



W.P.(MD).No.15616 of 2016

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 24.02.2023

CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

**W.P.(MD).No.15616 of 2016
and
W.M.P.(MD).No.11484 of 2016**

V.Santhakumari

... Petitioner

Vs.

- 1.The Joint Director of Secondary Education,
Chennai – 6.
- 2.The Chief Educational Officer,
Kanyakumari District.
- 3.The District Education Officer,
Kuzhithurai,
Kanyakumari District.
- 4.The Corporate Manager,
CSI Kanyakumari Diocese,
Dennis Street,
Opposite to Women's Christian College,
Nagercoil,
Kanyakumari District.
- 5.The Correspondent,
CSI VV Higher Secondary School,
Irenepuram,
Kanyakumari District.

... Respondents



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Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, to call for the records on the file of the 1st respondent pertaining to its order bearing Moo.moo.No.2270/D1/E3/2013 dated 23.06.2016 and to quash the same and consequently directing the 1st respondent to sanction and disburse the salary of the petitioner from 24.06.2008 to 02.01.2011 and pay all monitory benefits and also to calculate the said period for pensionary benefits.

For Petitioner : Mr.S.C.Herold Singh

For R-1 to R-3 : Mr.D.Sadiq Raja,
Additional Government Pleader

For R-4 and R-5 : No Appearance

ORDER

This Writ Petition is filed to quash the order dated 23.06.2016 and consequently directing the 1st respondent to sanction and disburse the salary of the petitioner from 24.06.2008 to 02.01.2011 and pay all monetary benefits and also to calculate the said period for pensionary benefits.

2. The petitioner is qualified with B.Sc., (Botany) and thereafter B.Ed., There was a vacancy at LMS Higher Secondary School, Kadamalaikuntu and the petitioner was appointed as Secondary Grade Teacher on 22.06.1994.



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Thereafter, on 13.05.2008, the petitioner was deployed to RTM, LMS Higher Secondary School, Mylaudu due to the diminishing strength of students in LMS Higher Secondary School. On 24.06.2008, again the petitioner was transferred from RTM LMS Higher Secondary School, Mylaudy to CSI VV Higher Secondary School, Irenepuram in the place of one J.Prajat Jose Kala who was promoted on 10.06.2008. The staff strength statement would be drawn on 1st August every year. For the academic year 2007-2008, 3 Secondary Grade Teachers posts were available in the said School and the statement is valid till 31.07.2008. The petitioner received LPC from Nagercoil DEO office after 22.04.2009. Therefore, the Correspondent of the said School forwarded the proposal on 25.05.2009 for releasing the salary. However, on 08.08.2009, the respondents returned the proposal saying that only one post alone was sanctioned to the said School. The contention of the petitioner is that the student strength for the year 2008-2009 was finalized on 21.10.2008. The said statement shows that 3 teachers post were in existence in the previous year and now one post with teacher and one post without teacher are rendered as surplus. The said staff strength statement was challenged in W.P.(MD)No.11958 of 2009 and this Court vide order dated 20.11.2009 granted interim stay. On 16.12.2009 another proposal was sent by the Correspondent citing the interim order with a request to pay the salary. On 02.04.2010, the said proposal was



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returned saying that no orders were passed in the Writ Petition and it is only an interim order staying the staff fixation statement. Aggrieved by the proceedings, the petitioner preferred an Appeal before the second respondent. Subsequently, on 03.01.2011, the petitioner was posted to VV Girls High School, Irenepuram which comes under the fourth respondent Management. Thereafter, the fourth respondent submitted a proposal and the petitioner was receiving the salary from 03.01.2011. However, the petitioner did not receive the salary from 24.06.2008 to 02.01.2011. The Correspondent submitted a request on 07.12.2011 to the first respondent for disbursing the petitioner's salary for the said period and the official respondents sought clarification wherein, the 5th respondent also furnished the detailed reply vide communication dated 22.11.2012. The third respondent sought for another clarification on 29.11.2012 and the same was also replied by the Correspondent vide communication dated 08.01.2013 and also sought for the Government Order copy by letter dated 18.03.2013. For which on 12.08.2013 the Correspondent replied that the copy of Government Order No.1820 dated 21.11.1984. Thereafter, the third respondent replied by stating that the petitioner was working in the surrender post. On 19.11.2015, the Correspondent was informed by the Education Department saying that the post in which the petitioner seeking approval was surrendered on 01.06.2009 itself.



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But the contention of the petitioner is that since 24.06.2008 there was no communication to that effect. The petitioner again approached CEO. Based on the communication dated 12.12.2015, the Chief Educational Officer recommended the Joint Director of School Education for sanctioning the amount. However, without considering the same and without proper application of mind, the impugned order dated 23.06.2016 was passed. Aggrieved over the same, the present Writ Petition is filed.

