



WEB COPY



W.P.No.14237 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.11.2024

CORAM:

THE HONOURABLE MR. JUSTICE J.SATHYA NARAYANA PRASAD

W.P.No.14237 of 2020

Mrs.Aasha

...Petitioner

-Vs-

1.The Central Board of Secondary Education,
Rep. by its Secretary,
PS – 1 – 2 – Institutional Area I.P Extn
Patparangi, Delhi – 110 092
Having its Regional Office at Plot
1630 A, “J” Block 16th Main Road,
Chennai – 600 040.

2.Vijayanta Senior Secondary School,
Represented by its Head Mistress,
H.V.F.Estate, Avadi, Chennai – 600 054.

...Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying for the issuance of a direction in the nature of Writ of Certiorarified Mandamus, to call for the records in proceedings VSSS/GENL.29/2020, dated 13.02.2020 on the file of the second respondent and quash the same as illegal, incompetent and without jurisdiction and further direct the second respondent to pay the salary and commencing from 01.06.2019 to 27.08.2019 and pass such further orders.

For Petitioner : Mr.V.Srimathi



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For R1 : Mr.G.Nagarajan
For R2 : Mr.T.L.Thirumalaisamy

ORDER

This writ petition has been filed to quash the proceedings passed by the second respondent vide VSSS/GENL.29/2020 dated 13.02.2020 and further direct the second respondent to pay the salary commencing from 01.06.2019 to 27.08.2019.

2. Learned counsel appearing for the petitioner submitted that the petitioner is a teacher in the 2nd respondent school. She joined the service in the year 1988 as Primary teacher. Her date of birth is 11.05.1961. From the date of service, she has been discharging her service without any adverse remarks for the past 31 years. The respondents' institution is affiliated to Central Board of Secondary Education (CBSE) Schools affiliated to CBSE are governed as per CBSE affiliation Bye Laws. Chapter VII of the CBSE bye laws relates to service conditions for employees in an affiliated institution. Rule 24 enables each school affiliated with the Board to frame service rules for its employees. If the institution fails to do so, it is clear that they are governed by the bye laws framed by the 1st respondent.



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WEB COPY 3. Learned counsel contended that till date the second respondent school has not framed any service rules. Hence, the rules framed by the CBSE are applicable to the second respondent school. As per the above rule, the petitioner is entitled to continue in service till 11.05.2021.

4. Being that so, the 2nd respondent overlooking the bye laws is keen on superannuating her at the age of 58 years. The bye laws permit the continuance till 60 years. The date of retirement of the petitioner is 31.05.2019 at the age of 58 years. But as per the rules, she is entitled to continue the service till the age of 60. However, the 2nd respondent school did not permit the petitioner to work, hence she was constrained to approach this Court in W.P.No.9165 of 2019 and the same was allowed on 08.08.2019, which observed as follows:

“14. Even otherwise, if the amendment to the Bye Laws which came into effect 19.10.2018 is to be considered, as rightly relied on by the learned counsel for the petitioner in a decision of this Court reported in 2012 (4) CTC 577 (cited supra), such amendment prescribing a different condition of service can be made applicable only prospectively and the petitioner, who joined much before the amendment was brought in, cannot be allowed to suffer a new condition of



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service to her detriment. Admittedly, the petitioner was appointed as Teacher in 1988, 20 years before the amendment and therefore, such amendment can at best be applied prospectively, when staff are appointed after the said date of appointment. Further, the fact of the 4th respondent school affiliated with the 1st respondent Board would mean that the Bye Laws of the Board would automatically apply including the service conditions of the employees and the Bye Laws of the 1st respondent Board shall prevail over any local arrangement of the 4th respondent school with its staff. In any case, the absence of any particular service conditions regarding age of retirement formulated by the 4th respondent society has not been disputed except stating that the power is with the Managing Committee. Such general power vested with the Managing Committee does not empower the 4th respondent school to retire its staff contrary to the specific Bye Laws of the 1st respondent Board.

15. For the above said reason, this Court is of the considered view that the petitioner has made out a clear case for grant of relief as the claim of the petitioner is squarely covered by the decision cited by the learned counsel appearing for the petitioner and also on the basis of the Bye Laws of the 1st respondent Board. In the said circumstances, the Writ Petition is allowed and a writ of mandamus is issued directing the respondents 4 and 5 to reinstate the petitioner in service as Teacher and continue her in service till she attains the age of 60 years and pay her all benefits as admissible.



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The respondents 4 and 5 are directed to pass appropriate orders in complying with a direction within a period of two weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed.”

