



W.P.No.10065 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.07.2024

CORAM:

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

W.P.No.10065 of 2022

M.A.Marlin Antoinette

... Petitioner

Vs

1. The Director of School Education,
Puducherry.

2. Fathima Higher Secondary School,
represented by its Secretary,
Archdiocesan Board of Education,
Puducherry.

3. The Principal,
Fathima Higher Secondary School,
Puducherry.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Mandamus, to direct the respondents to pay the salary to the petitioner as per the order with No.15092/DSE/GIAS/U.III/2004-2005 dated 01.08.2006 with retrospective effect from 01.08.2006 and to pay the arrears of wages with effect from 01.08.2006 with interest at the rate of 12% per annum and consequently to direct the first respondent to grant approval of the appointment of the petitioner to the post of Language Teacher (Tamil) with effect from 18.05.2009, the date on which the petitioner was appointed as Language Teacher (Tamil) with all benefits.



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For Petitioner : Mr.V.Ajaykumar
For R1 : Mr.Syed Mustafa
Special Government Pleader (Pondy)
For R2 and R3 : Mr.Father Xavier Arulraj
Senior Counsel
for M/s Father Xavier Associates

ORDER

This writ petition has been filed for direction directing the respondents to pay the salary to the petitioner as per the order with No.15092/DSE/GIAS/U.III/2004-2005 dated 01.08.2006 with retrospective effect from 01.08.2006 and to pay the arrears of wages with effect from 01.08.2006 with interest at the rate of 12% per annum and consequently to direct the first respondent to grant approval of the appointment of the petitioner to the post of Language Teacher (Tamil) with effect from 18.05.2009, the date on which the petitioner was appointed as Language Teacher (Tamil) with all benefits.

2. Heard the learned counsel on either side and perused the materials available on record.

3. The petitioner was originally appointed as Primary School



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Teacher on 04.08.1999 with the salary of Rs.1200/- per month in the third respondent School. There was two permanent vacancies as Primary School Teacher and as such, the third respondent sought for approval of the petitioner's appointment. On receipt of the same, the petitioner's appointment was duly approved by the first respondent, by an order dated 01.08.2006. The third respondent School is an aided School and even then, the petitioner was not paid any salary. Therefore, the petitioner was deprived of subsequent pay revision as well as other benefits including further promotion to the post of Trained Graduate Teacher. When the first respondent had duly approved the third respondent School as an aided School and the appointment of the petitioner, the first respondent ought to have paid the salary to the petitioner. Now, the petitioner is receiving very meager salary from the third respondent Management.

4. While approving the appointment of the petitioner, another Teacher viz., Josephine Amala Julina who was appointed as Primary School Teacher was also not paid any salary by the first respondent. Therefore, the said Josephine Amala Julina approached this Court, by way of a writ petition in W.P.No.12689 of 2010. This Court, by an order



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dated 22.09.2017, the first respondent was directed to give immediate effect to the order dated 01.08.2006 viz., approval order and pay all the arrears of salary with effect from 01.08.2006 without interest. Aggrieved by the same, the first respondent preferred an appeal in W.A.No.36 of 2019, in which, the Hon'ble Division Bench of this Court disposed of the appeal and the relevant portion of the Judgment dated 08.03.2024 in W.A.No.36 of 2019 are as follows:-

“ 38. This controversy is not the subject matter in this appeal as this can be resolved based on the available records as of now for which the School can very well place all the records to establish that, as per the pupil strength the Teacher can be considered as a required Teacher and not an excess Teacher in the 3rd respondent School and if any such records produced by the School concerned, it is open to the appellant/ Director of School Education to consider those documents and accordingly take a conscious decision in accordance with law.

39. In view of the aforesaid discussion, we feel that there is no error on the part of the learned Judge who allowed the said writ petition through the impugned order, therefore we feel that the said impugned order is to be sustained for the reasons stated by the learned Judge in the order itself apart from additional reasons that we have given in this order, accordingly this writ appeal is disposed of with the following orders.

