



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 19.04.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

W.P. (MD) No.8044 of 2021

and

W.M.P (MD) No.6142 of 2021

C.Benadict Raj

... Petitioner

-Vs-

1.The Secretary to Government,
Educational Department,
Secretariat, Chennai.

2.The Director of School Education,
College Road, Chennai.

3.The Chief Educational Officer,
Nagercoil, Kanyakumari District.

4.The District Educational Officer,
Kuzhithurai Educational District
At Marthandam,
Kanyakumari District.

5.St.Joseph's Higher Secondary School,
Rep. by its Correspondent,
Thiruthuvapuram, Kuzhithurai Post,
Kanyakumari District.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, to call for the records on the file of the second respondent pertaining to its order bearing Mu.Moo.No.10090/D1(1)/2003, dated 17.04.2004 with regard to the clause that the order of conversion of post came into force from the date of issuance of the said order and the consequential order of the second respondent bearing Na.Ka.No.27441/D1/E3/2020, dated 01.10.2020 and to quash the same and consequently directing the 2nd respondent herein to approve petitioner's appointment with effect from 07.01.2003 as B.T.Assistant in English and to extend the benefits from the said date instead of from 17.04.2004 and to grant all benefits including service and monetary benefits with effect from 07.01.2003 within a time frame that may be stipulated by this Court.

For Petitioner : Mr.S.C.Herold Singh

For Respondents : Mr.C.M.Mari Chellaiah Prabhu

(R1 to R4)

Additional Government Pleader



ORDER

This Writ Petition is filed to call for the records of the second respondent in Mu.Moo.No.10090/D1(1)/2003, dated 17.04.2004, with regard to the clause that the order of conversion of post came into force from the date of issuance of the said order and the consequential order of the second respondent mad in Na.Ka.No.27441/D1/E3/2020, dated 01.10.2020 and to quash the same and consequently directing the second respondent herein to approve petitioner's appointment with effect from 07.01.2003 as B.T.Assistant in English and to extend the benefits from the said date instead of from 17.04.2004 and to grant all benefits, including service and monetary benefits with effect from 07.01.2003.

2. Mr.C.M.Mari Chellaiah Prabhu, learned Additional Government Pleader takes notice on behalf of the respondents.

3. According to the petitioner, he has completed B.A., (English) in the year 1991 and B.Ed., in the year 1992. He registered his name in the Employment Exchange and on coming to know the vacancy arose in the fifth respondent School due to voluntary retirement of one R.Sundaram, B.T.Assistant (Social Science) on 30.09.2002, the petitioner applied for the said post. Considering the petitioner's application, the fifth respondent appointed the petitioner on 06.01.2003 and the petitioner joined duty on 07.01.2003 in the fifth respondent School. After the appointment, the fifth respondent sent a request to the fourth respondent seeking permission for conversion of post from B.T.Assistant (Social Science) to B.T.Assistant (English). The same was forwarded to the second respondent on 24.01.2003. The second respondent by the impugned order, dated 17.04.2004 granted permission for conversion of the post from B.T.Assistant (Social Science) to B.T.Assistant (English). Subsequently, the petitioner's service was regularised from 17.04.2004.

4. According to the petitioner, even though he was appointed on time scale of pay, he was paid with only consolidated pay of Rs.5,000/- and the petitioner has given various representations for regularising his service with effect from 07.01.2003, i.e., from the date of his initial appointment. The respondents 1 & 2 have not considered the various representations given by the petitioner. Finally, he gave a representation on 26.04.2013 and filed a writ petition in W.P(MD)No.4506 of 2014 for a direction to the respondents to approve the petitioner's appointment with effect from 07.01.2003 and to grant all the benefits, including service and monetary benefits with effect from 07.01.2003, by considering his representation, dated 26.04.2013. This Court, by the order, dated 20.07.2020, directed the petitioner to give a fresh representation to the second respondent within a period of four weeks from the date of receipt of a copy of that order and on receipt of the same, the second respondent was directed to consider the petitioner's representation and pass appropriate orders on its own merits and in

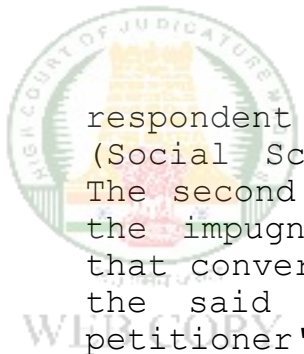


accordance with law. As per the order of this Court, dated 20.07.2020, the second respondent after considering the petitioner's request, rejected the same by the impugned order, dated 01.10.2020. The petitioner has come out with the present writ petition challenging the portion of the impugned order, dated 17.04.2004, imposing a condition that the conversion will be made effective from the date of issue of the said order only and the second impugned order, dated 01.10.2020.

