



WEB COPY

W.P(MD)No.9568 of 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
RESERVED ON : 22.04.2022
DELIVERED ON : 14.06.2022
CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY
W.P (MD)No.9568 of 2018

and
W.M.P(MD)Nos.8816 and 8817 of 2018

K.Santhi

... Petitioner

Vs.

1.The Director of Elementary Education,
College Road,
Chennai-6.

2.The District Elementary Educational Officer,
Madurai.

3.The Assistant Elementary Educational Officer,
Madurai East Range,
Madurai.

4.Thanam Middle School
Represented by its Correspondent,
Gandhi Nagar, Mathychiam,
Madurai East Range,
Madurai.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned proceedings issued by the second respondent in Na.Ka.No.6555/A4/2014, dated, 28.11.2014 and proceedings issued by the fourth respondent in letter No.18/2013, dated, 22.07.2013 and quash the same and consequently direct the respondents herein to regularize the services of the petitioner from 01.07.2004 to 20.04.2010 and pay the arrears of salary, other attendant benefits, increments, selection grade pay with arrears and difference of pay consequent on implementation of the seventh pay commission recommendations within the time stipulated by this Court.

For Petitioner	: Mr.G.Kannan for M/s.Veera Associates
For Respondents	: Mr.V.Om Prakash Government Advocate (Civil Side) for R1 to R3 Mr.M.Senthil Kumar for R4

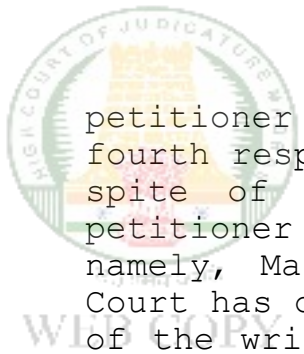


O R D E R

This writ petition has been filed to quash the impugned order, dated, 28.11.2014 and proceedings issued by the fourth respondent in letter No.18/2013, dated, 22.07.2013 and consequently direct the respondents to regularize the service of the petitioner from 01.07.2004 to 20.04.2010 and pay the arrears of salary, other attendant benefits, increments, selection grade pay with arrears and difference of pay consequent on implementation of the seventh pay commission.

2. The brief facts of the case are that the fourth respondent issued public notice on newspapers calling for applications to fill up the vacancy of Vocational Instructor during February 1997. The petitioner has applied and attended interview. After the selection process, the petitioner was appointed as Vocational Instructor on 19.02.1997. The fourth respondent is aided minority institution and the petitioner was appointed within the sanctioned strength and the appointment was made in the regular vacancy. The petitioner was conferred with the consolidated pay of Rs.800/- (Rupees Eight Hundred only). The fourth respondent submitted proposals for approval of appointment and the same was kept pending. Since the vacant post allotted to the fourth respondent school is Weaving, the appointment of the petitioner was made in the post of Sewing.

3. The contention of the petitioner is that the second respondent has already converted the said post from Weaving to Sewing and the petitioner was appointed only as a Sewing Instructor as per his qualification. The petitioner has already completed Diploma in Technical Teacher Education category in the Needle work and Dress making. He is fully eligible to the appointment of the said post. The second respondent has already approved the said post as a Vocational Instructor, Sewing. The second respondent also directed the first respondent by proceedings, dated, 03.04.2003 to ratify the conversion of weaving post as sewing post and the said proposal is pending on the file of the first respondent. The petitioner has been working on the said post for more than seven years without any salary. The petitioner was working as a Sewing Teacher from 1997 onwards. On 01.06.2004, the fourth respondent has orally terminated the petitioner's service without passing any orders. Aggrieved over the same, the petitioner had filed W.P.(MD) NO.308 of 2004 and this Court had allowed the said writ petition vide order, dated, 08.08.2007 and directed the first respondent to grant conversion of the post of Craft Instructor to that of Sewing Mistress within a period of three weeks and further directed the petitioner to report for duty from 01.09.2007 onwards. The petitioner had approached the fourth respondent on 01.09.2007 for continuing the service on the basis of the above said order passed by this Court, but the fourth respondent refused to allow the



