



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 29.11.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

W.P. (MD) No.25447 of 2019

and

W.M.P. (MD) No.22009 of 2019

WEB COPY

The Correspondent
L.M.S. Girls Higher Secondary School,
Neyyoor-629 001,
Kanyakumari District.

... Petitioner

-Vs-

- 1.The State of Tamil Nadu,
Rep. by its Principal Secretary,
Department of School Education,
Fort St. George,
Chennai-600 009.
- 2.The Director of School Education,
College Road, Chennai-600 006.
- 3.The Chief Educational Officer,
Kanyakumari District at Nagercoil,
Kanyakumari District.
- 4.The District Educational Officer,
Thuckalay, Kanyakumari District.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, calling for the records relating to the impugned proceedings issued by the fourth respondent DEO in O.Mu.No.4400/A1/2019 dated 26.07.2019, quash the same and further direct the third and fourth respondents to approve forthwith the re-employment of N.Jeslet Sudha as BT Assistant (Maths) in the petitioner school from 01.08.2019 till the end of the academic year 2019-2020 (ie., upto 31.05.2020), with all attendant benefits.

For Petitioner : Mr.K.Ragatheesh Kumar
for M/s.Isaac Chambers
For R1 to R4 : Mr.A.Thiagarajan,
Government Advocate.

ORDER

The order of the fourth respondent dated 26.07.2019 is sought to be quashed in the Writ Petition and further direction is sought for to direct the respondents 3 and 4 to re-employ the petitioner



from 01.08.2019 till the end of the academic year i.e., upto 31.05.2020.

2.Mr.A.Thiagarajan, learned Government Advocate takes notice on behalf of the respondents 1 to 4. By consent of both parties, this Writ Petition is taken up for final disposal at the stage of admission itself.

3.According to the petitioner, one N.Jeslet Sudha is working as BT Assistant (Maths) in the petitioner's School from 06.02.1998. She retired from service on 31.07.2019, on attaining the age of superannuation. The grievance of the petitioner is that if the said person is relieved in the middle of the academic year on attaining the age of superannuation on 31.07.2019, the students will suffer a lot and their studies will be affected. Hence, the petitioner's school has made a proposal to the fourth respondent to provide re-employment till the completion of the academic year i.e., upto 31.05.2020. According to the petitioner, the above said person is medically fit and there is no adverse remarks and there is no disciplinary proceedings pending against her. In these circumstances, the fourth respondent through the impugned proceedings dated 26.07.2019, rejected the petitioner's request, stating that surplus teachers need not be granted re-employment until the end of academic year. Hence, the petitioner has come up with the present Writ Petition.

4.The learned counsel appearing for the petitioner contended that the impugned order of the fourth respondent is against G.O.Ms.No.1643, Education (U2) Department, dated 27.10.1988. The respondents failed to consider the object of the re-employment to provide continuity of teaching by the same teacher. In support of his contention, the learned counsel for the petitioner relied on the judgment of the Division Bench of this Court reported in **2012 SCC Online Mad 1622 (The Secretary vs. R.Giriya and another)** and the relevant paragraphs 11 to 16 are extracted hereunder:-

"11. Contending that right of re-employment is not automatic, learned counsel for Appellant placed reliance upon the judgment in W.A.(MD) No.160 of 2009 (dated 31.01.2011). In the said judgment, referring to the judgment in W.A.No.1226/2003 dated 05.01.2007, the Division Bench of this Court held that "only when the teachers satisfies that his/her conduct or character are good and that he/she is physically fit to be re-employed, re-employment can be sought for". In the said case before the Division Bench, disciplinary proceedings was initiated and enquiry was also held and on conclusion of the enquiry, the School Management imposed a minor punishment on the teacher/1st Respondent thereon. In those circumstances, the Division Bench set aside the order of the learned single Judge and held that the 1st Respondent thereon is not entitled to re-employment.



12. The facts and circumstances of the case on hand stands on different footing. As pointed out earlier, only the Memos dated 29.7.2010 and 19.01.2011 were issued to the 1st Respondent for which 1st Respondent submitted a detailed explanation. No further proceedings was initiated against the 1st Respondent. In the counter-affidavit, 2nd Respondent alleged that even if the 1st Respondent was not eligible for the re-employment beyond the date of actual retirement, Appellant ought to have placed the matter before the Appointment Committee and ought to have sent the report to the 2nd Respondent who is the authority to take final decision on the resolution of the Appointment Committee. Appellant does not seem to have taken any such steps.

13. Learned counsel for Appellant contended that 1st Respondent attained superannuation on 30.11.2011 and she ought to have submitted her application for re-employment much in advance; but 1st Respondent submitted her application only on 01.11.2011. G.O.Ms.No.1643 dated 27.8.1988 does not lay down any such condition for submitting the application in advance. It only stipulates that pension papers are to be submitted atleast one year in advance.

14. By perusal of the Typed set of papers, it is seen that 1st Respondent had sent her application for re-employment on 01.11.2011 through "Registered Post Acknowledgement Due" enclosing her physical fitness certificate. The cover addressed to the Secretary of the School was returned with an endorsement "addressee refused returned to sender". When the Secretary of the School refused to receive the cover containing the application for re-employment, Appellant School is not justified in contending that application for re-employment ought to have been sent well in advance. The materials on record only shows that the relationship between the 1st Respondent and the School Management was strained. Regarding which the Tanjore District Elementary Educational Officer had also issued proceedings in Na.Ka.No.06774/A4/2010 dated 27.12.2010 stating that the School did not obey the order of Educational Authorities and ordered for direct payment of the salary to the teachers. Only because of the strained relationship, Appellant seems to have taken a rigid stand against the 1st Respondent.

