



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 18.03.2019
CORAM:

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

W.P. (MD) No.5667 of 2020
and
W.M.P. (MD) No.4947 of 2020

S.Durai Pandi

... Petitioner

-Vs-

1.The State of Tamil Nadu,
Represented by its Secretary,
Department of School Education,
Fort St. George, Chennai-600 009.

2.The Director of School Education,
College Road, Chennai-600 006.

3.The Chief Educational Officer,
Sivagangai District at Sivagangai.

4.The District Educational Officer,
Sivagangai, Sivagangai District.

5.The Headmaster,
Government Higher Secondary School,
V.Malampatti 630 562
Sivagangai District

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Mandamus, directing the respondents to permit the petitioner to continue in service as BT Assistant in Science in the 5th respondent school, namely, the Government Higher Secondary School, V.Malampatti, Sivagangai District till the end of the academic year 2019 2020 ie. till 31.05.2020 with all attendant benefits.

For Petitioner : Mr.S.Xavier Rajini
For Respondents : Mr.A.Thiyagarajan
Government Advocate.

ORDER

This Writ Petition is filed to direct the respondents to permit the petitioner to continue in service as BT Assistant in Science in the 5th respondent school, namely, the Government Higher



Secondary School, V.Malampatti, Sivagangai District till the end of the academic year 2019 2020 ie. till 31.05.2020 with all attendant benefits.

2.Mr.A.Thiyagarajan, learned Government Advocate takes notice on behalf of the respondents 1 to 4. Notice to the 5th respondent is dispensed with, since no adverse order is going to be passed against the 5th respondent. By consent of both parties, this Writ Petition is taken up for final disposal at the stage of admission itself.

3.According to the petitioner, he was appointed as B.T. Assistant (Science) on 07.01.2009 in the Government Higher Secondary School, V.Malampatti, Sivagangai District. He has to retire from service on 31.03.2020. The grievance of the petitioner is that if he is relieved in the middle of the academic year on attaining the age of superannuation on 31.03.2020, the students will suffer a lot and their studies will be affected. Hence, he has made an application to the 5th respondent on 19.02.2020. According to the petitioner, he is medically fit and there is no adverse remarks and there is no disciplinary proceedings against him. The 5th respondent, being satisfied about his character, conduct and physical fitness, forwarded the proposal to the third respondent vide his proceedings dated 19.02.2020, to provide re-employment till the completion of the academic year on 31.05.2020. However, no order has been passed. On enquiry with the officials, the petitioner came to know that the third respondent would not permit the petitioner to continue in the 5th respondent School, till the end of the academic year ie., 31.05.2020. Hence, the petitioner has come out with the present Writ Petition.

4.The learned counsel appearing for the petitioner contended that the respondents 1 to 4 failed to consider that the object of providing re-employment to a teacher is to provide continuity of teaching by the same teacher, for the welfare of the students. In support of his contention, the learned counsel for the petitioner relied on the judgment of the Division Bench of this Court reported in **2012 SCC Online Mad 1622 (The Secretary vs. R.Girija and another)**.

5.The learned Government Advocate appearing for the respondents 1 to 4 submitted that the post of the petitioner in the fifth respondent school is surplus and in view of the same, the request of the petitioner will not be considered and prayed for dismissal of the writ petition.

6.Heard the learned counsel appearing for the petitioner and the learned Government Advocate appearing for the respondents 1 to 4 and perused the materials available on record.



7.This Court, in the order dated 19.09.2019, made in W.P.Nos.26689 of 2019 etc., batch, relying on the Government Orders in G.O.Ms.No.1643, Education (U2) Department, dated 27.10.1988 and G.O.Ms.No.261, dated 20.12.2018 and the judgment of the Division Bench of this Court reported in **2012 SCC Online Mad 1622 (The Secretary vs. R.Girija and another)** allowed the Writ Petitions

8.It is relevant to extract below paragraphs 11 to 16 of the Division Bench Judgment.

"11. Contending that right of re-employment is not automatic, learned counsel for Appellant placed reliance upon the judgment in W.A.(MD) No.160 of 2009 (dated 31.01.2011). In the said judgment, referring to the judgment in W.A.No.1226/2003 dated 05.01.2007, the Division Bench of this Court held that "only when the teachers satisfies that his/her conduct or character are good and that he/she is physically fit to be re-employed, re-employment can be sought for". In the said case before the Division Bench, disciplinary proceedings was initiated and enquiry was also held and on conclusion of the enquiry, the School Management imposed a minor punishment on the teacher/1st Respondent thereon. In those circumstances, the Division Bench set aside the order of the learned single Judge and held that the 1st Respondent thereon is not entitled to re-employment.

12. The facts and circumstances of the case on hand stands on different footing. As pointed out earlier, only the Memos dated 29.7.2010 and 19.01.2011 were issued to the 1st Respondent for which 1st Respondent submitted a detailed explanation. No further proceedings was initiated against the 1st Respondent. In the counter-affidavit, 2nd Respondent alleged that even if the 1st Respondent was not eligible for the re-employment beyond the date of actual retirement, Appellant ought to have placed the matter before the Appointment Committee and ought to have sent the report to the 2nd Respondent who is the authority to take final decision on the resolution of the Appointment Committee. Appellant does not seem to have taken any such steps.