petitioner to join duty. Hence, the petitioner made a request to the fourth respondent on 03.09.2007 by way of sending representation. In spite of the same, the fourth respondent has not allowed the petitioner to join the service. The fourth respondent and one staff, namely, Malini had filed W.A(MD)Nos.445 and 482 of 2007 and this Court has dismissed the above writ appeals. Even after the dismissal of the writ appeals, the petitioner was not allowed the petitioner to join the duty. Hence, the petitioner filed Cont. P. (MD) No.190 of 2008. In the said contempt petition, the fourth respondent has filed a counter stating no objection to allow the petitioner to continue his duty. The petitioner was permitted to join the duty on 21.04.2010. Thereafter, by recording the statements of the rival parties, the petitioner was permitted to join the duty on 21.04.2010 and the contempt petition was closed.

4. After closure of the said contempt petition, the fourth respondent sent a proposal for conversion. Since the respondents have not considered the proposals, the petitioner again filed another contempt petition in Cont.P. (MD)No.173 of 2012. Thereafter, the second respondent issued order, dated, 23.09.2013, whereby, the respondents have approved the conversion of proposal and also approved the petitioner's appointment in the post of Sewing Mistress. Recording the same, the said contempt petition was closed. Even after the second respondent approving the appointment, the fourth respondent did not take any steps to send the proposal for paying the salary to the second respondent. Again, the petitioner filed another contempt petition in Cont.P. (MD)No.621 of 2014. On 22.09.2014, this Court has passed an order, wherein the fourth respondent was directed to make a proposal within a period of two weeks. Further, the second respondent shall consider and pass orders within a period of four weeks. Based on such orders, the second respondent has passed the impugned order, dated, 28.11.2014, rejecting the payment of salary for the period 01.07.2004 to 20.04.2010 on the ground of "No Work No Pay" and the fourth respondent has also passed an order on 22.07.2013, stating that the said period was not regularized. Aggrieved over the said order, the present writ petition has been filed. During the pendency of the above said contempt petition, the fourth respondent had submitted a proposal for salary for the period from 01.11.1997 to 30.06.2004 and 21.04.2010 to 31.10.2017. However, the respondents failed to pay the salary from 01.07.2004 to 20.04.2010 and this Court has directed the petitioner to file a fresh petition and contest the case. Hence, the petitioner filed this writ petition.

5. The second respondent has filed the counter stating that initially there was a ban in approving the vocational instructor post and that was subsequently lifted on 21.03.2003 by virtue of G.O.Ms.No.39. Though the petitioner was appointed on 31.03.1997 due to the ban in approving the said post, the petitioner was not granted any approval for the said post. Hence, the petitioner has



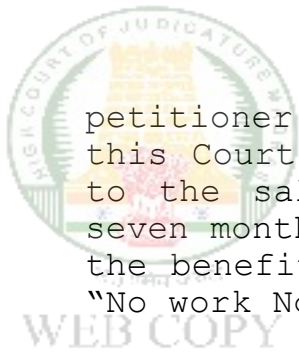
post from Craft Instructor to Sewing Mistress. The petitioner herein had left the school on her own and thereafter, the school management appointed one Malini with effect from 05.08.2007. After the order in the writ petition, the petitioner had been reinstated to the said post in the same school. Even though the order was passed in the writ petition, the fourth respondent had not taken any steps to reinstate the petitioner herein and due to that effect, the present petitioner had filed contempt petition. In the meanwhile, the fourth respondent school had filed writ appeal W.A(MD)No.482 of 2007 against the order passed in W.P.(MD)No.308 of 2004 seeking approval for the appointment of one Malini in the post of the writ petitioner. The said writ appeal was dismissed and the contempt petition was taken up and ordered in favour of the writ petitioner. Thereafter, the petitioner was allowed to work in the fourth respondent school. For the period from 01.09.1997 till 30.06.2004 the salary was paid to the tune of Rs.5,67,420/- (Rupees Five Lakhs Sixty Seven Thousand and Four Twenty only). The fourth respondent had submitted the attendance register which shows that the petitioner during the tenure of the period from 01.07.2004 to 20.04.2010 had not even attended the school. Therefore, based on "No Work No Pay", she is not entitled to the salary.

