



W.P. No.8889 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED : 20.08.2024

CORAM

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

W.P. No.8889 of 2023

1. M.Chella Durai (Deceased)

2. Corolene Chelladurai

3. Brainard Abraham

4. Binisha

...Petitioners

Vs.

1. The Chief Education Officer,
Udhagamandalam,
The Nilgiris District.

2. The District Educational Officer,
Coonoor, The Nilgiris District.

3. The Correspondent,
C.S.I. Higher Secondary School,
Ketti Post, The Nilgiris District.

...Respondents

(P2 to P4 substituted as LRs of deceased sole petitioner vide order dated 24.07.2023 made in W.M.P.No.19161 of 2023 in W.P.No.8889 of 2023 by NSKJ)



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PRAYER: Writ petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus calling for the records pertaining to the order passed by the 2nd Respondent in his proceedings No.Na.Ka.2876/Aa5/2021 dated 23.03.2022 and quash the same and directing the respondents to regularise the period of service of the petitioner 23.02.2007 to 27.01.2010 in the cadre of B.T.Assistant (History) and to confer all consequential service and monetary benefits.

For Petitioners : Mr.P.Ganesan

For Respondents : Mrs.E.Ranganayaki
Additional Government Pleader
(R1 and R2)

No Appearance (R3)

ORDER

This writ petition has been filed challenging the impugned proceedings of the 2nd Respondent dated 23.03.2022 and for a consequential direction to the Respondents to regularise the service of Mr.M.Chelladurai from 23.02.2007 to 27.01.2010 in the cadre of B.T. Assistant (History) and to confer with all consequential service and monetary benefits.

2. The case of the petitioner is that he was appointed as a Secondary Grade Assistant in the 3rd Respondent School which was a sanctioned post, in the year 1993. The post of B.T. Assistant (History) fell vacant in the



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School during July, 1999. The 3rd Respondent took steps to fill up the post and the petitioner also participated in the selection process. The promotion was granted in favour of one Evangeline and the petitioner was denied promotion.

3. The petitioner aggrieved by the same, filed W.P.No.18900 of 1999. This Court after hearing all the parties concerned allowed the writ petition by an order dated 08.01.2003 and directed the 3rd Respondent School to appoint the writ petitioner retrospectively to the post of B.T. Assistant (History) however, it was made clear that the petitioner will be entitled for salary attached to the said post only from the date on which he assumes office. For all other purposes, the petitioner was deemed to have been appointed with effect from the date on which the above said Evangeline was appointed.

4. Aggrieved by the above order, the said Evangeline filed Writ Appeal No.423 of 2003 and the said appeal was dismissed by the Division Bench by order dated 31.03.2003.



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5. The 3rd Respondent School acted upon the order passed by this Court and promoted the petitioner as B.T. Assistant (History) vide proceedings dated 10.01.2007. The approval was also sought for from the Education Department. In the meantime, the District Educational Officer through proceedings dated 22.02.2007 deployed the petitioner to some other School as if the petitioner continued in the post of Secondary Grade Assistant. This order was put to challenge by the petitioner in W.P.No.7899 of 2007 and this Court by an interim order dated 02.03.2007 stayed the redeployment. Ultimately the writ petition was allowed by an order dated 16.12.2009 after recording the fact that the impugned proceedings were withdrawn.

6. Ultimately, the approval was granted by the District Educational Officer, Coonor for the promotion of the petitioner to the post of B.T. Assistant (History) and necessary entry was made in the service register on 04.10.2010.



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7. The petitioner thereafter started the second innings by claiming for regularisation for the period from 23.02.2007 to 27.01.2010 in the cadre of B.T. Assistant (History). He filed Writ Petition No.11350 of 2016 and this writ petition came to be allowed by an order dated 28.03.2016. Aggrieved by the said order, the Education Department filed Writ Appeal No.1652 of 2016. The writ appeal was disposed of by an order dated 22.01.2018 with a direction to the education authorities to consider the claim made by the petitioner for regularisation for the period from 2007-2010.

8. Pursuant to the above order, the 2nd Respondent through proceedings dated 23.03.2022 rejected the claim made by the petitioner and refused to regularise the services of the petitioner for the period from 2007 to 2010. The same has been made a subject matter of challenge in the present writ petition.

9. The Respondents 1 and 2 have filed counter affidavit. The relevant portions in the counter affidavit are extracted hereunder:

“9. It is humbly submitted that challenging the above



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order again the petitioner has prayed for regularising his period 23.02.2007 to 27.01.2010. If the relief sought by the petitioner is granted then it would be bad precedent to thousands of similar cases, which will pave a path to teachers/ employers to demand salary and regularisation of service for the period which they haven't worked.

If the petitioner's break of service is regularised then salary have to be paid which will result in huge expenditure and the amount of pension will also be revised leading to much hardship and inconvenience to the Government which incur huge financial loss to the State Exchequer. Further it may lead to open the flood gate of similar claims which will also incur huge finance loss to the State Exchequer.

