



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 30.03.2022

CORAM:

**THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN
and
THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR**

**W.A(MD)Nos.1275 & 1276 of 2011
and
M.P. (MD)Nos.1 & 1 of 2011**

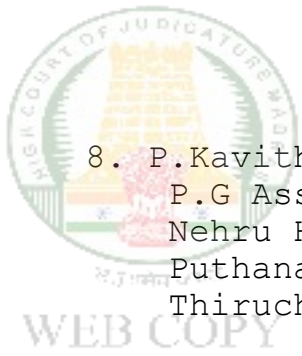
W.A(MD)No.1275 of 2011

S.Thamizhirumporai

... Appellant /petitioner

Vs.

- 1.The Director of School Education,
College Road,
Chennai-600 006.
2. The Joint Director of School Education,
(Higher Secondary) & Appellate Authority,
Department of School Education,
Chennai-600 006.
3. The Chief Educational Officer,
Tiruchirapalli,
Tiruchirapalli District.
4. The District Educational Officer,
Musiri,
Tiruchirapalli District.
5. The Secretary,
Nehru Higher Secondary School,
Puthanampatti,
Thiruchirapalli District.
6. The Head Master,
Nehru Higher Secondary School,
Puthanampatti,
Thiruchirapalli District.
7. The Sub Treasury Officer,
Thuraiyur,
Thiruchirapalli District.



8. P.Kavitha,
P.G Assistant (History),
Nehru Higher Secondary School,
Puthanampatti,
Thiruchirapalli District.

...Respondents/Respondents

PRAYER : Writ Appeal filed under Clause 15 of the Letters Patent praying this Court to set aside the order, dated 19.08.2011 in W.P.(MD)No.1662 of 2011.

Prayer in WP(MD). 1662/ 2011 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Certiorarified Mandamus, calling for the records pertaining to the orders in Na.Ka.No. 311/A1/2011, dated 31/01/2011 passed by the 4th respondent and quash the same, and direct the Respondents-1 to 5 to promote the petitioner to the post of P.G.Assistant (History) in the 5th respondent school with effect from 02/01/2007.

For Appellant : Mr.Dr.D.Gnanasekaran

For Respondents : Mr.S.P.Maharajan - RR1 to 4
Special Government Pleader

: No Appearance R5 to R8

W.A(MD)Nos.1276 of 2011

S.Thamizhirumporai ... Appellant / Petitioner

Vs.

1.The Joint Director of School Education,
(Higher Secondary) & Appellate Authority,
Department of School Education,
Chennai-600 006.

2. The Chief Educational Officer,
Thiruchirapalli,
Thiruchirapalli District.

3. The District Educational Officer,
Musiri,
Thiruchirapalli District.



4. Nehru Higher Secondary School,
represented by its Secretary,
Puthanampatti,
Thiruchirapalli District.

5. P.Kavitha,
P.G Assistant (History) (Unapproved),
Nehru Higher Secondary School,
Puthanampatti,
Thiruchirapalli District.

...Respondents/Respondents

PRAYER : Writ Appeal filed under Clause 15 of the Letters Patent praying this Court to set aside the Order, dated 19.08.2011 in W.P (MD)No.10989 of 2009.

Prayer in WP(MD). 10989 of 2009 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a WRIT OF MANDAMUS, restraining the 4th Respondent from permitting the 5th Respondent to work as unapproved Teacher in the post of P.G. Assistant (History) that became vacant from 01-06-2006 in the 4th Respondent school, and further directing the 4th Respondent to appoint the petitioner to the said post by way of promotion with effect from 02-01-2007, and further directing the Respondents to give to the petitioner service and monetary benefits with effect from 02-01-2007.

For Appellant : Mr.Dr.D.Gnanasekaran

For Respondents : Mr.S.P.Maharajan - RR1 to 3
Special Government Pleader

: No Appearance - R4

COMMON JUDGMENT

R.SUBRAMANIAN, J.

