

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 09.12.2020
CORAM:

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

Writ Petition No.20784 of 2014
&
MP.No.1 of 2014

C.Babu

... Petitioner

vs.

1. Director of School Education,
College Road, DPI Campus,
Chennai - 600 006.
2. The Joint Director of Secondary Education,
College Road, DPI Campus,
Chennai - 600 006.
3. The Chief Educational Officer,
Panagal Building,
Saidapet, Chennai - 600 015.
4. The District Educational Officer,
Chennai East, Choolaimedu High Road,
Chennai - 600 094.
5. The Secretary,
School Committee,
Rao Bahadur Allathure Nathamoony Chetty Higher Secondary
School,
No.26, Samy Street,
Chennai - 600 002.

सत्यमेव जयते... Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Mandamus, directing the respondents to pay the salary to the post of Junior Assistant as approved by the fourth respondent and pay the arrears of salary to the post of junior assistant from 11.11.2010 to till date after deducting the OA salary paid up to 1.11.2013 and the full salary from 1.12.2013 to till this day except February 2014 and continue to pay the same.

For Petitioner	:	Mr. U.Karunakaran
For R1 to R4	:	Mr.S.Sureshkumar, GA
For R5	:	Mr.S.Ilamvaludhi

ORDER

This writ petition has been filed for a mandamus directing the respondents to pay salary to the post of Junior Assistant as approved by the fourth respondent along with arrears from 11.11.2010 to till date, after deducting salary in the post of Office Assistant paid upto 01.11.2013 and full salary from 01.12.2013 to till this day, except February 2014 and continue to pay the same.

2. According to the petitioner, he joined as Office Assistant on 11.02.2000 in the fifth respondent school. In view of some dispute between third party and the school Secretary, this Court appointed an interim Committee to manage the affairs of the School and the Trust, vide order made in C.S.No.438/2000. Since there was a charge pending against one N.Chandra Babu, the said committee considered the request of the petitioner to promote him as Junior Assistant in the vacancy arose due to voluntary retirement of one Beula Devi and accordingly promoted him as such, with effect from 01.11.2010. Thereafter, the new school committee/fifth respondent was constituted, which after assuming office, served memos on the petitioner raising frivolous charges, calling upon him to give explanation. Further, they did not permit the petitioner to work as junior assistant from 03.01.2014 onwards and they appointed the said N.Chandra Babu as Junior Assistant on 12.11.2013 in the place of the petitioner, without challenging the appointment given to the petitioner. Thereafter, the fifth respondent issued an office order dated 18.01.2014, instructing the petitioner to do the work of Office Assistant, without passing any order, reverting him from the post of Junior Assistant. While so, the petitioner was issued with a charge memo dated 12.03.2014 framing 11 charges, to which, he sent his reply on 26.04.2014. Thereafter, from 02.06.2014, he was not allowed to sign in the attendance register. When the things stood thus, he was suspended from service on 23.06.2014. Since he was suffering from financial crisis, he made a representation dated 22.03.2014 to the fourth respondent marking a copy to the respondents 2 and 3, requesting to pay salary from the month of December 2013. Finding no response on the said representation, the petitioner has preferred the present writ petition.

3. Upon notice, the fourth respondent filed a detailed counter affidavit, wherein, it is inter alia stated as follows:

(i) The interim committee has appointed the petitioner as Junior Assistant straight away when the eligible person N.Chandra Babu is available from the feeder category of Record Clerk and the fourth respondent has not approved the appointment of the petitioner as it was not done by the School Committee duly constituted under the TNRPS (R) Act and Rules.

(ii) The school committee is the authority to sanction / regulate the services of the petitioner. The petitioner has kept his TSR without keeping it in the school. In the absence of the service register, the school committee is unable to regularise the period to claim salary. The fifth respondent has instructed the petitioner to hand over the service register, but the petitioner instead of handing over the service register, is writing representations to the respondents 1 to 4 that no salary was given to him.

(iii) The fifth respondent is the competent authority to claim salary and the fourth respondent is the approving authority. On receipt of the claim from the fifth respondent, it will be considered by the fourth respondent. Hence, this respondent has no say with regard to the relief sought in this writ petition.

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

5. The facts in issue are not in dispute. The petitioner has filed a series of petitions challenging the various orders and for certain directions from this Court, which have been disposed of by this Court. The present case of the petitioner is for disbursement of salary for a specified period. However, it is the submission of the 5th respondent that the service register is in the custody of the petitioner, who has taken it from the school, thereby disabling the school from processing the claim of the petitioner. It is the further stand of the respondents that the service of the petitioner in the promoted post has not been regularised and without such regularisation, it is not possible to claim salary for the post of the petitioner. The 4th respondent has further taken a stand that once the 5th respondent processes the claim of the petitioner it will be attended to in accordance with law.

6. It is not the case of the petitioner that his services have been regularised. Though the petitioner disputes the stand of the respondents relating to the service records being in possession of the petitioner, however, this Court is not inclined to go into the said issue. The case of the petitioner is that he has not been paid the salary for the post of Junior Assistant. However, the post of Junior Assistant held by the petitioner having not been regularised by the competent authority, the claim of the petitioner for salary towards the said post is unsustainable. The course open to the petitioner is to have his post regularised in a manner known to law and, thereafter, claim salary for the said post. In the absence of regularisation, the claim of the petitioner for salary towards that post cannot be granted.

7. For the reasons aforesaid, this writ petition stands dismissed. However, liberty is granted to the petitioner to work out his remedies in the manner known to law after getting necessary approval with regard to regularisation of his service in the post of Junior Assistant. There shall be no order as to costs. Consequently connected miscellaneous petition is also dismissed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

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To

1. Director of School Education,
College Road, DPI Campus,
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Panagal Building,
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4. The District Educational Officer,
Chennai East, Choolaimedu High Road,
Chennai - 600 094.

+1cc to Mr.U.Karunakaran , Advocate SR.No. 40282
+1cc to Mr.S.Ilamvazhudhi , Advocate SR.No. 39940

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&
MP.No.1 of 2014

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A.SK(10.03.2021)