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W.P.Nos.26449 of 2013 & 26290 of 2014

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 03.07.2023

Pronounced on : 06.07.2023

CORAM:

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

W.P.Nos.26449 of 2013 & 26290 of 2014 and
MP.Nos.1 & 2 of 2013

WP.No.26449 of 2013

L.Helan

... Petitioner

Vs.

- 1.The Joint Director of School Education,
College Road,
Chennai 600 006
- 2.The District Educational Officer,
(East), Chennai-94
- 3.The President,
Interim Committee,
Rao Bahadur Allathur Nathamoony,
Chetty High School, Pudupet,
Chennai-2

4.P.Dhavamani

... Respondents

(R4 impleaded as per order dated 09.01.2017
in WMP.No.25612 of 2016 in WP.No.26449 of 2013

PRAYER: Writ Petition is filed under Article 226 of Constitution of India praying to issue Writ of Certiorarified Mandamus calling for the records connected with the proceedings issued in Na.Ka.No.5975/A1/2012 dated 03.09.2013 passed by the second respondent and quash the



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same and consequently direct the respondents to promote the petitioner as Tamil Pandit.

For Petitioner : Mr.S.Ilamvaludhi

For Respondents

For R1 & R2: Mr.Yogesh Kannadasan,
Special Government Pleader

For R4 : Mr.V.Chandrasekaran

WP.No.26290 of 2014

P.Dhavamani

... Petitioner

Vs.

- 1.The Chief Educational Officer,
Panagal Buildings, Saidapet,
Chennai 600 015
- 2.The District Educational Officer(East),
Chennai 600 094
- 3.The Secretary-cum-Administrator,
Rao Bahadur Allathur Nathamoony,
Chetty Higher Secondary School,
Komaleeswaranpet, Pudupet,
Chennai 600 002

... Respondents

PRAYER: Writ Petition is filed under Article 226 of Constitution of India praying to issue Writ of Mandamus directing the third respondent to pay the salary and other allowances including incentives for higher qualifications in the regular time scale of pay to the petitioner in the post of Tamil Pandit in pursuance of the proceedings of the second respondent in Roc.No.5975/A1/2012 dated 03.09.2013, with effect from 03.06.2008, being the date of approval of appointment of the petitioner,



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with interest @ 12.5% p.a. till the date of realisation of, for the belated period that has been deliberated and maliciously caused by the third respondent, within the stipulated time limit as fixed by this Court.

For Petitioner : Mr.V.Chandrasekaran

For Respondents

For R1 & R2: Mr.Yogesh Kannadasan,
Special Government Pleader

For R : Mr.K.Muralidharan

COMMON ORDER

The writ petition in WP.No.26449 of 2013 is filed to issue Writ of Certiorarified Mandamus calling for the records connected with the proceedings issued in Na.Ka.No.5975/A1/ 2012 dated 03.09.2013 passed by the second respondent and quash the same and consequently direct the respondents to promote the petitioner as Tamil Pandit. The writ petition in WP.No.26290 of 2014 is filed to issue Writ of Mandamus directing the third respondent to pay the salary and other allowances including incentives for higher qualifications in the regular time scale of pay to the petitioner in the post of Tamil Pandit in pursuance of the proceedings of the second respondent in Roc.No.5975/A1/2012 dated 03.09.2013, with effect from 03.06.2008, being the date of approval of



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appointment of the petitioner, with interest @ 12.5% p.a. till the date of realisation of, for the belated period that has been deliberated and maliciously caused by the third respondent, within the stipulated time limit as fixed by this Court.

2. The petitioner in WP.No.26449 of 2013 challenged the order passed by the second respondent thereby approved the appointment of the fourth respondent as Tamil Pandit. WP.No.26290 of 2014 is filed by the fourth respondent in WP.No.26449 of 2013 for direction directing the third respondent to pay the salary and other allowances from the date of her approval of appointment as Tamil Pandit with effect from 03.06.2008 with interest at the rate of 12.5% per annum.