AND

N.SATHISH KUMAR, J.

The challenge in these Writ Appeals is to the common order of the Writ Court made in W.P(MD) Nos.10989 of 2009 and 1662 of 2011.

2. W.P.(MD) No.10989 of 2009 was filed for a writ of Mandamus forbearing the fourth respondent from permitting the fifth respondent to work as an unapproved teacher in the post of PG Assistant (History) that fell vacant on 01.06.2006 in the fourth respondent school and further, directing the fourth respondent to

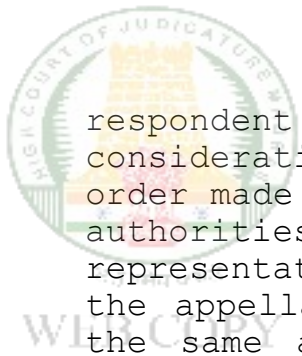


appoint the petitioner to the said post by way of promotion w.e.f. 02.01.2007 and further, directing the respondents to give him service and other monetary benefits from 02.01.2007.

3. Pending the said writ petition, the appointment of the fifth respondent was approved by the authority on 31.01.2011. This act of the authority in approving the appointment of the fifth respondent in the writ petition, led to the second writ petition being filed in W.P.(MD) No.1662 of 2011, challenging the grant of approval.

4. The brief facts that lead to filing of the writ petitions are as follows :

The petitioner joined duty as a Drawing Master on 03.06.1987 with the fourth respondent School. He was promoted to the post of BT Assistant on 15.02.1997. He was a BT Assistant in Science having acquired a qualification of B.Sc., Chemistry. Thereafter, the appellant/petitioner in the writ petitions acquired post graduate qualification in History on 22.09.2006. Thus, he became fully qualified for being appointed as a PG Teacher in History on 22.09.2006. The incumbent PG Assistant in History one Laurence Joseph retired on 31.05.2006 on attaining superannuation. The fifth respondent issued an advertisement on 23.11.2006, inviting applications for the post of PG Assistant in History. The petitioner made an objection to the advertisement by his representation, dated 30.11.2006, claiming that he being a Teacher, working in the School, is entitled to have preference or priority in terms of Rule 15(4) of the Tamil Nadu Private Schools Regulation Rules. However, the fourth respondent School appointed the fifth respondent as PG Teacher in History. This led to flurry of writ petitions by the petitioner and sixth respondent Kavitha, who was appointed as PG Teacher in the School. Various orders were passed by this Court. The authorities also on their part, passed various orders giving directions to the School to consider the case of the appellant for appointment. One such order is dated 06.04.2009 wherein, the Joint Director of School Education directed the School to consider the claim of the appellant for promotion. The educational agency by a resolution, dated 22.05.2009, considered the claim of the petitioner and rejected it. This rejection was not challenged. However, the appellant filed a writ petition in W.P.(MD) No.10323 of 2009 seeking a writ of Mandamus for implementation of the order, dated 06.04.2009. That writ petition came to be disposed of on 12.06.2009, it is seen from the records that the fact that the claim of the petitioner was rejected by the educational agency on 22.05.2009 was not brought to the notice of this Court. Therefore, this Court directed to implementation of the order, dated 06.04.2009. The appointee namely, the sixth respondent in W.A.(MD) No.1276 of 2011 namely, Mrs.Kavitha filed a W.P.(MD) No.13158 of 2009, challenging the order, dated 06.05.2009 the same was disposed of by this Court observing that the order, dated 06.04.2009 does not affect the rights of the petitioner therein, namely, the fifth



respondent in W.A.(MD) No.1276 of 2011, since it only directs consideration of the case of the appellant herein. Thereafter, the order made in W.P.(MD) No.10323 of 2009 was challenged by the School authorities in W.A.(M) No.1091 of 2009. The same was withdrawn on a representation that the school has already considered the claim of the appellant to the post of PG Assistant in History and rejected the same and therefore, the writ appeal does not survive. The appellant was also a party to the said writ appeal. It is after the disposal of the writ appeal by this Court, the impugned permission was granted by the authorities. It is at this stage, the petitioner has come up with these two writ petitions with the prayers as stated supra.

