

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE :23.09.2020

CORAM

THE HONOURABLE MR. JUSTICE M.DHANDAPANI

W.P. NO.21105 OF 2013

J.Santhakumari

.. Petitioner

- Vs -

1. The Secretary to Government,
Social Welfare and Nutritious Meal
Programme Dept.,
Fort St.George,
Chennai 600 009.
 2. The Commissioner of Rehabilitation for Disabled,
K.K.Nagar, Chennai 600 078.
 3. The District Rehabilitation for Disable,
Teynampet, Chennai 600 018.
 4. The Opportunity School,
Balar Kalvi Nilayam,
Ritherdon
- .. Respondents

Writ petition filed under Article 226 of the Constitution of India praying this Court to issue a writ of Mandamus, directing the first respondent to sanction the post of petitioner as Secondary Grade Teacher w.e.f. 15.4.1974 i.e. from the date of the petitioner initial appointment in accordance with G.O.Ms. No.105 Social Welfare and Noon Meal Scheme dated 23.6.2004 and further grant the petitioner benefits of Pay Scale and all other consequential and attendant benefits including Terminal Benefits arising thereof.

For Petitioner : Mr.T.Panchatsaram

For Respondents: Mr.S.Thangavel, Spl.G.P. For RR1 to R3
: Prabhu Chandran for
M/S.K.Balaji for R4

ORDER

The writ petition has been filed by the petitioner to direct the first respondent to sanction the post of petitioner as Secondary Grade Teacher w.e.f. 15.4.1974 i.e. from the date

of the petitioner initial appointment in accordance with G.O.Ms. No.105 Social Welfare and Noon Meal Scheme dated 23.6.2004 and further grant the petitioner benefits of Pay Scale and all other consequential and attendant benefits including Terminal Benefits arising thereof.

2.The case of the petitioner is that she was appointed as an Untrained Secondary Grade Teacher in the 4th respondent school in the year 1974 and thereafter she was recommended by the 3rd respondent on 17.8.1998 for being accommodated in a sanctioned post with all consequential benefits. Subsequently the second respondent had also recommended the petitioner's case in the year 1999 and 2002 to the Government for sanction of a post and to accommodate the petitioner in the said post. In the year 2003, the Director of Elementary Schools had also recommended her name for the same benefit as granted to five other junior teachers working in the same school. In the mean while, on 23.6.2004 the State issued G.O.Ms.No.105, Social Welfare and Noon Meal Scheme, creating a government post to the petitioner with effect from 15.4.1974 and granted all service benefits to her from the said date. Thereafter a period of two years the Government again reviewed its own decision and issued G.O.Ms.No.195 dated 19.12.2006 by fixing the scale of pay as 4500-125-7000 with effect from 19.12.2006. In order to avail such benefits, though the petitioner has retired from service on 31.7.2007, the petitioner made representations on 20.3.2007 and 20.8.2009 to the respondents, requesting her name for considering her claim as granted other junior secondary grade teachers. However, the 1st respondent sent a reply to the petitioner on 11.08.2009, simply stating that the post was sanctioned to the petitioner as per the G.O.Ms.No. 105 dt 23.06.2004, which was directed to be abolished immediately after the retirement of the petitioner and the said reply was communicated to the petitioner on 20.8.2009. Even thereafter the petitioner made a representation on 10.12.2012 with the very same request. However, till date no order was passed. Hence the present writ petition. सत्यमेव जयते

3.Learned counsel appearing for the petitioner submitted that without considering the said petitioner's representation the respondents simply rejected the representation on 20.8.009. However in order to avail such benefits the petitioner filed this writ petition with the above said prayer. Hence this Court issue a direction to the respondents to consider her claim on par with the other junior secondary grade teachers, who were granted similar benefits.

