

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.03.2021

CORAM

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

W.P.No.6071 of 2021

The Secretary,
Hindu Primary School,
Seyathinganallur,
Srivaikundam Taluk,
Tuticorin District-628 809.

... Petitioner

-vs-

1. Government of Tamil Nadu,
Rep. by its Secretary,
School Education Department,
Fort St.George, Chennai-600 009.
2. The Director of Elementary Education,
College Road, Chennai-600 006.
3. The District Elementary Educational Officer,
T.R.Naidu Street, Tuticorin.
4. The Additional Assistant Elementary Educational Officer,
Karungulam, Srivaikundam Taluk,
Tuticorin District.

5. D.Prema Indra

... Respondents

Prayer:

Petition is filed under Article 226 of Constitution of India to issue a Writ of Certiorarified Mandamus, calling for the records on the file of the 3rd respondent relating to payment of additional allowance to the 5th respondent as evident from the communication dated 18.02.2021 made in Na.Ka.No.4798/AA2/ 2018 and quash the same and consequently direct the 2nd respondent to sanction additional allowance for the period from 21.01.2007 to 22.09.2013 for discharging the duties and responsibilities of Headmistress of the petitioner school and consequently direct the 3rd respondent to sanction ex post facto the additional allowance payable to the 5th respondent, who has been authorized by this Honble court by an order dated 30.09.2020 in W.P. No.22631 of 2013.

For Petitioner : Mr.K.N.Natarajan

For R1 to R4 : Mr.P.Raja
Govt. Advocat

O R D E R

The petitioner has filed this writ petition, challenging the communication dated 18.02.2021 of the 3rd respondent relating to payment of additional allowance to the 5th respondent vide Na.Ka.No.4798/AA2/ 2018 and for a direction to the 2nd respondent to sanction additional allowance for the period from 21.01.2007 to 22.09.2013 for discharging the duties and responsibilities of Headmistress of the petitioner school and for further direction to the 3rd respondent to sanction ex post facto the additional allowance payable to the 5th respondent, who has been authorized by this Honble court by an order dated 30.09.2020 in W.P. No.22631 of 2013.

2. Mr.P.Raja, learned Government Advocate takes notice for the Respondents 1 to 4. Notice to R5 is dispensed with, as there is no adverse order is going to be passed against her in this case. By consent, the Writ Petition is taken up for final disposal at the admission stage itself.

3. The case of the petitioner is that the school, in which he is the Secretary is a Government aided school and pursuant to the suspension of the erstwhile Headmistress, the 5th respondent has been discharging the duties and responsibilities of Headmistress of the school. Though the post of Headmistress is a sanctioned post, no additional allowances were paid to her for want of sanction from the competent Authorities. It is further case of the petitioner that the 5th respondent filed W.P.No.22631 of 2013 for necessary sanction and payment and consequent to the order passed by this Court on 30.09.2020, a proposal to the 3rd respondent for effecting payment to the 5th respondent was submitted by the petitioner, which was declined by the 3rd respondent by the impugned communication. Aggrieved by the action of the 3rd respondent, the Petitioner in the capacity of the Secretary of the school, is before this Court.

4. It is seen that the petitioner is the 5th respondent in the Writ Petition in W.P.No.22631 of 2013 filed by the 5th Respondent herein, in which none appeared on behalf of the 5th Respondent / petitioner herein. In the Order dated 30.09.2020, this Court observed as follows:

"8....Therefore, this Court is of the considered opinion that the petitioner should be granted liberty to make a claim against the 5th respondent for payment of salary in the scale of pay of headmistress for the time in which she functioned as headmistress in-charge of the 5th respondent school."

Even assuming for the sake of argument that the Government should pay the amount to the 5th respondent herein, as long as the order dated 30.09.2020 is in force and it is not reviewed or modified, no relief can be granted either to the petitioner or 5th respondent. It is not known as to why the petitioner filed neither any appeal nor review petition against the order of the learned Single Judge dated 30.09.2020. Though a Judge can differ with the view taken by another Judge on an issue, the parties to the lis should be different and not the very same parties to the dispute in the earlier round of litigation that has already attained finality.

5. Hence, finding no merits in the case of the petitioner, the Writ Petition is dismissed. However, it is made clear that this order will not preclude the petitioner either to prefer an appeal or file a review petition against the order dated 30.09.2020. No costs.

Sd/-
Assistant Registrar(CS-VII)

//True Copy//

Sub Assistant Registrar

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To:

1. The Secretary,
Government of Tamil Nadu,
School Education Department,
Fort St.George, Chennai-600 009.
2. The Director of Elementary Education,
College Road, Chennai-600 006.
3. The District Elementary Educational Officer,
T.R.Naidu Street, Tuticorin.
4. The Additional Assistant Elementary Educational Officer,
Karungulam, Srivaikundam Taluk,
Tuticorin.

+1cc to the Government Pleader, S.R.No.16097

W.P.No.6071 of 2021

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CB(08/07/2021)



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