

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.03.2020

CORAM :

The Hon'ble Mr.A.P.SAHI, THE CHIEF JUSTICE

AND

The Hon'ble Mr.JUSTICE SUBRAMONIUM PRASAD

W.A.No.2047 Of 2002

S. Aruputharaj Appellant/Petitioner

-vs-

1. Government of Tamil Nadu,
rep by its Secretary,
Education, Science & Technology,
Department, Fort. St. George,
Madras - 9.
2. Director of School Education,
Madras - 6.
3. District Elementary Educational Officer,
Sankarankoil, Nellai Katabomman District.
4. Assistant Educational Officer,
Melaneelithanallur - 627953.
Nellai Kattabomman District.
5. Johns Elementary School,
Melaneelithanallur Post,
Sankarankoil Taluk, represented by its Manager ... Respondents/Respondents
Sankarankoil, Tirunelveli District

Writ Appeal filed under Clause 15 of Letters Patent against the order passed in W.P.No.2695 of 1996 dated 26.04.2002

WP.No.2695 of 1996:To issue a Writ of Certiorarified Mandamus calling for the records pertaining to the order of the Ist respondent in G.O.Ms.No.788, Education Department, dated 31/07/1991 and quash the same insofar as the petitioner is

concerned and direct the respondents to approve the appointment of the petitioner as Secondary Grade Teacher.

For appellant : Mr.P.V.S. Giridhar for
Mr.B. Nedunchezhiyan

For respondents : Mr.C. Munusamy
: Spl.Govt. Pleader

JUDGMENT

(Delivered by The Hon'ble Chief Justice)

We have heard learned counsel for the appellant, after having re-constructed the records, for which, separate orders have been passed today in C.M.P.No.2621 of 2020.

2. The appellant claims to have been appointed in a primary school viz., Johns Elementary School, Sankarankoil Taluk, Tirunelveli District. His contention is that a vacancy arose on 01.06.1994 when he came to be appointed in the School. He was not being granted approval on the ground that the Government order in G.O.Ms.No.788, Education Department dated 31.07.1991 placed an embargo of appointing male teachers for classes 1 to 5. A typed set of papers have been filed bringing on record the approval order dated 01.10.1996 and the same is extracted hereinunder:-

" Office of the District Primary Education
Officer,

TIRUNELVELI - 2

Mu.Mu.9744 A4/96 dated 01.10.96

Sub: Primary School - appointment of Intermediate
Teacher - School which obtained Minority Right -
giving approval - regarding.

Ref: Letter in N.A.No.626 A2/95 dated 9.8.96 of
the Assistant Primary Educational Officer,
Melaneelithanallur.

It is hereby ordered by recognizing the
appointment of Mr.S. Arputharaj, who is a B.Ed
qualified from 8.3.95, by filling up the vacancy
arises in connection with the retirement of
Mrs.S. Annathai on 31.5.94, who is an
intermediate Grade Teacher at Johns Primary

School, Melanarikudi,

Conditions:

1. No diminishing in the attendance of average students.
2. If diminishing in the attendance of average students happened, appointment shall be withdrawn.
3. Should comply the Final Order passed in W.P.No.2695/96 passed by the Hon'ble High Court of Judicature at Madras.
4. To give declaration in written in the Ten Rupees Non Judicial Stamp paper to the Assistant Educational Officer that he will pay the entire amounts received by way of salary on a Single Payment, if the above case is ordered in favour of the Government.
5. Since the appointment has been made during the ban period as announced by the Government, subsistence allowance has to be paid from the date of release of ban i.e., from 8.3.95.
6. Salary has to be paid on the pay scale of Intermediate Teacher.
7. No Additional pay has been paid for Degree Qualification.
8. Salary has been paid only on the pay scale of Intermediate Teacher.
9. Educational Testimonials and Appointment order has been returned along with this order.

Sd/-

For District Primary Educational Officer
Tirunelveli

3. A perusal thereof indicates that a conditional approval was granted to the appointment of the appellant / writ petitioner subject to the outcome of the writ petition. This order does not find mentioned in the impugned judgment dated 26.04.2002 when the learned Single Judge dismissed the writ petition on the ground that a subsequent Notification dated 20.08.1996 had come into existence that provides 25% posts for male teachers. The learned Single Judge, while dismissing the writ petition, also noted that such a challenge had been raised before the Apex Court in the case of P. Charles Samuel vs Government of Tamil Nadu and Others) (Civil Appeal No.7481 of 1994), where, such facts have been noticed. Accordingly, it was left open to the appellant / petitioner to challenge the

validity or otherwise of the Notification dated 20.08.1996, if he so desires. No adjudication was made on the validity of G.O.Ms.No.788 dated 31.07.1991. The appellant / writ petitioner did not challenge the validity of the Notification dated 20.08.1996, as according to the learned counsel, since 25% of the posts had been made available for males, the appellant could be adjusted in the Institution within the said percentage. Therefore, there was no necessity to challenge the said Government Order.

4. However, with the dismissal of the writ petition, the present appeal came to be filed contending that the writ petition ought to have been disposed of on merits and the continuity of the appellant / writ petitioner in service ought to have been maintained.

