



W.P.(MD) No.2323 of 2019

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 05.09.2023

CORAM:

THE HONOURABLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

W.P.(MD) No.2323 of 2019

and

W.M.P.(MD)No.1808 of 2019

X.Arun

... Petitioner

vs.

1.The State of Tamil Nadu,
Rep. by its Secretary,
Department of School Education,
Fort St. George, Chennai-600 009.

2.The Director of School Education,
College Road, Chennai-600 006.

3.The Chief Educational Officer,
Theni, Theni District.

4.The District Educational Officer,
Uthamapalayam, Theni District.

5.The Manager/Correspondent,
S.U.M Higher Secondary School,
Royappanpatty,
Theni District-625 526.

...

Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Mandamus, directing the respondents 3 and 4 to approve the appointment of the petitioner as Junior Assistant in the fifth respondent school, viz., SUM Higher Secondary School w.e.f., the original date of appointment ie., 30.03.2005 and with all salary and attendant benefits for the



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period between 30.03.2005 to 29.07.2007.

For Petitioner : Mr.K.Prabhu

For Respondents : Mr.J.John Rajadurai
Government Advocate for R1 to R4

No Appearance for R5

ORDER

This Writ Petition is filed for a Mandamus directing the respondents 3 and 4 to approve the appointment of the petitioner in the fifth respondent school as Junior Assistant with effect from the original date of appointment ie., w.e.f., 30.03.2005 instead of 29.07.2007 and grant the petitioner all the service and monetary benefits.

2. The brief facts are one Rajarathinam who was working as Junior Assistant at Savariyappa Udayar Memorial Higher Secondary School, Savarimuthu Lourdhu Nagar, Rayappanpatti retired from service w.e.f., 30.06.2004. In the resultant vacancy, the writ petitioner was appointed as Junior Assistant w.e.f., 30.03.2005 and the proposal was submitted to the respondents for approval. By an order dated 03.05.2005, the proposal was returned with an endorsement that since there is a ban order dated 29.11.2001 for filling up of the non-teaching post, the appointment cannot be approved. Thereafter, the ban which was imposed vide G.O.Ms.No.212 was



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subsequently lifted vide G.O.Ms.No.14 in the year 2006. Thereafter, once again a fresh proposal was sent by the fifth respondent school as if the petitioner is appointed w.e.f., 30.07.2007 and the said proposal was approved by the respondents and the petitioner is granted all the benefits with effect from the said date. It is in these circumstances, the petitioner prays that the approval ought to have been granted to the petitioner with effect from his original date of appointment ie., w.e.f., 29.03.2005.

3. The learned counsel for the petitioner in support of his submissions would also relied upon the judgment of this Court in ***Deva Asir Vs. The Secretary to Government, School Education Department***¹, more specifically relying upon paragraph 37 to contend that a perusal of the said judgment it would be clear that inspite of the ban, if any appointment has been made, Courts have held that the ban order by itself cannot come in the way of approval of the appointment with effect from the original date of appointment. Therefore, the learned counsel prays that in this case also the petitioner's appointment w.e.f., 29.03.2005 is denied only on the ground of the ban order and therefore, prays that similar benefit be extended to him.

4. Per contra, the learned Government Advocate appearing on behalf of the respondents 1 to 4 pointing out to the counter affidavit filed in the matter

1 (2016) 3 LW 152



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5. I have considered the rival submissions made on either side and perused the material records of the case.

6. I agree with the learned counsel for the petitioner that this Court in the judgment reported in **(2016) 3 LW 152** has held that even if the appointment is made during the ban period, the appointments have to be taken as approved from the original date. But however I am afraid that the said proposition cannot be applied to the facts of the instant case, as the petitioner as well as the fifth respondent school did not stick to the original date of appointment. After realizing that there was a ban order, and when the ban order was lifted in the year 2006, they sent a fresh proposal in the year 2007 as if the petitioner was appointed only w.e.f., 30.07.2007 and accordingly, the proposal has been approved by the respondents.



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7. In that view of the matter, the claim of the petitioner cannot be countenanced. Therefore, finding no merits, the Writ Petition is dismissed. However, it will be open for the writ petitioner to claim the said arrears of the salary for the said period from the fifth respondent Management. No costs. Consequently, connected miscellaneous petition is closed.

05.09.2023

NCC : Yes/No
Index : Yes / No
Internet : Yes / No
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To

- 1.The Secretary,
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Department of School Education,
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- 2.The Director of School Education,
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- 3.The Chief Educational Officer,
Theni, Theni District.
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D.BHARATHA CHAKRAVARTHY, J.

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