



WEB COPY



Writ Appeal No.1949 of 2011

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated:23.08.2023

CORAM

**THE HONOURABLE MR. JUSTICE R.SURESH KUMAR
AND
THE HONOURABLE MR. JUSTICE K.KUMARESH BABU**

**Writ Appeal No.1949 of 2011
and M.P.No.1 of 2012**

J.Helen Saroja

... Appellant

Vs

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

2.The Chief Educational Officer
Nagercoil,Kanyakumari District.

3.The District Educational Officer
Thakkalai and Post
Kanyakumari District.

... Respondents

PRAYER: Writ Appeal filed under Clause 15 of Letters Patent, to allow the writ appeal as prayed for by the appellant herein and consequently set aside the order made in W.P.No.12775 of 2003 dated 30.07.2010.

For Appellant : Ms.P.Mahalakshmi

For Respondents : Mr.K.V.Sajeev Kumar
Special Government Pleader



Writ Appeal No.1949 of 2011

JUDGMENT

WEB COPY (Judgment of the Court was delivered by R.SURESH KUMAR,J.)

This appeal had been directed against the order passed by the Writ Court dated 30.07.2010 made in W.P.No.12775 of 2003.

2. The appellant was the writ petitioner, who was having the qualification of B.Sc., Physics and B.Ed, which is the required qualification to hold the post of B.T.Assistant.

3. With that qualification, the appellant was appointed at RTLMS Higher Secondary School in the year 1978 and she was working therein till 30.06.1980 which was an unsanctioned post.

4. Thereafter, the appellant was transferred to L.M.S. Higher Secondary School, Kadamalaikundru in a sanctioned post from 01.07.1980 and she was paid salary by the third respondent up to 31.12.1981.

5. However, the appellant salary was withheld suddenly with effect



Writ Appeal No.1949 of 2011

from 01.01.1982 by the third respondent. However, the appellant continue to work in the said school till 21.07.1982.

6. From 22.07.1982, the appellant was transferred to Palliyadi Christkoil, L.M.S. Higher Secondary School, where the sanctioned post, which was held by an incumbent since got promoted which caused a vacancy, in that vacancy such transfer and appointment has been given to the appellant in the said Palliyadi Christkoil, L.M.S. Higher Secondary School. Therefore, continuously according to the appellant, she has been working atleast from 01.07.1980 in a sanctioned post.

7. However, the educational authority i.e., the respondents herein had approved the appointment of the appellant only with effect from 01.02.1984, therefore since then only salary was continuously paid, hence the period from 22.07.1982 till 31.01.1984, where the appellant was working at Palliyadi Christkoil, L.M.S. Higher Secondary School was not taken into account and for the said period no approval was given and consequently, no salary has been paid.

8. In order to get approval for the said appointment for the period



Writ Appeal No.1949 of 2011

she was working in the said school from 22.07.1982 till 31.01.1984 and to pay salary for the said period, the petitioner though had approached the respondents, the said plea was rejected through the order dated 15.02.2003.

9. Challenging the said order, the aforesaid writ petition had been filed by the appellant.

10. The Writ Court having considered the said plea raised by the appellant, who stood as writ petitioner before the Writ Court was pleased to reject the same and accordingly, the writ petition was dismissed through the impugned order dated 30.07.2010.

11. Aggrieved over the same, the present appeal has been directed.

12. In support of the plea raised by the appellant/petitioner, Ms.P.Mahalakshmi, learned counsel appearing for the appellant would contend that the two reasons cited by the Writ Court in paragraph 4 of the impugned order cannot be sustained, in view of the factual matrix.



WEB COPY

13. Elaborating further, the learned counsel appearing for the appellant would contend that, insofar as whether the post, in which the appellant was working during the relevant period is a sanctioned post or not is concerned, she pointed out that the learned Judge in the impugned order itself has stated that the appellant has been transferred and posted at Palliyadi Christkoil, L.M.S. Higher Secondary School with effect from 22.07.1982 in a vacancy, which was caused because of a earlier incumbent, who got promoted. Therefore, it is a sanctioned vacancy, therefore, the question of non-sanctioned vacancy as claimed by the respondents, where the appellant has been posted on 22.07.1982 does not arise.