5. The learned counsel appearing for the petitioner submitted that the petitioner was appointed on 06.01.2003 by the fifth respondent in the sanctioned vacancy. The fifth respondent on 13.01.2003 itself sought permission to convert the post from B.T.Assistant (Social Science) to B.T.Assistant (English). The same was forwarded to the second respondent by the fourth respondent. The second respondent without passing any order immediately, passed an order only on 17.04.2004, granting permission for conversion stating that the date of conversion would come into force from the date of issuance of the said order. There is an undue delay on the part of the second respondent and the second respondent ought to have granted permission with effect from 06.01.2003 itself. The order dated 01.10.2020 rejecting the representation of the petitioner on the ground that the permission was granted only on 17.04.2004, is erroneous.

6. The learned Additional Government Pleader appearing for the respondents submitted that in a School, if one B.T.Assistant post is vacant, that should be filled up by the appointment of B.T.Assistant in the same subject and if the School wants conversion, they have to obtain an order from the second respondent. The petitioner was appointed in the vacancy arose due to retirement of one R.Sundaram, B.T.Assistant (Social Science), but the petitioner has been appointed as B.T.Assistant (English), without getting any prior approval from the second respondent. Hence, the appointment of the petitioner is illegal. The second respondent after considering the request of the fifth respondent, passed a conversion order on 17.04.2004, granting permission to convert the post of B.T.Assistant (Social Science) as B.T.Assistant (English) and the petitioner's appointment was regularised from the date of conversion. The petitioner or the fifth respondent School have not challenged the said order. The petitioner was regularised from 17.04.2004. The said order and the order imposing the condition have become final. The petitioner after 10 years, i.e., on 26.04.2013 gave representation for regularising his service from the date of appointment and prayed for dismissal of the writ petition.

7. From the above rival submissions, it is seen that the petitioner was appointed on 06.01.2003 by the fifth respondent in the vacancy that arose due to the voluntary retirement of one R.Sundaram, B.T.Assistant (Social Science). The petitioner was



respondent sought permission, to convert the post from B.T.Assistant (Social Science) to B.T.Assistant (English), from the authority. The second respondent granted permission to the said conversion, by the impugned proceedings, dated 17.04.2004, imposing a condition that conversion will be made effective from the date of issuance of the said order only. In view of the impugned order, the petitioner's service was regularised with effect from 17.04.2004. The petitioner or the fifth respondent School did not challenge the condition imposed in the impugned order, dated 17.04.2004 that the conversion will be effect from the date of the order i.e., on 17.04.2004. The petitioner has stated that he has given various representations for regularising his service with effect from 06.01.2003. The petitioner has not proved that he approached the respondents, for regularising his service from 06.01.2003, before 2013. Only on 26.04.2013 the petitioner gave representation and filed a writ petition in W.P(MD)No.4506 of 2014. Even in that writ petition, the petitioner has not challenged the impugned order, dated 17.04.2004. The petitioner filed a writ petition in the year 2014 seeking direction to direct the second respondent herein to approve the petitioner's appointment with effect from 07.01.2003 as B.T.Assistant (English) and to extend the benefits from the said date instead of 17.04.2004 and to grant all benefits including service and monetary benefits, with effect from 07.01.2003, by considering his representation, dated 26.04.2013.

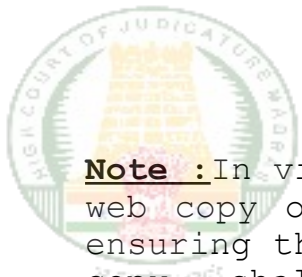
8. From the impugned order, dated 01.10.2020, it is seen that the representation of the petitioner, dated 26.04.2013 for regularising his service from the date of appointment i.e., on 06.01.2003 was rejected on the ground that as early as in the year 2004, a condition was imposed at the time of granting permission that the conversion will be made effective only from the date of issuance of the said order. The petitioner or the fifth respondent having failed to challenge the said condition at that time itself, is not entitled to claim such relief after 10 years and the petitioner is not entitled to challenge the order, dated 17.04.2004, in the writ petition filed in the year 2021 after 17 years. The claim of the petitioner is stale and invalid. Hence, the impugned order, dated 17.04.2004 and the consequential order, dated 01.10.2020, need not be interfered with at this stage and the reasons given by the second respondent are valid.

9. In the result, the writ petition stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(AE)

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/ /2021
Sub Assistant Registrar



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 to Government,
Educational Department,
Secretariat, Chennai.
- 2.The Director of School Education,
College Road, Chennai.
- 3.The Chief Educational Officer,
Nagercoil,
Kanyakumari District.
- 4.The District Educational Officer,
Kuzhithurai Educational District
At Marthandam,
Kanyakumari District.

+1 CC to Mr.S.C.HEROLD SINGH, Advocate (SR-16672[F] dated 20/04/2021)

+1CC to THE SPECIAL GOVERNMENT PLEADER(SR-16742[F] dated 20/04/2021)

Order made in
W.P. (MD) No.8044 of 2021 and
W.M.P (MD) No.6142 of 2021
19.04.2021

AM
SRS/24.05.2021/5P/7C