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W.P.(MD)NO.17229 OF 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 07.11.2022

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P.(MD)No.17229 of 2021 and
W.M.P.(MD)Nos.14094 & 14097 of 2021

O.N.Hema Latha,
B.T.Assistant,
St.Mary's Higher Secondary School,
Melpalai, Idaicode-629 152,
Kanyakumari District.

... Petitioner

Vs.

1. The Secretary to Government,
School Education Department,
St.George Fort, Chennai.
2. The Commissioner of School Education,
DPI Campus, College Road,
Chennai – 600 006.
3. The Chief Educational Officer,
Kanyakumari District,
At Nagercoil.
4. The District Educational Officer,
Thiruvattar,
Kanyakumari District.
5. St.Mary's Higher Secondary School,
Rep. by its Correspondent,
Melpalai, Idaicode – 629 152,
Kanyakumari District.

... Respondents



Prayer: Writ petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the records on the file of the 4th respondent pertaining to its order bearing Na.Ka. No.5829/B3/2020 dated 20.07.2021 and to quash the same and consequently direct the respondents to pay monthly salary with effect from 29.10.2020 to the petitioner in pursuant to the proceedings of the District Educational Officer, Kuzhithurai bearing Na.Ka.No.7927/B2/2010 dated 23.09.2010 by considering the salary bill submitted by the 5th respondent dated 25.01.2021.

For Petitioner : Mr.S.C.Herold Singh

For R-1 to R-4 : Mr.J.Ashok,
Additional Government Pleader.

For R-5 : Ms.A.Amala

* * *

ORDER

Heard the learned counsel on either side.

2. The writ petitioner was working as BT Assistant in the fifth respondent school. It is an aided minority institution. The writ petitioner was dismissed from service vide



proceedings dated 11.02.2013. Challenging her termination, she filed W.P.(MD)No.3053 of 2013. The said writ petition was dismissed on 06.10.2020 and that the writ petitioner was given liberty to avail inhouse appeal remedy. In terms of the same, the petitioner moved the appellate authority. The corporate manager who is the appellate authority set aside the order of termination and reinstated her in service vide proceedings dated 29.10.2020. This was communicated to the competent authority as such parallelly.

3. The question that arises for consideration is for directing the competent authority to take note of the subsequent development and pay salary arrears with effect from 29.10.2020. The petitioner's request was rejected. Challenging the same, the present writ petition came to be filed.

4. The writ petitioner and the management are on the same page.



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5. The stand of the learned Special Government Pleader is that when the students strength was verified in the year 2019, the post in question was identified as surplus. It is for these reasons, the department is unable to comply with the petitioner's request.

6. I am not able to appreciate the objections raised by the department. The fact remains that the writ petitioner was appointed against the sanctioned post. She was working in an approved post. She was dismissed from service and the removal order was followed by writ proceedings. This Court granted liberty to the petitioner to avail inhouse appeal remedy. The inhouse appeal ended in favour of the writ petitioner. The writ petitioner through her counsel informed the Court that she would be satisfied with continuity of service and she would not make any claim for wages for the period she did not work. When the removal order has been set aside, the benefits will relate back. The department is wrong in deciding the case of the petitioner with reference to the students' strength position that obtained in the year 2019. If the writ petitioner has become surplus teacher, she has to be redeployed along with post. When the



post of the petitioner becomes surplus, she could have been redeployed by the department. However, the department had not redeployed. Thus, the liability is on the part of the department to pay her salary arrears.

7. In this view of the matter, the order impugned in this writ petition stands set aside. The competent authority is directed to pay salary arrears payable to the writ petitioner with effect from 29.10.2020. It is open to the authorities to take fresh report on the students' strength. If the petitioner is found to be surplus, she can very well be deployed along with post.

8. This writ petition stands allowed accordingly. No costs. Consequently, connected miscellaneous petitions are closed.

07.11.2022

Index : Yes / No
Internet : Yes/ No

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G.R.SWAMINATHAN,J.

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