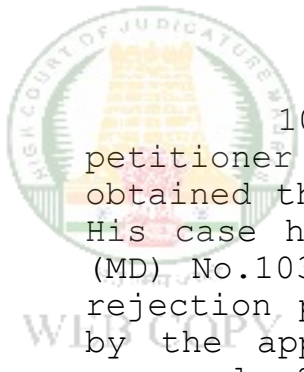
5. Admittedly, the vacancy for the post of PG Assistant in History in the fourth respondent School arose on the retirement of Lawrence Joseph on 31.05.2006. The permission to fill up the said post was sought for by the School and the same was accorded by the authorities on 31.08.2006. In order to be considered for appointment to the substantive post, the applicant must be qualified as on the date when the vacancy arose or on the date when the permission was granted.

6. Admittedly, the petitioner has acquired the PG qualification only on 22.09.2006 from Annamalai University. This was also without permission from the School authorities. Though the appellant/petitioner claimed that he applied for permission in the year 2003, but he had not produced any scrap of paper to prove the same. The School has firmly denied the receipt of any such application from the appellant.

7. In the above factual back-drop, the Writ Court concluded that the appellant was not qualified on the date when the post fell vacant or on the date when permission was granted for filling up of the post for direct recruitment. The fact that the petitioner has obtained M.A degree in History without the permission of the employer or the Education Department was also taken note of by the Writ Court and the Writ Court concluded that the appointment of the fifth respondent in W.A(MD) No.1276 of 2011, is justified. Upon the said conclusion, the Writ Court dismissed the writ petitions.

8. We have heard Dr.D.Gnanasekaran, learned counsel appearing for the appellant and Mr.S.P.Maharajan, learned Special Government Pleader appearing for the respondents 1 to 3.

9. Dr.D.Gnanasekaran, learned counsel appearing for the appellant would vehemently contend that in view of the order passed in W.P.(MD) No.10323 of 2009, the management should have considered his case and therefore, the authorities were not right in approving the appointment of Kavitha.



10. As rightly pointed out by the Writ Court that the petitioner was not qualified on the date of vacancy, he had also not obtained the permission of the employer to take up Post graduation. His case has been considered pursuant to the order passed in W.P. (MD) No.10323 of 2009 and rejected on 22.05.2009. The said order of rejection passed by the educational agency has not been challenged by the appellant in any manner. The authorities have accorded approval for the appointment of Kavitha. The fact that the educational agency has rejected the claim of the petitioner on 22.05.2009 was made known to the appellant, since he was a party to the Writ Appeal in W.A.(MD) No.1091 of 2009.

11. Therefore, we do not see any reason to interfere with the order of the writ Court and the Writ Appeals fail and accordingly, the same are dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(T & P)

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/ /2022

Sub Assistant Registrar(CS)

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To

1.The Director of School Education,
College Road, Chennai-600 006.

2. The Joint Director of School Education,
(Higher Secondary) & Appellate Authority,
Department of School Education, Chennai-600 006.

3. The Chief Educational Officer,
Tiruchirapalli, Tiruchirapalli District.

4. The District Educational Officer,
Musiri, Tiruchirapalli District.

5. The Sub Treasury Officer,
Thuraiyur, Thiruchirapalli District.

+1 CC to M/s.D.GNANASEKARAN, Advocate SR-15642[F] dated 31/03/2022

+1 CC to M/s.SPL GP (SR-15722[F] dated 31/03/2022)

COMMON JUDGMENT DELIVERED IN
W.A(MD)Nos.1275 & 1276 of 2011
30.03.2022

CK(CO)

TR(11.04.2022) 6P 8C