4.Per contra, learned Special Government Pleader submitted that initially the petitioner made representation to the respondents on 20.3.2007 in which the respondents sent a

suitable reply on 11.8.2009 stating that the superintendent post was created as per G.O.Ms.No. 105 dt 23.06.2004, and pursuant to the retirement of the petitioner, the said post was directed to be abolished immediately. Therefore the post was abolished in view of the retirement of the petitioner, hence the relief sought by the petitioner cannot be granted. Accordingly he prays for dismissal of the writ petition.

5.This Court heard the submissions advanced by the learned counsel appearing on either side and also perused the materials available on record.

6. The facts in the present case are not in dispute. The post was created for a particular person and on the demitting of office by the said person, viz., herein the petitioner, the post stood abolished. In such view of the matter, the respondent had rejected the request of the petitioner. However the rejection order was not challenged by the petitioner. Without challenging the rejection order, merely filing this writ petition is not sufficient. In such a backdrop, the petitioner cannot seek a mandamus as against the 1st respondent and no mandamus could be issued as sought for.

7.For the reason aforesaid, the writ petition fails and the same is dismissed. However, liberty is granted to the petitioner to work out her remedies in a manner known to law. There shall be no order as to costs.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

jrs

To

1. The Secretary to Government,
Social Welfare and Nutritious Meal
Programme Dept.,
Fort St.George,
Chennai 600 009.

2. The Commissioner of Rehabilitation for Disabled,
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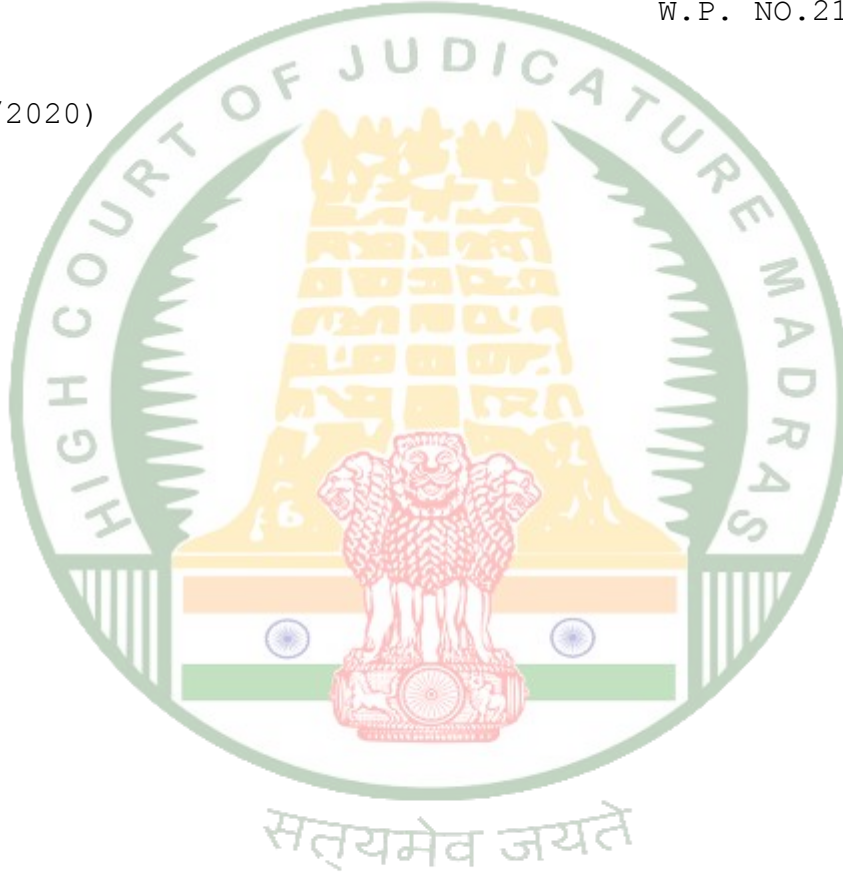
4.The Opportunity School,
Balar Kalvi Nilayam,
Ritherdon

+1 cc to M/s.K.Balaji,Advocate Sr.No. 31235

+1 cc to The Government Pleader, Sr.No. 31299

W.P. NO.21105 OF 2013

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RMP (05/11/2020)



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