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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.11.2021

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.NO.16580 OF 2017

AND

W.M.P.NOS.17950, 17951 OF 2017, 2691, 11034 OF 2018

AND 5197, 5198 OF 2020

(Through Video Conferencing)

P.Gowri

... Petitioner

.Vs.

1. The Director of Elementary Education,
College Road,
Chennai - 6.
2. The Director of Elementary Educational Officer,
The District Elementary Education Office,
Nagapattinam District.
3. The Assistant Elementary Educational Officer,
Sembanarkoil,
Nagapattinam District - 609 309.
4. The Secretary,
Bharathmatha Assistant Elementary School,
Kanjaganaram,
Nagapattinam district.

... Respondents

PRAYER:- Petition filed under Article 226 of the Constitution of India to issue a Writ of Mandamus, directing the Respondents to permit the Petitioner to continue in service as Secondary Grade Teacher in the 4th Respondent School till the end of the academic year 2017-18, as re-employment.

For Petitioners : Mr.S.N.Ravichandran

For R1 to R3 : Mr.L.S.M.Hasan Fizal
Government Advocate

For R4 : Mr.K.Satish Kumar



ORDER

This Petition was filed to direct the Respondents to permit the Petitioner to continue in service as Secondary Grade Teacher in the 4th Respondent School till the end of the academic year 2017-18, as re-employment.

2. In this Writ Petition an interim order came to be passed by this Court on 30.06.2017. By that time an order dated 28.06.2017 had been passed by the 3rd Respondent and communicated to the 4th Respondent/School, where the Petitioner was employed. By the said communication, the Respondents herein confirmed the 4th Respondent that there is no scope for continuing the Petitioner after 30.06.2017, being the date of superannuation. Therefore, W.M.P.No.5197 of 2020 has been filed to amend the prayer to read as follows:

"Certiorarified Mandamus, calling for the entire records connected with the impugned order passed by the 3rd Respondent vide Na.Ka.No.1047/A5/2017 dated 28.06.2017 and quash the same and directing the Respondents to permit the Petitioner to continue in service as Secondary Grade Teacher in the 4th Respondent School till the end of the academic year 2017-18, as re-employment "

instead of

"Mandamus, directing the Respondents to permit the Petitioner to continue in service as Secondary Grade Teacher in the 4th Respondent School till the end of the academic year 2017-18, as re-employment."

3. The Petitioner attained the age of superannuation on 30.06.2017. Learned counsel for the Petitioner submits that 30.06.2017 would come after the commencement of the academic year. The learned counsel for the Petitioner submitted that Government has issued orders in the past for allowing such teachers to continue in the school till the end of the academic year.

4. Learned counsel for the Petitioner has placed reliance on the decision of this Court rendered in Mangaiarasi.B vs District Collector Shivganga, reported in 1998 WLR 77, wherein, this Court taking note of G.O.Ms.No.1643 Education (u2) dated 27.10.1988, took a view that there cannot be any valid reasons to refuse redeployment to continue, the Petitioners therein, especially when the District Elementary Education Officer



himself has recommended for such redeployment of the Petitioner therein till the end of the year.

5. Learned counsel for the Petitioner has also referred an order passed in W.P.Nos.14934 and 14935 of 2010 dated 18.01.2011 wherein under the similar circumstances the relief was granted to the Petitioner therein. Para 8 of the said order reads as under:

"8.Inasmuch as the right of the reemployment is almost a matter of statutory right, I do not think that the reason adduced by the third respondent in the impugned order as also in the counter affidavit that the petitioner has not rendered minimum required service for earning pension and therefore he should be denied the said right is valid."

6. Learned counsel for the Petitioner has also placed reliance on the order passed on 19.09.2019 in W.P.No.26689 and batch of 2019, wherein under similar circumstances, the Court has granted relief based on several decisions of this Court. Reference was made to G.O.Ms.No.261 dated 20.12.2018, particularly clause 7(iii) which reads as under:

"10. This Court perused the GOMs. 261 dated 20.12.2018. As per clause 7(iii), Which reads as follows:

"மாணவர்களின் நலன் கருதி, உபரி பணியிடம் அல்லாத ஆசிரியர்களை மறு நிர்ணயம் செய்யக் கருதும்போது, அரசாணை (நிலை) எண்.170, பள்ளிக் கல்வித் (ப.க.5-2) துறை, நூள் 23.10.2014-ல் ஆணையிடப்பட்டவாறு, கல்வியாண்டின் இடையில், ஓய்வ, பெறும் ஆசிரியர்களுக்கு விருப்பத்தின் அடிப்படையில் மறு நியமனம் வழங்கப்படும் உபரி பணியிடம் அல்லாத ஆசிரியர்களுக்கும் ஓய்வ, பெறுவதற்கு முன்னர் கடைசியாக பெற்ற ஊதியத்தையே மறு நியமனம் ஊதியமாக வழங்க வேண்டும்."

