



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 11.03.2020

CORAM:

THE HONOURABLE MRS. JUSTICE J.NISHA BANU

W.P. (MD) No.351 of 2020 and

WMP (MD) Nos.271 to 273 of 2020

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Renuga Meenakshi Sundaram

Petitioner

Vs

1. The Chief Educational officer,
O/o the Chief Educational Officer,
Sivagangai,
Sivagangai District.
2. The District Educational Officer,
O/o The District Educational Officer,
Sivagangai,
Sivagangai District.
3. The Headmaster-in-charge,
Government Higher Secondary School,
Idaikattur,
Manamadurai Block,
Sivagangai District.

Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned order in O.Mu.No.4186/E3/2019 dated 30.06.2019 on the file of the Respondent No.1 and the consequential impugned order in Na.Ka.No.77/2019-2020 dated 30.06.2019, on the file of the respondent No.3 and quash the same as illegal and consequently for a direction, directing the respondent No.4 to provide re-employment to the petitioner in the post of B.T.Assistant in Social Science till the end of the academic year 31.05.2020.

For Petitioner : Mr.T.Lajapathi Roy

For Respondents : Mr.A.Thiyagarajan
Government Advocate

O R D E R

This Writ Petition is filed to call for the records pertaining to the impugned order in O.Mu.No.4186/E3/2019 dated 30.06.2019 on the file of the Respondent No.1 and the consequential impugned order in Na.Ka.No.77/2019-2020 dated 30.06.2019, on the file of the respondent No.3 and quash the same as illegal and consequently for a direction, directing the respondent No.4 to provide re-employment to the petitioner in the post of B.T.Assistant in Social Science till the end of the academic year 31.05.2020.



2. The case of the petitioner is that the petitioner was appointed as Block Resource Teacher Educator on 31.03.2003 and thereafter she was posted as B.T. Assistant on 02.01.2014 at third respondent School and attained superannuation on 30.06.2019. Due to attaining her superannuation on 30.06.2019, she made representation dated 12.06.2019, to the third respondent seeking re-employment till the end of the academic year. The third respondent has rejected the request made by the petitioner and passed the impugned order on 30.06.2019, stating that surplus teachers need not be granted re-employment until the end of academic year. Challenging the said order, the present Writ Petition is filed by the petitioner.

3. The learned counsel for the petitioner has relied upon the order passed in an identical Writ Petition in W.P.(MD) No.26689 of 2019.

Further, the learned counsel for the petitioner submitted that the claim of the petitioner has been rejected only due to the declaration of surplus teachers and without application of mind. Hence, the learned counsel submitted the impugned orders have to be quashed and the petitioner is entitled for re-employment till the end of the academic year 2019-2020

4. Opposing the claim made by the petitioner, the learned Government Advocate emphasized in his counter affidavit that there is no major difference in the strength of the students for the academic year 2018-2019 and 2019-2020. Hence, the Writ petition is not maintainable and liable to be dismissed.

5. The issue involved in this writ petition is covered by the Writ Appeal in **W.A. (MD) No.1013 of 2019 (S.Subbulakshmi Vs. The State of Tamil nadu and others)**, wherein, it has been held as follows:

3. *The appellant cannot dispute the fact that the re-employment is not a vested right. The suitability of the candidates will be assessed by the Institution/Department. However, there is no allegation against the appellant either she is inefficient or she was proceeded for any delinquency etc., thus, the appellant has not given to adverse notice and found to be physically fit to discharge her function till the end of the academic year. Thus, the appellant is entitled to be considered for re-employment till the end of the academic year, though she has attained the age of superannuation in the middle of the academic year.*

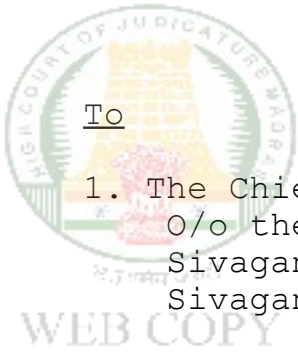
4. *The reason assigned by the respondents to reject the request of the appellant is rather curious, because it is based upon a staff fixation, which was done retrospectively in the year 2019 from the*



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academic year 2018-2019 onwards. The counter affidavit filed by the District Chief Educational Officer/third respondent states that by proceedings, dated 12.04.2019, the staff fixation was done not for the academic year 2019-2020, but for the academic year 2018-2019. we are at a loss to understand as to how such a retrospective fixation could be followed by passing an order in April, 2019. The third respondent would admit that the sanction for the academic year 2017-2018 was two B.T. Assistants in each of the Subjects Tamil, English and Mathematics and the same was revised to one for the academic year 2018-2019 and consequently, one post of B.T. Assistant in each of the subjects Tamil, English and Mathematics were required to be re-deployed, but she had retired from service. In such circumstances, the appellant has to necessarily be continued till the end of the academic year as she has fulfilled the other parameters.

5. It has been vehemently argued by the learned Special Government Pleader that there is no vested right for re-employment. That apart, when the post has been declared as surplus, the appellant cannot be permitted to work till the end of the academic year as she will be sitting idle and it will be a big drain on the state exchequer.
6. We agree with the submissions of the learned Special Government Pleader that the re-employment is not a vested right, but, a person cannot be denied the right unless and until he/she is found to be unsuitable or does not possess the requisite health condition. These factors are absent in the appellant's case. Thus, in our considered view, the stand taken by the Department by passing an order on 12.04.2019 fixing the staff strength for the academic year 2018-2019 with retrospective effect and citing the same as a reason not to permit the teacher to continue till the end of the academic year is wholly unreasonable.
7. One more factor, which waved in our mind is that the appellant was recruited and appointed in the Government High School, Udaiyanadu, Thanjavur District, on 03.03.2006. Thereafter, she was transferred to the Government High School, Thiruppuvanam and functioned in the said school till 2012, when she was declared as surplus by proceedings dated 16.07.2012. Therefore, the appellant has been working in the fifth respondent



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+1 CC to M/s.T.LAJAPATHI ROY, Advocate (SR-11519[F]

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SMA /04/05/2020/5P/5C