13. Learned counsel for Appellant contended that 1st Respondent attained superannuation on 30.11.2011 and she ought to have submitted her application for re-employment much in advance; but 1st Respondent submitted her application only on 01.11.2011. G.O.Ms.No.1643 dated 27.8.1988 does not lay down any such condition for submitting the application in advance. It only stipulates



that pension papers are to be submitted atleast one year in advance.

14. By perusal of the Typed set of papers, it is seen that 1st Respondent had sent her application for re-employment on 01.11.2011 through "Registered Post Acknowledgement Due" enclosing her physical fitness certificate. The cover addressed to the Secretary of the School was returned with an endorsement "addressee refused returned to sender". When the Secretary of the School refused to receive the cover containing the application for re-employment, Appellant School is not justified in contending that application for re-employment ought to have been sent well in advance. The materials on record only shows that the relationship between the 1st Respondent and the School Management was strained. Regarding which the Tanjore District Elementary Educational Officer had also issued proceedings in Na.Ka.No.06774/A4/2010 dated 27.12.2010 stating that the School did not obey the order of Educational Authorities and ordered for direct payment of the salary to the teachers. Only because of the strained relationship, Appellant seems to have taken a rigid stand against the 1st Respondent.

15. In 2008 (1) MLJ 312 (Correspondent, Secretary and Managing Trustee, Salem V.M.Rajagopalan and others), the Division Bench of this Court held that "re-employment is to be given even if there was no specific request from such teacher". Referring to the earlier Division Bench judgment in W.A.No.1179 of 1993 dated 06.9.1994 (S.Sundaram v. The Secretary, C.S.I. Diocese of Madras), in 2008 (1) MLJ 312, the Division Bench of this Court held as under:- "2. The right to continue on re-employment till the end of academic year conferred on the teachers working in the schools either Government or private, both minority or non-minority, has already been upheld by a Division Bench of this Court in W.A.No.1179 of 1993 (S.Sundaram v. Secretary, C.S.I. Diocese of Madras) and the SLP preferred against the same was also dismissed. The ratio laid down by the Supreme Court has been consecutively followed by this Court in R.Muthukrishnan v. Secretary, Aided Middle School, Korranattu, Karupur, Kumbakonam and the District Elementary Educational Officer, Thanjavur vide 1998 WLR 77.

3.1. In S.Sundaram v. Secretary, C.S.I. Diocese of Madras (supra), where the teacher was not permitted to avail the benefit of re-employment after his superannuation, the Division Bench directed the management and authorities to pay monetary benefits in terms of salary payable to him till the end of the academic year.



3.2. The only contention made on behalf of the appellant/Management is that the first respondent had not even made a request for re-employment after superannuation and therefore, he cannot make any complaint against the appellant/Management. But, similar contention was rejected by the Division Bench in the *S.Sundaram v. Secretary, C.S.I. Diocese of Madras (supra)*, whereunder it is held as follows:-

" We must point out here that as per the Government Order, there is no question of any teacher asking for continuation. The Government Order specifically states that the institutions are to continue them till the end of academic year, provided the teacher satisfies the three conditions laid down in the Government Order, G.O.Ms.No.452, dated 24.3.1970, which has been followed in subsequent Government Orders."

16. As has been enumerated in the Government Orders as well as in various judgments, the above said three conditions are to be fulfilled for the purpose of getting right to re-employment. There is nothing to show that the 1st respondent did not satisfy the essential conditions. While so, Appellant was not justified in refusing re-employment for the 1st Respondent. Learned Judge rightly directed the 2nd Respondent - The District Elementary Educational Officer, Tanjore District, Tanjore to permit the 1st Respondent to continue in service till the end of academic year on the 1st Respondent's production of physical fitness certificate and the certificate of character and good conduct in terms of G.O.Ms.No.1643 dated 27.8.1988. We do not find any reason warranting interference with the order of the learned single Judge."

9. In my considered opinion, the above judgment is squarely applicable to the facts and circumstances of the present case. Therefore, the respondents 1 to 4 are directed to permit the petitioner to continue in service, till the end of the academic year on production of physical fitness certificate and the certificate of character and conduct in terms of G.O.Ms.No.1643 dated 27.08.1988. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (records)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)



- 1.The Secretary,
State of Tamil Nadu,
Department of School Education,
Fort St. George, Chennai-600 009.
- 2.The Director of School Education,
College Road, Chennai-600 006.
- 3.The Chief Educational Officer,
Sivagangai District at Sivagangai.
- 4.The District Educational Officer,
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- 5.The Headmaster,
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Sivagangai District

+1 CC to M/s.S.XAVIER RAJINI, Advocate (SR-12322[F] dated
18/03/2020)
+1 CC to SPL.GP (SR-12472[F] dated 19/03/2020)

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MK (26.05.2020) 6P 8C