11. The said GO makes it clear that even the teachers can be re-employed in the said school for the welfare of the students and when similar issues came up for consideration before this Court, a Division Bench of this Court held as follows:

11. Contending that right of re-employment is not automatic, learned counsel for Appellant placed reliance upon the judgment in W.A.(MD) No.160 of 2009 (dated 31.01.2011). In the said judgment, referring to the judgment in W.A.No.1226/2003 dated



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Aknowledgement Due? enclosing her physical fitness certificate. The cover addressed to the Secretary of the Second was returned with an endorsement "addressee refused returned to sender". When the Secretary of the School refused to receive the cover containing the application for re-employment, Appellant School is not justified in contending that application for re-employment ought to have been sent well in advance. The materials on record only shows that the relationship between the 1st respondent and the School Management was strained. Regarding which the Tanjore District Elementary Educational Officer had also issued proceedings in Na.Ka.No.06774/A4/2010 dated 27.12.2010 stating that the School did not obey the order of Educational Authorities and ordered for direct payment of the salary to the teachers. Only because of the strained relationship, Appellant seems to have taken a rigid stand against the 1st respondent.

15. In 2008 (1) MLJ 312 (Correspondent, Secretary and Managing Trustee, Salem V.M. Rajagopalan), the Division Bench of this Court held that re-employment is to be given even if there was no specific request from such teacher?. Referring to the earlier Division Bench Judgment in W.A.No.1179 of 1993 dated 06.09.1994 (S. Sundaram v. The Secretary, C.S.I. Diocese of Madras), in 2008 (1) MLJ 312, the Division Bench of this Court held as under:-

2. The right to continue on re-employment till the end of academic year conferred on the teachers working in the schools either Government or private, both minority or non-minority, has already been upheld by a Division Bench of this Court in W.A.No.1179 of 1993 (S. Sundaram V. Secretary, C.S.I. Diocese of Madras) and the SLP preferred against the same was also dismissed. The ration laid down by the Supreme Court has been consecutively followed by this Court in R. Muthukrishnan V. Secretary, Aided Middle School, Korranattu, Karupur, Kumbakonam and the District Elementary Educational Officer,



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Thanjavur vide 1998 WLR 77.

3.1. In S. Sundaram V. Secretary, C.S.I. Diocese of Madras (supra), where the teacher was not permitted to avail the benefit of re-employment after his superannuation, the Division Bench directed the management and authorities to pay monetary benefits in terms of salary payable to him till the end of the academic year.

3.2. The only contention made on behalf of the appellant/Management is that the first respondent had not even made a request for re-employment after superannuation and therefore, he cannot make any complaint against the appellant/Management. But, similar contention was rejected by the Division Bench in the S. Sundaram v. Secretary, C.S.I. Diocese of Madras (supra), whereunder it is held as follow:

?... We must point out here as per the Government Order, there is no question of any teacher asking for continuation. The Government Order specifically states that the institutions are to continue them till the end of academic year, provided the teacher satisfies the three conditions laid down in the Government Order, G.O.Ms.No.452, dated 24.3.1970, which has been followed subsequent Government Orders.?

As has been enumerated in the Government Orders as well as in various judgments, the above said three conditions are to be fulfilled for the purpose of getting right to re-employment. There is nothing to show that the 1st respondent did not satisfy the essential conditions. While so, Appellant was not justified in refusing re-employment for the 1st respondent. Learned Judge rightly directed the 2nd respondent - The District Elementary Educational Officer, Tanjore District, Tanjore to permit the 1st respondent to continue in service till the end of academic year on the 1st respondent's production of physical fitness certificate and the certificate of character and good conduct in terms of G.O.Ms.No.1643 dated 27.08.1988.



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We do not find any reason warranting interference with the order of the learned single Judge.

12. Following the decisions, as above, the Writ Petitions are allowed. The impugned orders of the respondents 2 and 3 are set aside. The respondents are directed to issue re-employment orders to the petitioners till the end of academic year is over. No costs. Consequently, connected Miscellaneous Petitions are closed."

