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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.06.2022

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THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

Writ Petition No.195 of 2014
and
M.P.No.1 of 2014

M.Valliammal
W/o.J.Manickam

... Petitioner

Vs.

- 1.The State of Tamil Nadu,
represented by the Secretary to Government,
Education Department,
Fort St.George, Chennai - 600 009.
- 2.The Director of School Education,
College Road, Chennai - 600 006.
- 3.The Chief Educational Officer,
Panagal Maligai,
Saidapet, Chennai - 600 015.
- 4.The District Educational Officer,
Chennai - North,
Egmore, Chennai - 600 008.
- 5.The Correspondent,
Sir M.Ct.Muthiah Chettiar Hr.Sec.School,
No.23, Raja Annamalai Road,
Purasawalkam, Chennai - 600 084.

... Respondents

PRAYER:

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus directing the respondents 4 and 5 to regularize the services of the petitioner as a sweeper and allow the petitioner to discharge her duties as sweeper without interference with time scale of pay as applicable to the cadre from the date of the petitioner's appointment i.e. 01.06.1992 and to pay the difference of salary as arrears.



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For Petitioner : Mr.C.Johnson

For Respondents: Mrs.S.Anitha
Special Government Pleader [R1 to R4]
No appearance [R5]

O R D E R

The relief sought for in the present writ petition is to direct the respondents 4 and 5 to regularize the services of the petitioner as feeder and allow the petitioner to discharge her duties as sweeper without interference with time scale of pay.

2. The petitioner states that her husband A.M.Manickam joined in the fifth respondent aided school as marker with effect from 04.09.1974. The fifth respondent Management re-designated the post of the petitioner's husband and her husband was posted as Waterman in the retirement vacancy caused due to the retirement of Mr.S.Palanivelu with effect from 01.10.1975. The petitioner states that her husband served about 16 years in the fifth respondent Management and in spite of that, the Management had not taken effective steps to get approval and appointment in accordance with the Act and Rules. The Management salary had been paid during the relevant point of time. In view of the fact that the services of the deceased husband of the petitioner was not granted, she could not able to get pension and pensionary benefits. The petitioner earlier filed a civil suit in O.S.No.4217 of 1995 on the file of II Assistant City Civil Court, Chennai and subsequently, withdrew the same.

3. The learned counsel appearing for the petitioner mainly contended that the husband of the petitioner was appointed in a sanctioned post and further, the vacancy aroused due to the retirement of another employer. It is the duty of the Management to secure approval in favour of the deceased employee. However, the fact remains that the competent educational authorities have not approved the appointment of the husband of the petitioner during the relevant point of time and through out, he served as Management staff and was receiving the Management salary. Learned counsel made a submission that it is the duty of the Management to submit the proposal for approval of appointment, which was not pursued properly.

4. The regularization or permanent absorption cannot be granted in violation of rules in force. Admittedly, the husband of the petitioner was employed in the fifth respondent Management and the Management had not taken steps to submit the proposal for approval by the competent educational authorities. It is not made clear that whether the post was sanctioned or



not. In the absence of sanctioned post, the Management would not be in a position to seek approval for appointment of the husband of the petitioner. The fact remains that the husband of the petitioner served as a Management staff and was receiving salary from the Management. His services were not regularized nor approved by the competent educational authority for the purpose of claiming pensionary benefits under the Tamil Nadu Pension Rules.

5. The writ petition has been now filed after the death of the employee by his wife. At this length of time, the benefit of regularization or approval of appointment cannot be granted by this Court in writ proceedings. If at all, the Management is responsible for any lapses, the petitioner is at liberty to sue the Management for proper relief. Contrarily, the tax payers money cannot be paid by way of pension to an ineligible person, which would cause financial loss to the State exchequer. Only, if a right is established for grant of pension, then only, the Court has to consider and not otherwise. In the present case, the learned counsel for the petitioner reiterated that that Management has committed fault. The petitioner is at liberty to initiate all appropriate steps against the Management for proper remedy.

With this liberty, this Writ Petition stands disposed of. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-V)

//True copy//

Sub Assistant Registrar

gm

To

- 1.The Secretary to Government,
Education Department,
Fort St.George, Chennai - 600 009.
- 2.The Director of School Education,
College Road, Chennai - 600 006.
- 3.The Chief Educational Officer,
Panagal Maligai,
Saidapet, Chennai - 600 015.



4.The District Educational Officer,
Chennai - North,
Egmore, Chennai - 600 008.

+1cc to Mr.C.Johnson, Advocate SR.No.33966

+1cc to Mrs.Malarvizhi Udayakumar, Advocate SR.No.33925

+1cc to Government Pleader SR.No.34493

Writ Petition No.195 of 2014

JPL (CO)
GMY (20/06/2022)