



W.P.(MD)No.4116 of 2018

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED:07.02.2023

CORAM:

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.(MD)No.4116 of 2018
and
W.M.P(MD)No.4276 of 2018

Elsibai

... Petitioner

Vs.

- 1.The Secretary to Government,
Secretariat,
School Education Department,
Fort St. George,
Chennai.
- 2.The Director of School Education,
College Road,
Nungambakkam,
Chennai – 600 006.
- 3.The District Educational Officer,
Kuzhithurai,
Kanyakumari District.
- 4.The Correspondent,
Pius XI Higher Secondary School,
Thoothoor,
Kanyakumari District.

... Respondents



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Prayer: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus to call for the records on the file of the second respondent pertaining to its proceedings in Na.Ka.No.22958/D1/E3/2012 dated 23.11.2017 and to quash the same and consequently direct the respondents to regularize the service of the petitioner as Lab Attender in the fourth respondent school from the date of her initial appointment that it is from 10.06.1988 and to grant all monetary and service benefits in consequent to the same within a time frame that may be stipulated by this Court.

For Petitioner	: Mr.S.C.Herold Singh
For R-1 to R-3	: Mr.J.Ashok, Additional Government Pleader
For R-4	: No Appearance

ORDER

This writ petition has been filed to quash the proceedings of the second respondent in Na.Ka.No.22958/D1/E3/2012, dated 23.11.2017 and consequently, to direct the respondents to regularize the service of the petitioner as Lab Attender in the fourth respondent school from the date of her initial appointment ie., from 10.06.1988 and to grant all monetary and service benefits, within a stipulated period.



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2. The case of the petitioner is that she was appointed as a Lab Assistant in the year 1985. Though the petitioner was appointed as early as in the year 1985, no salary was paid to her. Therefore, the petitioner filed a writ petition in W.P.No.19046 of 1998, seeking for a direction to release her salary and this Court issued a direction to consider the petitioner's representation and pass appropriate orders. However, the petitioner's representation was rejected on the ground that the petitioner was appointed in a non sanctioned post. The said rejection order was challenged by the petitioner in W.P.No.23075 of 2002. This Court allowed the said writ petition and issued a direction to the official respondents to approve the appointment and pay the salary in term of the direction issued in W.A.Nos.1329 and 1330 of 1999. Since the said order was not complied, the petitioner filed a contempt petition in Cont.P(MD)No.729 of 2011. In the meantime, the Government preferred an appeal in W.A(MD)No.2120 of 2011 and the same was dismissed. Subsequently, when the contempt petition was taken up for hearing, an order passed by the Government in letter No.117/DI/2011-8 dated 24.02.2012 was produced, in and by which, the request of the petitioner was rejected. Against the said rejection order, the petitioner



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filed a writ petition in W.P(MD)No.3287 of 2012. This Court had set aside the said order and directed the respondents 1 and 2, to sanction the post of Lab Assistant in the fourth respondent school and pass appropriate orders and the respondents were directed to pass orders within a period of six weeks. Against which, the Government preferred an appeal in W.A(MD)No.213 of 2017. The said writ appeal was allowed and a direction was issued to the Educational Authorities to consider as to whether the fourth respondent school is entitled for the post of Lab Attender in accordance with relevant Government Orders. Pursuant to the said order, the second respondent passed the impugned order stating that there is no sanctioned post available in the fourth respondent school. Challenging the same, the petitioner has filed this writ petition with the aforesaid prayer.

3. The learned Additional Government Pleader appearing for the respondents 1 to 3, would submit that the fourth respondent school had been upgraded into a Higher Secondary School in the year 1981-1982. During the time of upgradation, adequate teaching posts were sanctioned. Since no grant-in-aid was given to some of the posts



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including the post of Lab Assistant, the school filed a writ petition in W.P.No.2008 of 1986 for the sanction of adequate teaching and non-teaching staffs. As per the interim order granted, the Government issued grant-in-aid for three posts of Graduate Assistants, one post of Record Clerk and one post of Lab Attender as per G.O.No.828, Educational Department, dated 13.05.1988. However, grant-in-aid was sanctioned for a period of two years from the year of recognition of the school ie., from 1981 onwards. Subsequently, grant-in-aid was not paid to the fourth respondent school and the above said posts were treated as non-sanctioned posts only. The fourth respondent instead of challenging the above said G.O., had appointed the petitioner as a Lab Assistant in the year 1985 taking advantage of G.O.Ms.No.573, dated 20.03.1978. Though the petitioner was appointed in an unsanctioned post, the fourth respondent had sought for approval and grant-in-aid from the Educational Authorities, only in the year 1998 ie., nearly after thirteen years, which is nothing but clear abuse of process of law. In the meanwhile, the petitioner filed a writ petition in W.P.No.19046 of 1998, praying to release her salary, wherein a direction was issued to consider the representation of the petitioner in the light of G.O.Ms.No.573, dated



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14.09.1998. Pursuant to which, the third respondent rejected the petitioner's request for the sanction of her post. The issue went up to the Hon'ble Supreme Court and the Government filed S.L.P.No.407 of 2012. As per the order of the Hon'ble Supreme Court, the authorities have to consider the claim of the petitioner strictly in accordance with law and Rules. Hence, an order was passed on 24.02.2012, rejecting the petitioner's claim. Suppressing the order of the Hon'ble Apex Court, the petitioner once again filed a writ petition for the same cause of action, which is a clear abuse of process of law. Therefore, the impugned rejection order is perfectly in order and prays for dismissal of this writ petition.

4. Heard the learned counsel appearing for the petitioner, the learned Additional Government Pleader appearing for the respondents and perused the materials produced before this Court.

5. Admittedly, the petitioner was appointed as a Lab Attender in the year 1985 by the fourth respondent school management and twice, her appointment was rejected on the ground that of non-sanctioned post. Challenging the same, the petitioner filed writ petitions



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and the writ petitions were allowed and the subsequent writ appeal filed by the Government was allowed and a direction was issued to consider the petitioner's case. Pursuant to the said order, the impugned rejection order is passed by the second respondent. In order to ascertain, whether the petitioner's post is vacant or not, the petitioner did not produce any sanction order for the said post. In the absence of any sanction order, the prayer sought for by the petitioner cannot be granted. Admittedly, the petitioner's appointment was in the non-sanctioned post and therefore, there is no irregularity or infirmity in the order passed by the second respondent and hence, the writ petition is liable to be dismissed.

6. In the result, this writ petition is dismissed. No Costs.
Consequently, connected miscellaneous petition is closed.

07.02.2023

pm

Index:Yes/No
NCC:Yes/No



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To:

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M.DHANDAPANI, J.

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