5. Pursuant to the above order, the petitioner was permitted to work in the school. However, she was not paid salary from 01.06.2019 to 27.08.2019 (i.e., for a period of 3 months). Therefore, the petitioner submitted a representation on 10.10.2019, directing the second respondent to pay the salary and other benefits during that period. However, the 2nd respondent on 13.03.2020, rejected the petitioner's representation applying the principle, "NO WORK NO PAY". Hence the present writ petition is filed.

6. Learned counsel contended that the amendment which the respondents were relying on is of year 2019. Whereas the petitioner initial appointment was in the year 1998, hence the amendment has prospective effect and not retrospective effect.

7. Learned counsel for the petitioner relied on the judgment passed by the Hon'ble Supreme Court of India in the case of **J.N.Srivastava Vs. Union of India and Another** reported in **(1998) 9 SCC 559**.



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WEB COPY 8. A counter affidavit was filed by the second respondent on 08.12.2020.

9. Learned counsel appearing for the second respondent school submitted that the petitioner was superannuated on 31.05.2019 on attaining the age of 58 years. Subsequently the order passed by this Court on 08.08.2019, the petitioner was reinstated on 28.08.2019. Since the petitioner was not working for the period from 01.06.2019 to 27.08.2019 for three months, the petitioner is not entitled for the salaries based on the principle of "NO WORK NO PAY".

10. Learned counsel appearing for the second respondent further submitted that the petitioner was appointed on 11.08.1988 as a Primary Teacher. The petitioner has executed an agreement with the School Management Committee of Vijayanta Senior Secondary School on 11.08.1998. As per the agreement, the petitioner would retire on attaining the age of 58 years. The date of birth of the petitioner is 11.05.1961. The petitioner is supposed to retire on superannuation from service on attaining 58 years of age (i.e. on 31.05.2019) at par with the teachers of the Tamil



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Nadu State Government. As per the appointment order, the petitioner will be required to abide by the rules / regulations that are existing and may be formulated by the Managing Committee from time to time and entitled to allowances as per Tamil Nadu State Government Rules.

11. Aggrieved by the letter dated 04.04.2019, the petitioner filed W.P.No.9165 of 2019 before the Hon'ble High Court, Madras, directing the respondents to extend her service till 11.05.2021. However, no interim order was granted to the petitioner to continue in service. The petitioner was superannuated on 31.05.2019 as per the School Norms and Rules of the Management Committee.

12. Learned counsel contended that the petitioner vide letter dated 02.01.2020 had requested to pay the salary for the period from 01.06.2019 to 27.08.2019 for which the period the petitioner had not worked. The second respondent vide letter dated 13.02.2020 had intimated the petitioner that, since the petitioner has not worked or done any teaching work during the said period, no payment can be made applying the principle of 'No work No pay'.

13. Heard both sides and perused the materials available on record.



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WEB COPY 14. In the case on hand, the petitioner was appointed on 11.08.1988 and the rule as on that date is that the petitioner shall be in service till attaining the age of 60. Subsequently, the amendment was introduced in the year 2018 by the second respondent school, by which the teachers will be entitled to serve up to the age of 58 years. Whereas this Court by order dated 08.08.2019, has directed the second respondent school to reinstate the petitioner. In the period in dispute, though the petitioner did no work, she was ready and willing to work and was prevented by the second respondent school.

15. Taking into account the judgment relied on by the learned counsel for the petitioner in the case of **J.N.Srivastava Vs. Union of India and Another** reported in (1998) 9 SCC 559, wherein the Hon'ble Supreme Court held as follows:

“It was submitted by learned Senior Counsel for the respondent – authorities that no back salary should be allowed to the appellant as the appellant did not work and therefore, on the principle of “no work, no pay”, this amount should not be given to the appellant. This submission of learned Senior Counsel does not bear scrutiny as the appellant was always ready and willing to work bu the



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respondents did not allow him to work after 31.01.1990. The respondents are directed to make available all the requisite monetary benefits to the appellant as per the present order within a period of 8 weeks on the receipt of copy of this order at their end. Office shall send the same to the respondents at the earliest.”

16. In view of the above factual matrix of the case and the ratio laid down by the Hon'ble Supreme Court of India, this Court is of the considered view that the petitioner is entitled / eligible for the salary to the period from 11.06.2019 to 27.08.2019 (3 months).

17. The second respondent is directed to settle the salary commencing from 01.06.2019 to 27.08.2019 (i.e., for a period of 3 months) due to the petitioner within a period of two months from the date of receipt of a copy of this order.

J.SATHYA NARAYANA PRASAD, J.

18. In the result, the writ petition stands disposed of with the above observations and direction. No costs.

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cda

Index : Yes/No

Speaking/Non Speaking order

To

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