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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **31.07.2023**

CORAM:

THE HONOURABLE **DR.JUSTICE ANITA SUMANTH**
AND
THE HONOURABLE **MR.JUSTICE R.VIJAYAKUMAR**

W.A.(MD)Nos.1242 & 1243 of 2014
and
M.P.(MD)Nos.2 & 2 of 2014

The District Elementary Educational Officer,
Virudhunagar ...Appellant in both appeals

/Vs./

N.Parameswari (died)

1.Rajakani ..1st Respondent in W.A.(MD)No.1242/2014

1.S.N.Subbulakshmi ..1st Respondent in W.A.(MD)No.1243/2014

2.The Secretary and Correspondent of
Sri Rao Bahadur A.K.D.Dharmaraja Middle School,
Rajapalayam.
...2nd Respondent in both petitions

COMMON PRAYER:- Writ Appeal - filed under Clause 15 of Letters
Patent Act, to set aside the order dated 26.02.2013 passed in W.P.
(MD)Nos.10116 and 10120 of 2006.



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In both appeals:

For Appellants	: Mr.V.Om Prakash Government Advocate
For R1	: Mr.D.Srinivasa Raghavan
For R2	: Mr.S.Deenadhayalan

COMMON JUDGMENT

(Judgment of the Court was delivered by **DR.ANITA SUMANTH, J.**)

The writ petitioners/first respondent in both Writ Appeals, had approached this Court seeking mandamus directing the District Educational Officer and Secretary and Correspondence of Sri Rao Bahadur A.K.D.Dharmaraja Middle School, Rajapalayam (in short ‘School’) to pay salary for the period from 19.07.2000 to 04.08.2004 and 11.02.2002 to 14.09.2004, respectively, on approving their appointments as Secondary Grade Teacher in the School with all attendant and monetary benefits.

2.Writ Petitions came to be allowed on 26.02.2013. Pending Writ Petition, the first petitioner in W.P.(MD)No.10116 of 2006 had passed away and her legal heir was brought on record.



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3.The School had been refused approval for appointment of the petitioners on the ground that the School had not obtained declaration as minority institution. Sans declaration of minority status, the school was required to obtain prior permission for appointments in the department, which had not been done and consequently, the writ petitioners were held not entitled to their appointments.

4.The school had filed O.S.No.544 of 1984 on the file of the Additional District Munsif Court, Srivilliputhur, seeking a declaration as a linguistic minority institution. The suit came to be decreed by judgment and decree dated 16.02.1989.

5.The State preferred First Appeal in A.S.No.83 of 1991 on the file of the Sub Court, Srivilliputhur challenging decree dated 16.02.1989. Pending First Appeal, there was no interim stay suspending the decree passed by the trial Court. The First Appeal came to be allowed on 03.03.1999 and as a result, the school lost minority status.

6.To be noted, another candidate by name Anuradha had been appointed on 03.09.1996, during the pendency of the First Appeal. That



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appointment came to be approved by the State, evidently for the reason that decree dated 16.02.1989 was in subsistence at that time as there was no interim order pending first appeal.

7.The case of Anuradha has been relied on by the first respondent/writ petitioners before us. However, in light of the distinction as noted above, that Anuradha's appointment was on 03.09.1996 during the subsistence of decree dated 16.06.1989, writ petitioners cannot take benefit of that appointment as that appointment is distinguishable in law.

8.The judgment in the First Appeal was challenged by the School by way of second appeal in S.A.No.807 of 1999. Pending second appeal, an application had been filed in C.M.P.No.8203 of 1999 seeking stay of judgment and decree in A.S.No.83 of 1991 dated 03.03.1999. That Civil Miscellaneous Petition was ordered and interim protection granted for a limited period. The interim protection was continued until further orders by order dated 15.06.1999.



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9.The appointment of the petitioners were made during the tenure of the interim protection granted in the second appeal. Approvals had been sought by the School on 30.08.2000 (in the case of Parameswari) and 05.06.2003 (in the case of Subbulakshmi). Those applications came to be returned by the State citing pendency of the Second Appeal.

10.Thus, the School had gone ahead to appoint Subbulakshmi on 11.02.2002 and Parameswari on 19.07.2000 without awaiting approval from the State on the strength of the interim order, which was in force till 03.09.2003, when it came to be vacated.

11.The legal issue that has arisen in the matter is as to whether grant of interim protection would result in resumption of minority status that was granted to the School on 16.02.1989. The State would canvass the view that with the allowing of the first appeal on 03.03.1999, the school had lost minority status and the interim protection granted earlier can, in no way be understood to mean resumption of the minority status decreed on 16.02.1989 as that decree had merged with judgment and decree dated 03.03.1999 passed in the first appeal.



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12.This matter has been adjourned on few occasions to enable the parties to advance submission on this legal issue. However, there have been no effective arguments advanced on this point by either side.

13.Learned single Judge has allowed the writ petitions noticing the position that the petitioners were appointed in sanctioned posts in vacancies caused by retirements and hence, the petitioners would be entitled, in equity, to the relief sought for on the unique facts of their cases. The writ petitions had been disposed directing the respondents to consider the proposal for payment of salary for the period between 19.07.2000 to 04.08.2004 and 11.02.2002 to 14.09.2004 being periods when the two petitioners served in the school and release financial benefits in their favour. A time frame of three months was fixed for that purpose. Pending present writ appeal, a limited stay has been granted, which has not been extended further.

14.The factum of the writ petitioners having worked during 19.07.2000 to 04.08.2004 (in the case of Parameswari) and 11.02.2002 to 14.09.2004 (in the case of Subbulakshmi) is undisputed. It is also



undisputed that the approvals sought by the School on 30.08.2000 and 05.06.2003 were only returned by the State. Had the State rejected the applications for approvals on the ground of want of minority status, the legal position as to whether the School was right in assuming that the grant of interim protection resurrected the minority status, would perhaps have been clarified. However, this aspect of the matter did not weigh with the State at that juncture.

15. Having noted the aforesaid facts and circumstances that arise for consideration, we find ourselves in agreement with the conclusion of the writ Court. The petitioners must be granted the benefits they seek having admittedly been appointed in (i) sanctioned posts (ii) in retirement vacancies and (iii) having discharged their services.

16. To clarify, Subbulakshmi will be entitled to salary and benefits for the period 11.02.2002 to 03.09.2003 and Parameswari for the period between 19.07.2000 to 03.09.2003, the latter in both cases being the date of vacating of interim stay. The legal question as to the effect of interim protection pending second appeal is left open.



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17.The State will pass necessary orders granting approval as well as disburse the requisite grants within a period of eight weeks from date of receipt of a copy of this order.

18.At this juncture, the learned counsel for the writ petitioners would point out that there are periods, both anterior and post the period for which they have been found entitled to salary and benefits under this order, when the petitioners have rendered services to the School. As this Court is concerned only with grant-in-aid for the period for which this order has been passed, any other benefit sought by the writ petitioners would have to be addressed to the School. Such request, if made, will be considered by the School expeditiously, in accordance with law. No costs. Consequently, connected Miscellaneous Petitions are closed.

[A.S.M.J.] & [R.V.J.]
31.07.2023

NCC :Yes/No
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DR.ANITA SUMANTH, J.
AND
R.VIJAYAKUMAR, J.

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Order made in
W.A.(MD)Nos.1242 & 1243 of 2014

Dated:
31.07.2023