muthuvelan
for M/s.Isaac Chambers

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O R D E R

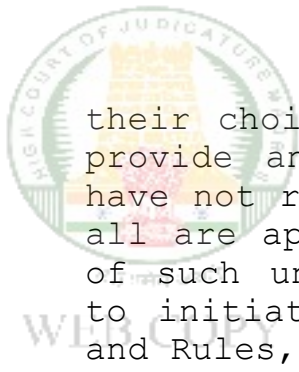
The relief sought for in the present writ petition is for a direction to direct the respondents to pay the salary of the writ petitioner for the services rendered by him in the fifth respondent school for the period from 12.10.2010 till the date of approval ie., 14.06.2011.

2.The admitted facts are that the writ petitioner was appointed as Junior Grade B.T.Assistant on temporary basis in a non-sanctioned post on 12.10.2009.

3.The writ petitioner was serving in the school continuously and subsequently the vacancy arises and accordingly, the appointment of the writ petitioner was approved by the competent educational authorities with effect from 14.06.2011, in another school. However, the petitioner claims that the salary for the period in which he worked in fifth respondent school from 12.10.2009 to 14.06.2011 has not been paid. Thus, the petitioner is constrained to move the present writ petition.

4.Any employer extracting work from the employees without payment of salary is nothing but an exploitation. An employer is bound to pay salary as per the minimum wages principles and as applicable to the particular cadre in which such employees are working. Therefore, all such exploitations are to be condemned and all suitable actions are to be taken by the competent authorities of the State. No employer should be allowed to exploit the services of the employee under the pretext that after some years, they will get approval of appointment. Such exploitation are commonly prevailing in the State of Tamil Nadu, more specifically in Government aided schools as well as in minority schools. The school managements are either getting considerations for such appointments or not paying the salary till the approval of appointment is granted by the competent authorities.

5.Even it is brought to the notice of this Court that arrears of salary paid by education department is being shared. In this regard, this Court is of an opinion that the appointments in Government aided schools wherein the grant-in-aid is paid by the State are to be monitored and regulated. Undoubtedly, the minority institutions are empowered to appoint eligible persons as per



their choice. However, while appointing such persons, they should provide an undertaking to the educational authorities that they have not received any donations or otherwise from the Teachers who all are appointed by such managements. In the event of any breach of such undertaking, then, the educational authorities are bound to initiate appropriate actions under the provisions of the Act and Rules, even for cancellation of the recognition.

6. There is a large scale allegation that the teachers are being appointed in Government aided schools and minority institutions functioning with the assistance of grant-in-aid that they are getting huge amount for the purpose of appointing the teachers in the schools. Such corrupt activities, even for appointment of teachers are to be dealt with iron hands. There cannot be any leniency or misplaced sympathy. In this regard, the vigilance has to be pressed into service for the purpose of identifying and ascertaining the facts regarding the corrupt activities in the appointments of Government aided schools and minority institutions. The power of appointment is granted by virtue of the constitutional principles. If such a power provided under the Constitution for minority institutions are misused or suppressed, then a serious view is to be taken and those schools are to be prosecuted under the appropriate provisions of law and for even cancellation of recognition or cancellation of grant-in-aid.

7. Any school or the management involving in corrupt activities are to be declared as anti-nationals and appropriate authorities must initiate action for cancellation of recognition by conducting a detailed enquiry and if necessary through the vigilance and anti-corruption department. All these aspects are required in view of the fact that our State is filled with corrupt activities. Thus, the authorities competent are bound to show some sensitiveness in dealing with such matters where the allegations of corrupt activities are brought to the notice of the authorities. Large scale allegations are based on appointments on extraneous considerations. Sharing of arrears of salary paid after grant of approval of appointment are all to be viewed seriously and a mechanism is to be provided for the purpose of curtailing all the corrupt activities.

8. This Court is of the considered opinion that in the present case, learned Counsel appearing on behalf of the school management made a statement that the Teachers are giving undertaking that they will work without salary. Such an undertaking is in violation of the basic principles of law. Any condition imposed between the parties which is based on public policy cannot be considered as a valid contract under the Indian Contract Act. Any agreement or contract must have the terms and conditions in consonance with the

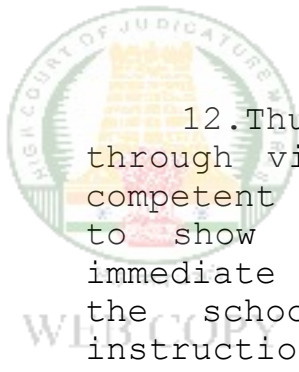


principles of law. Any agreement between the parties which runs contrary to the Statute or public policy, then all such agreement are null and void in the eye of law and the same cannot be enforced at all. Thus, any such undertaking if at all obtained from the teachers that they will work without salary is an exploitation. All such undertakings are obtained by exploiting the situation and the position of the unemployed teachers and thus, the undertakings are to be declared as null and void and accordingly non-erst.

