



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 15.06.2021

CORAM

THE HONOURABLE MR.JUSTICE T. S. SIVAGNANAM

AND

THE HONOURABLE MRS.JUSTICE S.ANANTHI

WEB COPY

W.A. (MD)No.1089 of 2021
and C.M.P. (MD) No.4832 of 2021

Vani

... Appellant/Writ Petitioner

Vs.

1.The Additional Assistant Elementary
Educational Officer,

Chinamanoor,
Theni District.

2.The Secretary,
Muthiah Elementary School,
K.Duraisampuram, Kuchanoor
Theni District,
Theni.

... Respondents/Respondents

Prayer : Appeal filed under Clause 15 of the Letters Patent against the order passed by this Court in W.P.(MD)No.10339 of 2015, dated 03.12.2020.

Prayer in WP(MD). 10339/ 2015 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Certiorari, calling the records relating to the proceedings of the 2nd respondent made in mu.thu.No.160/2014 dated 03.05.2015 and consequential proceedings mu.thu.No.165/2014 dated 12.05.2015 and quash the same.

For Appellant : Mr.R.Murali

For Respondent No.1 : Mr.A.K.Manickam

Standing Counsel for Government

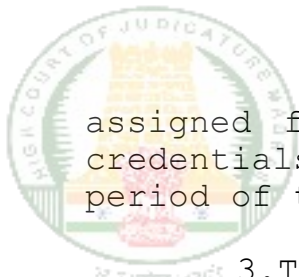
For Respondent No.2 : Mr.C.Arul Vadivel @ Sekar

J U D G M E N T

(Judgment of the Court was delivered by T. S. SIVAGNANAM, J.)

This Writ Appeal filed by the Writ Petitioner is directed against the order dated 03.12.2020 in W.P.(MD) No.10339 of 2015.

2.The order impugned in the Writ Petition was an order directing recovery of incentive increment paid to the appellant/teacher for acquiring M.A. Qualification. The reason



assigned for recovery is that the appellant did not produce the credentials to prove such acquiring higher qualification within a period of two years from the date of acquiring higher qualification.

3.The Writ Petition was of the year 2015. The first respondent department has not filed counter affidavit even though the second respondent has filed their counter affidavit in July, 2015. When the Writ Petition was taken up for disposal during December, 2020, it has been dismissed on the ground that the petitioner should approach the appellate authority. We find that such objection was raised by the Management also in the counter affidavit. Furthermore, none of the contentions of the petitioner has been noted in the order. Further, it is submitted that on the said date, counsel did not appear and the learned counsel for the Writ Petitioner sought for adjournment. In any event, since the Writ Petition was pending from 2015, it may not be appropriate to dismiss the Writ Petition on the ground that the petitioner should avail alternative remedy. Therefore, we are of the view that the Writ Petition should be heard and decided on its own merits.

4.In view of the above, the Writ Appeal is allowed and the order of the learned Single Judge is set aside and the Writ Petition is restored to the file of the learned Single Judge. Registry is directed to list the Writ Petition before the learned Single Judge during the week commencing from 12.07.2021 with a request to hear the matter at the earliest, since the Writ Petition was of the year 2015. Within that date, the respondent department should file a counter affidavit. In the light of the above, no recovery shall be effected till the disposal of the Writ Petition. Consequently, connected Miscellaneous Petition is closed. No costs.

Sd/-

Assistant Registrar (Cs-I)

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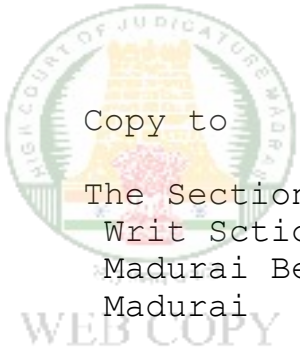
/ /2021

Sub Assistant Registrar(CS)

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 Additional Assistant Elementary
Educational Officer,
Chinamanoor,
Theni District.



Copy to

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

+1 CC to M/s.SPL GP (SR-19560[F] dated 17/06/2021)

W.A. (MD)No.1089 of 2021
15.06.2021

KB(23.06.2021) 3P 4C