



W.A.Nos.2297 & 2298 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.08.2023

CORAM

THE HON'BLE Mr. JUSTICE R.SURESH KUMAR  
AND  
THE HON'BLE Mr. JUSTICE K.KUMARESH BABU

W.A.Nos.2297 & 2298 of 2019  
and  
C.M.P.Nos.15164 & 15170 of 2019  
C.M.P.Nos.15263 & 15250 of 2021

- 1.The Government of Tamil Nadu,  
Rep. By its Secretary to Government,  
School Education Department,  
Fort St. George, Chennai – 600 009.
- 2.The Director of School Education,  
DPI Campus, College Road,  
Chennai – 600 006.
- 3.The Joint Director of School Education,  
DPI Campus,  
College Road, Chennai – 600 006.
- 4.The Chief Educational Officer,  
The Officer of the Chief Educational Office,  
Nagercoil, Kanyakumari District.
- 5.The District Educational Officer,  
The Office of the District Educational Officer,  
Thuckalay, Kanyakumari District.

... Appellants in both WAs

Vs.



W.A.Nos.2297 & 2298 of 2019

1.R.Justin Prema

... 1<sup>st</sup> Respondent in WA.No.2297/2019

1.J.Japa Jaya

... 1<sup>st</sup> Respondent in WA.No.2298/2019

2.The Correspondent,  
Yettacode Higher Secondary School,  
Veeyannoor Post,  
Thiruvattar – 629 177.  
Kanyakumari District.

... 2<sup>nd</sup> Respondent in both WAs

Prayer : Appeals filed under Clause 15 of the Letters Patent Act, praying to set aside the order dated 03.08.2018 in W.P.Nos.23416 and 23415 of 2015.

In both WAs

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

For Respondents : Mr.T.Mohan, Senior Counsel  
For Mr.C.Johnson for R1

: Mr.R.N.Amarnath for R2

### **COMMON JUDGMENT**

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

These two appeals since have arisen out of common order passed by the Writ Court dated 03.08.2018 in W.P.Nos.23416 and 23415 of 2015, with the consent of the learned counsel appearing for both sides, these writ appeals were heard together and are disposed of by this common order.



W.A.Nos.2297 & 2298 of 2019

2. The case of the 1<sup>st</sup> respondent in both the cases viz., J.Japa Jaya and R.Justin Prema, who stood as the writ petitioners before the Writ Court is that, they were appointed as Sewing Teacher in respect of J.Japa Jeya and P.G. Teacher (Commerce) in respect of R.Justin Prema at the 5<sup>th</sup> respondent School on 10.06.2013 in the sanctioned vacancies.

3. On the very same date, according to the 5<sup>th</sup> respondent as well as the 1<sup>st</sup> respondent, proposal had been sent to the Educational authorities who are the appellants herein for approval of such appointment. It is the further claim of them that, since the approval was not given, again a reminder was given on 14.06.2014.

4. Despite these communications, according to them, since no action had come from the authorities, another reminder had been sent on 22.07.2015.

5. Even after this communication nothing has come from the authorities towards approving the appointment of these teachers, hence they approached the Writ Court by filing the said writ petitions seeking a writ of mandamus to consider their appointment and after evaluating the



W.A.Nos.2297 & 2298 of 2019

educational qualification or service of the teachers concerned, their appointment shall be approved and grant-in-aid shall be released for making the appointment of those teachers with effect from 10.06.2013.

6. These two writ petitions were heard and disposed by the common order dated 03.08.2018 by the Writ Court, where the Writ Court after having analysed the factual matrix projected by both sides allowed the said writ petitions with the following effect.

“21.This Court, for all the above stated reasons, is of the view that the petitioners have made out a case in all fours and therefore, this Court directs the respondents 1 to 3 to evaluate the educational certificates of the petitioners, approve their appointments as Teachers in their respective Departments and direct the respondents to release grant-in-aid and pay monthly salary and allowances due to the petitioners with arrears from 10.06.2013. The petitioners are also entitled to all other attendant benefits on such approval of their appointment from 10.06.2013. The respondents 1 to 3 are directed to pass appropriate orders within a period of eight weeks from the date of receipt of a copy of this order.

22.In the result, the writ petition stands allowed. No costs. Consequently, connected miscellaneous petitions are closed.”



W.A.Nos.2297 & 2298 of 2019

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7. Aggrieved over the said order passed by the Writ Court, the present writ appeals have been directed.

8. Supporting the appeals, Mr.K.V.Sajeev Kumar, learned Special Government Pleader appearing for the appellants would contend that, though it was claimed by the School management as well as the teachers that appointments were made in respect of these two teachers on 10.06.2013, no such proposal had ever been sent by them till 2015. According to the learned Special Government Pleader, only on 22.07.2015 the proposal had first time been sent and was received by the Office of the District Educational Officer, Takkalai.