15. In 2008 (1) MLJ 312 (Correspondent, Secretary and Managing Trustee, Salem V.M.Rajagopalan and others), the Division Bench of this Court held that "re-employment is to be given even if there was no specific request from such teacher". Referring to the earlier Division Bench judgment



in W.A.No.1179 of 1993 dated 06.9.1994 (S.Sundaram v. The Secretary, C.S.I. Diocese of Madras), in 2008 (1) MLJ 312, the Division Bench of this Court held as under:- "2. The right to continue on re-employment till the end of academic year conferred on the teachers working in the schools either Government or private, both minority or non-minority, has already been upheld by a Division Bench of this Court in W.A.No.1179 of 1993 (S.Sundaram v. Secretary, C.S.I. Diocese of Madras) and the SLP preferred against the same was also dismissed. The ratio laid down by the Supreme Court has been consecutively followed by this Court in R.Muthukrishnan v. Secretary, Aided Middle School, Korranattu, Karupur, Kumbakonam and the District Elementary Educational Officer, Thanjavur vide 1998 WLR 77.

3.1. In S.Sundaram v. Secretary, C.S.I. Diocese of Madras (supra), where the teacher was not permitted to avail the benefit of re-employment after his superannuation, the Division Bench directed the management and authorities to pay monetary benefits in terms of salary payable to him till the end of the academic year.

3.2. The only contention made on behalf of the appellant/Management is that the first respondent had not even made a request for re-employment after superannuation and therefore, he cannot make any complaint against the appellant/Management. But, similar contention was rejected by the Division Bench in the S.Sundaram v. Secretary, C.S.I. Diocese of Madras (supra), whereunder it is held as follows:-

" We must point out here that as per the Government Order, there is no question of any teacher asking for continuation. The Government Order specifically states that the institutions are to continue them till the end of academic year, provided the teacher satisfies the three conditions laid down in the Government Order, G.O.Ms.No.452, dated 24.3.1970, which has been followed in subsequent Government Orders."

16. As has been enumerated in the Government Orders as well as in various judgments, the above said three conditions are to be fulfilled for the purpose of getting right to re-employment. There is nothing to show that the 1st respondent did not satisfy the essential conditions. While so, Appellant was not justified in refusing re-employment for the 1st Respondent. Learned Judge rightly directed the 2nd Respondent - The District Elementary Educational Officer, Tanjore District, Tanjore to permit the 1st Respondent to continue in service till the end of academic year on the 1st Respondent's production of



physical fitness certificate and the certificate of character and good conduct in terms of G.O.Ms.No.1643 dated 27.8.1988. We do not find any reason warranting interference with the order of the learned single Judge."

and he also relied on the order dated 19.09.2019 made in W.P.Nos.26689 of 2019 etc. batch.

5.The learned Government Advocate appearing for the respondents submitted that the post of the BT Assistant in the petitioner's school is surplus and in view of the same, the request of the petitioner was rejected and prayed for dismissal of the writ petition.

6.Heard the learned counsel appearing for the petitioner and the learned Government Advocate appearing for the respondents and perused the materials available on record.

7.From the materials on record, it is seen that the fourth respondent rejected the claim of the petitioner on the ground that the post of the petitioner viz., B.T.Assistant (Maths) was already stated as surplus in the staff fixation order for the year 2018-2019. The said reason for rejecting the claim of the petitioner to continue Tmt.N.Jeslet Sudha in service till the end of academic year is erroneous. This Court, in the order dated 19.09.2019, made in W.P.Nos.26689 of 2019 etc., batch, relying on the Government Orders in G.O.Ms.No.1643, Education (U2) Department, dated 27.10.1988 and G.O.Ms.No.261, dated 20.12.2018 and the judgment of the Division Bench of this Court reported in **2012 SCC Online Mad 1622, (The Secretary vs. R.Girija and another)**, allowed the Writ Petitions. The ratio in the judgment of the Division Bench of this Court and the order dated 19.09.2019, made in W.P.Nos.26689 of 2019 etc., batch, is squarely applicable to the facts of the present case.

8.Following the decisions as indicated above, this Writ Petition is allowed. The impugned order of the fourth respondent, dated 26.07.2019, is set aside. The official respondents are directed to issue re-employment order to one N.Jeslet Sudha in the petitioner's school, till the end of academic year is over. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar

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Sub Assistant Registrar(CS)



1.The Principal Secretary,
Department of School Education,
Fort St. George,
Chennai-600 009.

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

3.The Chief Educational Officer,
Kanyakumari District at Nagercoil,
Kanyakumari District.

4.The District Educational Officer,
Thuckalay, Kanyakumari District.

+1 CC to M/s.ISAAC CHAMBER, Advocate (SR-102735[F] dated 29/11/2019)

+1 CC to M/s.GP (SR-103001[F] dated 02/12/2019)

W.P. (MD) No.25447 of 2019
29.11.2019

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