



W.P.(MD).No.5403 of 2016

THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 15.03.2023

CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P.(MD).No.5403 of 2016

R.Rathinam

... Petitioner

Vs.

- 1.The State of Tamil Nadu,
Represented by its Secretary,
Department of School Education,
Fort St.George,
Chennai – 600 009.
- 2.The Director of School Education,
College Road,
Chennai – 600 006.
- 3.The Chief Educational Officer,
Kanyakumari District,
Nagercoil.
- 4.The District Educational Officer,
Nagercoil,
Kanyakumari District.
- 5.The Secretary,
S.M.R.V.Higher Secondary School,
Vadasery, Nagercoil – 629 001.

... 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, calling for the records relating to the impugned proceedings issued by the fourth respondent herein Na.Ka.No.01229/Aa1/2012 dated 13.01.2016 quash the same, and further directing the respondents herein to pass orders treating the service rendered by the petitioner as Tamil Pandit in the fifth respondent-school from 18.03.2003 to 24.01.2007 as qualifying service for sanctioning service benefits.

For Petitioner : Mr.E.V.N.Siva

For R-1 to R-4 : Mr.M.Ramesh,
Government Advocate.

For R-5 : No Appearance.

ORDER

This Writ Petition is filed challenging the order dated 13.01.2016 with a consequential direction to pass order by treating the service rendered by the petitioner as Tamil Pandit in the fifth respondent-school from 18.03.2003 to 24.01.2007 as qualifying service for sanctioning service benefits.

2. The petitioner is qualified to be appointed as Tamil Pandit and was appointed in the fifth respondent School. The fifth respondent School is a Non-Minority Aided Educational Institution. The Tamil Pandit post fell vacant



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on 31.05.2000 on account of retirement of the previous incumbent namely P. Kalyanasundaram. The fifth respondent School seems to have submitted proposal on 25.05.2003 seeking prior permission to fill up the post, but the respondents have not passed any orders. Since the fifth respondent School is in need of Tamil Pandit has proceeded further to recruit a Tamil Pandit. Hence, the fifth respondent conducted an interview for 20 candidates sponsored by the Employment Exchange and appointed the petitioner on 18.03.2003 in the said vacancy. The School Management submitted a proposal for approval on 25.05.2003. The fourth respondent vide proceedings dated 13.02.2004 recommended the proposal for approval. However, the Chief Educational Officer rejected the proposal. Hence, the School preferred W.P.(MD)No.810 of 2007 and this Court vide order dated 08.08.2011 directed the respondents to grant approval from 25.01.2007 and directed the respondents to disburse the arrears of salary from 25.01.2007. The third respondent approved the appointment from 25.01.2007 and paid the arrears of salary but failed to grant continuity of service from the date of initial appointment that is from 18.03.2003 to 24.01.2007. Hence, the petitioner repeatedly submitted several representations. Thereafter, the petitioner filed W.P.(MD)No.23639 of 2015 for Mandamus. When the Writ Petition came up for hearing, this Court vide order dated 04.01.2016 directed the learned Additional Government Pleader to get



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instructions as to why no order is passed in spite of specific direction issued by the Court in W.P.(MD)No.810 of 2007 dated 08.08.2011. The respondents were granted one more opportunity to avoid *suo motu* contempt proceedings. Thereafter, the impugned proceedings dated 13.01.2016 was passed, thereby the service rendered from 18.03.2003 to 24.01.2007 was rejected on the ground that the Tamil Pandit post is surplus in the fifth respondent School. Challenging the said impugned order, the present Writ Petition is filed.

3. The respondents have filed a counter stating that whether the petitioner is eligible for monetary benefits and service benefits was already considered in the earlier round of litigation and this Court has fixed the date as 25.01.2007 and directed the respondents to grant approval from 2007 onwards. The petitioner having accepted the same cannot now seek regularization from the date of original appointment that is on 18.03.2003. Moreover, the petitioner was granted salary for his service from 2007 onwards. The petitioner was however not granted any incentive increments because of the pending litigation. Therefore, the approval was granted from the year 2007 onwards is based on the order of this Court and there is no infirmity. Hence, the respondents prayed to dismiss this Writ Petition.



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4. Heard Mr.E.V.N.Siva, learned counsel for the petitioner and Mr.M.Ramesh, learned Government Advocate appearing for the respondents 1 to 4 and perused the records.

5. The fifth respondent School is an Aided Private Non-Minority Institution and as per Rule 15(4) C of Tamil Nadu Recognized Private Rules, the institution is bound to take prior permission before appointing any teacher in the vacancy of the School. Admittedly, the fifth respondent has submitted an application seeking prior permission but the respondents have not granted the same. Therefore, the fifth respondent proceeded to conduct the selection process thereafter appointed the petitioner and submitted the proposal for approval on 25.05.2003. These factors were already considered in the earlier round of litigation in W.P.(MD)No.810 of 2007 and this Court has categorically held that the approval shall be granted from 25.01.2007 onwards. The petitioner has accepted the same and has not filed any appeal against the said order. Now, the petitioner cannot claim to regularize his service from the date of his appointment i.e. from 18.03.2003.



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6. Therefore, this Court is of the considered opinion that the petitioner is entitled to salary, continuity of service and all eligible monetary benefits including increments from 25.01.2007 only. It is made clear that the petitioner is not entitled to Old Pension Scheme as well. Therefore, the official respondents are directed to grant approval, monetary benefits including increments and the continuity of service from 25.01.2007 onwards. The said exercise shall be completed within a period of eight (8) weeks from the date of receipt of a copy of this order.

7. With the above direction, this Writ Petition is disposed of. There shall be no order as to costs.

15.03.2023

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



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To
WEB COPY

- 1.The Secretary,
The State of Tamil Nadu,
Department of School Education,
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- 2.The Director of School Education,
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- 3.The Chief Educational Officer,
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S.SRIMATHY, J.

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