



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 25.01.2021

CORAM:

THE HONOURABLE MRS.JUSTICE PUSHPA SATHYANARAYANA

AND

THE HONOURABLE MRS.JUSTICE S.KANNAMMAL

W.A(MD)No.1378 of 2013

and

M.P(MD)No.2 of 2013

WEB COPY

- 1.The Government of Tamil Nadu,
Rep. by Secretary Education Department,
Chennai.
 - 2.The Director,
Department of Elementary Education,
Chennai - 600 006.
 - 3.The District Educational Officer,
Department of Elementary Education,
Madurai.
 - 4.The Assistant Educational Officer,
Department of Elementary Education,
Madurai - 625 005. ... Appellants / Respondents 1 to 4
- Vs.
- 1.D.Jeyarani ... 1st Respondent / Writ Petitioner
 - 2.Rathina Primary School,
Rep. by its Secretary,
Ponmeni Pudur,
Arasaradi, Madurai - 16. ... 2nd Respondent / 5th Respondent
 - 3.The Correspondent,
R.C Elementary School,
Gnanaolipuram,
Madurai. ... 3rd Respondent / 6th Respondent

Prayer: Writ Appeal filed under Clause 15 of the Letters Patent to set aside the order, dated 27.03.2013 made in W.P(MD)No.4097 of 2006 on the file of this Court.

Prayer in WP(MD). 4097/ 2006 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, calling for the records pertaining to Na.Ka.29517/EG(III)/1-99 dated 27/10/2000 issued by the 2nd respondent and quash the same and direct the 2nd respondent to



regularize the services of the petitioner from 08/06/1995 to 19/03/1997.

For Appellants : Mrs.S.Srimathy,
Special Government Pleader.

For R - 1 : Mr.M.Saravanan

For R - 2 : Mr.M.Senthil Kumar

JUDGMENT

**(Judgment of the Court was delivered by
PUSHPA SATHYANARAYANA, J.)**

The Government has preferred the Writ Appeal against the order dated 27.03.2013 passed in W.P(MD)No.4097 of 2006.

2.The first respondent / writ petitioner was a Teacher, who had been working at the second respondent-School, was seeking to regularize her services from 08.06.1995 to 19.03.1997.

3.The first respondent / writ petitioner was appointed in a retirement vacancy in the second respondent-School on 08.06.1995. The approval of the Department to fill up the retirement vacancy with effect from 01.06.1995 was issued only on 19.03.1997. As the first respondent / writ petitioner was already appointed, it was forwarded to the Department for approval and the approval was granted on 03.09.1998. While the approval was granted, the authority had given effect to the same only from 19.03.1997. As the services of the first respondent / writ petitioner from 08.06.1995 till 19.03.1997 were not approved, several representations were made by the first respondent / writ petitioner to the authority, which resulted in the impugned order being passed rejecting the request of the first respondent / writ petitioner. When the same was put to challenge in W.P(MD)No.4097 of 2006, the said order was set aside and the authorities were directed to approve the appointment of the first respondent / writ petitioner with effect from 08.06.1995. Aggrieved by the same, the above Writ Appeal is preferred by the authorities on three grounds.

4.The first contention raised by the learned Special Government Pleader is that the first respondent / writ petitioner ought to have been recruited only through Employment Exchange, whereas, she was directly appointed by the School and hence, the appointment is not valid.

5.There is no merit in the said argument, as already the said issue was settled in **Ramasami Vs. State of Tamil Nadu** reported in **1990 W.L.R 42**, wherein, it has been specifically held that the

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educational institutions can appoint persons not sponsored by the Employment Exchange also and the same views are also taken by this Court in various Writ Petitions. Besides the authority having approved the appointment, cannot be allowed to raise such an issue.

6.The second contention raised by the learned Special Government Pleader is that before appointment, the Management of the School did not get prior approval.

7.As already stated, the School has got powers to appoint directly without getting a candidate sponsored by the Employment Exchange. The relevant aspects for such appointment are that there should be sufficient students strength and also vacancy. It is not in dispute that the said School had sufficient strength on the date of appointment ie., 08.06.1995. Having satisfied with the requirements for appointing a Teacher, the second ground raised by the learned Special Government Pleader also does not merit any consideration.

8.Thirdly, the learned Special Government Pleader raised the issue with regard to communal roster, which was not followed by the authorities while appointing the first respondent / writ petitioner.

9.It has to be noted that the said aspect was not mentioned even in the impugned order, but it was raised only at the time of arguments even before the learned Single Judge, which was rightly rejected.

10.Though the appellants / respondents by its proceedings dated 19.03.1997 permitted the Management to fill up the retirement vacancy, it was permitted with effect from 01.06.1995. Having granted such approval for appointment from 01.06.1995, the appellants / respondents cannot refuse to count the period between 08.06.1995 to 19.03.1997, which is approximately one year and 10 months.

11.Having failed to convince this Court on all the three grounds raised, we are of the opinion that the order of the learned Single Judge does not require any interference and the same is confirmed.

If the appellants / respondents had not given effect to the order, the appellants / respondents are directed to approve the appellant / writ petitioner's appointment from the date of appointment, namely, 08.06.1995 and pass appropriate orders within a period of two months from the date of receipt of a copy of this order. Though the first respondent / writ petitioner had claimed that between 08.06.1995 and 19.03.1997 she was not paid with any salary, she has only asked for regularization of her service for the purpose of pension. It is now clarified that though the said period will be computed for the purpose of regularization for the payment of pension, the first respondent / writ petitioner will not get salary for the said period.



12.With the above observations, this Writ Appeal is dismissed.
No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

ps

Note :

In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate / litigant concerned.

To

- 1.The Secretary Education Department,
Government of Tamil Nadu,
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- 2.The Director,
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- 3.The District Educational Officer,
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- 4.The Assistant Educational Officer,
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+1 CC to M/s.R.SUBARAMANIAN, Advocate (SR-2114[F] dated
27/01/2021)

W.A(MD)No.1378 of 2013
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NA (CO)

NR (09/02/2021) 4P : 6C