9.Considering the facts and circumstances that the writ petitioner has given an undertaking before the management that he will not claim any salary for the period in which he worked as a management staff, this Court is of an opinion that such an agreement or undertaking is in violation of the provisions of the Indian Contract Act. Thus, the same cannot be enforced by the school management. Large scale allegations are prevailing across the State of Tamil Nadu that the private management, wherein the grant in aid is provided, the managements are abusing their power while appointing the teachers in the schools. Large scale corrupt activities are committed and the poor unemployed youths who all are aspiring to become teachers are exploited. In practical terms, the sanctioned posts are sold by these managements.

10.Such a situation deserves a drastic change and the State being a trustee, the citizens must act swiftly so as to ensure that all such corrupt activities are dealt with and all such appointments are regulated in a proper manner. If necessary, the Government has to formulate certain rules to regulate transparency in these schools. Such rules must be issued in consonance with the constitutional principles as well as based on the statutes in force.

11.The right of minorities to establish and administer educational institutions under Article 30 would not confer any right for maladministration. Thus, the right provided under the constitution must be exercised keeping in mind the corresponding duties between the Society in consonance with the principles of Constitution of India and therefore, it is for the State to ensure that all such minority institutions and Government aided institutions are appointing the teachers in consonance with the constitutional schemes and by strictly following the statutes in this regard with reference to the eligibility and other criterias. In respect of the corrupt activities, there must be a mechanism so as to initiate appropriate action against the schools in the event of any complaints that the appointments are made based on certain corrupt activities in Government aided schools and minority institutions.



12.Thus, the Government must initiate appropriate action through vigilance and anti-corruption department or through the competent authorities of the department in the event of any proof to show that such corrupt activities are established, then immediate action should be taken for cancelling the recognition of the schools and in this regard, suitable guidelines and instructions are to be issued to all the Government aided institutions, minority institutions availing the grant in aid from the Government.

13.In this regard, it is necessary to implead the Secretary to Government, School Education Department, Fort St. George, Chennai, for the limited purposes of issuing such guidelines and for the purposes of initiating action against the management in the event of committing any such corrupt activities. Mrs.S.Srimathy, learned Special Government Pleader takes notice for the impleaded sixth respondent.

14.Considering the fact that the writ petitioner was working in the fifth respondent school without salary from 12.10.2009 to 14.06.2011, the writ petitioner is entitled to get management salary for the period in which he served as a teacher. This Court is inclined to pass the following orders:

"1.The respondents 3 to 5 are directed to settle the salary as applicable to the post of B.T. Assistant to the petitioner for the period from 12.10.2009 to 14.06.2011 within a period of twelve [12] weeks from the date of receipt of a copy of this order.

2.The sixth respondent Secretary to Government, School Education Department is directed to issue guidelines / consolidated instructions for the purpose of regulating the appointments made against the sanctioned posts in Government aided institutions as well as in minority institutions where grant-in-aid is provided enabling to regulate the appointment in a transparent manner and in consonance with the constitutional principles.

3.The consolidated instructions are to be issued by the sixth respondent for the purpose of initiating actions in the event of any opinion or complaint regarding the corrupt activities in the matter of appointments in all such institutions.

4.In the event of proving the corrupt activities, or demand and acceptance of bribe by these managements, then all suitable actions are to be initiated for the purpose of cancelling the recognition of the school."



15. With the above directions, the writ petition stands disposed of. No costs.

Sd/-

Assistant Registrar (CS-II)

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// True Copy //

Sub Assistant Registrar (CS)

MR

To

1. The District Elementary Educational Officer,
Nagercoil,
Kanyakumari District.

2. The Assistant Elementary Educational Officer,
Nagercoil,
Kanyakumari District.

3. The Secretary to Government,
School Education Department,
Fort St. George,
Chennai.

+1 CC to M/s.K.SAMIDURAI, Advocate (SR-77011[F] dated
23/07/2019)

+1 CC to M/s.ISAAC CHAMBERS, Advocate (SR-77180[F] dated
24/07/2019)

+1 CC to M/s.SPL GP (SR-77309[F] dated 24/07/2019)

W. P [MD] No. 9758 of 2014
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