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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.03.2022

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THE HONOURABLE MR.JUSTICE M.S.RAMESH

W.P.No.34409 of 2013
and M.P.Nos.1 & 2 of 2013

R.S.Manoj Kumar

...Petitioner

Vs.

1. The Director of School Education,
DPI Campus, College Road,
Chennai - 600006.
2. The Chief Educational Officer,
Cuddalore District,
Cuddalore.
3. The Secretary,
Shri P.Muthiyar Higher Secondary School,
Kasthuribai Street,
Panrutti Taluk - 607106,
Cuddalore District.
4. Sr.Berttila Nobert
Headmistress
Shri P.Muthiyar Higher Secondary School,
Kasthuribai Street,
Panrutti Taluk - 607106,
Cuddalore District.

...Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Mandamus, forbearing the respondents from terminating the service of the petitioner from the post of Physical Education Teacher in 3rd respondent school by oral termination except by following provisions of law and the procedure established by law in compliance of the provisions of Tamil Nadu Recognized Private School (Regulations) Act, 1973 and the Rules made there under.

For Petitioner : Mr.S.Nedunchezhiyan

For Respondents : M/s.Rajarajeswari
Government Advocate [R1 & R2]
Mr.P.Godson Swaminath
for M/s.Isaac Mohanlal [R3 & R4]



ORDER

The third respondent/School receives financial aid from the Government, towards staff salaries for Standard I to VIII. The petitioner herein was employed as a Physical Education Teacher in the unaided section of school, on contractual basis from 26.06.2006, which was subsequently extended. It is the case of the petitioner that on 03.12.2013, the School/Management had orally terminated his services.

2. The learned counsel for the third and fourth respondents/School submitted that the petitioner was appointed only in an unsanctioned post on contractual basis and since it was felt that the services of the petitioner was no longer required on completion of the contract on 30.11.2013, they have sent a letter of discharge on 28.11.2013, which was refused by the petitioner.

3. The learned counsel for the petitioner predominantly raised a ground stating that prior to the oral termination, the procedure under the Tamil Nadu Recognized Private School Regulations Act, was not followed.

4. Admittedly, the post in which the petitioner was engaged, is an unsanctioned post on contractual basis. The respondents also claims to have given a letter of discharge after completion of the contract period. While that being so, the procedure contemplated under the Tamil Nadu Recognized Private School Regulations Act, need not be applied for such contractual employment.

5. This position came up for consideration in the decision of the Hon'ble Division Bench of this Court in the case of 'R.Keerthivarman Vs. The District Education Officer' reported in '2014 (1) CWC 841 and the ratio was reiterated in the following manner:-

"..... 7. Similar issue was considered by the Division Bench of this Court in the decision reported in 2007 (1) CTC 649 (The Correspondent, M.M. Higher Secondary School, Bethelpuram, Kanyakumari District and others v. K.Mathu Kumar and others) with regard to the claim of the salary of a teacher appointed in an un-sanctioned post. In Paragraph (9) of the said decision, the Division Bench held thus:-

"9. It is settled law that if a person has been appointed against a post not sanctioned by the State Government, he cannot claim salary against such unsanctioned post. There is nothing on record to suggest that the post of PG Assistant (Economics) was required to be sanctioned for the school, in absence of which the teaching in the school would have been affected. In absence of such



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averment and other details, according to us, no relief could have been granted in the manner granted by the learned Single Judge and in the manner as was sought for by the writ petitioner. If the petitioner was appointed against a post created by the school management, but not sanctioned by the State Government, the petitioner, at best, could claim for wages from the school management, which was paid to him at the rate of Rs.1000 per month for taking classes for two hours per day. In such a situation, the impugned order dated 29.9.2004 passed by the learned Single Judge in W.P.No.18900 of 2001 cannot be upheld."

8. The appellant having been appointed in an un-sanctioned post, he cannot plead that the procedure contemplated under Section 22 of the Tamil Nadu Recognised Private Schools (Regulation) Act, 1973 should have been followed before terminating the service. If the argument of the appellant is to be accepted, as per the said Act, the appellant is not entitled to file writ petition and his remedy is to file an appeal against the order of termination before the competent authority and thereafter, further appeal was provided before the Tribunal for Education cases and then only, he can approach this Court by filing writ petition. Hence, the issue raised by the appellant is answered against the appellant."

6. The aforesaid extract is self-explanatory. As such, I do not find any merits on the claim of the petitioner that the procedure contemplated under the Tamil Nadu Recognized Private School Regulations Act, was violated.

7. At this juncture, the learned counsel for the petitioner submitted that two months salary, while the petitioner was in service, is still due. This statement is refuted by the learned counsel for the Management. In case, any such salary is due to the petitioner, prior to 04.12.2013, the fourth respondent/Management shall forthwith disburse the same, as expeditiously as possible.

8. With the above direction, this Writ Petition stands dismissed. No costs. Connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-IX)

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To

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W.P.No.34409 of 2013

BR (CO)
PR (30/03/2022)