



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.03.2022

CORAM

THE HONOURABLE MR.JUSTICE S. VAIDYANATHAN

AND

THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.A.No.2809 of 2021

The Correspondent,
St. Thomas Aided Primary School,
Marthoma Nagar P.O.,
Gudalur, Nilgiris.

...Appellant

Vs.

1.Ms.S.Asha

2.Secretary to Government of Tamil Nadu,
Department of Education,
Chennai.

3.The Director of Elementary Education,
College Road,
Chennai - 600 006.

4.The District Elementary Education Officer,
Mount Pleasant,
Coonoor, The Nilgiris.

...Respondents

Prayer : Writ Appeal as against the order dated 08.03.2021 in W.P.No.3489 of 2012.

Prayer in W.P.No.3489 of 2012 : Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Mandamus directing the 3rd respondent to treat the period of service i.e. from 28.03.2000 to 31.07.2005 in the 4th respondent school as regularized and to pay the Petitioner all back wages and all attendant benefits with 12% p.a. interest or interest on the arrears of back wages as fixed by this Court.

For Appellant : Mr.John Zachariah for
M/s.FoxMandal Associates

For Respondents : Ms.S.Valarmathi for R1
Mrs.S. Mythreyee Chandru,
Special Govt. Pleader (Edn.)
for R2 to R4



J U D G M E N T

S. VAIDYANATHAN, J. AND MOHAMMED SHAFFIQ, J.

Aggrieved by the order dated 08.03.2021 passed in W.P. No. 3489 of 2021, the 4th respondent school in the writ petition has come forward with the present appeal.

2. The 1st respondent herein filed the writ petition for issue of a Writ of Mandamus directing the District Elementary Education Officer to treat the period of service i.e, from 28.03.2000 to 31.07.2005 in the appellant school as regularised and to pay the 1st respondent/writ petitioner all backwages and all attendant benefits with 12% interest per annum or interest on the arrears of backwages as fixed by the Court. The learned Single Judge, after considering the submissions of the 1st respondent/writ petitioner, the Government and the 4th respondent school, came to the conclusion that a teacher, who does not fulfill the qualification cannot be expected to continue as a teacher and approval cannot be granted and that no mandamus can be issued to the official respondents to approve the appointment of the 1st respondent/writ petitioner in the appellant school and disposed of the writ petition with the following directions:

"20. In that view of the matter, this Court is inclined to dispose of this writ petition with the following orders:

(i) That the second respondent is directed to give a clarification / order accepting or rejecting the plea raised by the petitioner through the fourth respondent school with regard to her appointment with effect from 28.03.2000 as sought for by the third respondent vide his proceedings in Na.Ka.No. 3731/A2/2001 dated 28.09.2001 and such order shall be passed, within a period of eight weeks from the date of receipt of a copy of this order, by the second respondent and once such order is passed, based on which, consequential order can also be passed by the third respondent and communicate the same to the petitioner as well as the fourth respondent school.

(ii) Once such order is passed as per the stand now taken by the official respondents rejecting the claim of the petitioner through the fourth respondent School for approving her appointment with effect from 28.03.2000, on receipt of such order from the official respondents, the petitioner can

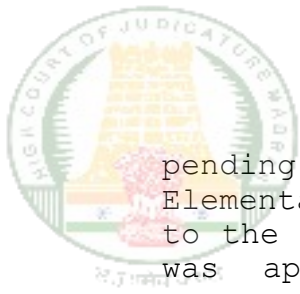


4. Mrs. Mythreyee Suresh, learned Special Government Pleader (Education) appearing on behalf of respondents 2 to 4 would reiterate that there is a prescribed qualification to hold the post of Secondary Grade Teacher, more so, in a linguistic minority school, where the medium of instruction is other than Tamil. The qualification prescribed must have been obtained by the teacher, who seeks appointment in the school. It has been stated that even though the 1st respondent/writ petitioner was qualified in Malayalam, she did not have the qualification in Teacher Education Diploma Course in Malayalam Medium and therefore, the appointment could be detrimental to the students and a teacher without qualification cannot be employed as a teacher for teaching several subjects in Malayalam as medium of instruction. Hence, the appointment was not approved.

5. Heard both sides.

6. During the course of arguments, it is submitted by Mr. John, learned counsel for the appellant that in spite of directions of this Court, no order has been passed by the official respondents. This was countered by Mrs. Mythreyee Suresh, learned Special Government Pleader (Education) appearing for respondents 2 to 4 stating that the order of rejection has been passed on 20.11.2021. In reply, Mr. John, learned counsel submitted that the copy of the rejection order has not been furnished.

7. The 1st respondent had left the service of the appellant school as early as on 31.07.2005. It is evident from the records that the Director of Elementary Education had taken a decision as per the directions of this Court on 20.11.2021, but the same has not been served on the appellant in spite of the orders of the Court. The various correspondences would make it very clear that there was a recommendation by the Assistant Elementary Educational Officer, Kudaloor to the Director of District Elementary Education, Coonoor, by letter dated 03.09.2001, that the appointment of the 1st respondent, namely, the writ petitioner could be approved. In spite of this communication, as early as in the year 2001, the official respondents have taken their own sweet time to take a decision, that too, after the orders passed by this Court, nearly after a period of 20 years. Having taken the decision belatedly and allowed the teacher to work in the appellant school, we are of the view that the Government will have to pay the salary and not the 4th respondent school. Whenever the approval of appointment of a teacher is requested by the school concerned, the Government will have to take a decision, at least, within a period of 3 months from the date of receipt of a copy of the application. Though there is no time frame for taking a decision, the official respondents cannot keep the application



pending for decades together, more so, when the Assistant Elementary Educational Officer wrote the letter dated 03.09.2001 to the Director of Elementary Education that the writ petitioner was appointed as an intermediate teacher and sought for approval. For the belated action of the Government and more so, the 1st respondent/writ petitioner has sought the relief of payment of wages from the Government, we are of the view that the order of the learned Single Judge needs to be modified and accordingly, the official respondents are directed to pay the salary to the 1st respondent/writ petitioner within a period of six months from the date of receipt of a copy of this order. This Court would make it very clear that the interest portion sought by the 1st respondent/writ petitioner is declined. In case, the Government fails to pay the amount within six months, the interest portion shall get revived automatically.

8. The writ appeal is disposed of accordingly. No costs.

Sd/-
Assistant Registrar(CS-IV)

// True Copy //

Sub Assistant Registrar

nv

To

1. Secretary to Government of Tamil Nadu,
Department of Education,
Chennai.

2. The Director of Elementary Education,
College Road,
Chennai - 600 006.

3. The District Elementary Education Officer,
Mount Pleasant,
Coonoor, The Nilgiris.

+1cc to M/s. Foxmandal & Associates, Advocate, Sr.No.16038

+1cc to M/s. J. Franklin, Advocate, Sr.No.16962

W.A.No.2809 of 2021

NK(CO)
RVM(11/04/2022)