



W.P.(MD) No.13362 of 2018

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 08.08.2022

CORAM

THE HONOURABLE MR.JUSTICE M.S.RAMESH

W.P.(MD) No.13362 of 2018

S.Velkani

... Petitioner

Vs.

- 1.The Secretary to Government,
Education Department,
State of Tamil Nadu,
St. Fort George,
Chennai – 9.
- 2.The Director of School Education,
DPI Compound,
College Road, Chennai – 6.
- 3.The Chief Educational Officer,
Tirunelveli District,
Tirunelveli.
- 4.The District Educational Officer,
Tenkasi Educational District,
Tirunelveli.
- 5.The Secretary,
Thiru C.P.Athithanar Girls Higher Secondary School,
Rayagiri, Sivagiri (Via),
Tirunelveli District.



W.P.(MD) No.13362 of 2018

WEB COPY

6.The District Educational Officer,
Sankarankovil,
Tenkasi District.

... Respondents

(6th respondent has been *suo motu* impleaded as a party in this case as per order, dated 08.08.2022, passed in W.P.(MD).No.13362 of 2018)

PRAYER: Writ petition filed under Article 226 of the Constitution of India to issue a writ of Certiorarified Mandamus, to call for the records in respect of order passed by 4th respondent in Na.Ka.No.1180/A4/2018, dated 26.05.2018 and quash the same and consequently, direct the 4th respondent to approve the appointment of petitioner as and disburse all the service and monetary benefits from 02.11.1992.

For Petitioner : Mr.S.Chellapandian

For Respondents : Mr.S.Shaji Bino for R1 to R4
Special Government Pleader

ORDER

The petitioner herein was appointed as Secondary Grade Teacher in the fifth respondent school. Her request for grant of approval from the date of her appointment, on the ground that the appointment of a similarly placed physical education teacher in the fifth respondent school, namely, Ms.M.Indrany, was approved based on the order passed in W.P.No.23847 of 2012, dated



W.P.(MD) No.13362 of 2018

13.12.2012, came to be rejected through the impugned order, dated 26.05.2018, by stating that the order passed in the writ petition in the case of Ms.M.Indrany will apply only to her case and not to the petitioner's case. On this simple ground, the impugned order came to be passed.

2. A perusal of G.O.(Ms).No.64, School Education Department, dated 03.03.2016, reveals that the Physical Education Teacher, namely, M.Indrany was appointed in a non-sanctioned post and in respect of the same, this Court had taken note of the fact that the students strength in the School had reached the required mark and therefore, the appointment of the physical education teacher was entitled to be approved from 19.09.1998 and accordingly, the order was passed. The reason for such approval having been observed by this Court in its earlier order, cannot be said to different from the facts involved in the petitioner's case. Furthermore, there is no observation in the order of this Court that such finding would be applied only to the physical education teacher who was the petitioner in that writ petition. By a mere reference that the order will only apply to the case of M.Indrany, the present impugned order has been passed, which is not proper.



W.P.(MD) No.13362 of 2018

WEB COPY

3. The learned Government Pleader also placed reliance on the averments in the counter affidavit and submitted that the post of Secondary Grade teacher was sanctioned only on 05.01.2001 and thereafter, the petitioner's appointment was approved only on 16.01.2001 and therefore, he cannot claim approval even prior to the sanctioning of the post. Such a reason is not assigned in the impugned order. The simple case of the petitioner was that since the appointment of Indrany was approved from the year 1978, the petitioner was entitled for such retrospective approval. It is a settled proposition in service jurisprudence that the respondents cannot improve their case, as evidenced in the impugned order, through a counter affidavit. As such, the reasons stated in the counter affidavit, cannot be sustained.

4. Accordingly, the impugned order passed by 4th respondent in Na.Ka.No.1180/A4/2018, dated 26.05.2018, is hereby quashed. At this juncture, it is stated that due to the bifurcation of the District, the fifth respondent school is now under the jurisdiction of District Educational Officer, Sankarankovil. Accordingly, the District Educational Officer,



W.P.(MD) No.13362 of 2018

WEB COPY

Sankarankovil, Tenkasi District, is *suo motu* impleaded as sixth respondent and the matter is remanded back to the sixth respondent herein, who shall pass fresh orders after extending an opportunity to the petitioner as well as the fifth respondent herein. Such final orders shall be passed, within a period of three months from the date of receipt of a copy of this order, on its own merits and in accordance with law.

5.This writ petition stands allowed. No costs.

08.08.2022

Index : Yes / No
Speaking Order/ Non Speaking Order

TM

To

- 1.The Secretary to Government,
Education Department,
State of Tamil Nadu,
St. Fort George,
Chennai – 9.
- 2.The Director of School Education,
DPI Compound,
College Road, Chennai – 6.

5/7



W.P.(MD) No.13362 of 2018

WEB COPY

- 3.The Chief Educational Officer,
Tirunelveli District,
Tirunelveli.
- 4.The District Educational Officer,
Tenkasi Educational District,
Tirunelveli.
- 5.The Secretary,
Thiru C.P.Athithanar Girls Higher Secondary School,
Rayagiri, Sivagiri (Via),
Tirunelveli District.
- 6.The District Educational Officer,
Sankarankovil,
Tenkasi District.



WEB COPY



W.P.(MD) No.13362 of 2018

M.S.RAMESH,J.

TM

W.P.(MD) No.13362 of 2018

08.08.2022