



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 19.09.2022

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P.(MD)No.14918 of 2020

D.Sundar Jeba Selvam,
S/o.Devasirvatham,
Secondary Grade Assistant,
Hindu Primary School,
Karuvelankuntu Street,
Tirunelveli Town.

... Petitioner

Vs.

1. The State of Tamil Nadu,
Through its Secretary to Government,
School Education Department,
Fort St. George, Chennai – 9.
2. The Director of School Education,
DPI Campus, Chennai – 6.
3. The District Educational Officer,
Tirunelveli District, Tirunelveli.
4. The Block Educational Officer,
Tirunelveli Urban Range, Tirunelveli.
5. The Secretary,
Hindu Primary School, Karuvelankuntu Street,
Tirunelveli Town.

... Respondents

Prayer: Writ petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records relating to the order passed by the 3rd respondent in his proceedings in Na.Ka.



No.3445/A2009, dated 29.07.2009 in respect of date of appointment and approval which is on 01.06.2009 and quash the same and consequent direction may be issued to the respondents to approve the appointment of the petitioner as Secondary Grade Assistant from the date of joining on 20.04.2009 instead of 01.06.2009 in the 5th respondent school and revise the salary accordingly and to pay arrears within the stipulated time.

For Petitioner : Mr.T.A.Ebenezer

For R-1 to R-4 : Mr.S.Shaji Bino,
Special Government Pleader.

For R-5 : No appearance.
* * *

ORDER

Heard the learned counsel on either side.

2. Vacancy in the post of Secondary Grade Assistant in the fifth respondent arose on 01.09.2008. The petitioner was appointed in the said vacancy on 01.09.2008. He however joined only on 20.04.2009. The delay in joining arose on account of the fact that the permission to fill up the vacancy was granted only on 09.04.2009. When the proposal was submitted to the competent authority for approval of the



petitioner's appointment, the authority vide order dated 29.07.2009 approved the petitioner's appointment with effect from 01.06.2009. Questioning the same, the petitioner filed W.P.No.29149 of 2013.

3. When the matter was taken up for final hearing, it was realized that the petitioner failed to challenge the original primary order. Therefore, the said writ petition was dismissed as withdrawn with liberty to challenge the primary order dated 29.07.2009. Availing such liberty granted vide order dated 03.08.2020, the present writ petition came to be filed.

4. The learned Special Government Pleader appearing for respondents 1 to 4 submitted that no case for interference has been made out. He submitted that the writ petitioner had joined the post virtually on the eve of summer vacation and that therefore payment of salary for May 2009 cannot be made. He remarked that without doing any work, the petitioner will be getting pay for the said month.

5. I carefully considered the rival contentions and went through the materials on record.



6. When the petitioner was appointed against a sanctioned vacancy, the approval must date back to the date of appointment. In this case, the vacancy arose on 01.09.2008 itself. In fact the petitioner was also appointed with effect from the said date. It was only on account of the delay in granting permission to fill up the vacancy, the petitioner joined on 20.04.2009. This cannot be put against the writ petitioner. In my view, the department should not adopt a miserly approach. If the petitioner is rightly entitled to a benefit, it ought not to be denied.

7. In this view of the matter, the order impugned is quashed to the extent of the approval should date back to 20.04.2009 and not 01.06.2009. The petitioner shall be paid salary for the month of May 2009 and his service will be reckoned from 20.04.2009. This writ petition stands accordingly allowed. No costs.

19.09.2022

Index : Yes / No
Internet : Yes/ No

PMU



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To:

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2. The Director of School Education,
DPI Campus, Chennai – 6.
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G.R.SWAMINATHAN,J.

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