



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 08.01.2020

CORAM:

THE HONOURABLE MRS. JUSTICE J.NISHA BANU

W.P. (MD) No.12832 of 2014 and
MP(MD) No.2 of 2014

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V.C. Joseph Durai
Headmaster
St.Aloysius Middle School
Chinthamani - 627 355
Tirunelveli District

Petitioner

Vs

1. The State of Tamil Nadu,
Rep 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 Joint Director of School Education,
(Higher Secondary Education),
College Road,
Chennai - 600 006.
4. The District Educational Officer,
Tuticorin,
Tuticorin District .
5. The Correspondent,
Sacred Heart Higher Secondary School,
Sattankulam - 628 704,
Tuticorin District .

Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus calling for the records relating to the impugned proceedings issued by the 1st respondent Secretary vide G.O.Ms.No.314 [School Education Department (D2)], dated 12.11.1999, and consequential order issued by the third respondent Joint Director (Higher Secondary Education) vide proceedings O.Mu.No.42721/W5/E1/2014 dated 10.06.2014, and further direct the respondents 1



to 4 herein to forthwith reckon the petitioner's services as PG Assistant in the 5th respondent school from 31.12.1986 to 26.11.1997 rendered in an unaided post for all practical purposes including fixation of salary and pension benefits.

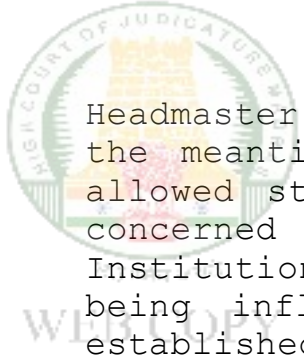
For Petitioner : Mr. M.J.Shabu Jose
For Respondents : Mr.N.Shanmugaselvam
Additional Government Pleader,
For R1 to R4

Mr.V.John Kennady, For R5

O R D E R

This Writ Petition is filed to call for the records relating to the impugned proceedings issued by the 1st respondent Secretary vide G.O.Ms.No.3014 [School Education Department (D2)], dated 12.11.1999, and consequential order issued by the third respondent Joint Director (Higher Secondary Education) vide proceedings O.Mu.No.42721/W5/E1/2014 dated 10.06.2014, quash the same, and further direct the respondents 1 to 4 herein to forthwith reckon the petitioner's services as PG Assistant in the 5th respondent school from 31.12.1986 to 26.11.1997 rendered in an unaided post for all practical purposes including fixation of salary and pension benefits.

2. The case of the petitioner is that initially, he was appointed as PG Assistant (Accountancy) in an unsanctioned post in the fifth respondent school and was working for the period from 07.08.1985 to 26.11.1997. The prescribed qualification for the post of PG Assistant is Post Graduate Degree with B.Ed. At the relevant point of time, since the petitioner had been undergoing B.Ed Degree course, the District Educational Officer granted exemption from possessing B.Ed Degree to the petitioner as per proceedings Na.Ka.No.7566/A4/87 dated 05.11.1988. The post of PG Assistants were created on the upgradation of the 5th respondent School as a Higher Secondary School in the year 1985. As the Government did not sanction grant-in-aid towards salary to these posts, the school filed Writ Petition in W.P.No.2876 of 1987, and during the pendency of the said Writ Petition, the first respondent has sanctioned 10 PG Assistant posts and one Laboratory Attender to the school for two years from the date of recognition viz 17.07.1985, vide G.O.Ms.No.667 (Education (HS) Department) dated 30.04.1987. As per the said Government order, the petitioner has been sanctioned with salary for the period from 07.08.1985 to 16.07.1987. Further, the petitioner has been sanctioned with the salary for the period from 17.07.1987 to 16.10.1987 vide G.O.Ms.No.1804, Education (HS2) Department, dated 27.12.1989. Subsequently, he was transferred and appointed as Middle School



Headmaster in R.C.Middle School, Saveriarpuram on 27.11.1997. In the meantime, Writ Petition filed by the school management was allowed stating that State of Tamil Nadu and other authorities concerned shall consider the application of each of the Institution for grant-in-aid, within a period of 16 weeks, without being influenced by the fact that such institution had been established without obtaining any prior permission. In such circumstances, the petitioner had sent several representations to the respondents, requesting to reckon his service as PG Assistant during the period from 31.12.1986 to 26.11.1997, in the 5th respondent recognized school, against an unaided post, for the purpose of pay-fixation and pension benefits and the same was rejected by the third respondent Joint Director of School Education on the ground that as per G.O.Ms.No.314 (School Education Department(D2) dated 12.11.1999, the service in an unaided post in a private school recognized before 01.06.1991 should be reckoned only for promotional purposes and not for the purpose of fixation of salary and pension. Challenging the same, the petitioner has come before this Court with the present Writ Petition.