14. The learned counsel would further contend that, insofar as the further finding at paragraph 4 of the impugned order of the Writ Court that the appellant does not having the qualification to hold the post because it is only P.G. Assistant Course and not a B.T. Assistant Course is concerned, the learned counsel would contend that the post, wherein the appellant was appointed is only a B.T. Assistant that too B.T. Assistant, Science. Insofar as the other reasons that, it is a surplus post



Writ Appeal No.1949 of 2011

hence, after adjustment of the surplus only, the approval has been given, therefore, the appellant is not entitled to claim salary from 22.07.1982 to 31.01.1984 is concerned, the learned counsel would clarify this position that the surplus post was B.T. Assistant, History, whereas in the sanctioned post, where she was appointed is B.T. Assistant, Science, therefore, it is not a surplus post as claimed by the official respondents and that was erroneously made before the learned single Judge in the Writ Court, which has been accepted by the learned Judge, therefore, that reason also cannot stand in the legal scrutiny, she contended.

15. Insofar as the qualification to hold the post is concerned, the degree certificate of the appellant has been produced by way of additional typed set of papers before this Court, where the appellant secured B.Sc.Physics degree from University of Madras and secured B.Ed degree from University of Kerala, these two qualifications are enough to hold the post of B.T. Assistant, Science and in the Service Register of the appellant also these two qualifications have been recorded and insofar as the degree certificate issued by the Kerala University with regard to B.Ed qualification of the appellant is concerned, that having been validated and that endorsement has also been made in the Service Register of the appellant, which has been produced before this Court for



our perusal.

WEB COPY

16. On the other hand, Mr.K.V.Sajeevkumar, learned Special Government Pleader appearing for the respondents would submit that, insofar as the qualification that has been produced before this Court said to have been obtained from University of Kerala is concerned, whether it is to be accepted as a qualification to hold the post of the B.T. Assistant is a question still to be answered. He would also submit that insofar as the surplus post is concerned, the over all surplus in the group of schools were taken into account, therefore the post wherein the appellant appointed also was considered to be a surplus post till 1984. Therefore, for the period from 1982 to 1984, the appellant, who worked in the post was considered to be a surplus post, accordingly she was not entitled to get approval and consequently, the salary, he contended.

17. We have considered the said rival submissions made by the learned counsel appearing for the parties and have perused the materials placed before this Court.



18. The three reasons cited by the Writ Court have been discussed herein above. Insofar as the post whether was a sanctioned one or not is concerned, it is a sanctioned post because the Writ Court itself in paragraph 1 of the order has recorded that the appellant has been posted on 22.07.1982, in the post, which was caused as a vacant one as the earlier incumbent working got promoted, therefore, it goes without saying that it is a sanctioned post. The second reason is that it is a post, where the person, who is having the P.G. qualification alone can be appointed is concerned, since it is admittedly a B.T.Assistant, Science post, for which, the qualification prescribed under the relevant rule is only the UG degree in the relevant subject and the B.Ed degree, which qualification the appellant is having as stated supra.

19. Insofar as the surplus post, which was adjusted is concerned, as rightly stated by the learned counsel appearing for the appellant that the post, which is in question, where the appellant was appointed is B.T. Assistant, Science, whereas the surplus post is B.T. Assistant, History and contra to that no documents have been filed by the respondents therefore, it cannot be stated that it is a surplus post.



20. Therefore, absolutely there has been no reason to state that the appellant is not entitled to get approval and consequently the salary from 22.07.1982, therefore, the reasons stated by the respondents in passing the order dated 15.02.2003 cannot be sustained and this has not been considered in proper perspective by the Writ Court, hence, we feel that the order impugned is liable to be interfered with.

21. In the result, the following orders are passed in this writ appeal:

- ◆ That the impugned order passed by the Writ Court is set aside and the writ petition is allowed by setting aside the order passed by the first respondent dated 15.02.2003. As a sequel, there shall be a direction to the respondent to approve the appointment of the appellant with effect from 22.07.1982 in B.T. Assistant, Science post in the said school concerned and accordingly, the salary from 22.07.1982 to 31.01.1984 with all other attendant benefits shall be calculated and be paid to the appellant within a period of eight(8) weeks from the date of receipt of a copy of this order.



Writ Appeal No.1949 of 2011

With all these directions, this writ appeal is ordered accordingly.

No costs. Connected miscellaneous petition is closed.

(R.S.K.,J.)

(K.B., J.)

23.08.2023

Index: Yes/No

Speaking Order/Non Speaking Order

Neutral Citation: Yes/No

mp

To

- 1.The Director of School Educational
College Road,Chennai- 600 006.
- 2.The Chief Educational Officer
Nagercoil,Kanyakumari District
- 3.The District Educational Officer
Thakkalai and Post
Kanyakumari District



WEB COPY



Writ Appeal No.1949 of 2011

R.SURESH KUMAR., J.
and
K.KUMARESH BABU.,J.

mp

Writ Appeal No.1949 of 2011

23.08.2023