



W.P.No.26368 of 2010

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.12.2022

CORAM

THE HONOURABLE Mrs. JUSTICE J.NISHA BANU

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- 1.S.Maria Singam (died)
- 2.M.Joan Mary
- 3.M.Seviyar Liyonci Bernard
- 4.M.Alphonse Joseph Derin

P2 to P4 substituted as LR's of the
deceased 1st petitioner as per order
passed by TRJ in M.P.No.1/2014
dt.5.2.2014

.... Petitioners

VS

1. The State of Tamil Nadu,
rep. By its Secretary, Education Department,
Fort St.George, Chennai-9
2. The Chief Educational Officer,
Virudhunagar District.
3. The District Educational Officer,
Virudhunaga District.
4. The Correspondent,
St.Stanislaus High School,
Sattur, Virudhunagar District.

.... Respondents



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Writ Petition filed under Article 226 of the Constitution to issue a Writ of Certiorarified Mandamus to call for the records made in the impugned order of the second respondent in Na.Ka.No.7080/A4/09 dated 13.10.2009 and quash the same and direct the respondents to grant backwages and continuity in service to the petitioner for the post of Physical Education Teacher in 4th respondent School with effect from 16.01.1981 with all consequential benefits thereof in the light of G.O.Ms.No.251 Education Department dated 26.2.88 and order in W.A.No.1407/98 dated 23.10.1998

For Petitioner : Mr.S.N.Ravichandran

For Respondents : Mrs.Mythreye Chandru
Special Government Pleader for R1 to R3
Dr.Fr.Xavier Arulraj for R4

ORDER

This writ petition has been filed to quash the order passed by the 2nd respondent dated 13.10.2009 and to direct the respondents to grant backwages and continuity in service to the petitioner for the post of Physical Education Teacher in the 4th respondent School with effect from 16.01.1981 with all consequential benefit thereof in the light of G.O.Ms.No.251, Education dept. dated 26.02.1988 and order in WA.No.1407/1998 dated 23.10.1998.

2. Heard the learned counsel for the petitioner, the learned Special Government Pleader appearing for the 1st to 3rd respondents and the learned



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counsel appearing for the 4th respondent.

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3. Learned counsel for the petitioner would state that the petitioner was qualified with lower grade training in Physical Education Teacher and was appointed as Physical Education Teacher in the 4th respondent School with effect from 16.01.1981 in the vacancy caused due to the resignation of one Mr.Edmond Roy. His appointment was approved by proceedings dated 28.01.1981 and was granted the regular increment every year and he was made permanent in the post with effect from 1.1.1983. The 2nd respondent conducted an audit of all the Schools within its jurisdiction and submitted a report and as per the report of the 2nd respondent dated 20.05.1984, the 3rd respondent stopped paying salary to the petitioner from July 1984. The petitioner was allowed to work without salary being paid till 18.03.1985, on which date, he was forcibly relieved from the post. The petitioner was not given any notice and no opportunity was afforded to him and no written order of termination was passed by the respondents. According to Annexure 5 of Special Rules for Tamil Nadu Educational Subordinate Service, the first appointment of Physical Education Teacher (P.E.T.) in a School should possess Higher Grade training and the next appointment of Physical Education Teacher (P.E.T.) in the same School shall possess lower grade training. The post



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of P.E.T. was sanctioned to the 4th respondent School only in the year 1980. The first appointment was made to one Edmond Roy who possess higher grade qualification and after his resignation, the petitioner was the second appointee and therefore, the appointment of the petitioner is valid.

4. Learned counsel would further submit that as per G.O.Ms.No.1440 Education Department dated 14.09.1987, all the appointment of P.E.T. with Lower Grade was approved and considered. The petitioner was illegally terminated on 18.03.1985 and another person was appointed on 17.7.1985. The petitioner filed W.P.No.5246 of 1990, challenging the same. Since the petitioner was not having money to consult a counsel, he contacted the legal aid department and hence, there was a delay in filing the said writ petition. The said writ petition was allowed on 11.09.1998. Against which, the Management filed Writ Appeal in W.A.No.1407 of 1998 and the department did not file any appeal. An order was passed in the said appeal and thereafter, the petitioner was reinstated in the fourth respondent school with effect from 28.06.1999 but he was not given any backwages. Therefore, the petitioner filed W.P.No.5313 of 2001 which was dismissed on 3.3.2005. Against which, the petitioner filed W.A.No.942/2005, in which, an order was passed directing the petitioner to give



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representation to the department in this regard. The petitioner gave representation to the first respondent but the same was rejected on 13.10.2009. It is the case of the petitioner that he was illegally terminated by the school management only with a view to accommodate their own man in his place, therefore, he is entitled for backwages and all other attendant benefits from 1.7.1984. Hence, this writ petition with the aforesaid relief.

