

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.01.2020

CORAM:

THE HONOURABLE Mr. JUSTICE N. ANAND VENKATESH

W.P.NO.35472 of 2019
and
WMP No. 36287 of 2019

V. Rajesh

... Petitioner

-Vs-

1. The Director of Elementary Educational
DPI Campus, College Road
Chennai 600 006.
2. The Chief Educational Officer
Thiruvallur District,
Thiruvallur.
3. The District Educational Officer,
Avadi Education District
Thiruvallur District.
4. The Assistant Elementary Educational Officer,
Presently the Block Educational Officer,
Poonamallee Block
Thiruvallur District.
5. The Correspondent,
Thiruvalluvar Middle School
Nambi Nagar, Poonamallee
Chennai 600 056.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ, order or direction more particularly a writ in the nature of Writ of Mandamus or any other appropriate Writ, Order or Direction in the nature of Writ, directing the respondents to disburse the salary to the petitioner in the post of Secondary Grade Teacher in fifth respondent school from the date of appointment on 20.04.2017 as per the approval order issued by the third respondent in Na.Ka.No.1872/Aa1/2019 dated 22.07.2019 with all consequential and attendant benefits.

For Petitioner : Mr.G. Sankaran
For Respondents : Mrs. V. Annalakshmi
Government Advocate.

ORDER

This Writ Petition has been filed for the issue of Writ of Mandamus directing the respondents to disburse the salary of the petitioner in the post of Secondary Grade Teacher in the fifth respondent school from the date of his appointment on 20.04.2017.

2. The case of the petitioner is that there was a vacancy in the fifth respondent school to the post of Secondary Grade Teacher due to the retirement of the incumbent on 28.02.2017. The District Elementary Educational Officer (presently DEO) issued orders on 28.03.2017 granting permission to the fifth respondent school to fill up the post of Secondary Grade Teacher in the vacancy that arose due to retirement.

3. The fifth respondent school, thereafter, conducted a selection and the petitioner was found fit and he was appointed to the post of Secondary Grade Teacher by an appointment order dated 20.04.2017 and the petitioner has been working since then in the fifth respondent school.

4. After the appointment of the petitioner, the fifth respondent school has forwarded the proposal to the department seeking for approval of the appointment. The third respondent has returned the proposal on the ground that there are surplus Secondary Grade Teachers who are available in other schools and they have to be accommodated in the vacancy and therefore, the appointment of the petitioner cannot be approved.

5. The petitioner challenged the said order before this Court by filing the Writ Petition in W.P. No. 17363 of 2018. When the writ petition was pending, the third respondent has issued orders in his proceedings dated 22.07.2019 approving the appointment of the petitioner to the post of Secondary Grade Teacher from the date of his appointment.

6. It is the grievance of the petitioner that his salary was not sanctioned in spite of the same being forwarded by the fifth respondent school. This was done by referring to G.O. Ms.No.165 dated 17.09.2019 that came to be issued pursuant to the orders passed by the Division Bench of this Court. Aggrieved by the same, the present Writ Petition has been filed by the petitioner seeking for appropriate direction.

7. Mr. G. Sankaran, learned counsel appearing on behalf of the petitioner submitted that the Division Bench judgment of this Court cannot be made applicable to the facts of the present case. The learned counsel submitted that the vacancy itself came to be filled up after permission was granted by the District Elementary Education Officer by proceedings dated 28.03.2017. Even thereafter, the third respondent has approved the appointment of the petitioner by his proceedings dated 22.07.2019. The learned counsel submitted that in view of these two proceedings, both the filling up of the post as well as the appointment of the petitioner has been approved by the concerned authorities. Therefore, the necessary consequence is that the petitioner will have to be paid the salary by granting aid and the same cannot be denied to the fifth respondent school.

8. The third respondent has filed a counter affidavit in this case. The counter affidavit relies upon the Division Bench Judgment of this Court made in W.A. (MDS) 76/18 dated 09.04.2019. The third respondent has taken a stand that in view of the orders passed by the Division Bench, the approval of the appointment of the petitioner cannot be carried forward and the post has to be filled up only with the surplus teacher.