5. We may point out that there was an order of approval in favour of the appellant / writ petitioner during the pendency of the writ petition, which is extracted herein above and therefore, the appellant / writ petitioner was continuing in service and was receiving salary. After dismissal of the writ petition, when the appeal came to be filed, an interim order was passed in favour of the appellant on 15.07.2002, that continued. We have perused the said order and a copy thereof has been produced by the learned counsel for the appellant. It is thus evident that the appellant is continuing in service and receiving salary.

6. In between, the appeal was dismissed in the absence of the appellant's counsel on 23.11.2018. The appeal was, however, was restored on 31.01.2019 and this is how, the matter has come up before us for consideration.

7. In our considered opinion, the learned Single Judge ought not to have dismissed the writ petition only on the promulgation of the Government Order dated 20.08.1996 inasmuch as the very continuance of the appellant was dependent on the interpretation of the Government Order in G.O.Ms.No.788 dated 31.07.1991, which was under challenge and which was applicable at the point of time when the appellant was appointed. If debarment is upheld appointing a male teacher, then, the appellant cannot claim any right of continuity unless it is found to be unreasonable or invalid on any other grounds. Thus, the issue of the appellant's appointment had to be adjudicated on merits.

8. In our opinion, G.O.Ms.No.788 dated 31.07.1991 was issued in order to curtail the rights of male applicants. We

find that the subsequent Government Order dated 20.08.1996 gives relaxation to the extent of 25% to males. The appellant's appointment was approved on 1.10.96 and the approval was continuing till the writ petition came to be dismissed on 26.04.2002. Thus, on the date of modification of the Government Order, the appellant was continuing in service and therefore, his continuance could be saved within 25% available strength of male teachers for classes 1 to 5.

9. This aspect did require consideration which has not been considered by the learned Single judge while dismissing the writ petition. In the wake of fact that the appellant is continuing to serve the Institution and is also being paid salary, we find that the impugned judgment dated 26.04.2002 cannot be sustained and accordingly, the same is set aside, but, at the same time, the primary issue with regard to the validity of the Government Order in G.O.Ms.No.788 dated 31.07.1991 or its impact on the appointment of the appellant or even otherwise the continuity of the appellant in terms of the Government Order dated 20.08.1996 has to be adjudicated.

10. We therefore allow the appeal, setting aside the impugned judgment dated 26.04.2002 and remit the matter back to the learned Single Judge for deciding afresh in the light of the observations made above. The appellant shall be entitled to continue in service and receive salary till the final disposal of the writ petition. No costs.

Sd/-
Asst.Registrar (CS VI)
/true copy/
Sub Asst. Registrar

sr
To

1. Government of Tamil Nadu,
rep by its Secretary,
Education, Science & Technology,
Department, Fort. St. George,
Madras - 9.

2. Director of School Education,
Madras - 6.

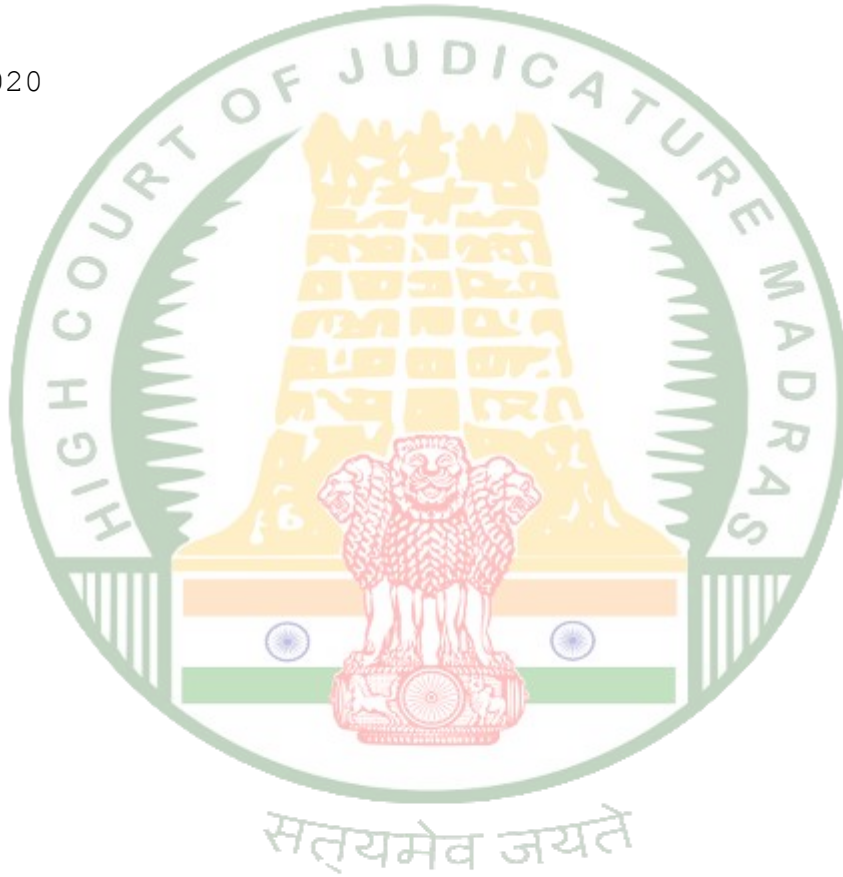
3. District Elementary Educational Officer,
Sankarankoil, Nellai Katabomman District.

4. Assistant Educational Officer,
Melaneelithanallur - 627953.
Nellai Kattabomman District.

+1 cc to Mr.B.Nedunchezhiyan Advocate sr19394

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