



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 11.03.2020

CORAM:

THE HONOURABLE MRS. JUSTICE J.NISHA BANU

W.P. (MD) No.26483 of 2019 and

WMP (MD) Nos.22890,22891 & 22893 of 2019

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K.Dhanapackia Britto

Petitioner

Vs

1. State of Tamil Nadu,
Rep by its Principal Secretary,
Department of School Education,
Fort St.George, Chennai - 9.
2. The Director of School Education,
O/o the Director of School Education,
DPI Campus, Chennai - 6.
3. The Joint Director of School Education
(Higher Secondary),
O/o the Joint Director of School Education
(Higher Secondary),
DPI Campus, Chennai - 6.
4. The Chief Educational officer,
O/o the Chief Educational Officer,
Virudhunagar, Virudhunagar District
5. The District Educational Officer,
O/o The District Educational Officer,
Virudhunagar Virudhunagar District
6. The Government Higher Secondary School,
Rep by its Head Master
K.Sellaiyapuram
Virudhunagar,
Virudhunagar 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.4936/E1/2019 dated 07.11.2019 on the file of the Respondent No.4 and quash the same as illegal and consequently directing the respondent No.4 to provide re-employment to the petitioner in the post of B.T. Assistant in English 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 to call for the records pertaining to the impugned order in O.Mu.No.4936/E1/2019 dated 07.11.2019 on the file of the Respondent No.4 and quash the same as illegal and consequently directing the respondent No.4 to provide re-employment to the petitioner in the post of B.T. Assistant in English till the end of the academic year 31.05.2020.

2. The case of the petitioner is that the petitioner was appointed as BT Assistant on 03.10.2005 in the Panchayat Union Middle School, Elayirampanni, Virudhunagar District and at the time of her retirement, she was working as BT Assistant (English) at Government Higher Secondary School, K.Selaiyapuram, Virudhunagar District. Due to attaining her superannuation on 31.11.2019, she made representation dated 26.06.2019, to the sixth respondent seeking re-employment till the end of the academic year. The fourth respondent has rejected the request made by the petitioner and passed the impugned order in O.Mu.No.4936/E1/2019 dated 07.11.2019 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 order has 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 as per Para 7 (ii) of G.O.Ms.No.261 dated 20.12.2018, the teachers who had completed the age of 58 cannot be re-employed at any time, when a surplus teacher is available for that post. The learned Government Advocate further submitted that if the petitioner be re-employed, it will cause unnecessary and unavoidable monetary loss to the Government. 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-



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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 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



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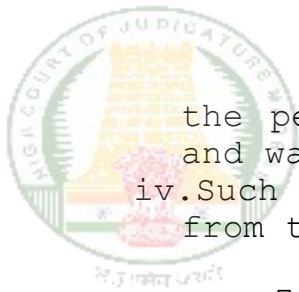
health condition. These factors are absent in the appellant's case. Thus, in our considered view, the stand taken by the Department by passing an order on 12.04.2019 fixing the staff strength for the academic year 2018-2019 with retrospective effect and citing the same as a reason not to permit the teacher 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 School since 2012. It is not the case of the respondents that the post was rendered surplus from the academic year 2013-2014 onwards, but they sought to declare the post as surplus for the academic year 2018-2019, that too by passing an order at the end of the academic year ie 12.04.2019.

8. Thus, for the above reasons, the Writ Appeal is allowed and the order dated 14.08.2019, passed in W.P(MD) 15159 of 2019, is set aside. ...The respondents 3 to 5 are directed to permit the appellant to function till the end of the academic year. It is made clear that for the period during which the appellant was not employed ie from 01.07.2019 till she is re-employed pursuant to this Judgment, she shall not be entitled to salary by applying the principle "No work No pay". On and after the appellant is re-employed, she is entitled to draw salary and wages. No costs.

6. Following the same, this Court is inclined to pass the following order:

- i. The order in Oo.Mu.No.4936/E1/2019 dated 07.11.2019 on the file of the Respondent No.4 is hereby quashed.
- ii. The respondents are directed to permit the petitioner to work as BT Assistant (English) till 31.05.2020 ie end of the academic year, by making re-employment and pay the salary to the petitioner.
- iii. It is made clear that for the period during which the petitioner was not employed, she shall not be entitled to salary by applying the principle "No work No pay". On and after



the petitioner is re-employed, she is entitled to draw salary and wages.

iv. Such exercise shall be completed within a period of two weeks from the date of receipt of a copy of this Order.

7. With the above directions, the Writ Petition is disposed of. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (CO)

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Sub Assistant Registrar (CS)

To

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Rep by its Principal Secretary,
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O/o the Director of School Education,
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6. The Government Higher Secondary School,
Rep by its Head Master
K. Sellaiyapuram, Virudhunagar,
Virudhunagar District

+1 CC to M/s. T. LAJAPATHI ROY, Advocate (SR-11518[F]

VRN

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SMA/04.05.2020/5P/8C

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