



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 09.08.2021

CORAM

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

W.P (MD)No.4801 of 2018

and

W.M.P (MD) .Nos.4814, 4815 & 5458 of 2018

WEB COPY

M.Shanthi

... Petitioner

Vs.

1. The Chief Educational Officer,
Office of the Chief Educational Officer,
Sivagangai District,
Sivagangai.

2. The Correspondent,
St.James Higher Secondary School,
Suranam, Ilayangud Taluk,
Sivagangai District.

... Respondents

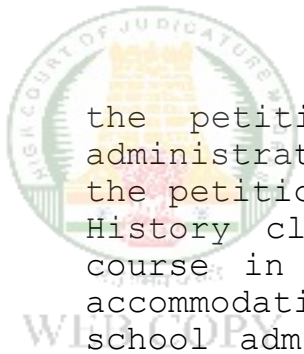
Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, to call for the records connected with the order dated 03.01.2018 reliving the petitioner from the post of Post Graduate teacher passed by the second respondent and quash the same as illegal, consequently directing the respondents no.2 to permit the petitioner to continue in service with all service and attendant benefits.

For Petitioner : M/s.S.Malaikani
For Respondents : Mr.A.K.Manickam,
Government Advocate for R1.
Mr.A.Amala,
for R2.

ORDER

This Writ Petition has been filed seeking for issuance of a Writ of Certiorarified Mandamus, to call for the records connected with the order dated 03.01.2018 passed by the second respondent reliving the petitioner from the post of Post Graduate teacher and quash the same as illegal, and a consequential direction to the second respondent to permit the petitioner to continue in service with all service and attendant benefits.

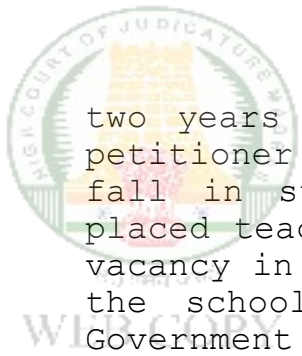
2.The case of the petitioner is that the petitioner was appointed as a Typewriting teacher in the 2nd respondent school for classes XI and XII in the year 1995 and thereafter on completion of M.A.History, she was appointed as P.G.Assistant in History subject and she served in the school for the past 23 years. According to



the petitioner, during the academic year 2015-16, the school administration closed the type writing vocational group and directed the petitioner to take classes for 6 to 8th standard and also to take History classes for XI standard students. Since the typewriting course in the school was closed and as there was no chance of accommodating the petitioner in any other post in the school, the school administration decided to relieve from service with effect from 31.03.2018. However, by communication dated 11.01.2018, the 2nd respondent informed the petitioner that she would be transferred to some other school with sufficient strength, after getting permission from the President. However, by communication dated 27.1.2018, the 2nd respondent informed the petitioner that one Kumarasamy, Robin, Arlin Sujith and Vanitha were already relieved due to reduction of students in the school and as such, they have also stated that one Ilayaraja and Prema were also relieved from service along with the petitioner. The grievance of the petitioner is that without considering her representation and long years of service she put in, the 2nd respondent issued impugned order dated 03.01.2019 relieving her from the post of P.G.Teacher. Thereafter, the petitioner made a representation to the 2nd respondent on 9.1.2018 and 29.01.2018, requesting him to provide her Post Graduate Teacher (History). Since no response was forthcoming, the petitioner has come forward with the preset writ petition.

3.The learned counsel for the petitioner would submit that the petitioner had put in 23 years of service as Typewriting teacher and after closure of the typing subject, she worked as P.G.Teacher (History) for XI Standard and there is no justification for the 2nd respondent to relieve the petitioner from the post at the age of 51 years and she cannot get any employment due to age factor. Hence, the learned counsel seeks to quash the impugned order and to direct the respondents to continue the petitioner in service with all service attendant benefits.

