



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 31.10.2019
CORAM:

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM
and
THE HONOURABLE MRS.JUSTICE R.THARANI

W.A.(MD) No.1013 of 2019
and
C.M.P.(MD) No.9300 of 2019

S.Subbulakshmi

... Appellant/Petitioner

-vs-

1. The State of Tamil Nadu
rep.by its Secretary to Government
Department of School Education
Ft. St.George
Chennai-600 009

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

3. The District Chief Educational Officer
Sivagangai District
Sivagangai

4. The District Educational Officer
Sivagangai

5. The Head Master
Government High School
Ladanendal, Sivagangai District

... Respondents/Respondents

Writ Appeal filed under Clause 15 of Letters Patent to set aside the order, dated 14.08.2019, passed in W.P.(MD) No.15159 of 2019, on the file of this Court.

Prayer in WP(MD). 15159/ 2019 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a writ of Certiorarified Mandamus to call for the records relating to the order passed by the 3rd respondent in O.M.No.3992/E3/2019 dated 30.06.2019 and quash the same and to direct the respondents to permit the petitioner to work till 31.05.2020 by making reappointment and pay the salary to the petitioner.



For Appellant : Mr.M.MD.Ibrahim Ali
For Respondents : Ms.S.Srimathy
Special Government Pleader

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J U D G M E N T

[Judgment of the Court was made by T.S.SIVAGNANAM, J.]

This writ appeal by the writ petitioner is directed against the order dated 14.08.2019, passed in W.P.(MD) No.15159 of 2019.

2. The said writ petition was filed by the appellant challenging the order, dated 30.06.2019, passed by the District Chief Educational Officer, Sivagangai District / third respondent, by which the appellant, who had attained the age of superannuation and retired from service on 30.06.2019 was not permitted to function till the end of the academic year i.e. 31.05.2020.

3. The appellant cannot dispute the fact that the re-employment is not a vested right. The suitability of the candidate will be assessed by the Institution / Department. However, there is no allegation against the appellant either she is inefficient or she was proceeded for any delinquency etc. Thus, the appellant has not given to adverse notice and found to be physically fit to discharge her function till the end of the academic year. Thus, the appellant is entitled to be considered for re-employment till the end of the academic year, though she has attained the age of superannuation in the middle of the academic year.

4. The reason assigned by the respondents to reject the request of the appellant is rather curious, because it is based upon a staff fixation, which was done retrospectively in the year 2019 from the academic year 2018-2019 onwards. The counter affidavit filed by the District Chief Educational Officer / third respondent states that by proceedings, dated 12.04.2019, the staff fixation was done not for the academic year 2019-2020, but for the academic year 2018-2019. We are at a loss to understand as to how such a retrospective fixation could be followed by passing an order in April, 2019. The third respondent would admit that the sanction for the academic year 2017-2018 was two B.T.Assistants in each of the subjects Tamil, English and Mathematics and the same was revised to one for the academic year 2018-2019 and consequently, one post of B.T.Assistant in each of the subjects Tamil, English and Mathematics were required to be re-deployed. The appellant, if she was in service, would have also been re-deployed, but she had retired from service. In such circumstances, the appellant has to necessarily be continued till the end of the academic year as she has fulfilled the other parameters.



5. It has been vehemently argued by the learned Special Government Pleader that there is no vested right for re-employment. That apart, when the post has been declared as surplus, the appellant cannot be permitted to work till the end of the academic year as she will be sitting idle and it will be a big drain on the State exchequer.

6. We agree with the submission of the learned Special Government Pleader that the re-employment is not a vested right, but, a person cannot be denied the right unless and until he / she is found to be unsuitable or does not possess the requisite health condition. These factors are absent in the appellant's case. Thus, in our considered view the stand taken by the Department by passing an order on 12.04.2019 fixing the staff strength for the academic year 2018-2019 with retrospective effect and citing the same as a reason not to permit the teacher to continue till the end of the academic year is wholly unreasonable.

7. One more factor, which waved in our mind is that the appellant was recruited and appointed in the Government High School, Udaiyanadu, Thanjavur District, on 03.03.2006. Thereafter, she was transferred to the Government High School, Thiruppuvanam and functioned in the said School till 2012, when she was declared as surplus in the said School and transferred to the fifth respondent School by proceedings dated 16.07.2012. Therefore, the appellant has been working in the fifth respondent School since 2012. It is not the case of the respondents that the post was rendered surplus from the academic year 2013-2014 onwards, but they sought to declare the post as surplus for the academic year 2018-2019, that too by passing an order at the end of the academic year i.e. on 12.04.2019.

8. Thus, for the above reasons, the writ appeal is allowed and the order dated 14.08.2019, passed in W.P.(MD) No.15159 of 2019, is set aside. Consequently, the writ petition in W.P.(MD) No.15159 of 2019 is allowed and the order dated 30.06.2019, passed by the District Chief Educational Officer / third respondent, is hereby quashed. The respondents 3 to 5 are directed to permit the appellant to function till the end of the academic year. It is made clear that for the period during which the appellant was not employed i.e. from 01.07.2019 till she is re-employed pursuant to this Judgment, she shall not be entitled to salary by applying the principle "No Work No Pay". On and after the appellant is re-employed, she is entitled to draw salary and wages. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CO)

// True Copy //

Sub Assistant Registrar (CS)



To

1. The Secretary to Government,
Department of School Education,
State of Tamil Nadu,
Ft. St.George,
Chennai-600 009.
2. The Director of School Education,
Directorate of School Education,
College Road,
Chennai-600 006.
3. The District Chief Educational Officer,
Sivagangai District,
Sivagangai.
4. The District Educational Officer,
Sivagangai.

+1 CC to Mr.MOHAMED IBRAHIM ALI, Advocate (SR-95375[F] dated
01/11/2019)

+1 CC to SPL GP (SR-95436[F] dated 01/11/2019)

W.A. (MD) No.1013 of 2019

and

C.M.P. (MD) No.9300 of 2019

31.10.2019

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