



W.A.(MD).No.749 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 09.10.2023

CORAM

**THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM
AND
THE HON'BLE MR.JUSTICE V.LAKSHMINARAYANAN**

W.A.(MD).No.749 of 2019
and
C.M.P.(MD).No.6607 of 2019

J.Manohar Sagayaraj

.. Appellant/Petitioner

Vs.

1.The District Educational Officer,
Trichy District,
Trichy.

2.The Block Educational Officer,
Trichy West,
City Corporation Middle School Campus,
Subramaniyapuram,
Trichy.

..Respondents/Respondents

PRAYER: Writ Appeal filed under Clause 15 of Letters Patent, to set aside the order dated 03.04.2019 in W.P.(MD).No.17894 of 2018 on the file of this Court and allow the Writ Appeal as prayed for.



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For Appellant : Mr.Ragatheesh Kumar
for M/s.Isaac Chambers
For Respondents : Mr.D.Sadiq Raja
Additional Government Pleader

JUDGMENT

(Judgment of the Court was delivered by S.M.SUBRAMANIAM,J.)

The Writ Appeal on hand has been instituted against the order dated 03.04.2019 passed in W.P.(MD).No.17894 of 2018.

2. The appellant/writ petitioner joined as a Secondary Grade Teacher in the R.C Model School, Cantonment, Tiruchirappalli on 21.06.1983. Admittedly, he attained the age of superannuation on 30.06.2018. The appellant submitted an application to the Correspondent of the said School on 19.06.2018 seeking re-employment from 01.07.2018 to 31.05.2019 based on the Government Order issued in G.O.Ms.No.1643 Education (U2) Department dated 27.10.1988. The appellant enclosed all necessary certificates along with his application. The Correspondent of the School permitted him to continue to work from 01.07.2018 to 31.05.2019 vide order dated 19.06.2018 and forwarded the said proposal to the first



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respondent/District Educational Officer, Tiruchirappalli for necessary approval.

3. It is not in dispute that the District Educational Officer has not approved the re-employment of the appellant in the minority aided school. However, at the instance of the management, the appellant continued till 31.05.2019 and has relieved from service.

4. The learned counsel for the appellant mainly contended that the appellant was allowed to continue till the end of the academic year, i.e., 31.05.2019, by the order of the school management and further, the decision of the first respondent was also challenged in the Writ proceedings. Thus, the appellant is entitled for the Government salary as admissible for the period of re-employment from 01.07.2018 to 31.05.2019.

5. The learned Single Judge, following the judgment of the Hon'ble Division Bench of this Court in the case of ***K.Ramachandran Vs. The District Elementary Educational Officer and three others passed in W.A.***



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(MD).No.910 of 2010 dated 15.12.2010, rejected the claim of the appellant.

Thus, the appellant preferred the present Writ Appeal.

6. The contention of the learned counsel for the appellant is that the Government Order issued in G.O.Ms.No.261 School Education Department dated 20.12.2018 came into force after the date of retirement of the appellant on 30.06.2018 and therefore, the said Government Order cannot be applied retrospectively so as to disqualify the appellant from seeking re-employment on the basis of the original Government Order. The learned counsel for the appellant relied upon the order of the learned Single Judge of this Court in W.P.(MD).No.13813 of 2013 dated 19.03.2018 and another order passed based on the said order.

7. The learned Additional Government Pleader appearing for the respondents raised an objection by stating that facts are not comparable. The facts in those cases, relied upon by the learned counsel for the appellant, are different, wherein, the competent authorities of the Education Department granted approval to continue in service and thereafter, rejected



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the claim and the order of rejection was under challenge. Thus, the order passed in W.P.(MD).No.13813 of 2013 is not applicable to the case of the appellant herein. Though the Government Order issued in G.O.Ms.No.261 dated 20.12.2018 was issued after the date of retirement of the appellant, the competent authorities found that surplus teachers were working in the R.C Model School and when the surplus teachers are working in the school, there was no necessity to grant approval to re-employ the appellant in the same school, which would result in financial loss to the State. Thus, there is no infirmity in respect of the decision taken by the authorities of the Education Department and consequently, the Writ Appeal is to be rejected.

8. Considering the rival contentions raised between the parties, the concept of re-employment of teaching staffs till the end of academic year was introduced for the benefit of the students studying in the school. A teacher, who commenced classes in the academic year, must be allowed to teach/take classes till the end of the academic year, so that the students will not get affected and in order to fulfil such purpose and object, the Government introduced a scheme of re-employment to allow the teachers to



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continue in service till the end of the academic year, if their date of retirement falls during the middle of the academic year. The scheme is a concession and not an absolute right. It is not part of service conditions of the Government teachers or the teaching staffs working in aided or minority institutions. Such concession is extended by the Government to protect the interest of the students and therefore, the necessity and requirement for the purpose of granting permission is to be ascertained based on facts and circumstances of each case. No doubt, twin conditions are imposed generally to consider a teacher for grant of re-employment. Those two conditions are that the character and conduct of the teacher must be satisfactory and he must be physically fit enough to continue in service. If twin conditions are satisfied and beyond that, if any administrative reasons are there, then the authorities competent are bound to consider the same in view of the fact that re-employment is not an absolute right and it is a concession extended. The question of discrimination between employees in such circumstances would not arise as each case is to be considered subjectively and with reference to the guidelines issued by the Government.



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9. The learned counsel for the appellant contended that the appellant had satisfied both the conditions of satisfactory character and conduct and physical fitness and therefore, the rejection is improper. However, the learned Additional Government Pleader appearing for the respondents reiterated that surplus teachers were working in the school and granting approval for extension would result in financial loss to the State. That being an administrative reason, there is no perversity as such.

10. When re-employment is not a right nor a service condition, but a concession extended to protect the interest of the students studying in the school, the decision taken, if subjectively acceptable, then the power of judicial review need not be exercised by this Court. The decision, if found arbitrary or in violation of any of the rules, then alone the relief needs to be considered.

11. In the present case, the appellant was allowed to continue till the end of the academic year at the discretion of R.C Model School management and admittedly, without the approval of the competent



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authorities of the Education Department. Therefore, the State need not pay the salary to the appellant for the extended service rendered by him, but the Management of the R.C Model School has to pay the salary to the appellant for the period from the date of his retirement till the end of the academic year, i.e., the date of relieving of the appellant from service. In this regard, the appellant is at liberty to work out his remedy against the Management of the School in the manner known to law. As far as the State is concerned, there is no obligation to settle the salary since approval for extension of service was not granted.

12. Accordingly, the Writ Appeal stands dismissed. There shall be no order as to costs. Consequently, connected miscellaneous petition stands closed.

(S.M.S.,J.) (V.L.N.,J.)
09.10.2023

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