3. The learned counsel for the petitioner submitted that G.O.Ms.No.314 (School Education Department(D2) dated 12.11.1999 cannot be made applicable to the present case, in as much as the said Government Order can have only a prospective operation. The learned counsel further submitted that the first respondent has reckoned the service period of two teachers rendered in unsanctioned post, in a private recognized school for fixation of the salary and pension benefits vide G.O.(1D) No.125, School Education (VE) Department dated 13.04.2010 and the District Educational Officer, Tirunelveli had extended the same benefits to one Mr.Krishnan, Secondary Grade Teacher vide proceedings Na.Ka.No.958/A2/2012 dated 01.04.2013 and the petitioner also entitled for the same benefit.

4. On the other hand, the learned Additional Government Pleader submitted that the fifth respondent school has initially appointed the petitioner as Post Graduate Teacher, without having sanctioned post, from the funds of management, as unqualified post graduate teacher, even without having required qualification of B.Ed degree, thereby the appointment of the petitioner itself becomes defective. Subsequent sanctioning of temporary posts, the petitioner received salary for the period from 07.08.1985 to 16.07.1987. The petitioner had worked in the fifth respondent school only during the period when the school was functioning without aid. Subsequent sanctioning of commerce PG post was filled up by another person and not by the petitioner. It is further submitted that when there is no specific general rule in the Tamil Nadu Recognized Private Schools(Regulation) Act 1973 and Rules



1974 and in the Tamil Nadu Minority Schools Rules 1977 to count the service rendered in the self finance sections of a recognized school for the fixation of pay and pensionary benefits, and there is specific order of the Government in G.O.Ms.No.439 Education dated 05.05.1993 that services rendered in a recognized Private school without sanctioned post prior to 01.06.1991 could be counted only for experience for the purpose of promotion alone, the relief sought for by the petitioner is illegal. Rule 12 of Tamil Nadu Pension Rules, 1978 stipulates that the service rendered without Government salaries is not considered as qualifying service for calculation of pension. Hence, the period from 31.12.1986 to 26.11.1997 without payment of salaries from Government funds cannot be counted for the purpose of fixation of pay and pension. As per interim order of this Court, salaries were paid to the petitioner only for the period from 07.08.1985 to 16.07.1987 and from 17.07.1987 to 16.10.1987. But posts were sanctioned only from 01.06.2001, whereas the petitioner had worked in the fifth respondent school prior to 01.06.2001 in an unsanctioned post. Hence, there is no need to interfere with the order passed by the third respondent.

5. Heard both sides and perused the documents available on record.

6. On a careful perusal of the documents, petition averments and counter averments will go to show that the initial appointment of the petitioner as PG Assistant in the fifth respondent school was without prescribed qualification, that too admitted by the petitioner in his affidavit. It is not in dispute that the petitioner was working in the fifth respondent school for a period from 07.08.1985 to 26.11.1997. It is seen that as per interim order of this Court, the petitioner also received salary for the period from 07.08.1985 to 16.07.1987 and from 17.07.1987 to 16.10.1987. The posts were sanctioned only from 01.06.2001, whereas the petitioner had worked in the fifth respondent school prior to 01.06.2001 in an unsanctioned post. That apart, there is no specific general rule in the Tamil Nadu Recognized Private Schools(Regulation) Act 1973 and Rules 1974 and in the Tamil Nadu Minority Schools Rules 1977 to count the service rendered in the self finance sections of a recognized school for the fixation of pay and pensionary benefits. Also, there is specific order of the Government in G.O.Ms.No.439 Education dated 05.05.1993 that services rendered in a recognized Private school without sanctioned post prior to 01.06.1991 could be counted only for experience for the purpose of promotion alone.

7. For all the foregoing reasons, I am not inclined to interfere with the order passed by the third respondent vide proceedings O.Mu.No.42721/W5/E1/2014 dated 10.06.2014 and



accordingly the Writ Petition stands dismissed. No costs.
Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(CS-II)

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Sub Assistant Registrar(CS)

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To

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 Joint Director of School Education,
(Higher Secondary Education),
College Road,
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4. The District Educational Officer,
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Tuticorin District .
5. The Correspondent,
Sacred Heart Higher Secondary School,
Sattankulam - 628 704,
Tuticorin District .

+1 CC to M/s.SPL.GP (SR-992[F]

+1 CC to M/s.M.J.SHABU JOSE, Advocate (SR-1264[F]

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SCR(CO)

TR(26.02.2020) 5P 8C