9. The learned Government Advocate appearing on behalf of the respondents, apart from reiterating the stand that has been taken in the counter affidavit, submitted that the Chief Educational Officer has now ordered for an enquiry as to how the District Educational Officer had granted approval for the appointment of the petitioner in the light of the Government Order in G.O.Ms. No.165 dated 17.09.2019 and in the light of the Division Bench order which has been referred supra. The learned Government Advocate submitted that the authorities have acted strictly in accordance with the orders passed by this Court and therefore, the petitioner will not be entitled for any grant of salary since the appointment itself is in violation of the orders passed by this Court and the Government Order that has been referred herein above.

10. This Court has carefully considered the submissions made on either side and the materials placed on record.

11. The issue involved in this case is as to whether the Division Bench Judgment of this Court in W.A. (MDS) 76/18 dated 09.04.2019 can have effect even for those vacancies which arose much before this judgment. This Court had an occasion to deal with this issue in W.P.No.368 of 2020 (Thiruvaduthurai Adheenam Middle School, Ngapattinam vs. The Director of Elementary Education, Chennai and others) and the relevant portions are extracted hereunder.

6. It is an admitted case that the vacancies arose in the year 2014 and 2017 and the petitioner school has proceeded to fill up the vacancy of Secondary Grade Teacher and had sent proposal seeking for approval of the appointment and it was kept pending by the 2nd respondent. The second respondent ought to have independently considered the approval sought for by the petitioner since, the post in question is a sanctioned post and it is a sanctioned vacancy. The second respondent ought not to have relied upon the order passed by the Division Bench of this Court in the year 2019 and should not have given a retrospective effect for a sanctioned vacancy which arose in the year 2014 and 2017 respectively. That apart, the second respondent failed to take note of the fact that the operation of G.O. Ms. No.165, dated 17.09.2019 has already been suspended by this Court and the very validity of the said Government order is now under consideration in the writ appeal which is pending before the Madurai Bench of this Court.

7. In the considered view of this Court, the second respondent ought to have independently considered the approval for appointment sought for by the petitioner school. The second respondent cannot rely upon the subsequent order passed by this Court in the year 2019 and deny the approval."

12. It is clear from the above order that the third respondent ought not to have relied upon the order passed by the Division Bench of this Court in the year 2019 and should not have given a retrospective effect for a sanctioned vacancy which arose in the year 2017.

13. In view of the above discussions, this Court is of the considered view that the filling up of the vacancy was duly approved by the District Elementary Education Officer by proceedings dated 28.03.2017 and the appointment was also approved by the third respondent by his proceedings dated 22.07.2019 and therefore, the petitioner cannot be denied the payment of salary. This is more so due to the fact that the operation of G.O.Ms.165 dated 17.09.2019 has already been stayed by the Division Bench of this Court.

14. In the result, this Writ Petition is allowed and there shall be a direction to the third respondent to disburse the salary of the petitioner who is working as a Secondary Grade Teacher in the fifth respondent school from the date of his

appointment and necessary orders shall be passed in this case within a period of four weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petitions is also closed.

Sd/-
Assistant Registrar (CS-III)

//True copy//

Sub Assistant Registrar

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To

1. The Director of Elementary Education
DPI Campus, College Road
Chennai 600 006.
2. The Chief Educational Officer
Thiruvallur District,
Thiruvallur.
3. The District Educational Officer,
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Presently the Block Educational Officer,
Poonamallee Block
Thiruvallur District.
5. The Correspondent,
Thiruvalluvar Middle School
Nambi Nagar, Poonamallee
Chennai 600 056.

+1cc to Mr.G. Sankaran, Advocate SR.No.5989

+1cc to Government Pleader SR.No.6172

W.P.NO.35472 of 2019

GJ(CO)
GMY(12/02/2020)