5. Learned Special Government Pleader appearing for the respondents would vehemently submit that the Chief Educational Officer has raised some objection in respect to the appointment made to the petitioner and the petitioner was terminated from service in the year 1985 itself and only after a period of 5 years, he had filed the writ petition in W.P.No.5246/1990. He has not immediately approached this Hon'ble Court. She would further submit that in the interregnum period, he worked in some other School and the same was stated in para 4 of the counter filed by the 2nd respondent in the contempt petition No.836/1999 also. Therefore, he is not entitled for continuity of service and backwages and hence, the impugned order was rightly passed rejecting the claim made by the petitioner.

6. This Court paid its anxious consideration on the submissions made on



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either side and and perused the materials available on record.

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7. Perusal of the order dated 11.09.1998 passed in W.P.No.5245 of 1990 shows that this Court has quashed the order of the C.E.O. and directed the respondents to reinstate the petitioner in service with backwages and all other attendant benefits. In the said order, this Court has also set aside the endorsement made in the Service Register of the petitioner relieving him on 18.03.1985. Against which, the School Management filed appeal in W.A.No.1407 of 1998. By order dated 23.10.1998, the Division Bench has observed that since another person has been appointed in the place of the petitioner and was working for several years, the Education Department was given liberty to pass orders after affording necessary opportunity to the writ petitioner. In the said order, the Division Bench has also observed that the petitioner/first respondent has satisfactorily explained the delay and though there is inordinate delay, on the facts and circumstances of the case, the writ petition cannot be thrown out for laches. Therefore, now the learned Special Government Pleader cannot raise the same ground of delay as it has already been answered by the Division Bench.

8. It is also noticed that the petitioner was not gainfully employed during



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the interregnum period. He was working only for a short period in Lions School, that too, on consolidated basis, as one cannot starve and be idle and this cannot be put against the petitioner for denying his claim of backwages and continuity of service. Subsequently, the C.E.O. by order dated 28.06.1999 directed the D.E.O to take necessary steps to reinstate the petitioner in service. Again, on 28.07.1999, the C.E.O. directed the Correspondent of St.Stanislaus High School to reinstate the petitioner in service. In spite of the order of the C.E.O., the School failed to comply with the order. The petitioner, though was relieved from service was subsequently, absorbed in the School which is under the control of the management of the fourth respondent.

9. In the counter affidavit filed by the Chief Educational Officer, Virudhunagar/2nd respondent herein, it is stated that they have taken action according to the orders of the High Court, but the Correspondent has not obeyed either the High Court orders or the instructions of the Department and there is no other way for the C.E.O to convince the Correspondent of the said school as it is a Minority School, as he has no powers to interfere with their administration of the School. The petitioner also attained the age of superannuation on 31.07.2008. As per G.O.Ms.No.251 dated 26.02.1988, it is stated that holders of



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Government Teachers' Certificate in Physical Education Lower Grade should also continue to be eligible for appointment as Physical Education Teachers in Government Schools even on or after 1.4.78 and shall continue to be so in future also and that the Government now direct that the said order be made applicable to appointment made in Aided Middle High and Higher Secondary Schools also. Therefore, the petitioner was fully qualified for the post of Physical Education Teacher at the time of his initial appointment.

10. For the reasons stated above, the Writ Petition is allowed. The impugned order passed by the second respondent made in Na.Ka.No.7080/A4/09 dated 13.10.2009 is hereby quashed and the respondents are directed to grant backwages and continuity in service to the petitioner for the post of Physical Education Teacher in the 4th respondent School with effect from 16.01.1981 with all consequential benefits thereof. It is made clear that the petitioner is entitled for arrears of backwages from 18.03.1985 to 27.06.1999. The respondents are directed to release all monetary benefits to the legal heirs of the deceased employee/1st petitioner as per rules. No costs.

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Index: Yes/No

Speaking/Non-speaking order

vsi

To

1. The State of Tamil Nadu,
rep. By its Secretary, Education Department,
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Virudhunagar District.
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