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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.03.2022

CORAM

THE HON'BLE MR.JUSTICE P.D.AUDIKESSAVALU

W.P.NO.21095 OF 2018

M.S.Robert

... Petitioner

.Vs.

1. The Joint Director,
(Employee's Division)
Directorate of School Education,
E.V.K.Sampath Maligai 4th Floor,
College Road,
Chennai.

2. The Chief Educational Officer,
Erode - 368 001,
Erode District.

3. The Headmaster,
The Government High School,
Koodakkarai - 638 454,
Gobichettipalayam Taluk,
Erode District.

... Respondents

PRAYER:-

Writ Petitions filed under Article 226 of the Constitution of India, 1950, praying to issue a Writ of Mandamus directing the First and Second Respondents to regularize the Petitioner's service in the post of B.T.Assistant (English) from 02.01.2014 by considering his representations dated 17.02.2018 and 19.02.2018.

For Petitioner : Mr.S.Manokaran

For Respondents : Mr.Stalin Abhimanyu
R1 to R3 Additional Government Pleader
(Education)



O R D E R

Heard Mr.S.Manokaran, Learned Counsel for the Petitioner, Mr.Stalin Abhimanyu, Learned Additional Government Pleader for the Respondents and perused the materials placed on record, apart from the pleadings of the parties.

2. The Petitioner was appointed in the post of B.T. Assistant (Chemistry) on 26.12.2008 through the Teachers Recruitment Board and he was posted in the school of the Third Respondent. It was noticed during the inspection conducted by the Chief Educational Officer that the Petitioner had subsequently become blind and as per the certificate issued by the Medical Board, he was not able to read textbooks and write on the blackboard with normal speed. In such circumstances, he was relieved from service by Order in O.Mu.No.04/09 dated 19.01.2009 passed by the Third Respondent, which had been challenged by the Petitioner in W.P.No.28401 of 2011 before this Court and had been disposed by order dated 29.08.2012 holding as follows:-

"2. The case of the Petitioner is that he was appointed as B.T. Assistant on 26.12.2008 and posted at Government High School, Koodakkarai, Gobichettipalayam. While so, he was relieved from the said post on 19.01.2009 by the impugned order of the Third Respondent. The said order is under challenge in the present Writ Petition.

3. It is contended on behalf of the Petitioner by the learned Counsel appearing for the petitioner that the Petitioner was directed to appear before the Medical Board on 10.08.2010 and he did so. It has been found that the Petitioner has 100% blindness in both of his eyes and he is not fit for working as B.T. Assistant. On the basis of the Medical Report, the Petitioner has been relieved from the post without providing him alternative employment as required under Section 47 of the persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995. Therefore, the Petitioner challenging the order relieving him from service, with a request for further direction to the Respondents to provide him alternative employment, has come up with the present Writ Petition.

4. On notice, Learned Additional Government Pleader appearing for the Respondents reports that he has received instructions from the Respondents



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stating that the Petitioner will be provided with alternative employment.

5. In view of the said submission made by the Learned Additional Government Pleader, the Writ Petition stands disposed of, with a direction to the Respondents to provide alternative employment to the Petitioner. The said exercise has to be carried out within a period of four weeks from the date of receipt of a copy of this order. No order as to costs. Consequently, connected miscellaneous petition is closed."

Though the Petitioner has been given appointment as B.T.Assistant (English) on 02.01.2014 and continues to hold the said post, his services have not been regularized despite representations dated 17.02.2018 and 19.02.2018 made by him to the First and Third Respondents respectively, which has necessitated the filing of this Writ Petition to pass orders in that regard.

3. In the Counter-Affidavit dated 11.12.2019 filed by the Second Respondent, the claim of the Petitioner for regularization in service as B.T. Assistant (English) is resisted by contending that the Review Petition (S.R.42291 of 2013) has been made for re-consideration of the order dated 29.08.2012 in W.P.No.28401 of 2011 passed by the Court and its outcome would have to be awaited for taking further action in the matter. However, no material has been placed before the Court to show that such Review Petition has been taken on file despite the lapse of several years and in the absence of an order staying the order dated 29.08.2012 in W.P.No.28401 of 2011 passed by the Court, the Respondents ought to comply with the same in letter and spirit and any such action taken would have been subject to the outcome of that Review Petition.

4. It is the mandate of Section 47 of the Persons with Disabilities (Equal Opportunities Opportunities, Protection of Rights and Full Participation) Act, 1995, which is now substituted by Section 20 of the Rights of Persons with Disabilities Act, 2016, that a person who acquires disability is not deprived of his employment, which would have to be fully protected. This would obviously mean that if the necessity has arisen for appointing some other qualified persons as B.T. Assistant (English) and B.T. Assistant (Chemistry) in the interests of the students, the Petitioner would still be entitled to all attendant and consequential benefits with continuity of service, full pay protection and timely payment of the emoluments in the post of B.T. Assistant (Chemistry) till he attains the age of superannuation and a supernumerary post would



have to be created for accommodating the Petitioner in that regard. Consequently, the Petitioner cannot be deprived of the monetary benefits that he was entitled to receive in the post of B.T. Assistant (Chemistry), which was held by him at the time of acquiring 100% disability of blindness under the guise that he does not possess the qualification for the alternative post of B.T. Assistant (English) and the same would have to be continued to be paid to him.

5. Accordingly, the Respondents shall take necessary further action for regularizing the services of the Petitioner from 02.01.2014 onwards and make payment of the entire amount of monetary benefits due to him for the period from January 2014 to March 2022 by 31.05.2022, apart from the monthly salary from April 2022 onwards on the due dates. The report of compliance in that regard shall be filed before the Registrar (Judicial) of this Court.

6. In the result, the Writ Petition is ordered on the aforesaid terms. No costs.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

gd

To

1. The Joint Director,
(Employee's Division)
Directorate of School Education,
E.V.K.Sampath Maligai 4th Floor,
College Road, Chennai.
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Erode District.



Copy To:-

The Registrar (Judicial),
Madras High Court,
Chennai - 600 104.

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+1cc to Mr.S.Manokaran, Advocate, S.R.No.14877
+1cc to the Special Government Pleader, S.R.No.15475

W.P.NO.21095 OF 2018

SKM(CO)
PBS/13/04/2022