



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.09.2021

CORAM:

THE HON'BLE DR.JUSTICE ANITA SUMANTH

W.P.NO.30776 OF 2008

B.Kalaivani

... Petitioner

.vs.

1. The Inspector of Anglo Indian Schools,
Chennai-600 006.
2. The Correspondent,
Sacred Heart Convent Higher Secondary School,
Villupuram - 606 602,
Villupuram District.
3. The Educational Commissioner,
Directorate of School Education, D.P.I.Complex,
Nungambakkam, Chennai - 600 006.
4. The Director,
Directorate of School Education, D.P.I.Complex,
Nungambakkam, Chennai - 600 006.
5. The Chief Educational Officer,
Villupuram District.
6. The District Educational Officer,
Villupuram, Villupuram District.

(R3 to R6 impleaded vide order dated 14.09.2021 made in WMP.No.18588 of 2021 in W.P.No.30776 of 2008 by ASMJ)

... Respondents

PRAYER:

Writ Petition filed under Article 226 of the Constitution of India, praying to issue Writ of Certiorarified Mandamus, calling for the records pertaining to the order bearing R.C.No.1417/A/2008 dated 26.05.2008 on the file of the first respondent and quash the same and consequently direct the respondents to recognize the service of the petitioner.



WEB COPY

For Petitioner : Mr.Akhil Akbar Ali
for Mr.Mohd.Yaqoob Kaleel

For R1, R3 to R6 : Mr.C.Selvaraj
Government Advocate

For R2 : Mr.Godson Swaminathan

O R D E R

The petitioner is one Ms.B.Kalaivani, who was appointed as a computer instructor by the Sacred Heart Convent Higher Secondary School/R2 from June, 1991. She rendered services there till May, 1994 and then again from 05.06.1994 to 17.01.1996 as a computer assistant.

2. R2 School is an aided minority school that receives Grant-in-aid from the State of Tamil Nadu. On 18.01.1996, she was appointed in a leave vacancy and was re-appointed in 06.06.1996 on regular basis in the position of M.G.Assistant. Her services were confirmed on 01.03.1998.

3. From 01.06.1999, in line with G.O.Ms.No.559 dated 11.07.1975, she was absorbed as a member of regular staff of R2 School in the capacity of Computer Science Assistant and has served for approximately 16 years in various capacities. Her appointment, on and from 06.06.2002, had been in place of one Ms.M.Malarvizhi whose services had been terminated by order dated 19.03.2007, with effect from 01.06.2002.

4. The aforesaid order of termination came to be challenged by Malarvizhi in W.P.No.1352 of 2004. She had sought inter alia quash of the order of termination and a consequential direction to reinstate her in service with all consequential benefits. The writ petition came to be allowed on 22.11.2007 by a learned Single Judge of this Court issuing a direction that she petitioner was permitted to join duty with effect from 01.12.2007 and would be entitled to salary from that date or whenever she joins duty.

5. As regards her claim for benefits for the period prior to 01.12.2007, the learned Judge left it to the result of the appeal that she stated she had filed before the Director of School Education. Liberty was granted to the parties in that



writ petition to move the Director of School Education for early hearing of the appeal.

6. We are not, in this writ petition, concerned with the subject matter of that writ petition except to note that the petitioner herein was appointed in the vacancy caused by termination of Malarvizhi, with effect from 01.06.2002. The case of the petitioner is that her Service Register had not been activated citing the litigation initiated by the said Malarvizhi. Thus the services of the petitioner from 06.06.2002 to 15.03.2007 entitling her to salary and other benefits was not taken into account as service. With effect from 15.03.2007, the petitioner is in Government employment and is no longer in the services of the school.

7. The counter filed by the State proceeds on the basis that the appointment of the petitioner was in a vacancy caused by termination of Malarvizhi which itself had not been approved by the Department and thus the subsequent order of the High Court for re-instatement of Malarvizhi in the same post as well as the appointment of the petitioner on 06.06.2002 in the same vacancy was not liable to be accepted.

8. As far as R2 School is concerned, it sails with the petitioner relying upon its status as a minority institution, not liable to seek approval for either recruitment or termination of staff and thus entitled to take a decision on its own in such matters.

9. The concurrent stand of R2 School and the petitioner is liable to be accepted in light of decision of the Division Bench of this Court in the case of The Society of the Brothers of the Sacred Heart of Jesus and another Vs The State of Tamil Nadu and Others W.P.No.4478 of 1974 and batch (order dated 17.12.1975).

10. Writs of Declaration had been filed by several petitioners challenging the application of the Tamil Nadu Private Schools (Regulation) Act, to minority institutions and after detailed discussion summed up at internal page No.91 of the decision, various statutory provisions of the Act were held not to be applicable to minority institutions including those relating to seeking of approval for recruitment or termination of faculty/staff.



11. All parties before me concur on the position that the post to which the petitioner was appointed is a sanctioned post and the only question that then arises is as to whether prior approval was sought or not which is rendered redundant in the light of the decision of the Division Bench as aforesaid.

12. The impugned order is set aside and this Writ Petition allowed. The petitioner is directed to be granted salary as well as all consequential benefits for the period from 06.06.2002 to 15.03.2007 when she obtained Government employment.

13. Learned Counsel for the petitioner states that the petitioner has received part of the amounts due to her which position the learned counsel for the petitioner is unable to confirm or deny. Thus, the respondents are directed to pay over the arrears and pension, after deducting the sum they state the petitioner has received along with a detailed working sheet of the amounts due within a period of six (6) weeks from today. No costs.

Sd/-

Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

sl/kbs

To

1. The Inspector of Anglo Indian Schools,
Chennai-600 006.
2. The Correspondent,
Sacred Heart Convent Higher Secondary School,
Villupuram - 606 602,
Villupuram District.
3. The Educational Commissioner,
Directorate of School Education, D.P.I.Complex,
Nungambakkam, Chennai - 600 006.



4. The Director,
Directorate of School Education, D.P.I.Complex,
Nungambakkam, Chennai - 600 006.

WEB COPY

5. The Chief Educational Officer,
Villupuram District.

6. The District Educational Officer,
Villupuram, Villupuram District.

+1cc to M/s.M.Kaviyarasi, Advocate, S.R.No.50698

+1cc to the Government Pleader, S.R.No.51611

W.P.No.30776 of 2008

PL(CO)
PM/12/11/2021