





W.P.No.26421 of 2015

St. John's Hr.Secondary School

Palayamkottai.

...

Respondents

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**Prayer** Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of certiorarified mandamus to call for the records of the first respondent Proceedings in Letter No.1389/VE/2008-3 dated 10/2/2010 and to quash the same, direct the second and third respondents to pay the petitioner's salary for the period from 1/1/2005 and further pass an order towards the continuity of service for the break up period from 1/1/2005 to 1/6/2005 in accordance with law.

For petitioner

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Mr.A.Subadra

for Mr.Terry Chellaraja

For respondents

...

Mr.S.Rajesh

Government Advocate

for R.R.1 to 4.

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## O R D E R

This writ petition is filed to quash the Proceeding dated 10/2/2010 passed by the first respondent in Letter No.1389/VE/2008-3 and direct

the second and third respondents to pay the petitioner's salary for the



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period from 1/1/2005 and order for continuity of service for the break up period from 1/1/2005 to 1/6/2005 in accordance with law.

2. The petitioner was appoined as Post Graduate Assistant in Mathematics under T.D.T.A.Management at Tirunelveli/fifth respondent School. During the year 2004, the Chief Educational Officer/third respondent has issued deployment orders stating that all the Post Graduate Teachers including the petitioner is surplus in the fifth respondent School. Aggrieved by the said deployment orders of the third respondent, fifth respondent Management has preferred an appeal before the Joint Director of School Education. The Joint Director of School Education in his Proceeding dated 3/6/2005 has allowed the appeal and directed the Chief Educational Officer/third respondent to cancel the deployment order.

3. Except the petitioner, all the other Teachers were allotted to work from January 2005 and deployment orders passed by third respondent were not cancelled. Fifth respondent Management has once again appealed to the Joint Director of School education for cancellation of deployment order. Again Director of School Education by way of



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Proceeding in Na.Ka.No.6422/W7/2003 dated 21/2/2006 allowed the appeal and consequently, the Chief Educational Officer/third respondent in its communication dated 16/3/2006, relying upon G.O.Ms.No.525 declared that there is sufficient student and Teacher strength and thereby ordered that the Post Graduate Teacher (Maths) can continue in the same School. Accordingly, from 1/6/2005, salary was being paid to the petitioner.

4. It is submitted by the learned counsel for the petitioner that initially on account of the Proceedings issued by the third respondent/Chief Educational Officer, passing the deployment order to the effect that the petitioner and others, Teachers are surplus in the fifth respondent School, the salary was not paid from 1/1.2005 to 1/6/2005 and accordingly, his service period was also not continued for the said period and that the petitioner has submitted that representations to pay the salary and regularise the service, but the same was not considered.

5. The fourth respondent has filed a detailed counter affidavit and submitted that the writ petition is filed at a belated stage, as the impugned proceedings were issued in the year 2010, and that the petitioner was



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retired from service on 31/5/2014 after attaining the age of superannuation. It is further submitted that the Government will pay the salary of the Teachers basing on the students strength working in the fifth respondent School. In the year 2004 – 2005, while fixing the strength of the student and Teacher, it is found that Post Graduate Teachers were surplus in fifth respondent School. The petitioner is also one of the surplus Post Graduate Assistant in Mathematics. He was redeployed to Sarah Tucker Girls Higher Secondary School, Palayamkottai, by the Chief Educational Officer, in his Proceeding dated 31/12/2004. In the said proceeding, it has been specifically mentioned that Correspondent of the fifth respondent School shall relieve the petitioner immediately from the School, so as to enable him to join in the new station. The Correspondent of the School has however, failed to relieve the petitioner from the School and Director of the School Education, Chennai, in his Proceeding in K.Dis.No.40405/W5/E1/2007 dated 14/12/2007 had categorically held that the Management has to pay the salary from 1/1/2005 to 31/5/2005.

6. It is submitted further by the learned Additional Government



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Pleader that the Director of School Education in RC.NO.6422/W7/2005 dated 21/2/2006 ordered the Chief Educational officer, Tirunelveli to review the matter and pass appropriate orders, keeping in view of the strength of the students. Based on the said directions, Chief Educational Officer, Chennai, in his Proceeding dated 16/3/2006, reviewed the matter and found that during the year 2005 – 2006, for the subject Mathematics, in the Higher Secondary Standards of the School, there were 35 periods per week and that after giving 28 periods to one Post Graduate Assistant in Mathematics, there remained 7 periods which could be taken by the petitioner another Post Graduate Assistant in Mathematics and Assistant Headmaster and thereby, the petitioner was allowed to continue in the School from 2005 – 2006 onwards. Again the Management has made a representation to the Director of School Education. Accordingly, the petitioner was allowed to continue in the same School from the year 2005 – 2006 onwards in his Proceeding in RC.No.6966/B2/2004 dated 16/3/2006.

