



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 31.08.2020

CORAM

THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN

AND

THE HONOURABLE MR.JUSTICE P.RAJAMANICKAM

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W.A. (MD)No.648 of 2020

and

C.M.P. (MD) .No.4055 of 2020

1. The District Elementary Educational Officer,
Tirunelveli, Tirunelveli District.
 2. The Additional Assistant Elementary Educational Officer,
Nanguneri, Tirunelveli District.
- ... Appellants/ 1 & 2 respondents

Vs.

1. T.Kingsly Nirmala,
Secondary Grade Teacher,
St.Aloysius Middle School, Chinthamani Post,
Munanjipatti Via, Nanguneri Taluk,
Tirunelveli District.
...1st Respondent/Writ Petitioner
- 2.The Correspondent,
St.Aloysius Middle School, Chinthamani Post,
Munanjipatti Via, Nanguneri Taluk,
Tirunelveli District.
... 2nd Respondent/3rd Respondent

Prayer: Writ Appeal filed under Clause 15 of Letters Patent, against the order of this Court made in W.P.(MD).No.13292 of 2015 dated 20.03.2019.

Prayer in WP(MD). 13292 of 2015 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, calling for the records relating to the Impugned Proceedings issued by the 1st Respondent District Elementary Educational Officer vide O. Mu. No. 1496/Aa4/2008 dated 02.09.2008 quash the same and further direct the 1st respondent hereinto approve the petitioner s service as Secondary Grade Teacher in the 3rd Respondent school during the period from 01.02.2002 to 17.06.2004 (2 years, 4 months and 17 days) with salary and other attendant benefits.



For Appellants : Mrs.S.Srimathy,
Special Government Pleader.

For Respondents : Mr.A.Ajith Geethan for R1

J U D G M E N T

(Judgment of the Court was delivered by **M.SATHYANARAYANAN, J.**)

The official respondents aggrieved by the order dated 20.03.2019, passed in W.P.(MD).No.13292 of 2015, filed by the first respondent/writ petitioner, in which, the other cases similar in nature have also been taken into consideration and the writ petitions came to be disposed of with the certain directions.

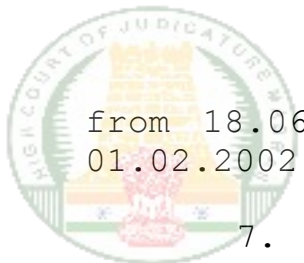
2. This Court vide judgment passed today, in respect of W.P.(MD).No.17932 of 2014, has dismissed the Writ Appeal.

3. The first respondent/writ petitioner filed W.P.(MD).No.13292 of 2015, praying for issuance of a Writ of Certiorarified Mandamus, relating to the impugned proceedings of the first appellant dated 02.09.2008 and quash the same and also prayed for consequential direction directing the first appellant herein, to approve her service as a Secondary Grade Teacher in the services of the second respondent/School, during the period from 01.02.2002 to 17.06.2004 (2 years, 4 months and 16 days) with salary and other attendant benefits.

4. The said writ petition after contest came to be allowed, vide common impugned order dated 20.03.2019, along with the other writ petitions and hence, the present Writ Appeal has been filed.

5. It is a case of the first respondent/writ petitioner that she was appointed as Secondary Grade Teacher in the private aided school under the management of the second respondent with effect from 01.02.2002, vide appointment order issued by the Manager, R.C. School, Tuticorin Diocese, dated 31.01.2002 and it is also her claim that her appointment was against a permanent vacancy, which arose on account of the promotion of the previous incumbent Thiru.Arputha Kanagaraj, as Primary School Headmaster, on 31.01.2002.

6. The second respondent/school submitted a proposal to the first appellant herein, through proper channel, namely, the second appellant for requesting disbursement of grant-in-aid toward her salary with the positive recommendation and the first appellant vide proceedings dated 12.07.2004, with effect



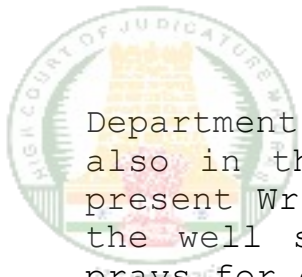
from 18.06.2004, instead of the date of initial appointment on 01.02.2002.

7. The first respondent/writ petitioner, challenging the said proceedings, filed W.P.(MD).No.9648 of 2005, and the Single Bench of this Court vide order dated 14.12.2007, directed the official respondents to consider the case of the first respondent/writ petitioner, in the light of the Full Bench decision of this Court in **Director of Elementary Education, Chennai and two others v. Tmt.S.Vigila and another**, reported in [2006 (5) CTC 385], within a stipulated time. However, the first appellant had returned the proposal once again vide proceedings dated 02.09.2008, reiterated his earlier stand and challenging the legality of the same, the first respondent/writ petitioner filed the writ petition. The writ petition was entertained and on behalf of the first appellant herein, a counter affidavit was also filed, wherein he took a stand among other things that there were so many surplus teachers working in other schools coming under the management of R.C.Diocese, Tuticorin and therefore, an obligation is cast upon the R.C. Diocese, Tuticorin to redeploy the surplus teachers to the needy schools in the existing vacancies. In the light of the same, the first respondent/writ petitioner is not entitled for approval of her service rendered between 01.02.2002 and 17.06.2004.

