



W.A.No.76 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 5.4.2023

CORAM

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR
AND
THE HONOURABLE MRS.JUSTICE K.GOVINDARAJAN THILAKAVADI

W.A.No.76 of 2020
and C.M.P.No.1127 of 2020

- 1 The State of Tamilnadu
Rep by its Secretary to Government,
School Education Department,
Fort St.George, Chennai.
- 2 The Director of School Education,
DPI Campus, College Road, Chennai.
- 3 The Chief Educational Officer,
Nagapattinam District, Nagapattinam.
- 4 The District Educational Officer,
Sirkazhi Taluk, Nagapattinam District.
- 5 The Head Master
Government Girls Higher Secondary School
Sembanarkoil.
- 6 The Head Master
Higher Secondary School, Sankaranpanthal,
Tharangampadi Taluk, Nagapattinam District. ... Petitioner

Vs.

A.Abirami ... Respondent



W.A.No.76 of 2020

Writ Appeal filed under Section 15 of Letters Patent to set aside the order passed in W.P.No.32293 of 2019 dated 18.11.2019 on the file of this Court.

For Appellant : Mr.V.Manoharan, A.G.P.
For Respondents : Mr.D.Gopinathan

JUDGMENT

(Judgment of the Court was delivered by **D.KRISHNAKUMAR, J.**)

According to the petitioner, the writ petitioner joined service as B.T. Assistant (Tamil) in the respondent Government School on 1.10.2007 and the petitioner attained the age of superannuation on 30.6.2019 in the middle of the academic year 2019-2020, as per the proceeding dated 6.8.2019. The Headmistress, Govt. (Girls) High School, Sembakanarkoil, recommended to the respondent for re-employment of the petitioner. On 26.7.2019, without providing any reason, the District Educational Officer, 4th respondent passed the impugned order by rejecting the re-employment to the writ petitioner by stating that the post of B.T. Assistant (Tamil) held by the petitioner is surplus in Sembakanarkoil Govt. School and therefore, the petitioner is not entitled to re-employment till the end of the academic year that was under challenge in the writ petition.

2. Following the judgments of the Division Bench of this Court, the learned Single Judge set aside the impugned order and directed the



W.A.No.76 of 2020

respondents to issue re-employment orders to the writ petitioner till the end of the academic year i.e. February, 2020. Challenging the said order, the instant appeal has been filed before this Court.

3. The learned Additional Government Pleader appearing for the appellants submitted that the writ petitioner is holding the surplus Teacher post in the 6th appellant's school by taking note of Pupil Teacher ratio as prescribed in Right of Children to Free and Compulsory Education Act. Further, Accountant General also raised audit objection. Consequently, the re-employment of the writ petitioner was deferred and therefore, as the said post is treated as surplus, the writ petitioner is not entitled for re-employment.

4. The learned counsel appearing for the writ petitioner/respondent contended that as per the Headmistress's report, two posts of B.T. Assistant (Tamil) has been sanctioned to the 6th appellant's School, wherein one post is treated as surplus post. The writ petitioner is senior teacher in the said school and the 6th appellant's School Headmistress also recommended re-employment to the writ petitioner till the end of the academic year as per the Government Scheme. Further, it is stated that the appellant has not passed any order stating that the post held by the writ petitioner is surplus post. The



W.A.No.76 of 2020

Chief Educational Officer passed an order by simply stating that one post of B.T. Assistant (Tamil) is treated as surplus post. Therefore, the request of the writ petitioner was not considered by the appellants for re-employment. There is no reason in the said order that the one post of B.T. Assistant (Tamil) as held by the writ petitioner is treated as surplus one. Under these circumstances, this Court passed the reasoned order by allowing the writ petition and therefore, no interference is called for.

5. We have heard the learned Counsel appearing for the appellants and the learned Additional Government Pleader appearing for the respondents and perused the materials available on record.

6. On perusal of the impugned order passed by the third appellant viz., Chief Educational Officer, wherein it is stated that Headmistress of the 6th respondent School recommended for re-employment of the writ petitioner/respondent by stating that there is no surplus post. The third appellant/ Chief Educational Officer rejected the claim of the writ petitioner without assigning any reason in the impugned order, by simply stating that the writ petitioner is holding the post of B.T. Assistant (Tamil) which is surplus post.



W.A.No.76 of 2020

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7. As rightly pointed out by the learned counsel appearing for the respondent/writ petitioner, the third appellant has not placed any material before the writ Court that the post held by the petitioner viz., B.T. Assistant (Tamil) is treated as surplus post. According to the learned Additional Govt. Pleader appearing for the appellant, as per the G.O.Ms.No.217 School Education Department dated 20.6.2019, petitioner's post is declared as surplus post. The said reason has not been cited in the impugned order passed by the third appellant. It is only during the course of arguments, the learned Additional Government Pleader appearing for the appellants has stated that the petitioner is holding the post viz., B.T. Assistant (Tamil) is a surplus one. Therefore, we are not inclined to accept the said contention at the stage of the arguments in the appeal. It is well settled principles of law laid down by the Hon'ble Supreme Court in ***AIR 1978 SC 851 Mohinder Singh Gil Vs. Chief Election Commissioner followed by this Court in C.L.Pasupathy vs. Engineer in Chief (WRO), reported in 2009 (2) MLJ 491*** for the point that when an order is passed by an Administrative Authority, the same should be supported by reasons. Statutory authority cannot be permitted to support his order on the basis of statements made in the counter affidavit. In the light of ***Mohinder Singh case***, the appellant cannot substitute a reason for rejection of the petitioner's claim.



W.A.No.76 of 2020

WEB COPY

8 In view of the above, we are not inclined to accept the contention of the appellant. At this stage, the learned Additional Government Pleader appearing for the respondents informed to the Court that the writ petitioner/respondent is not entitled to re-employment till the end of the academic year for the reason that the School itself has been closed from March, 2020 till the end of the academic year and therefore, she is not entitled to re-employment till the end of the academic year. To that extent, we are agree that the petitioner cannot have any right to continue from March 2020 till the academic year.

9 In view of the aforesaid discussion, the order passed by the learned Single Judge is sustained. However, the said order is modified to the extent that respondent / writ petitioner is entitled for re-employment from the date of superannuation i.e. from 1.7.2019 till February, 2020.

10 Consequently, writ appeal is partly allowed with the direction to the appellant department to pay salary to the respondent/writ petitioner from the date of superannuation i.e. from 1.7.2019 till February, 2020 within a period of 12 weeks from the date of receipt of copy of the order. No cost. Connected miscellaneous petition is closed.

(D.K.K.J.) (K.G.T.J.)
5.4.2023



W.A.No.76 of 2020

Speaking/Non Speaking order

Index: Yes

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To

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W.A.No.76 of 2020

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