7. It is further submitted by the learned Additional Government Pleader that as per the Proceeding dated 14/12/2007, the Director of School Education, Chennai has held that since the Management is solely



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responsible for not relieving the petitioner, Management has to pay the salary from 1/1/2005 to 31/5/2005 and it is also stated that break in service also caused on account of the fact that Management has failed to relieve the petitioner. It is further submitted by the learned Additional Government Pleader, representing the respondents 1 to 4 that since the Management has committed an error in not relieving the petitioner, whatever salary to be paid to the petitioner, Management has to pay and so also, the Management alone has to pass orders in continuous of service.

8. Heard Mr.Terry Chellaraja, learned counsel for the petitioner and Mr.Vadivelu Deenadayalan, learned counsel for the respondents 1 to 4.

9. The respondents 1 to 4 Government Officials on one hand and respondents 5 to 6 on the other hand have thrown the petitioner to a peculiar situation, on account of which the petitioner could not get his salary for the period from 1/1/2005 to 31/5/2005 and that his service was also not counted from 1/1/2005 to 31/2/2005, without his fault.

10. Admittedly, the petitioner was working as a Post Graduate



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(Mathematics) Teacher in the fifth and sixth respondent Schools. Since the third respondent/Chief Educational Officer has passed orders, declaring that the petitioner is a surplus Teacher in the School, the peittioner was transferred him to Sarah Tucker Girls Higher Secondary School, Palayamkottai. Once the petitioner was transferred as per the orders of the third respondent, the petitioner should have been relieved enabling him to join in the new Station. But the Management has declined to relieve the petitioner thereby, he was continued to be on the rolls in the Management School/respondent Nos.5 and 6.

11. Basically, once the petitioner has been on the rolls of the respondent Nos.5 and 6 Schools, without being relieved by the Management, he is not at fault and that as long as she is on the rolls of the School, she should be paid the salary from 1/1/2005 to 31/5/2005. It is not the case of the respondents that the petitioner has not worked during the period from 1/1/2005 to 31/5/2005.

12. The Government and the Management have been fighting in respect of non relieving of the petitioner even after his transfer by the third respondent. Admittedly, the Management of the School has not

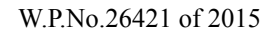


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relieved the petitioner from the School. At that time, the Government should have taken steps to see that the petitioner is relieved from the School and in case if the School Management is not adhering to the directions of the third respondent, then stringent action should have been taken against the Management. However, the Government has not taken any action against the Management. Instead, the Government has punished the petitioner. Unless the petitioner is relieved, he is not expected to go to new Station and report. Therefore, the petitioner cannot be found fault for not relieving from the place and not reporting to the new Station.

13. Further, on the appeal filed by the respondents 5 and 6/Management, the Director of School Education has directed the Chief Educational Officer to review the Student Teacher ratio. Accordingly, third respondent has reviewed and issued Proceedings that the petitioner can continue in the same School.

14. Therefore, on going through the entire records, this Court is of the opinion that on account of the issues between the petitioner and Management, the petitioner has become the scapegoat. Either the



In fact, the School where the petitioner was working is an aided School.

15. In the result, this writ petition is allowed and the order dated 10/2/2010 passed in Letter No.1389/VE/2008-3 by the first respondent is hereby quashed. The second and third respondents are directed to pay the petitioner's salary for the period from 1/1/2005 to 1/6/2005, within a period of six weeks from the date of receipt of a copy of this order. No costs.

15/3/2024

mvs.

Index: Yes/No

Neutral Citation: Yes/No

To



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1. The Secretary  
Department of School Education  
Secretariat  
Chennai 600 009.
2. The Director of School Education (HSS)  
Nungambakkam  
Chennai 600 006.
3. The Chief Educational Officer  
Education Department  
Kokkiragulam  
Tirunelveli.
4. The District Educational Officer  
Tirunelveli Town.

Dr.D.NAGARJUN,J

mvs.



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