

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

DATED: 09.08.2019

CORAM:

WEB COPY

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM**W.P. (MD) No.3956 of 2015****and****M.P. (MD) .Nos.1 and 2 of 2015****and****W.M.P. (MD) .No.9562 of 2017**

Sr.Marcel Caroline

... Petitioner

Vs.

1.The Director of Primary School Education,
College Road, Chennai-6.

2.The District Elementary Education Officer,
Ambasamudram,
Tirunelveli District.

3.The Assistant Elementary Education Officer,
Ambasamudram,
Tirunelveli District.

... Respondents

PRAYER: Writ Petition under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records pertains to the impugned order passed by the third respondent in Na.Ka.No.01/A1/2015 dated 09.03.2015 and quash the same and further direct third respondent to approve forthwith the re-appointment of Sr.L.Lilly Pushparani, Headmistress of the petitioner school from 01.12.2014 and disburse the salary including all attendant benefits.

For Petitioners : Mr.S.Rozario Sundarraaj

For Respondents : Mrs.S.Srimathi

Special Government Pleader

ORDER

The order impugned dated 09.03.2015 rejecting the claim of the writ petitioner to grant extension of service from the date of retirement to till the end of the academic year is under challenge in the present writ petition.

2.The Correspondent of the School filed the present writ petition in order to get relief to the retired Headmistress of the School Sister L.Lilly Pushparani. The Headmistress Sister L.Lilly Pushparani has attained the age of superannuation on 30.11.2014 and she was allowed to retire from service from the post

of Headmistress. However, it is contended that as per the Government Orders, the Teachers are entitled to get extension of service, till the end of the academic year. Pursuant to the policy of the Government for grant of extension of service till the completion of academic year, the writ petitioner school also made an application to the authorities. However, the Department has not accorded any such approval for extension of service.

3.The learned Special Government Pleader relying on the counter affidavit filed by the respondents made a submission that the school is not entitled as the said Headmistress was treated as surplus and many number of surplus Teachers were there during the relevant point of time. Thus, the extension of service were not granted. The factual position in this regard as set out in para 6 of the counter affidavit, is extracted hereunder;

"6.Regarding the averment made in para 2,3 and 4 of the affidavit it is submitted that there are teachers are found excess in many schools under the single management of congregation of Immaculate conception as submitted below.

Sl.No.	Name of School	No.of Surplus Secondary Grade Teacher
1	R.C.Fatima Middle School, Kamaraj salai, Madurai	13
2	St.Beatrice Middle School, Old Kuyavarpalayam	14
3	R.C.Middle School, Keelavasal, Madurai.	9
4	St.Xavier Middle School, Savariarpalayam, Dindigul	5
5	St.Soosai Middle School, Mullipandi, Dindigul	3
6	St.Ceciliy Middle School, Manamadurai.	3
7	R.C.Middle School, Rayapuram	2
8	R.C.Middle School, Cheranmahadevi	1
Total		50

Due to the surplus of 50 Teachers, in one single management Government have to incur unnecessarily excess expenditure to a tune of minimum of Rs.1,29,78,000/- per year for 50 Teachers at the rate of minimum pay Rs.20,600+DA Rs.1030/- per month per teacher one Sr.L.Lilly Pushparani, headmistress of the petitioner's school namely St.Xavier's Middle School Irudayakulam attained superannuation on 30.11.2014. If Sr.Lilly Pushparani was relived on retirement on 30.11.2014, the Headmistress post could be filled by promotion on 01.12.2014 and the resultant vacancy

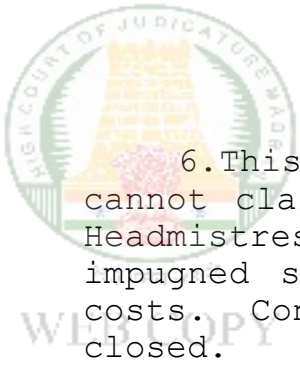


of secondary grade teacher post could be filled up by transferring one of the secondary grade teacher out of 50 surplus teachers and thus financial burden on the Government could have reduced. The petitioner has avered that Sr.L.LillyPushparani was initially appointed as secondary grade teacher and she served in various schools. Service in various schools under the same management, could be possible only when the management of the schools transfer the petitioner from one school to another. Therefore, there is no difficulty for the management of the third respondent's school to transfer surplus teachers to the eligible vacancies as and when arise. Till such transfer is completed giving reemployment to a who retired on superannuation is not permissible since it would cause continuation of surplus teacher at the cost of Government. But the reemployment of Sr.L.Lilly Pushparani after her retirement on 30.11.2014 is against the above procedure and hence, it could be approved. Therefore, the third respondent in his proceedings A.thi.mu.No.1111/A1/2014 dated 10.11.2015 rejected the proposal, seeking approval for the above reemployment stating that as there are surplus teachers in the schools under the management there is no rules to give reemployment."

Thus, the claim of the writ petitioner to grant extension of service in favour of the Sister L.Lilly Pushbarani, was rejected by the Department.

4.The extension of service is a concession. Extension of service can never be claimed as a matter of right. The scheme of extension is granted by the Government in order to facilitate the students to get the benefit of imparting education through the same Teacher till the end of the academic year. Thus, the scheme being a concession and implemented for the benefit of the students, who all are undergoing education in the schools. The benefit cannot be claimed as a matter of legal right. Once, the competent authorities of the department accorded permission to continue in service till the end of the academic year, then alone the Teacher is entitled to get salary and not otherwise. If at all the writ petitioner Management allowed the Teacher to continue without permission of the Education Department, then the Management has to pay the salary for the period in which the Teachers served without any approval or permission from the Education Department.

5.The learned counsel for the writ petitioner states that the Headmistress was allowed to continue till the end of the academic year. In those circumstances, the writ petitioner Management has to pay salary to the Headmistress to continue beyond his date of retirement till the end of academic year. However, the Government services cannot be paid, in the absence of any such specific permission or approval from the competent authority of the Education Department.



6.This being the principles, the writ petitioner Management cannot claim any salary for the period of service rendered by the Headmistress beyond the date of retirement. Accordingly, the order impugned stands confirmed and the writ petition is dismissed. No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar

// True Copy //

Sub Assistant Registrar(CS)

To

1. The Director of Primary School Education,
College Road, Chennai-6.
2. The District Elementary Education Officer,
Ambasamudram,
Tirunelveli District.
3. The Assistant Elementary Education Officer,
Ambasamudram,
Tirunelveli District.

+1 CC to Mr.ROZARIO SUNDARRAJ, Advocate (SR-81024[F] dated 09/08/2019)

+1 CC to SPL GP (SR-81332[F] dated 13/08/2019)

W.P. (MD) No.3956 of 2015

and

M.P. (MD) .Nos.1 and 2 of 2015

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