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W.A.[MD]No.820 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 07.04.2021

CORAM:

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

AND

THE HONOURABLE MRS.JUSTICE S.ANANTHI

W.A.[MD]No.820 of 2021

and

C.M.P.[MD]No.3642 of 2021

- 1.The Director of School Education,
College Road, Chennai.
- 2.The Joint Director of School
Education (Secondary Education),
College Road, Chennai - 600 006.
- 3.The Chief Educational Officer,
Thirunelveli, Thirunelveli District.
- 4.The District Educational Officer,
Cheranmahadevi, Tirunelveli District.

: Appellants 1to4/
Respondents 1 to 4

Vs.

The Correspondent,
St. Mary's Higher Secondary School,
Vickramasingapuram,
Tirunelveli District - 627 425.

: Respondents/Writ
Petitioner

PRAYER: Writ Appeal filed under Clause 15 of the Letters Patent, to set aside the order dated 23.04.2019 made in W.P.[MD]No.9634 of 2019.

Prayer in WP(MD). 9634/ 2019 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue an appropriate writ , order or direction in the nature of a Certiorarified mandamus calling for the records relating to the impugned proceedings issued by the 3rd respondent CEO in Mu.Mu.No.1631/A2/2017 dated 23.03.2017 (in so far as the conversion of the post to BT Assistant Maths from the date of issuance of his proceedings, w.e.f 23.03.2017) and the consequential proceedings issued by the 4th respondent DEO in Ne.Mu.No.1497/A3/2017 dated 12.06.2017 (in so far as approving the

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appointment of Mrs. A. Amalashiny as BT Assistant in Maths w.e.f. 23.03.2017) and the subsequent proceedings of the 2nd Joint Director in Oo.Mu.No.079405/D2/E3/2017, dated 14.02.2019 (confirming the order of the CEO dated 23.03.2017) quash the same and further direct the respondents 2 to 4 herein to approve forthwith the appointment of Mrs.A. Amalashiny as BT Assistant in Maths in the petitioner School w.e.f. the date of her actual appointment i.e. 20.07.2015 and disburse grant-in-aid towards her salary and other attendant benefits.

For Appellants : Mrs.S.Srimathy
Special Government Pleader

For Respondent : Mr.T.Cibi Chakraborty

JUDGMENT

[Judgment of the Court was delivered by **T.S.SIVAGNANAM, J.**]

With the consent on either side, this Writ Appeal is taken up for final disposal.

2.Heard Mrs.S.Srimathy, learned Special Government Pleader appearing for the appellants and Mr.T.Cibi Chakraborty, learned Counsel appearing for the respondent.

3.The appeal is against the order dated dated 23.04.2019 made in W.P.[MD]No.9634 of 2019.

4.The learned Single Bench while allowing the writ petition has taken note of several decisions of the Hon'ble Division Bench of this Court and the operative portion of the impugned order reads as follows:

"7.This Court, in *The Manager, RC Schools, Salem Diocese Society (Salem-Namakal Districts, Mary Palace, 63, Thammannan Road, Salem - 636 009 v. The State of Tamil Nadu and others* [W.P.No.19902 of 2008, decided on 30.04.2009], held as follows:

"2. A similar issue came up before this Court, which is reported in 2005-WLR-515 (M.Sivakumar Vs. The Government of Tamil Nadu by Secretary, Education Department, Fort St. George, Chennai - 9 and two others, in which paragraph 7 is relevant and the same is extracted as under:-

"7. A careful perusal of the impugned orders would show that no reasons have been assigned by the Respondents to order salary for the Petitioner only from 28.3.1996 when the Management has very clearly stated that he joined



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duty as P.G. Assistant History on 25.10.1993 itself and is serving in the said capacity till date. But, neither the second Respondent in his order dated 28.3.1996 nor the third Respondent in his order dated 18.3.1997 have considered this aspect so as to grant the approval as it has been sought for on the part of the Management nor any reason has been assigned for denying the salary to the Petitioner from 25.10.1993 to 27.3.1996 and granting the same only from 28.3.1996 in spite of the specific case of the school authorities that on the retirement of the erstwhile Headmaster Mr.S.Krishnamoorthy, who was also taking History classes for the Higher Secondary Sections, there was virtually no teacher to take the History Classes in the school and hence the Petitioner who was a M.A. (History), B.Ed. candidate was appointed to cater to the needs of the school. Therefore, both the orders passed by the Respondents 2 and 3, since being inconsistent ones, this Court has to cause its interference into the same and quash the same and grant the relief as sought for on the part of the Petitioner and hence the following order:

In result, (i) the above Writ Petition succeeds and the same is allowed.

(ii) The order of the second Respondent dated 28.3.1996 made in his K.Dis.No. 47458/W6/95 and the consequential order of the third Respondent passed in his Na.Ka.No.1516/95/A1, dated 18.3.1997 are quashed.

(iii) The respondents 2 and 3 are hereby directed to issue necessary orders granting approval of the Petitioner's appointment as P.G. Assistant (History) in Sri Kayilai Subramani Desiga Swamigal Higher Secondary School, Tirupanandal, Thanjavur District w.e.f. 25.10.1993 i.e. from the date of his appointment in the school, within sixty days from the date of receipt of a copy of this order. However, in the circumstances of the case, there shall be no order as to costs."

3. It is also not explained by the Respondents as to why they refused to approve the said conversion with effect from 3.9.2003, despite the admitted fact that the said teacher was appointed to the said post on that date.



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4. In view of the said reasons and following the said judgement, this impugned order is set aside, in so far as the same is adverse to the Petitioner is concerned and accordingly, this Writ Petition is ordered, directing the Respondents to disburse the arrears of salary to the concerned teacher within a period of twelve weeks from the date of receipt of a copy of this order. No costs. Consequently, the connected MPs are closed."

5. Apart from the above, we also find that the identical issue was considered by the Hon'ble Division Bench in the following judgments and the appeals filed by the Government were dismissed:

- i) 2005 Writ Law Reporter 515**
- ii) W.P.No.19902 of 2008**
- iii) 2012 (3) MLJ 678**
- iv) W.P.[MD]No.18164 of 2013**
- v) W.P.[MD]No.14875 of 2010**
- vi) W.A.[MD]No.121 of 2013**
- vii) W.A.[MD]No.1406 of 2014**
- viii) W.P.[MD]No.7241 of 2019**
- ix) W.A.[MD]No.1368 of 2019**
- x) W.P.[MD]No.7241 of 2019**

6. The argument of the learned Special Government Pleader to take a re-look in the matter cannot be entertained at this stage when all the above appeals have attained finality. Hence, we do not find any ground to interfere with the order of the learned Single Judge.

7. With the above observation, the Writ Appeal stands dismissed. However, there shall be no order as to costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar ()

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/ /2021

Sub Assistant Registrar (CS)



MR
To
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- 2.The Joint Director of School
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JUDGMENT MADE IN
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KM (17.05.2021) 5P 5C