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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 3.12.2021

CORAM:

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

W.P.No.7068 of 2010

N.MALARVIZHI
W/O.B.BASKARAN,
NO.5 JAMUNA ILLAM, 1ST FLOOR,
MULLAI STREET, SADHASIVAM NAGAR,
CHINNAPATTI-624 301,
DINDIGUL DISTRICT

...PETITIONER

Vs.

1. THE JOINT DIRECTOR (PERSONNEL)
OF SCHOOL EDUCATION
COLLEGE ROAD, CHENNAI-6.

2. THE DISTRICT EDUCATIONAL OFFICER,
DINDIGUL DISTRICT DINDIGUL.

3. THE DEVANGAR HIGHER SECONDARY SCHOOL,
REP. BY ITS SECRETARY,
CHINNAPATTI,
DINDIGUL DISTRICT 624301

...RESPONDENTS

Prayer:Writ petition filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorari filed mandamus Calling for the records relating to the proceedings No.64/2008-09 dt.16.2.2009 of the 3rd respondent herein and quash the same and to direct the respondents to pay immediately the Salary and Allowance due to the petitioner for the duties discharged by the petitioner in her capacity as B.T.Assistant in the 3rd respondent School for the period from 9.6.1992 to 23.8.1995 with 15% interest.

For Petitioner : Mr.R.Muthukkannu

For Respondents 1 & 2: Mr.V.Nanmaran, A.G.P.(Edn.)

For Respondent No.3 : Mr.Ashok menon



O R D E R

According to the petitioner, the petitioner was appointed as B.T. Assistant (Maths) on 9.6.1992 in the third respondent School. The third respondent School forwarded a proposal to the second respondent for approval of appointment of the petitioner on 15.10.1992. Pending approval, the petitioner submitted a complaint to the third respondent about the misbehaviour of the Headmaster. The petitioner was removed from service by issuing relieving order to the petitioner. The petitioner preferred an appeal before the Joint Director of School Education. Subsequently, the petitioner was appointed as B.T. Assistant in Government High School, Dindigul. Based on the undertaking given by the third respondent in the letter, dated 18.12.1999 that the Management is responsible for the payment of arrears and salary and allowance, the first respondent has stated that in respect of payment of arrears of salary and allowance, the matter is between the third respondent school and the petitioner and the same would be settled as per the order of the Court. Therefore, based on the aforesaid undertaking given by the third respondent School, the School Management Appeal was dismissed as infructuous.

2. According to the learned counsel appearing for the petitioner, pursuant to the said order, he made representation to the School to settle the arrears of salary payable to the petitioner for the service rendered by the petitioner for a period from 9.6.1992 to 23.8.1995 within a month. Since the representation does not evoke any response, the petitioner has filed a W.P.No.4107 of 2001 before this Court to direct the respondents to pay arrears of salary to the petitioner. This Court by its order, dated 8.9.2008 directed the third respondent School to dispose of the representation of the petitioner, dated 25.10.2000. On receipt of the Court order, the third respondent passed the impugned order stating that the School Committee has decided to file Writ petition to get approval of the petitioner's appointment for claiming arrears of salary. Therefore, the petitioner has preferred the present writ petition before this Court.

3. Counter affidavit filed by the third respondent School Management wherein it is stated that the second respondent has not approved the appointment of the petitioner and therefore, not able to settle the arrears of salary payable to the petitioner. It is only the State Government that has to make the payment to the petitioner. Further, it is stated by the Secretary of the third respondent School that he has no personal knowledge of what had transpired between the then Headmaster of the third respondent School and the petitioner. Therefore, according to the school Management, arrears of salary has to be



paid by the Government not by the School.

4. The learned Additional Govt. Pleader appearing for the respondent would submit that the order passed by the Joint Director of School Education recording the undertaking given by the Secretary of the third respondent School, has stated that the said dispute for payment of arrears of salary has to be settled as per the orders of the Court. Therefore, the department is no way held responsible for payment of arrears of salary. It is further submitted that the third respondent while forwarded a proposal to the educational authorities for approval of appointment of the petitioner, has passed the order of termination as against the petitioner without getting any approval from the educational authorities. Therefore, the issue of settling the arrears of salary is only between the petitioner and the third respondent School.

5. Heard the rival submissions of the parties and perused the materials available on record.

6. The point for consideration in the instant writ petition is that whether the third respondent School Management is liable to pay arrears of Salary due to the petitioner for the service rendered by the petitioner during relevant period in the School as Teacher.

7. According to the counsel appearing for the petitioner, the petitioner was served as B.T. Assistant Teacher in the third respondent School and as per the Rules, the petitioner is entitled to get salary for the duties discharged by him as B.T. Assistant for the period from 9.6.1992 to 23.8.1995. The counsel for the petitioner also relied on the decision of the Division Bench of this Court reported in (2006) 4 MLJ 1125 [Bharath Primary School run by Sri Bhathrakaliamman Trust rep. By its Secretary vs. A.Pauldurai and others] wherein the Division Bench of this Court has held as under:

"9. We do not know as to how the earlier judgment of the Division Bench cited by the learned counsel for the appellant is helpful to him. On the contrary, as authoritatively pointed out by the Supreme Court, when there is a contract between the management and the teacher, the liability to pay the salary completely vests on them. If the stand of the Management is accepted, then the poor teacher, who worked as a Head Master for the period between 23.9.1998 and 07.6.2000, will have to go without any salary notwithstanding the fact that his appointment was not approved by the Department.