9. Therefore the claim made both by the teachers as well as the School as if that the teachers were appointed on 10.06.2013, therefore they should be considered for approval from that date, cannot be countenanced, hence it had come up for seeking clarification. In the meanwhile, since the teachers approached the Writ Court and the *lis* was pending for 3 years from 15.01.2018, no decision could be taken.



W.A.Nos.2297 & 2298 of 2019

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10. The learned Judge by allowing the writ petitions had given a positive direction to approve the appointment of these teachers and to release the salary for them from the date of appointment and therefore aggrieved over the same, these appeals had been filed. In the appeals, interim stay was granted at the admission stage and these appeals since have been pending from 2019 and taken up only now, the position would not be changed as if that on receipt of the proposal from the School dated 22.07.2015 the same has been kept pending, he contended.

11. He would also submit that, insofar the claim made by the teachers that they were qualified to hold the post where respectively they were appointed and they have been appointed on 10.06.2013 and the claim made by the School that, they were appointed only in the sanctioned post and the School is entitled to grant-in-aid are all the matters of factual matrix which have to be gone into by the officials/authorities who are competent to give approval to such appointment if it is otherwise in order. They are waiting for such a decision to be taken, since they rushed to the Court and the *lis* has been since pending from 2015 till date no decision could be taken, hence the



W.A.Nos.2297 & 2298 of 2019

learned Special Government Pleader would contend that, these aspects since have not been considered by the learned Judge in proper perspective and the learned Judge having accepted the plea raised by the teachers supported by the School that they were appointed on 10.06.2013 since then they have been continuously working unmindful of the stand taken by the respondents that, there was no communication or proposal sent by the School till 22.07.2015, was pleased to allow the said writ petitions, therefore the said approach of the learned Judge is erroneous, hence the learned Special Government Pleader seeks indulgence of this Court in these appeals.

12. Per contra, Mr.T.Mohan, learned Senior Counsel appearing for the contesting respondents i.e., the teachers who are the 1<sup>st</sup> respondent respectively in both the appeals as well as Mr.R.N.Amarnath, learned counsel appearing for the 2<sup>nd</sup> respondent management of the School would contend that, insofar as the claim made by the teachers as well as the management of the School that they were appointed on 10.06.2013 is concerned, there are appointment orders which have been filed in the typed set of papers before the learned Judge and also before this Court, the appointment orders make it clear that on 10.06.2013 in the vacancy already available in the School, these two teachers were appointed.



W.A.Nos.2297 & 2298 of 2019

13. On the very same date i.e., on 10.06.2013 a proposal had been sent by the School and a reminder also had been sent on 14.06.2014, despite these communications since no action was forthcoming from the appellant Department, the second reminder was sent by the School management on 22.07.2015, however the appellant has taken a stand that the 22.07.2015 reminder alone is the first communication as if that has been sent by the School but factually it is not correct.

14. In order to support this contention, the learned counsel appearing for the teachers as well as the School management have relied upon the photocopy of the entire attendance register for the years 2013-2014 and 2014-2015.

15. In the said attendance register, they relied upon the name of the teachers, in Sl.Nos.66 and 68 these two teachers name have been mentioned along with other two teachers, all the four teachers were claimed to have been appointed on 10.06.2013 at the respondent School.

16. Continuously the attendance runs for several months of the academic year and ultimately on 21.07.2017 the Superintendent



W.A.Nos.2297 & 2298 of 2019

concerned of the Education Department having verified the attendance had put his signature and seal, this has also been produced for our perusal. Also the learned counsel appearing for the teachers and management has further relied upon the documents i.e. the document dated 20.10.2014 where the attendance certificate had been issued by the Principal of the District Institute of Education and Training, Theroor where some refresher training conducted and the in the training, one of the teacher viz., R.Justin Prema was sent for training, also a Duty Certificate of the same teacher issued by the Headmaster concerned had been produced. That apart, in yet another document that is signed by the Camp Officer who is none other than the DEO where he has stated that one of the teacher R.Justin Prema was sent for examination duty from 25.03.2015 to 30.03.2015.

17. Relying upon these documents, the learned counsel appearing for the School and the teachers would contend that, had there not been appointed in the year 2013 there would not have been any attendance having been verified and sent by the authorities concerned for the year 2013 and 2014 where their name and signatures are found. Also they could not have been sent for examination duty by the DEO himself in the



W.A.Nos.2297 & 2298 of 2019

year 2015 had they not been appointed in the year 2013-2014 as claimed by the teachers as well as the School management.