7. Countering the arguments of the learned counsel for the Petitioner, learned counsel for the Respondents submits that identical issue was recently decided by the Hon'ble Division Bench of this Court on 16.03.2021 in W.A.(MD).Nos.107, 566, 588, 594, 933, 1177 & 1273 of 2020. In this connection, reference has been made to paras 8, 9, 10, 12 & 13, which read as under:

"8.Re-employment is not a matter of right. The fundamental issue is that, the appellants did not prevent or prohibit re-employment. Rather, the question is to the payment of salary for such re-employment. The Management or the Head of the Institution certainly knows about the situation, which might arise during the academic year. Therefore, they have to make a request either for re-deployment or re-employment, as the case may be, at the starting of the academic year. If no action is forthcoming, they must pursue their request. Therefore, if the Management is interested in the welfare of the Students, it could have approached the authorities to give aid for re-employment or to take a decision on the request made for re-deployment. They cannot either make re-employment or make a mere request and thereafter, undertake the said exercise.

9.When a policy decision is taken, this Court cannot either interpret in a different way or go contrary to that. We have already held that re-employment is not a matter of right. The Moment, a teacher attains the age of superannuation, the relationship between Master and Servant gets terminated. Re-employment is a fresh employment. When a permission is either sought for a Government teacher or aid is sought for an aided Institution, post axiomatic conditions attached will have to be followed. In fact, it will be appropriate, no such



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explanation shall be given while seeking salary or aid for the institution without due approval.

10. Much reliance has been made on the judgment of the Division Bench of this Court in Reynold Jayasekaran Vs. Director of School Education [cited supra]. In our considered view, the Division Bench of this Court has taken note of the earlier orders passed by this Court. As stated by us earlier, we are dealing with the case of policy decision made. The Government Order passed in G.O.(Ms)No.261, School Education (Pa.Ka.5(2)) Department, dated 20.12.2018, was not available at the relevant point of time before the learned Single Judge, who passed an order dated 06.02.2020, in W.P.No.2772 of 2020. The relevant clause governing has not been placed. The Government Order does not say that the question of surplus teachers will have to be reckoned within the same School. For example, in a Government School if surplus teachers are available, the other Government Schools cannot be allowed to indulge in re~employment without undertaking the process of re~deployment. Similarly, if an aided Private School is having number of institutions, a duty is imposed upon them to see to it that the surplus teachers available in the other Institutions are transferred to the Institution, in which, the teacher attains the age of superannuation during the academic year. It is for them to adopt anyone, but they cannot seek aid for both the posts. The same logic applies to the Government School teachers as well. After all, the Government is not expected to make payment for two teachers for imparting education for one set of Students.

11. Mr. S. Xavier Rajini, learned counsel appearing for the respondent in W.A.(MD)No.933 of 2020 submitted that the order passed by the learned Single Judge of this Court has been given effect to and therefore, the Writ Appeal has become infructuous.

12. We are afraid that the said proposition of law cannot be accepted. Compliance of an order appealed against is the discretion of a party, who files the said appeal. Therefore, compliance or non~compliance will not have an effect on the order under challenge. We are also not inclined to accept the submissions made that without complying the mandate of Rule 22 of Right of Children to Free



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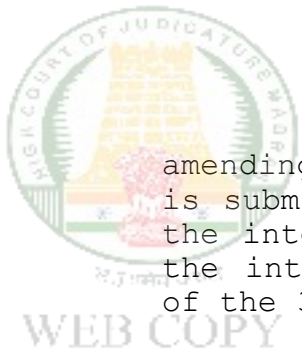
and Compulsory Education Rules, 2010, a re-employment cannot be stopped. Both stand on a different footing, as discussed by us already. For non-compliance of one, the other would not go automatically. If there is non-compliance, the concerned authorities will have to pursue the compliance, but for the alleged default, they cannot seek some other reliefs. In any case, we have already stated that steps ought to have been taken either by the Management or by the Headmaster at the earliest point of time to avoid this situation, particularly, when they have stated the interest and welfare of the Students. Similarly, the contentions that re-employment cannot be given only to those teachers, who attained the age of superannuation while working in a surplus post, cannot be accepted in the light of our discussion as above, as the relationship gets terminated on attaining the age of superannuation and thereafter, it is re-entry for the teacher and therefore, the fact as to whether one was working in an existing sanctioned post or excess post will not make any difference.