6. The fourth respondent has also filed a counter stating that since the petitioner had not attended the school during that period, she is not entitled to the salary on the basis of the principles of "No Work No Pay".

7. Heard Mr.G.Kannan, learned counsel appearing for the petitioner, Mr.V.Om Prakash, learned Government Advocate(Civil Side) appearing for respondents 1 to 3 and Mr.M.Senthil Kumar, learned counsel appearing for respondent 4 and perused the records.

8. It is seen from the records that there are several litigations in this writ petition. The first spell of litigation started from 2004 onwards and the second spell was started from 2007 onwards. The petitioner was out of employment from 01.07.2004 to 31.08.2007. The petitioner was orally terminated and challenging the same, the petitioner has filed the writ petition. The petitioner was not in service for three years two months. Thereafter, in the second spell of litigation, the petitioner was not in service from 01.09.2007 to 20.04.2010. From 01.09.2007 to 20.04.2010 the period, the petitioner was not permitted to join the fourth respondent management in spite of the order of the High Court, but finally allowed, because of the contempt proceedings. The petitioner is seeking salary for the two spells. As far as the first spell is concerned, i.e., 01.07.2004 to 31.08.2007, the petitioner's right was rejected before the High Court. Therefore, during the period, the petitioner is not entitled to claim any salary. However, from the period 01.09.2007 to 20.04.2010, the petitioner has not received

<https://hcs.judges.org.in/hcs/judges> because the fourth respondent has not allowed the



petitioner to join the duty in spite of Court orders. Therefore, this Court is of the considered opinion, the petitioner is entitled to the salary from 01.09.2007 to 20.04.2010 i.e., for two years seven months twenty days. However, the petitioner is not entitled to the benefit from 01.07.2004 to 31.08.2007 based on the principle of "No work No Pay".

9. The respondents have rejected regularization for the period from 01.07.2004 to 20.04.2010 vide order 22.07.2013. This Court has held that the petitioner is not entitled to salary from 01.07.2004 to 31.08.2007, but entitled to salary from 01.09.2007 to 20.04.2010. As far as regularization is concerned, the petitioner herein had left the school on her own and not attended the school from 01.07.2004, thereafter the school management appointed one Malini with effect from 05.08.2007. Thereafter based on Court orders the petitioner ought to be allowed to join duty from 01.09.2007 but the school had denied permission to join duty but finally allowed to join from 20.04.2010. Therefore, this Court is of the concerned opinion that the petitioner is entitled to regularization from 01.09.2007 onwards. Therefore, the respondents are directed to regularization from 01.09.2007.

10. The respondents are directed to implement this order by granting regularization and salary as stated supra within a period of six weeks from the date of receipt of a copy of this order.

11. With these directions, this Writ Petition is disposed of. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (CO)

// True Copy //

/06/2022

Sub Assistant Registrar(CS)

gbg

To

1.The Director of Elementary Education,
College Road,
Chennai-6.

2.The District Elementary Educational Officer,
Madurai.

3.The Assistant Elementary Educational Officer,
Madurai East Range,



+1 CC to M/s.M. SENTHIL KUMAR, Advocate (SR-25530[F] dated 14/06/2022)

+1 CC to M/s.VEERA ASSOCIATES, Advocate (SR-25676[F] dated 14/06/2022)

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+1 CC to M/s.SPL.GP (SR-25810[F] dated 15/06/2022)

W.P. (MD)No.9568 of 2018

14.06.2022

RD(28.06.2022) 6P 7C