

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 30.09.2020

CORAM

THE HONOURABLE MR. JUSTICE M.DHANDAPANI

W.P. NO.22631 OF 2013

D.Prema Indra

.. Petitioner

- Vs -

1. The Government of Tamil Nadu
rep. By its Secretary
School Education Department
Fort St. George, Chennai - 9.
2. The Director of Elementary Education
College Road, Chennai - 6.
3. The District Elementary Educational Officer
T.R. Naidu Street, Tuticorin.
4. The Addl. Assistant Elementary
Educational Officer
Karungulam, Srivaikundam Taluk
Tuticorin District.
5. The Secretary
Hindu Primary School
Seydlinganallur, Srivaikundam Taluk
Tuticorin District 628 809.

.. Respondents

Writ petition filed under Article 226 of the Constitution of India praying this Court to issue a writ of mandamus directing the 5th respondent to send a proposal to the 3rd respondent for the appointment of the petitioner as Headmistress with effect from 21.1.07 and consequently direct the 2nd and 3rd respondents to approve the same and pay the Headmistress salary with all arrears with effect from 21.1.07.

For Petitioner : Ms. P.Mahalakshmi

For Respondents: Mr. S.Suresh Kumar, GA for RR-1 to 4
No Appearance for R-5

ORDER

it is the case of the petitioner that she was appointed as secondary grade teacher in the 5th respondent school on 11.9.1985 and her appointment has also been approved by the competent authority. It is averred by the petitioner that one Clemency Selvapackiam was appointed as Headmistress in the 5th respondent school from 3.2.04 and she was absent from 21.1.07 and due to certain disputes between the said individual and the 5th respondent management, the said Clemency Selvapackiam was terminated from service on 6.12.08 and the petitioner, as the senior-most teacher in the 5th respondent school was put as in-charge headmistress from 21.1.07 and she is working as Headmistress of the 5th respondent school.

2. It is further averred by the petitioner that though she has been working as in-charge headmistress for more than five years, she has not been paid the salary of the post of headmistress. In this regard, the 5th respondent had sent a proposal to the competent authority for approval of the appointment of the petitioner as Headmistress. The petitioner submitted a series of representations the last of which was submitted on 5.2.13, but till date neither her post has been approved nor she has been paid salary in the post of headmistress. It is further averred that though the 3rd respondent, vide his proceedings dated 14.2.13, has forwarded the representation of the petitioner to the 4th respondent for taking action, however, no order has been passed on the representation of the petitioner for payment of salary of the post of headmistress. Therefore, left with no other alternative, the petitioner has filed the present petition for the relief supra.

3. Learned counsel appearing for the petitioner submits that it is an admitted fact that the petitioner has been put in-charge of the post of headmistress consequent upon the termination of Clemency Selvapackiam in the year 2007. It is the further submission of the petitioner that the said Clemency Selvapackiam successfully assailed her order of termination by filing W.P. No.6151/13, wherein this Court set aside her termination, but directed reinstatement, but without backwages. In such circumstances, the petitioner having performed the duties of headmistress, the petitioner is entitled to be paid the salary of headmistress from 21.1.07 till the date of reinstatement of the said Clemency Selvapackiam. However, inspite of several representations, no order has been passed on the same granting her the pay of headmistress and, accordingly, prays for a positive direction to the respondents.

4. Learned Government Advocate appearing for respondents 1 to 4 submitted that in the absence of approval, the question of payment of scale of pay of headmistress to the petitioner does not arise. It is further submitted by the learned Government Advocate that there is no rule, which mandates payment of salary to the petitioner, as in-charge headmistress, in the absence of the proposal being approved by the competent authorities.

5. On the above contentions, it is fairly conceded by the learned counsel for the petitioner that no rule prescribes payment of salary by the competent authorities to the petitioner for carrying out her functions as the headmistress of the school. However, it is equally submitted that the petitioner should not be left in lurch on the ground of technicality that there is no rule and direction should be given to the 5th respondent to pay the salary in the post of headmistress to the petitioner, as the 5th respondent has extracted the work of headmistress from the petitioner.

6. Though the 5th respondent has been served, there is no appearance on behalf of the 5th respondent and, therefore, the name of the 5th respondent is shown in the causelist.

7. This Court bestowed its best attention to the contentions advanced by the learned counsel on either side and perused the materials available on record.

8. The facts in the present case are not in dispute. It is equally accepted by the learned counsel for the petitioner that there is no rule, which mandates payment of salary to the petitioner in the post of headmistress, in absence of the post being approved by the competent authorities. Therefore, it is clear that in the absence of any rule, no direction could be issued to the authorities to pay the salary to the petitioner in the post of headmistress, as approval has not been granted. However, it is borne out by record, which is not in dispute that the petitioner has been discharging the duties in the post of headmistress since 21.1.07, the date from which one Clemency Selvapackiam stood terminated till the date of the reinstatement of the said Clemency Selvapackiam, without backwages, on the directions of this Court in W.P. No.6151/13. Such being the position, the petitioner is definitely entitled to be paid the salary in the post of headmistress in-charge for the said period. Therefore, this Court is of the considered opinion that the petitioner should be granted liberty to make a claim against the 5th respondent for payment of salary in the scale of pay of headmistress for the time in which she functioned as headmistress in-charge of the 5th respondent school.

9. For the reasons aforesaid, this writ petition is disposed of granting liberty to the petitioner to make a claim against the 5th respondent for payment of salary in the scale of pay of headmistress for the time in which she functioned as headmistress in-charge of the 5th respondent school, in accordance with law.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

GLN
To

1. The Secretary to Government
School Education Department
Government of Tamil Nadu
Fort St. George, Chennai - 9.
2. The Director of Elementary Education
College Road, Chennai - 6.
3. The District Elementary Educational Officer
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5. The Secretary, Hindu Primary School,
Seydlinganallur, Srivaikundam Taluk,
Tuticorin District - 628 809.

+1 cc to The Government Pleader, Sr.No. 32424

AJS (CO)
RMP (03/11/2020)

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