



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 20.07.2020

CORAM:

THE HONOURABLE MRS. JUSTICE J.NISHA BANU

W.P. (MD) No.4506 of 2014

C.Benadict Raj

...Petitioner

Vs

1. The Secretary to Government,
Educational Department,
Secretariat,
Chennai.
2. The Director of School Education,
College Road,
Chennai.
3. The Chief Educational Officer,
Nagercoil,
Kanyakumari District.
4. The District Educational Officer,
Kuzhithurai Educational District,
At Marthandam,
Kanyakumari District.
5. St.Joseph's Higher Secondary School,
Rep by its Correspondent,
Thiruthuvapuram,
Kuzhithurai Post,
Kanyakumari District.

...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Mandamus, directing the second respondent herein to approve the petitioner's appointment with effect from 07.01.2003 as B.T.Assistant in English and to extend the benefits from the said date instead of 17.04.2004 and to grant all benefits including service and monetary benefits with effect from 07.01.2003 by considering his representation dated 26.04.2013, within a time frame stipulated by this Court.

For Petitioner	: Mr.S.C.Herold Singh
For Respondents	: Mr.N.Shanmugaselvam
1 to 4	Special Government Pleader

O R D E R

This writ petition is filed to direct the second respondent herein to approve the petitioner's appointment with effect from 07.01.2003 as B.T.Assistant in English and to extend the benefits



from the said date instead of 17.04.2004 and to grant all benefits including service and monetary benefits with effect from 07.01.2003 by considering his representation dated 26.04.2013, within a time frame stipulated by this Court.

2.The case of the petitioner is that he was appointed as B.T. Assistant (English) in the fifth respondent school, in the vacancy arose due to the retirement of one R.Sundaram, by appointment order dated 06.01.2003. As there was no proper instructor to teach English, the fifth respondent school management decided to have a change of staff and on 14.01.2003, the fifth respondent had sent a proposal to the fourth respondent regarding the change of staff and the said proposal was forwarded by the fourth respondent to the second respondent. As per G.O.Ms.No.285 dated 01.10.1999, it is ordered that if the school is having 5 or more sections, one English teacher can be appointed, provided that there should be 10% out of total vacancy. Subsequently, the second respondent by its proceedings in Mu.Mu.No.10090/D1(1)/2003 dated 17.04.2004 has changed the post of B.T.Assistant (Social Science) into B.T.Assistant (English), thereby the service of the petitioner was regularised with effect from 17.04.2004, totally overlooking the fact that he was originally appointed on 06.01.2003. On 26.04.2013, the petitioner had submitted his representation to the second respondent to regularize his service from the date of his appointment i.e., from 07.01.2003. Since no action has been taken by the respondents, the petitioner is before this court with the present Writ Petition.

3.The learned counsel for the petitioner submitted that though the petitioner was appointed in the fifth respondent school by appointment order dated 06.01.2003, the service of the petitioner has been regularised only from 17.04.2004. The learned counsel further submitted that as there was no proper instructor to teach English, the school management has decided to go for change of staff and the same was done after getting approval from the concerned authority. Hence, the service of the petitioner has to be regularised from the date of his initial appointment.

4.The learned Special Government Pleader in his Counter affidavit submitted that if one B.T.Assistant post is vacant, that should be filled up by appointment of B.T.Assistant in the same subject. If a school wants to follow different subject roaster, necessary orders have to be obtained from the Director of School Education, Chennai. In this case, against the vacancy arose due to the retirement of one Mr.R.Sundaram, in the post of B.T.Assistant (Social Science), the petitioner has been appointed as B.T.Assistant (English) without getting any prior approval from the concerned. Hence, the appointment of the petitioner itself is illegal. Further, it is stated in the counter affidavit that after knowing the mistake committed by the fifth respondent, they requested the fourth respondent to change the above B.T.Assistant (Social Science) post



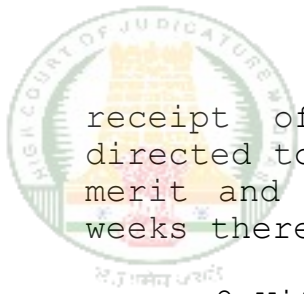
into B.T.Assistant (English) post. In turn, the second respondent has passed a conversion order on 17.04.2004 and hence, the petitioner's service has been regularised from the date of conversion order. Therefore, regularization of the petitioner's service from 17.04.2004 is proper.

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

6.It is seen from the appointment order issued to the petitioner that the date of appointment was on 06.01.2003, wherein it was clearly stated that the petitioner was appointed as High School Assistant (English) Teacher, under the Corporate Management of R.C.Diocese of Kottar and posted at St.Joseph's Higher Secondary School, Thirithuapuram in the place of Mr.R.Sundaram, High School Assistant, voluntarily retired and directed to report for duty on 07.01.2003. Subsequently, on 13.05.2003, the Correspondent of St.Joseph's Higher Secondary School, Thirithuapuram has addressed a letter to the Director of School Education, Chennai stating that one Mr.R.Sundaram, who was working as B.T.Assistant (Social Science) retired from service voluntarily on 30.09.2002, thereby Mr.C.Benadict Raj has been appointed on 07.01.2003 and allotted to English subject and requesting to change the vacant post of B.T.Assistant (Social Science) to B.T.Assistant (English), based on which, the Director of School Education has given an approval for change of post as requested by the school management. Hence, it is clear from the above documents that the date of appointment of the petitioner was 06.01.2003 and immediately on 13.05.2003 itself, request has been made for conversion of the vacant post of B.T.Assistant (Social Science) to B.T.Assistant (English). After giving appointment to the petitioner as B.T.Assistant(English) in the place of B.T(Assistant (Social Science), approval has been sought for by the school management and the same has been granted on 17.04.2004, thereby the service of the petitioner has been regularised from the date of approval. Admittedly, the BT Assistant (Social Science) is a sanctioned post and taking into consideration the need of the BT Assistant (English), the conversion has been allowed from the date of passing the conversion order. Admittedly, the petitioner has been working from 07.01.2003 and the post which was converted is already a sanctioned post and due to the need of the BT Assistant (English), conversion request was made on 13.05.2003 itself. Since the petitioner's appointment was approved from the date of passing of the order of conversion, a representation has been given only on 26.04.2013, but till date, no order has been passed.

7.Considering the facts and circumstances of the case and also considering the fact that the petitioner has given a representation on 26.04.2013, the petitioner is directed to give a fresh representation to the second respondent within a period of four months from the date of receipt of a copy of this order and on



receipt of the said representation, the second respondent is directed to consider the same and pass appropriate orders on its own merit and in accordance with law, within a period of twelve (12) weeks thereafter.

8. With the above directions, this Writ Petition is disposed of. No costs.

Sd/-

Assistant Registrar (CSII)

// True Copy //

/ /2020

Sub Assistant Registrar (CS)

vrn/smn

To

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