



W.A(MD)No.899 of 2024

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 10.06.2024

CORAM:

**THE HONOURABLE MR.JUSTICE R.SURESH KUMAR
and
THE HONOURABLE MR.JUSTICE G.ARUL MURUGAN**

W.A(MD)No.899 of 2024

S.Ramar

... Appellant/Petitioner

vs.

1.The District Elementary Educational Officer,
Tuticorin,
Tuticorin District.

2.The Additional Assistant Elementary Educational Officer,
Sathankulam,
Tuticorin District.

3.The Secretary,
Sivagami Ammal Primary School,
Nariyankudiruppu,
Pothakalanvialai Post,
Sathankulam Taluk,
Tuticorin District – 628 702.

... Respondents/Respondents

PRAYER : Writ Appeal filed under Clause 15 of Letters Patent to set aside the order dated 22.09.2022 made in W.P(MD)No.6865 of 2017.

For Appellant

: Mr.A.Ajith Geethan

For Respondents

: Mr.D.Sadiq Raja
for R.1 & R.2



W.A(MD)No.899 of 2024

WEB COPY

JUDGMENT

[Judgment of the Court was made by R.SURESH KUMAR, J.)

This Writ Appeal has been directed against the order passed by the Writ Court, dated 22.09.2022 made in W.P(MD)No.6865 of 2017.

2.The appellant/writ petitioner was appointed in the third respondent School as a Secondary Grade Teacher in the vacancy caused by the erstwhile incumbent on 15.04.2009 with effect from 16.04.2009. Pursuant to the said appointment, he joined the service and has been continuously working. However, by order, dated 25.05.2009, the first respondent has given approval for such appointment only from 01.06.2009. The peculiar reason that has been given by the first respondent for giving such a belated approval of such an appointment from 01.06.2009 instead of 16.04.2009 is that since the month of April and May, there will be holidays for the School, therefore, even if the appointment is made and approval is given, the Teacher would not be pressed into service for taking classes, therefore, from the starting of the next Academic year ie., from 01.06.2009 the approval of appointment can be given. Accordingly, such an approval was given from 01.06.2009.



W.A(MD)No.899 of 2024

WEB COPY

3.The said belated approval given to the appellant/writ petitioner was questioned, of course, subsequently and belatedly. In the meanwhile, the request of the appellant/writ petitioner to date back the approval from 16.04.2009 also has been considered/negated, by order of the first respondent, dated 24.01.2017. These two orders ie., orders dated 25.05.2009 and 24.01.2017 had been put under challenge by the appellant/writ petitioner in the present Writ Petition ie., W.P(MD)No.6865 of 2017.

4.The said Writ Petition was heard and decided by the Writ Court, by order, dated 22.09.2022, where the learned Judge, having taken note of the factual matrix as projected by both sides, has granted the relief to the appellant/writ petitioner that if at all the appellant/writ petitioner is entitled to get the benefits from 16.04.2009 the date on which the appellant/writ petitioner has been appointed, such benefits only the service benefits, therefore, no salary benefit or monetary benefit would be granted to the appellant/writ petitioner. Aggrieved over the same, the appellant/writ petitioner has preferred the present Appeal.



W.A(MD)No.899 of 2024

WEB COPY

5.Heard Mr.A.Ajith, learned counsel appearing for the appellant and Mr.D.Sadiq Raja, learned Additional Government Pleader appearing for the respondents 1 and 2. In view of the order that is proposed to be passed in this Appeal, notice to the third respondent is dispensed with.

6.We have perused the order of appointment which is dated 15.04.2009. Before such an appointment that was made on 15.04.2009, the District Educational Officer, ie., the first respondent has given its nod to make such an appointment as a vacancy has been caused from 02.01.2009 onwards. Such prior permission had been given by the first respondent since the School is a non-minority institution, on 31.03.2009 after getting such permission only, the School having selected the appellant/writ petitioner had given the appointment on 15.04.2009 and the Teacher joined in the School on 16.04.2009, therefore, it cannot be stated that there has been any delay on the part of the School in making such an appointment.



W.A(MD)No.899 of 2024

WEB COPY

7.It is also an admitted case on the part of the respondents that the appointment had been made to the appellant/writ petitioner on 15.04.2009 and he joined service on 16.04.2009 or with effect from 15.04.2009, therefore, to that extent there has been no dispute on the factual matrix.

8.Since the appellant/writ petitioner being the Teacher has been appointed with effect from 16.04.2009 in the vacancy ie., caused in the third respondent School for which prior approval or prior permission also had been given by the first respondent on 31.03.2009, there could be no plausible reason for the first respondent to refuse the approval with effect from 16.04.2009.

9.The reason that has been stated in the order, dated 25.05.2009 and reiterated in the consequential impugned order passed in this regard, which was under challenged before the Writ Court that since the months of April and May being the Holidays for the Schools such an appointment/approval would be given only from 01.06.2009, is completely unsustainable.



W.A(MD)No.899 of 2024

WEB COPY

10. There has been no such rule available, as the appointment if at all is made in the vacancy caused in the sanctioned post for which prior permission also had been extended by the first respondent, there could be no impediment for making such an appointment immediately and since that has been made with effect from 16.04.2009, in all fairness, approval ought to have been given by the first respondent only with effect from 16.04.2009 and not from 01.06.2009.

11. Though the appellant/writ petitioner had approached this Court, subsequently, by way of a belated Writ Petition since the service benefits arising out of such an approval from the date of initial appointment is a continuing cause of action, such a belated approaching of the Court by the appellant/writ petitioner cannot be put against him, therefore, on that ground the part of the relief that has been denied by the learned Judge through the impugned order, in our considered view, cannot be sustained. Therefore, the order passed by the learned Judge, which is impugned herein is liable to be modified to the following effect in this appeal:



W.A(MD)No.899 of 2024

WEB COPY

'That there shall be a direction to the first respondent to date back the approval that has been given through the order, dated 25.05.2009 to the appellant/writ petitioner with effect from 16.04.2009 instead of 01.06.2009, consequently, he would be entitled to get the service benefits. It is made clear that the service benefits include revision of salary but the backwages with regard to the revision of salary, the appellant/writ petitioner is not entitled to, whereas, the revision of such salary with effect from 16.04.2009 shall be undertaken notionally, based on which the future salary can be calculated and accordingly, be paid.'

12. With these clarification and modification of the order, which is impugned herein, this Writ Appeal is, accordingly, ordered. However, there shall be no order as to costs.

[R.S.K.,J.] [G.A.M.,J.]
10.06.2024

NCC : Yes / No
Index : Yes / No



W.A(MD)No.899 of 2024

WEB COPY

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W.A(MD)No.899 of 2024

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ORDER MADE IN
W.A(MD)No.899 of 2024

DATED : 10.06.2024