4.The learned Government Advocate appearing for the first respondent, while reiterating the averments contained in the counter affidavit, would submit that at the time of appointment as Vocational Instructor (Typing), the petitioner gave an undertaking on 05.06.1996 to the effect that she will withdraw her service as a teacher on account of the fall in strength and attendance in a class or section of particular language or subject as stipulated by the Government without any compensatory assistance. He would further submit that when the petitioner was appointed, the school had student strength around 1300, which drastically came down to 683 for various reasons and the students opting for vocational subject (typing) also reduced to 14 to 13 respectively. Therefore, in such circumstances, the 2nd respondent management had no other option except to close down the particular course from the year 2016 and accordingly, relieved the petitioner from the post of Vocational Instructor and later on, on a sympathetic consideration, the petitioner was allowed to work in the lower sections for a period of

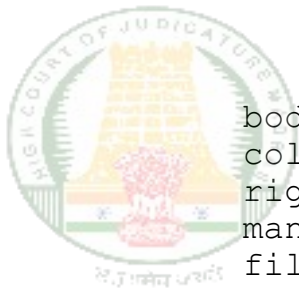


two years and subsequently, vide proceedings dated 03.01.2018 the petitioner was relieved from the post of a Teacher on account of the fall in strength. He would also submit that already similarly placed teachers in different subjects were relieved and there is no vacancy in the post of BT or PG Assistant in history is available in the school to accommodate the petitioner. Hence, the learned Government Advocate sought for dismissal of the writ petition.

5. Heard the learned counsel for the petitioner and the learned Government Advocate for the first respondent and perused the entire materials available on record.

6. The 2nd respondent school receives grant-in-aid from the Government for Standard VI to X for Tamil medium, while for XI and XII standard, it is self-financed. It is not in dispute that the petitioner, at the time of appointment as Vocational Instructor, had accepted the terms and conditions and gave an undertaking to the effect that she will withdraw her service as a teacher on account of the fall in strength and attendance in a class or section of particular language or subject as stipulated by the Government without any compensatory assistance. It is pertinent to note that all along the petitioner has been allowed to work by the 2nd respondent management for nearly 23 years and when there is drastic fall in the student strength from 1300 to 683 and on closure of the vocational subject (typing), the 2nd respondent was constrained to issue impugned proceedings relieving her from the post. In fact, along with the petitioner, other similarly placed teachers were relieved on account of reduction in school strength. According to the 2nd respondent management, there is no feasibility to accommodate the petitioner in the 2nd respondent school as there is no vacancy. In such circumstances, this Court is of the view that the claim of the petitioner cannot be considered and further, the 2nd respondent institution is purely an unaided minority educational institution, which is not amenable to the writ jurisdiction under Article 226 of the Constitution of India. In similar writ petition in W.P.No.11855 of 2016, this Court has observed as under in para 13:

" 13. In the light of the ratio laid down by the Apex Court in Committee of Management, La Martiniere College Lucknow, through its Principal and another v. Vatsal Gupta and others, 2016 SCC Online SC 743 ruling that no writ petition is maintainable against an unaided minority private institution, since the fifth respondent is a private unaided minority educational institution, no writ petition under Article 226 can be entertained, as it is not amenable to the writ jurisdiction. Besides, when the petitioners have been relieved from service as per the terms of contract, which are purely personal in nature, the writ petitioners cannot enforce a



body on the premise that the fifth respondent college adopts certain statutory provisions. If the rights are purely of a private character, no mandamus can be issued. Hence, the writ petitions filed by the petitioners are not maintainable against the fifth and sixth respondents. Accordingly, the writ petitions are dismissed. However, the petitioners are at liberty to work out their remedy in the manner known to law by approaching the appropriate authority...."

7.Following the above, this Court is of the view that since the 2nd respondent is a private unaided minority educational institution, no writ petition under Article 226 can be entertained, as it is not amenable to the writ jurisdiction. Accordingly, the Writ Petition is dismissed. However, the petitioner is at liberty to work out her remedy in the manner known to law by approaching the appropriate authority. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (W)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

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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:

The Chief Educational Officer,
Office of the Chief Educational Officer,
Sivagangai District,
Sivagangai.

+1 CC to M/s.A.AMALA, Advocate (SR-25685[F] dated 09/08/2021)
+1 CC to M/s.SPL GP (SR-25946[F] dated 11/08/2021)

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