3. The respondents have filed a counter stating that the fifth respondent School is a minority School getting full grant-in-aid from the Government. The petitioner was initially appointed as Secondary Grade Teacher on 22.06.1994 in the LMS Higher Secondary School, Kadamalaikundu and she was deployed to RTM LMS Higher Secondary School under the same corporate Management on 13.05.2008 due to the decreased in students' strength at Kadamalaikundu. Again, she was transferred from RTM LMS Higher Secondary School to CSI VV Higher Secondary School, Irenepuram on 10.06.2008. The staff fixation of the School CSI VV Higher Secondary School, one post of Secondary Grade Teacher was declared as surplus in the staff fixation settled for the year 2008-09 and the post was surrendered to the Director's common pool and it was taken by the Director of School Education on 21.09.2010. In view of the same, the



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appointment of the petitioner by transfer to the post was not approved by the District Educational Officer and orders rejecting to approve the said appointment was issued by the District Educational Officer. The petitioner preferred an appeal to the Joint Director of School Education as per Rule 7 of the Tamil Nadu Minority Schools Recognition and Payment of Grant, Rules 1977 and the same was considered in terms of the said rules. As per Rule 6 of the payment of grant rules, the salary would be paid from the date of approval. The petitioner was working in the post which was declared as surplus and was surrendered to the higher authority. Hence, the petitioner is not eligible for any salary according to the said rules. As per revised staff fixation settled vide order dated 28.02.2008, only one post of Secondary Grade Teacher was allowed and the two posts of Secondary Grade Teachers were identified as surplus due to availability of B.T. teachers and the said fact was not stated by the petitioner and the petitioner has suppressed the said fact. For the subsequent years also, only one post of Secondary Grade Teacher was allowed and the rest two posts of Secondary Grade teachers were identified as surplus. Yet salary was drawn for two Secondary Grade Teachers in as much as one teacher was already working in the surplus post. The petitioner was appointed in the surplus post without teacher, in spite of instructions from the Department, the said post should not be filled up. The fifth respondent has deliberately appointed the



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petitioner in the post which was declared as surplus without teacher. Therefore, the petitioner is not entitled to grant-in-aid for the said post for the period as stated supra. Therefore, the respondents prayed to dismiss this Writ Petition.

4. Heard Mr.S.C.Herold Singh, learned counsel for the petitioner and Mr.D.Sadiq Raja, learned Additional Government Pleader, for the respondents 1 to 3 and perused the records.

5. The respondents have stated that the said post is a “surplus post without teacher” vide proceedings in Na.Ka.No.8470/A5/07 dated 28.02.2008 and the surplus teachers report was granted to the fifth respondent School and the said proceedings is extracted hereunder:



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வினா எண்: 101 - திரு. உதயி (D.D.ம்) கீழ்க்கண்டவற்றி-
- 1967-68-ம் ஆண்டில் - பண்டிதர் பதவி-
நிராகரம் - பள்ளிதலம் திட்டம், தரீ திட்டம் -
கீழ்க்கண்டவற்றை - கருத்து -

7955/95/07, என்.பி.12,07

பரமசிவனின் சூக்தி காலத்தில் 1007-1012ல் கவிமிகாதிபதிகள் கீழ்க்கண்ட
பாஷைக்கு பத்திரங்கள் பதிவிட்டு தங்கள் மனம் போனபடியிலிருந்து விநாயகனா-
திகார பாஷைகளின் இடங்களைப் பராமசிவனின் பாஷைகளில் கீழ்க்கண்ட பாஷை மொத்தம்
மூன்று கீழ்க்கண்ட பாஷைகளில் பதிவிட்டனர்.

சமீப காலங்களில் சித்திரங்கள் மிகவும் அதிகமாக சித்திரங்களாக மாறினது. ஆனால், மிகவும் பழக்கமாக.

பெரிய அளவில் இயங்கி : ஸ்ரீ. என். கு. வீ. வி. ரமணி, பி. ச. துரைசாமிநாதர்.

[illegible]

தமிழ்நாடு - 6 முதல் 10 வகுப்புகளில் பட்டிதான் தனிப்பிரிவாக அமைக்க வேண்டும். வேறு வேறு பட்டிதான் என்று பங்கிட்டு வந்த 2 எல்லைகள் பட்டிதான் தனிப்பிரிவு என்று 1 வகுப்பு முதல் 5 வகுப்புகள் இருந்தன என்று கருதியும் 1 வகுப்பு வரையில் வேறுபடுத்தப்படும்.

5-45-2007 22-6-08
 உறுப்பினர் சபை
 தீர்மானம், 6-7-08

செய்தது:
திரு. என். கு. வி. சி. சேனாபதி,
ம. ம. அமைச்சரவைத் துறைக்குரிய செயலகம்,
சென்னை-600 089.



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6. When the School was intimated regarding the surplus teachers as stated in the above proceedings, the School is not having any power to appoint the petitioner. Therefore, the fifth respondent has deliberately appointed the petitioner and the fifth respondent has given false hope to the petitioner that the said post would be regularized and also directed the petitioner to initiate the litigation. Infact, the School has deliberately kept silent and it is not coming forward to contest the case. Such litigation is creating serious prejudice and embarrassment to the Government.

7. Based on the above communication wherein it is stated that the post is declared as surplus, the petitioner is not entitled to salary for the period from 24.06.2008 to 02.01.2011. Since the fifth respondent has misrepresented to the petitioner and has indulgent in such irresponsible attitude, the fifth respondent is directed to pay the salary to the petitioner for the said period from 24.06.2008 to 02.01.2011.



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WEB COPY 8. With the above direction, this Writ Petition is dismissed. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

24.02.2023

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

To

- 1.The Joint Director of Secondary Education,
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- 2.The Chief Educational Officer,
Kanyakumari District.
- 3.The District Education Officer,
Kuzhithurai,
Kanyakumari District.



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S.SRIMATHY, J.

Nsr

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