8. The learned Single Judge after taking note of the judgment in **The Director of Elementary Education and Ors., v. The Correspondent**, reported in [2018 (1) Writ L.R.421], in terms of G.O.Ms.No.525, School Education (D1) Department, dated 29.12.1997, the obligation is cast upon the Director of Elementary Education to redeploy the surplus staff from one School to another had found that the case of the first respondent/writ petitioner merits acceptance and accordingly, disposed of the writ petition with certain directions and challenging the legality of the same, the present Writ Appeal is filed.

9. The learned Special Government Pleader would submit that in the light of the facts that the Roman Catholic Schools of Tuticorin Diocese have very many surplus teachers. The approval of the first respondent/writ petitioner with regard to her services rendered between 01.02.2002 and 17.06.2004, could not be granted and prayed for short accommodation to produce the list.

10. Per contra, Mr.A.Ajith Geethan, learned Counsel appearing for the first respondent would submit that even in the earlier round of litigation in W.P.(MD).No. 13292 of 2015, the counter affidavit filed on behalf of the respondents, the exercise carried out in terms of G.O.Ms.No.525, School Education (D1)



Department, dated 29.12.1997, have not been implemented and so also in the counter affidavit of the official respondent in the present Writ Appeal. The learned Single Judge having taken note of the well settled position of law has rightly granted relief and prays for dismissal of the Writ Appeal.

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11. This Court has carefully considered the rival submissions and also perused the materials placed before it.

12. A Division Bench of this Court in the common judgment dated 17.06.2015 in W.P.(MD).Nos.639 to 642 of 2015 and batch, etc., [**The Director of Elementary Education v. B.Infanse & Ors.**,] has considered the issue and observed as under:-

"8.It is now more than four years, since the observations were made in W.A(MD)No.70 of 2012 dated 13.03.2012. It is also be noted that every year as per G.O.MS.NA.525, School Education(D1) Department, dated 29.12.1997, staff fixation is done, in each school, by educational authorities, on the basis of teacher-pupil ratio. No materials have been placed before this Court, as to the staff fixation done in the subsequent years, from 2012 onwards, in the schools, in which, surplus was noticed. If the existence of surplus staff continued in the subsequent years, the department ought to have taken action only, as against the said schools and redeployment could have been done then and there. But from the submission of the learned Special Government Pleader, it is evident that no steps were taken, for all these four years. If in the subsequent years, staff fixation in the schools, in which excess was noticed, had already been approved, then the educational authorities are bound by such orders."

13. A perusal of the counter affidavit filed on behalf of the official respondents in the earlier round of litigation filed by the first respondent/writ petitioner in W.P.(MD).No. 13292 of 2015, as well as the present round of litigation in W.P.(MD).No. 9648 of 2005 and batch, etc., where the following stand has been taken by the official respondents:-

"It is submitted that there were so many surplus teachers were working in the schools which are running under the R.C. Diocese. It is required to be re-deployed the surplus teachers to the needy schools in the existing vacancies."

The contents of the counter affidavits merely states that there were so many surplus teachers working in the Schools, which are running under the R.C.Diocese, Tuticorin and therefore, there is a requirement of redeployment of surplus teachers to the needy schools in existing vacancies.



14. It is to be noted at this juncture, the counter affidavits are silent as to the exercise undertaken by the concerned officials, in terms of G.O.Ms.No.525, School Education (D1) Department, dated 29.12.1997. Though opportunity is available to the respondents to bring to the knowledge of the concerned school, as to the actual number of surplus teachers available within the aided Schools of R.C.Diocese of Tuticorin, the said vital fact has not been stated by the concerned official respondents for the reasons best known to them, for which, the first respondent/writ petitioner cannot be faulted with.

15. The learned Single Judge has also taken note of the fact the appointment of the first respondent/writ petitioner in respect of the concerned post and in the light of the said legal position has rightly granted the relief.

16. This Court, on an independent application of mind is of the considered view that there is no error apparent or any infirmity in the reasons assigned by the learned Single Judge for disposing of the writ petition with certain directions and finds no merit in this Writ Appeal.

17. In the result, this **Writ Appeal is dismissed**, confirming the order dated 20.03.2019, passed in W.P.(MD).No.13292 of 2015. The respondents are directed to comply with the order dated 20.03.2019, as confirmed by this Writ Appeal within a period of eight weeks from the date of receipt of a copy of this order and communicate the decision taken to the respondents. No costs. Consequently, the connected civil miscellaneous petition is also dismissed.

Sd/-

Assistant Registrar(CS-II)

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Sub Assistant Registrar(CS)

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Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.



To

1. The District Elementary Educational Officer,
Tirunelveli, Tirunelveli District.

2. The Additional Assistant Elementary Educational Officer,
Nanguneri, Tirunelveli District.

+1 CC to M/s.FATHER XAVIER ASSOCIATES, Advocate (SR-15463[F]
dated 01/09/2020)

W.A. (MD) No. 648 of 2020

and

C.M.P. (MD) .No. 4055 of 2020

31.08.2020

DB (CO)

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