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W.A.[MD]No.1091 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 14.06.2021

CORAM:

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

AND

THE HONOURABLE MRS.JUSTICE S.ANANTHI

W.A. [MD]No.1091 of 2021

and

C.M.P. [MD]No.4839 of 2021

- 1.The State of Tamil Nadu,
Rep. by its Principal Secretary,
Department of School Education,
Fort St. George, Chennai - 600 009.
- 2.The Director of School Education,
College Road, Chennai - 600 006.
- 3.The Chief Educational Officer,
Kanyakumari District at Nagercoil,
Kanyakumari District.
- 4.The District Educational Officer,
Thuckalay,
Kanyakumari District. : Appellants/Respondents 1 to 4

Vs.

The Correspondent,
LMS Girls Higher Secondary School,
Neyyoor - 629 001.
Kanyakumari District. : Respondent/Writ Petition

PRAYER: Writ Appeal filed under Clause 15 of the Letters Patent, praying to set aside the order dated 29.11.2019, in W.P.[MD]No.25447 of 2019 and allow this Writ Appeal.

Prayer in WP(MD). 25447/ 2019 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to calling for the records relating to the impugned proceedings issued by the 4th respondent DEO in O.Mu.no.4400/A1/2019 dt 26.7.2019 Quash the Same and further direct the 3rd and 4th respondent to approve forthwith the re-employment of N.Jeslet Sudha as BT Assistant(Maths) in the petitioner school from 1.8.2019 till the end of the academic year 2019-2020 (ie. upto 31.5.2020) with all attendant benefits

For Appellants : Mr.R.Baskaran
Standing Counsel for Government

For Respondent : Mr.R.Ragatheesh Kumar for
M/s.Issaac Chamber



JUDGMENT

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

We have heard Mr.R.Baskaran, learned Standing Counsel for Government appearing for the appellants and Mr.R.Ragatheesh Kumar, learned Counsel appearing for the respondent.

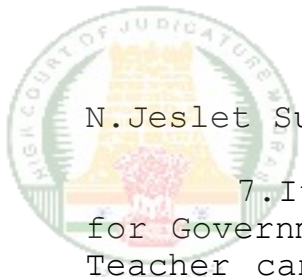
2.This Writ Appeal is directed against the order dated 29.11.2019, in W.P.[MD]No.25447 of 2019.

3.The first respondent in this appeal is the writ petitioner, who challenges the proceedings of the fourth appellant dated 26.07.2019, by which, the fourth appellant rejected permission to continue a Teacher namely, N.Jeslet Sudha, who was working as B.T.Assistant in Mathematics and who has attained the age of superannuation on 31.07.2019 and not allowing her to continue till the end of the academic year 2019-2020 ie., up to 31.05.2020, on the ground that one post of B.T.Assistant in Mathematics has been declared as surplus by the order passed by the third appellant dated 05.01.2019.

4.The learned Single Bench had allowed the writ petition by relying upon the decision of the Hon'ble Division Bench in the case of **The Secretary Vs. R.Girija and another** reported in **2012 SCC Online Mad 1622**.

5.After elaborately hearing the learned Counsel for the parties, we find that the decision in the case of **R.Girija** [referred supra] can have no application to the facts of the present case. The issue involved in the writ petition was whether the staff fixation order declaring one post of B.T.Assistant in Mathematics as surplus can impact the right of the management to continue the Teacher till the end of the academic year. Thus, without deciding the legal issue, the Writ Petition has been allowed. Hence, we have to necessarily interfere with the order passed in the writ petition. We also note that the concerned Teacher has served up to 31.05.2020. But, however, her emoluments for the period from 01.08.2019 to 31.05.2020 is yet to be settled.

6.In the interregnum, the first respondent management has filed W.P.[MD]No.25455 of 2019, challenging the staff fixation order passed by the third appellant dated 05.01.2019 and an order of interim stay has been granted on 29.11.2019 and the writ petition is pending. Consequent thereof was that the Teacher whose post was declared as surplus is still continuing in the first respondent school. Thus, in our considered view, the outcome of the said writ



N.Jeslet Sudha.

7.It is brought to our notice by the learned Standing Counsel for Government that if the post has been declared surplus then, the Teacher cannot be continued beyond the age of 58 years and in this regard, has drawn our attention to Clause 7(ii) in G.O.Ms.No.261, School Education Department dated 20.12.2018. Thus, we are of the view that the writ petition requires to be heard afresh. More particularly, when the said Teacher N.Jeslet Sudha has worked in the school from 01.08.2019 to 31.05.2020 and she has not received her emoluments for the said period.

8.Learned Counsel for the first respondent management submitted that at the relevant point of time, there was a batch of cases pending before this Court, where the orders passed by the Department rejecting the request for re-employment were challenged and there was also a challenge to G.O.261 dated 20.12.2018. Learned Single Bench in the Principal Seat in the case of **K.Narayanasamy and others Vs. The State of Tamil Nadu in W.P.Nos.26689 of 2019 etc., batch**, allowed the writ petitions. Therefore, it is submitted by the learned Counsel for the first respondent that whenever cases pertaining to surplus teachers issue came up before the Single Bench, the Writ Petitions were allowed even at the admission stage. In our considered view, it may not be advisable to allow the writ petition at the admission stage, especially, when the case pertains to a service matter.

9.Be that as it may, learned Counsel for the first respondent submitted that in a batch of appeals filed by the Government in W.A.No.107 of 2020 dated 16.03.2021, the orders passed by the learned Single Bench have been set aside.

10.In the light of the above, we allow this appeal, by setting aside the order passed in the writ petition. The Writ Petition is restored to the learned Single Bench of this Court to be tagged along with W.P.[MD]No.25455 of 2019. Further more, we note that the writ petition was allowed in the admission stage. The appellant department is directed to file counter affidavit in the writ petition. However, there shall be no order as to costs. Consequently, the connected miscellaneous petition is closed.

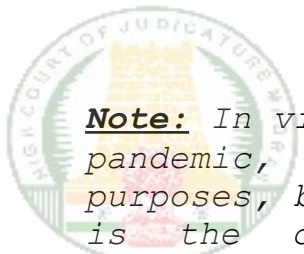
Sd/-

Assistant Registrar (CSII)

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/ /2021

Sub Assistant Registrar(CS)



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Kanyakumari District.

Copy to

The Section Officer,
Writ Section
Madurai Bench of Madras High Court,
Madurai

+1 CC to M/s.ISAAC CHAMBERS, Advocate (SR-19359[F] dated 16/06/2021

W.A.[MD]No.1091 of 2021
14.06.2021

KB(24.06.2021) 4P 7C