



WEB COPY



W.P.(MD).No.24162 of 2016

THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 13.03.2023

CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P.(MD).No.24162 of 2016

M.Murugan

... Petitioner

Vs.

The Chief Educational Officer,
Tuticorin,
Tuticorin District.

... Respondent

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 and quash the proceedings in Na.Ka.No.959/Au3/2016 dated 07.12.2016 on the file of the respondent and consequently directing the respondent to disburse the petitioner's salary in the post of B.T.Assistant for the period from 25.02.2015 to 08.10.2015 as expeditiously as possible within the time frame fixed by this Court.

For Petitioner : Mr.P.Samuel Gunasingh

For Respondent : Mr.M.Ramesh,
Government Advocate.



W.P.(MD).No.24162 of 2016

WEB COPY

ORDER

This Writ Petition is filed challenging the impugned order dated 07.12.2016 with a consequential relief to disburse the petitioner's salary in the post of B.T.Assistant for the period from 25.02.2015 to 08.10.2015.

2. The petitioner was initially appointed as Secondary Grade Assistant Teacher in the KGS Higher Secondary School, Srivaikundam. The petitioner was claiming promotion to the post of P.G. Assistant and has filed W.P.(MD) No.9257 of 2014. In the meanwhile, the petitioner was transferred to Hindu Higher Secondary School, Alvarthirunagari. The contention of the petitioner is that since the petitioner was seeking promotion, the petitioner was vindictively transferred to Hindu Higher Secondary School and hence, the petitioner challenged the transfer order in W.P.No.2700 of 2015 and obtained stay on 27.02.2015. However, the petitioner was not allowed to join in the KGS Higher Secondary School itself because of the stay order. Hence, the petitioner filed Contempt Petition in Cont.P.No.434 of 2015. The Hon'ble Court vide order dated 22.09.2015 directed the petitioner to join Hindu Higher Secondary



W.P.(MD).No.24162 of 2016

School and thereafter, the petitioner joined the said post. Because the petitioner was not serving in both the schools, the petitioner was not paid any salary for a period from 25.02.2015 to 08.10.2015. Hence, the petitioner sent representation to the respondent and the same was declined through the impugned order.

3. The respondent has filed a counter stating that since the petitioner has not joined the duty, based on the principles of no work no pay, the petitioner is not entitled to salary for the said period. Hence, the respondent prayed to dismiss this Writ Petition.

4. Heard Mr.P.Samuel Gunasingh, learned counsel appearing for the petitioner and Mr.M.Ramesh, learned Government Advocate, appearing for the respondent.

5. The transfer is incident to service. In the present case, even though the petitioner states that the said transfer is vindictive transfer but the said transfer was based on the surplus issue. However, the petitioner was an eligible candidate for the promotion to the post of P.G.Assistant and the petitioner is



W.P.(MD).No.24162 of 2016

claiming the promotional post and there are other contenders to the said post.

The petitioner has challenged the transfer order and obtained stay of the order on 27.02.2015. The transfer order was passed on 18.02.2015. When there is stay for the transfer order, then the petitioner is entitled to salary for the period for the said period from 25.02.2015 to 08.10.2015. Therefore this Court is directing the respondent to pay salary and the said exercise shall be completed within a period of (8) eight weeks from the date of receipt of a copy of this order.

6. In view of the above, this Writ Petition is partly allowed. There shall be no order as to costs.

13.03.2023

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



W.P.(MD).No.24162 of 2016

To
WEB COPY

The Chief Educational Officer,
Tuticorin,
Tuticorin District.



WEB COPY



W.P.(MD).No.24162 of 2016

S.SRIMATHY, J.

Nsr

W.P.(MD).No.24162 of 2016

13.03.2023