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10. Article 23 of the Constitution of India prohibits forced labour. It is not as if the Management took a contra stand before the learned Judge with reference to the appointment of the first respondent. On the contrary, they have supported the appointment throughout and only when they were mulcted with financial liability, they have come forward to file the present appeal. Therefore, the stand of the Management cannot be approved."

8. In another judgment relied on by the counsel for the petitioner rendered by the Hon'ble Supreme Court reported in 2012 (1) SLJ (SC) 128 [VISHWA MOHINI VS. DISTRICT INSPECTOR OF SCHOOLS & OTHERS] wherein the hon'ble Supreme Court has held as under:

"6. In the peculiar facts and circumstances of this case, we are of the considered view that interest of justice would meet if the appellant is paid for the period she worked with the concerned school. Accordingly, we direct respondent Nos.1 to 4 to pay the salary of the appellant for the period she worked, within eight weeks from today. However, the District Inspector of Schools and the State of U.P. would be at liberty to recover that amount from the management of the school or from any other individual."

9. Yet another decision relied on by the counsel appearing for the petitioner reported in 2012 (5) MLJ 139 [DIRECTOR OF ELEMENTARY EDUCATION AND OTHERS VS. A.SUSAI MICHAEL AND ANOTHER] wherein the Division Bench of this Court has held as under:

"5. The Government had specifically stated that the Writ Petitioner's services were availed by the second respondent/School from 2.6.1997 to 28.2.2000. The approval was not granted by the appellants for the reason that the Writ Petitioner did not have undergone the one month Course in Child Psychology. Since he did not have the required qualification, he was terminated from service. However, the fact remains that the first respondent/Writ Petitioner had served in the second respondent/School between 2.6.1997 and 28.2.2000.

6. In the light of the above facts, it



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would be appropriate to direct the second respondent/ School to pay the salary to the Writ Petitioner for the period from 2.6.1997 to 28.2.2000. Already the learned Single Judge had awarded 6% interest per annum on the said amount from the date on which it became due till the date of realisation.

7. Accordingly, there will be a direction to the second respondent/School to pay the salary to the first respondent/Writ Petitioner as indicated above with interest at the rate of 6% per annum from the date on which it became due till the date of realization. It is held that the appellants 1 to 4 are not liable to pay the salary to the Writ Petitioner. The learned counsel for the first respondent requested that the said period of his service from 2.6.1997 to 28.2.2000 may be considered for the pensionary benefits. It is open to him to make appropriate representation to the authorities concerned in this regard."

10. Curiously reading the aforesaid judgments of the Hon'ble Supreme Court as well as the Division Bench of this Court, it is clearly held that the School Management has to pay the arrears of salary to the petitioner for the services utilized by the School Management.

11. Coming to the facts of the case on hand, the third respondent School Management has given an undertaking before the first respondent that the arrears of salary payable to the petitioner will be settled as per the Court order. But in reply to the petitioner's representation, 25.10.2000, the third respondent School has stated that the School Committee has taken steps to challenge the order passed by the Joint Director of School Education. However, in the counter affidavit filed by the third respondent School, there is no whisper about filing writ petition challenging the order of the Joint Director of School Education.

12. In the light of the above, third respondent School cannot absolve the responsibility of settling the arrears of salary payable to the petitioner for the duties discharged by the petitioner from 9.6.1992 to 23.8.1995. Further, the petitioner is entitled for interest at the rate of 6% p.a.

13. In view of foregoing discussion, this Court pass the following order:



i) The impugned order passed by the third respondent School is set aside.

ii) The petitioner shall make representation to the first respondent along with copy of this order seeking suitable direction to the third respondent School for settlement of arrears of salary payable to the petitioner for the period from 9.6.1992 to 23.8.1995 along with interest at the rate of 6% p.a.

iii) On receipt of such representation, the first respondent is directed to issue appropriate direction to the third respondent School to comply with the undertaking given by the third respondent School Management and pay arrears of salary to the petitioner, within a period of 12 weeks from the date of receipt of communication to be issued by the first respondent.

14. In the result, the writ petition stands allowed with the above directions. No costs.

Sd/-
Assistant Registrar (CS-VI)

//True Copy//

Sub Assistant Registrar

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To

1. THE JOINT DIRECTOR (PERSONNEL) OF SCHOOL EDUCATION,
COLLEGE ROAD, CHENNAI-6.
2. THE DISTRICT EDUCATIONAL OFFICER,
DINDIGUL DISTRICT DINDIGUL.
3. THE SECRETARY,
DEVANGAR HIGHER SECONDARY SCHOOL,
CHINNAPATTI, DINDIGUL DISTRICT 624301

+1cc to Mr.R.Muthukkannu, Advocate, S.R.No.63865

+1cc to M/s.Ashok Menon, Advocate, S.R.No.64292

W.P.No.7068 of 2010

GSM(CO)
RGA(22/12/2021)