13. In such view of the matter, the impugned orders passed by the learned Single are set aside and the Writ Appeals are allowed. No costs. Consequently, connected Miscellaneous Petitions are closed."

Learned counsel for the Respondents further submits that even otherwise there is no justifiable reasons for continuing the Petitioner as a Secondary Grade Teachers, particularly after Right of Children to free and Compulsory Education Act, 2009 came into force.

8. It is submitted that during the relevant period when the Petitioner was working as a Secondary Grade teacher in the 4th Respondent school, there were only 77 students in class one to five and the sanctioned teachers was only $1 + 2 = 3$ @ 1:30 ratio. It is submitted that as on 30.06.2017 there were about four surplus teachers in the 4th Respondent school and therefore, even on that count also there is no justification saddling the official Respondents to pay salary to the Petitioner merely because the Petitioner attained the age of superannuation in the middle of the academic year, rather in the beginning of the beginning of the academic year on 30.06.2017.

9. Therefore, the learned counsel for the Respondent submits that Writ Petition and the Miscellaneous Petition for



amending the prayer are liable to be dismissed. That apart it is submitted that the Respondent took immediate steps to vacate the interim order and had filed W.M.P.No.2691 of 2017 to vacate the interim injunction, in the light of order dated 28.06.2017 of the 3rd Respondent.

10. It is therefore submitted that whichever way one looks at the Writ Petition filed by the Petitioner deserves to be dismissed.

11. Heard the learned counsel for the Petitioner and the learned counsel for the Respondents. Perused the impugned order and interim order passed by this Court on 30.06.2017.

12. There is no dispute. In the counter affidavit filed by the Respondents, it is stated as on 30.06.2017 there were four excess teachers working in the 4th Respondent school. Therefore, the question that arises for consideration is whether the Petitioner should be allowed to continue beyond the age of superannuation, merely because the Petitioner attained the age of superannuation after the commencement of the academic year on 30.06.2017. The facts on record indicate that there is no other justifiable reasons for continuing the Petitioner in service beyond the age of superannuation, particularly in the light of the fact that there were already four excess teachers in the 4th Respondent School. It would have been different, if the school was starved of teachers and that there were no surplus teachers present in the school. The purpose of allowing the teachers, who attain the age of superannuation during the middle of the academic year was intended to ensure that the education does not suffer and the teachers are retained in the school for the benefit of the students and it is strictly not for the benefit of the teachers concerned to seek reemployment.

13. The Hon'ble Division Bench of the Madurai Bench of this Court by its order dated 16.03.2021 has categorically held that once the teachers attain the age of superannuation, the contract of employment stands terminated and in the matter of reemployment, a teacher cannot have a right to be reemployed. There were overwhelming reasons in this case for not granting the relief to the Petitioner. The 4th Respondent ought to have properly advised the Petitioner to not to continue in service, even though the Petitioner attained the age of superannuation on 30.06.2017. There is therefore, no merit in the Writ Petition.

14. Therefore, the Writ Petition filed by the Petitioner stands dismissed. Consequently, Miscellaneous Petition filed for amending the prayer of the Writ Petition in W.M.P.No.5197 of 2020 stands dismissed and the other Miscellaneous Petitions are closed. While dismissing the Writ Petition, liberty is given to



the Petitioner to file appropriate proceedings to recover the salary for the period between 01.07.2017 till 31.05.2018 from the 4th Respondent in the manner known to law. However, it is made clear that if the terminal benefits of the Petitioner as on the date of her superannuation i.e. on 30.06.2017 will have to be paid, provided appropriate proposals are sent by the Petitioner and the 4th Respondent. This exercise shall be carried out by the Petitioner and the 4th Respondent, within a period of 30 days from the date of receipt of a copy of this order. No Costs.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

jeni/sai

To

1. The Director of Elementary Education,
College Road, Chennai - 6.
2. The Director of Elementary Educational Officer,
The District Elementary Education Office,
Nagapattinam District.
3. The Assistant Elementary Educational Officer,
Sembanarkoil,
Nagapattinam District - 609 309.
4. The Secretary,
Bharathmatha Assistant Elementary School,
Kanjaganaram,
Nagapattinam district.

+1cc to Mr.S.N.Ravichandran, Advocate, S.R.No.57451

W.P.NO.16580 OF 2017

GPL (CO)
PBS/10/12/2021