The petitioner was promoted as B.T. Assistant obeying to the judgment and he was allowed to retire on 30.03.2018 A.N. due to superannuation with all monetary benefits for the period he worked. But the petitioner claims to regularise the period which he was absent to work.”

10. Heard Mr.P.Ganesan, learned counsel for the petitioners and Mrs.E.Ranganayaki, learned Additional Government Pleader for Respondents 1 and 2.



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11. The main ground that was raised by the learned Additional Government Pleader on behalf of the 1st and 2nd Respondents is that delay was only due to the attitude of the 3rd Respondent School in not relieving the petitioner when he was redeployed in the year 2007. Thereby, the petitioner was not doing any work from the year 2007 to 2010. Therefore, the services of the petitioner cannot be regularised for this period.

12. Per contra, the learned counsel for the petitioner submitted that the petitioner is not to be blamed in this case since the petitioner was made to run from pillar to post right from the beginning in order to get the promotion as B.T. Assistant (History) to which he was fully qualified. The learned counsel submitted that the concept of “No work No pay” will not be attracted in the present case since the fault was on the Respondents in not sanctioning the promotion given to the petitioner by the 3rd Respondent School as early as on 10.01.2007. Therefore, it was contended that the Respondents cannot be permitted to take advantage of their own wrong and deny regularisation of services of the petitioner for the period from 2007 to



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2010. To substantiate this submission the learned counsel relied upon the judgment of the Apex Court in the case of ***Ramesh Kumar vs. Union of India and others*** reported in ***(2015) 6 MLJ 243(SC)***.

13. The short issue that arises for consideration is as to whether the petitioner is entitled for regularisation for the period from 23.02.2007 to 27.01.2010.

14. On going through the entire materials it is quite evident that the order passed by this Court in W.P.No.18900 of 1999 recognised the fact that the petitioner is entitled to be promoted and appointed as B.T. Assistant (History) in the 3rd Respondent School. This order was passed on 08.01.2003 and it was confirmed on 31.01.2003. This Court also made it clear that the petitioner will be entitled for salary only from the date on which he assumes office. But however it was also made abundantly clear that for all the other purposes, the petitioner will be deemed to have been appointed with effect from the date on which the rival claimant was appointed in the said post. Pursuant to this order, the 3rd Respondent School issued promotion and



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posting of the petitioner to the post of B.T. Assistant (History) on 10.01.2007. By the time the petitioner started functioning as a B.T. Assistant (History), the District Educational Officer, Coonor through proceedings dated 22.02.2007 had deployed the petitioner to some other School. According to the District Educational Officer, the position held by the petitioner as Secondary Grade Assistant itself was surplus and therefore it has to be transferred to another School through deployment. This proceedings of the District Educational Officer virtually takes away the benefit that had accrued to the petitioner by virtue of the order passed by this Court directing the promotion of the petitioner to the post of B.T. Assistant (History). This ultimately came to an end when the writ petition challenging the same was disposed of on 16.12.2009 after recording the fact that the impugned proceedings issued was withdrawn. The service register entry was made only on 04.10.2010 recognising the promotion of the petitioner to the post of B.T. Assistant (History).

15. For the period from 2007 to 2010, there was absolutely no fault on the part of the petitioner and the entire fault was on the educational



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authorities who were not allowing the petitioner to function as B.T. Assistant (History). They went to the extent of touching upon the feeder cadre namely the Secondary Grade Assistant post and declared the same as surplus and thereby this position which was earlier held by the petitioner was deployed to some other School. This was an ingenious way of depriving the petitioner of his promotion to the post of B.T. Assistant (History) which was also recognised by this Court while allowing the writ petition filed by the petitioner.

16. As rightly contended by the learned counsel for the petitioner, the concept of “No work No pay” will not have any application in this case since the entire fault was on the part of the Respondents. The Respondents were not allowing the petitioner to function as B.T. Assistant (History) and therefore they cannot be permitted to turn around and contend that the petitioner did not function as B.T. Assistant (History) for the period from 2007 to 2010 and therefore this period cannot be regularised.

17. The petitioner also died during the pendency of this writ petition



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and his LR's have been brought on record. Thus the petitioner was not able to enjoy the fruits of this promotion during his lifetime.

18. In light of the above discussion, the impugned proceedings of the 2nd Respondent in Na.Ka.2876/Aa5/2021 dated 23.03.2022 is hereby quashed. There shall be a direction to the 2nd Respondent to pass necessary orders and regularise the period of service of the petitioner from 23.02.2007 to 27.01.2010 in the cadre of B.T. Assistant (History). It goes without saying that all the consequential service and monetary benefits shall also be paid. This process shall be completed within a period of 8 weeks from the date of receipt of a copy of this order.

19. In the result, the writ petition is allowed. No costs.

20.08.2024

Index : Yes / No
Speaking (or) Non-Speaking order
Neutral Citation: Yes / No
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N.ANAND VENKATESH, J.

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To:

- 1.The Chief Education Officer,
Udhagamandalam,
The Nilgiris District.
- 2.The District Educational Officer,
Coonoor, The Nilgiris District.
- 3.The Correspondent,
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