(i) That the order passed by the learned Judge which is impugned herein is sustained, accordingly this writ appeal has to be rejected hence it is rejected.



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(ii) As a sequel, there shall be a direction to the appellant to calculate the salary arrears payable to the 1st respondent/writ petitioner with effect from 01.08.2006 as a Secondary Grade Teacher at the 3rd respondent School and such arrears shall be calculated and be paid to the Teacher within a period of two months from the date of receipt of a copy of this judgment.

(iii) Insofar as the issue with regard to the excess Teacher and based on which whether the Teacher is to be subjected to transfer to some other needy School is concerned, it is open to the 3rd respondent School to produce all the relevant records to substantiate their contention that, the Teacher should be retained at the 3rd respondent School based on the pupil strength. If any such records or documents are filed immediately by the School Management, the same shall be considered objectively by the Director of School Education, Puducherry Government after giving an opportunity of being heard to the School Management and thereafter a decision can be taken on merits and in accordance with law."

5. Thus, it is clear that similarly placed person whose appointment was also approved along with the petitioner succeeded before this Court with a direction to the first respondent to calculate the salary arrears with effect from 01.08.2006, within a period of two months from the date of receipt of a copy of the order.

6. The first respondent filed a counter and it revealed that posts created vide G.O.Ms.No.86 dated 21.07.2006 were not filled up till 2012



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for want of sufficient funds. It is only in 2012, the process of filling up of the posts had commenced. The third respondent School had sent a proposal for filling up of newly created as well as upgraded posts and existing vacancies. The said proposal of the third respondent was examined and approval for release of grant-in-aid from 29.03.2012 was accorded for the appointment of 9 Trained Graduate Teachers including the petitioner, 7 Primary School Teachers including the petitioner, 2 Physical Education Teacher and 1 Multi-Tasking Staff (General) by the communications dated 15.05.2012 and 18.07.2012. It was further revealed that though the petitioner's appointment was duly approved, by an order dated 01.08.2006, the third respondent had not reported the fact of excess teaching staff during Selection Committee attended by the third respondent on 25.07.2006. It was informed only on 29.08.2006, wherein it was stated that two posts of Primary School Teachers have been sanctioned, but inadequate students' strength does not permit to accept the sanction at present.

7. If at all there was no students strength and the third respondent failed to inform the same to the first respondent, immediately after



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noticing the students strength, the first respondent would have cancelled the approval of the petitioner. So far, the approval of the petitioner is not cancelled. Therefore, the said grounds cannot be countenanced to deny the salary of the petitioner. The petitioner's appointment was duly approved in the existing sanctioned vacancy.

8. As stated supra, similarly placed Teacher whose appointment was approved in the very same order is now granted salary and the same is also confirmed by the Hon'ble Division Bench of this Court in the writ appeal.

9. The learned Senior Counsel appearing for the second and third respondents would submit that the petitioner's appointment was duly approved by the first respondent, by an order dated 01.08.2006. Even then, the first respondent failed to pay any salary to the petitioner. However, the third respondent is paying consolidated salary to the petitioner. In fact, the petitioner is the second senior most Teacher among other Teachers.



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10. In view of the above, the first respondent is directed to pay the salary of the petitioner as per her order of approval dated 01.08.2006 with retrospective effect from 01.08.2006, within a period of six weeks from the date of receipt of a copy of this order. It is made clear that the petitioner is not entitled for interest for the arrears of salary. If the first respondent failed to pay the arrears of salary, within a period of six weeks, the petitioner is entitled for interest at the rate of 6% for future period.



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11. In view of the above, this writ petition stands allowed. No costs.

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Internet: Yes
Index : Yes/No
Neutral Citation : Yes/No
Speaking/Non Speaking order
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G.K.ILANTHIRAIYAN. J.

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To

1. The Director of School Education,
Puducherry.
2. The Secretary,
Fathima Higher Secondary School,
Archdiocesan Board of Education,
Puducherry.
3. The Principal,
Fathima Higher Secondary School,
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