3. The petitioner in WP.No.26449 of 2013 has joined in service as Secondary Grade Teacher in the year 1992 and thereafter, she was transferred as Secondary Grade Assistant in High School in the year 1998 to the third respondent school. She also completed B.Lit (Tamil) Graduation and she is qualified to be promoted to the post of



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B.T.Assistant. The Interim Committee was constituted by the third respondent school. On 31.05.2007, then Tamil Pandit namely Thiru.Rajakannu was retired and the post became vacant. While being so, as on 03.06.2008 the third respondent was acting and fulfilled Committee was not at all functioning. The petitioner is being eligible to be promoted to the post of Tamil Pandit, the third respondent / temporary Committee had no jurisdiction to appoint Tamil Pandit straight away from open competition instead of promoting the senior most Secondary Grade Assistant as Tamil Pandit. The third respondent also has no power to appoint or promote anyone else to the higher post.

4. As per Section 18 of the Recognized Private School (Regulations) Act, 1974, the School Committee does not have such power to appoint or promote anybody. Even then, the third respondent appointed the fourth respondent as Tamil Pandit and sought for approval. While it was pending, they also approached this Court in WP.No.15001 of 2011 for direction and this Court directed the Chief Educational Officer to consider the application and pass appropriate orders. In fact



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that was not complied with and as such, the third respondent initiated contempt proceedings and as such the second respondent passed the impugned order thereby approved the appointment of the fourth respondent as Tamil Pandit.

5. The learned counsel for the petitioner in WP.No.26449 of 2013 would submit that the appointment of the fourth respondent itself is violation of Rule 4(II)(a) of Tamilnadu Recognised Private Schools (Regulations) Rules, 1974 and it is also violation of Rule 15(4)(1) of Tamilnadu Recognised Private Schools (Regulations) Rules, 1974. When the said rule is not followed scrupulously, the order passed is *void ab initio*. Further, the fourth respondent already resigned her post on 02.01.2013 itself. Without even verifying the same, the second respondent mechanically, that too in order to satisfy the order passed by this Court, approved the appointment of the fourth respondent as Tamil Pandit. Originally she was appointed on 03.06.2008 and thereafter, she resigned herself from her post on 02.01.2013.



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6. The learned counsel for the fourth respondent and the petitioner in WP.No.26290 of 2014 submitted that she was initially appointed as Post Graduate Tamil Pandit on consolidated pay of Rs.3,000/- per month with effect from 11.07.2001 by the third respondent. After retirement of Mr.Rajakannu, Tamil Pandit on 31.05.2007, the post of Tamil Pandit became vacant w.e.f. 01.06.2007. After following the procedure prescribed under the law and after conducting proper interview and also considering the qualification in merit, efficiency, dedication in teaching work, the fourth respondent was selected and appointed by order dated 25.04.2008 in pursuance of the resolution dated 09.04.2008 by the School Committee. Thereafter, necessary proposal was sent to the first respondent through the second respondent at the request of the third respondent. However, it was not considered and as such the third respondent was constrained to file writ petition before this Court and the second respondent approved her appointment to the post of Tamil Pandit.



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6.1 He further submitted that though the third respondent periodically reminded the second respondent to sanction and approve the regular time scale of pay, it was not considered and as such, the third respondent filed writ petition before this Court in WP.No.15001 of 2011. This Court considering the facts and circumstances of the case, directed the first respondent to consider and dispose the request made by the school authorities. Even then, the direction issued by this Court was not complied with and as such, the school authorities filed contempt petition before this Court in Cont.P.No.1820 of 2013 and only thereafter, the second respondent passed order on 03.09.2013 thereby issued sanction and approval of the appointment of the petitioner as Tamil Pandit in the time scale of pay of Rs.9300-34800 + GP 4400 with effect from 03.06.2008. However, the time scale of pay with effect from 03.06.2008 is not paid to the petitioner till date.