18. The stand of the respondents however is that, only on 22.07.2015 first time the proposal has come, therefore if at all any appointment is made that can be taken up only from 22.07.2015, however according to the learned counsel appearing for the teachers and the management, the said contention cannot be countenanced for which they cited these documents.

19. We have considered these rival submissions made by the learned counsel appearing for both sides and have perused the materials placed before this Court.

20. One admitted fact before this Court is that, on 22.07.2015 a proposal has come and this is received by the DEO office at Thakkalai and the rubber stamp to that effect put in the photocopy of the letter dated 22.07.2015 which is claimed to be the reminder of the earlier proposal by the School management, is made available before us for our perusal.



21. Therefore atleast on 22.07.2015 the proposal had come from the point of view of the Educational authorities i.e. the appellant herein, therefore the proposal were available for pursuing and after consideration orders could have been passed on merits, but they have not passed orders even till date, the reason being that, there has been a *lis* before the Writ Court first, secondly before this Court by filing the present appeals.

22. Before the teachers approaching the Writ Court if the orders have been passed, definitely the teachers would not have approached this Court by filing the writ petitions, therefore the delay caused on the part of the appellant Department in considering the proposal sent by the School cannot be attributable to any one including the pendency of the *lis*.

23. Moreover, insofar as the claim made by the teachers as well as the School management that they were appointed on 10.06.2013 is concerned, in support of their contention, the aforestated documents have been relied upon where the attendance have been verified by the Education Department and signed by the Superintendent and also examination duty had been given to these two teachers, it has been signed by the very DEO himself of course signed by facsimile.

24. Though it is claimed by the learned Special Government



W.A.Nos.2297 & 2298 of 2019

Pleader appearing for the respondents that, on the date of sending communication dated 22.07.2015 the writ petitions have been filed therefore there was no occasion for the respondents to consider even the belated proposal sent by them dated 22.07.2015, the said reason also cannot be countenanced, because, no authority can wait for the litigant to approach the Court to seek for a mandamus even to undertake the lawful duty cast upon them under the Statute.

25. Under the Tamil Nadu Private Schools (Regulation) Act and the Tamil Nadu Minority Schools (Recognition and Payment of Grant) Rules, if any such proposal comes from the School that shall be immediately considered and decided on merits therefore they cannot wait for the teacher or the School to come to the Court of law and seek for a mandamus, therefore that reason stated by the respondents also cannot be accepted by this Court.

26. Moreover, if it is a stand of the respondents that from 22.07.2015 alone the teachers were appointed, therefore from that date alone the issue can be taken up for consideration for passing orders for approval, the other documents which are relied upon by the teachers as



W.A.Nos.2297 & 2298 of 2019

well as the School management, as we discussed herein above, cannot be disputed. The reason being that, those documents have been signed or vouched by the Education Department by their officers like Superintendent as well as the CEO concerned. Therefore all these aspects since have been considered by the learned Judge who has come to a right conclusion that, in all fours the case of the teachers have been proved and therefore the learned Judge was pleased to give such a direction to the appellant Department to consider the proposal and to pass orders for approving their appointment from the date of appointment and also release the grant-in-aid. We do not find any error in the said approach of the learned Judge, who after taking pain to deal with this issue effectively, has passed an exhaustive order which is impugned herein.

27. The said order passed by the learned Judge is fortified by our evaluation of these documents which we have discussed herein above, therefore we do not find any reason to interfere with the order which is impugned passed by the Writ Court.

28. In the result, the writ appeals are deserved to be dismissed, therefore they are dismissed. As a sequel, there shall be a direction to the appellant Department to consider the proposal sent by the School with



W.A.Nos.2297 & 2298 of 2019

regard to the appointment of the teachers from 10.06.2013 and accordingly pass necessary orders of course after evaluating the educational qualification of the teachers concerned to hold the post where they were appointed and pass necessary orders to that effect.

29. Once the orders of approval is passed, it goes without saying that the teachers are entitled to claim salary from the date of appointment and all other perquisites for which they are entitled to. The needful as indicated above shall be undertaken by the appellant Department within a period of twelve weeks from the date of receipt of a copy of this judgment.

30. With these directions, the Writ Appeals are dismissed. However, there shall be no order as to costs. Consequently, connected miscellaneous petitions are also dismissed.

[R.S.K., J.] [K.B., J.]  
23.08.2023

Index : Yes/No  
Speaking Order : Yes/No  
Neutral Citation : Yes/No  
Sgl

R. SURESH KUMAR, J.  
and



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W.A.Nos.2297 & 2298 of 2019

K.KUMARESH BABU, J.

Sgl

W.A.NoS.2297 & 2298 of 2019

23.08.2023