7. Heard, Mr.S.Ilamvaludhi, the learned counsel for the petitioner in WP.No.26449 of 2013, Mr.V.Chandrasekaran, the learned counsel for the petitioner in WP.No.26290 of 2014, Mr.Yogesh



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Kannadasan, Special Government Pleader for respondents 1 & 2 in both writ petitions, Mr.K.Muralidharan, the learned counsel for the third respondent in WP.No.26290 of 2014 and Mr.V.Chandrasekaran, the learned counsel for the fourth respondent in WP.No.26449 of 2013.

8. On perusal of the counter filed by the second respondent revealed that the fourth respondent was appointed after retirement of one, Rajakannu on 31.05.2007 as Tamil Pandit on 30.06.2008. The proposal for approval had been sent and the same was returned with an endorsement that 1) whether prior permission has been obtained from the Chief Educational Officer for her appointment 2) When a Tamil Pandit is very much available, reasons must be assigned for the requirement of the second post of Tamil Pandit 3) If it is so, necessary strength of the students also must be stated 4) To distribution of the Time Table of the teachers also must be sent 5) Due process of law to appoint a person to a particular post, they should be appointed through employment exchange. However, in the appointment of the fourth respondent, she was not appointed by the employment exchange nor by the paper publication. She



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was not appointed by the school committee and she was appointed only by interim Committee. That apart, the fourth respondent, in order to prove her qualification, failed to furnish any school / college certificates. However, while pending contempt petition, her appointment was approved by the second respondent. The petitioner is qualified to be promoted to the post of Tamil Pandit. However, she was not promoted to the post of Tamil Pandit.

9. It is also to be noted that the fourth respondent never filed any writ petition, even for her appointment and approval of her appointment and salary, etc. Instead the third respondent, that too without any power, they approached this Court and obtained order of approval from the second respondent. The third respondent is non minority school and Rule 15(4) of (II) of Tamilnadu Recognised Private Schools (Regulation) Act, 1973 and Rules 1974 had not been followed. Prior to the appointment, no permission was obtained from the first respondent. Therefore, the appointment of the fourth respondent itself is violation of Rule 4(II)(a) of Tamilnadu Recognised Private Schools



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(Regulations) Rules, 1974 and Rule 15(4)(1) of Tamilnadu Recognised Private Schools (Regulations) Rules, 1974

10. That apart, the fourth respondent has resigned her post as early as on 02.01.2013 even before the impugned approval of her post of Tamil Pandit dated 03.09.2013. She is working in a Government school at present and she has not mentioned anything about the present employment in the affidavit. The Rules are very clear that when she has resigned her post, she will not only forfeit her right as a matter of right, she cannot claim anything at all from the erstwhile school. Therefore, the impugned order of approval dated 03.09.2013 is liable to be quashed. Accordingly, the impugned order dated 03.09.2013 is quashed and the writ petition in WP.No.26449 of 2013 is allowed. Consequently, connected miscellaneous petitions are closed.

11. In view of the above quashment of approval of the fourth respondent's appointment as Tamil Pandit dated 03.09.2013, she is not entitled for the salary and other allowances for the post of Tamil Pandit.



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Therefore, the writ petition in WP.No.26290 of 2014 is devoid of merits.

Accordingly, the writ petition in WP.No.26290 of 2014 is dismissed.

There shall be no order as to costs.

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Internet: Yes

Index: Yes/No

Speaking/Non-speaking order
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To

1. The Joint Director of School Education,
College Road,
Chennai 600 006
2. The District Educational Officer,
(East), Chennai-94
3. The President,
Interim Committee,
Rao Bahadur Allathur Nathamoony,
Chetty High School, Pudupet,
Chennai-2
4. The Chief Educational Officer,
Panagal Buildings, Saidapet,
Chennai 600 015
5. The Secretary-cum-Administrator,
Rao Bahadur Allathur Nathamoony,
Chetty Higher Secondary School,
Komaleeswaranpet, Pudupet,
Chennai 600 002
6. The Public Prosecutor,
High Court, Madras.



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G.K.ILANTHIRAIYAN, J.
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