



W.A(MD)No.468 of 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 10.04.2024

CORAM :

JUSTICE N.SESHASAYEE

and

JUSTICE P.VADAMALAI

W.A(MD)No.468 of 2018
and CMP(MD)No.2803 of 2018

P.Killy

... Appellant/Petitioner

Vs.

1. The State of Tamil Nadu,
Rep. By its Secretary,
Scool Education Department,
Chennai – 600 009.

2.The Director of School Education,
College Road,
Chennai

3.The Chief Educational Officer,
Nagercoil,
Kanyakumari District.

... Respondents/Respondents

PRAYER: Writ Appeal is filed under Clause 15 of Letter Patent as
against the common order passed by this Court dated 22.12.2017 in
W.P(MD)No.5029 of 2011 on the file of this Court.



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For Appellant : Mr.I.G.Ivyn
for M/s.Isaac Chambers

For Respondents : Mr.D.Sadiq Raja
Additional Government Pleader

J U D G M E N T

[Judgment of the Court was delivered by **N.SESHASAYEE, J.**]

This appeal is filed challenging an order of the learned single Judge in W.P(MD)No.5029 of 2011.

2. The facts are as below:

- The appellant was adequately qualified to be appointed as a Drawing Teacher. On 31.07.1988, he was temporarily appointed as a Drawing Teacher in a Higher Secondary School, Nattalam in Kanyakumari District and he joined the duty on 06.08.1988.
- The appointment was made under Rule 10(a)(1) of Tamil Nadu State Subordinate Service Rules and the order of appointment issued to the appellant was subject to two conditions. However, on 01.09.1988, within about three weeks from the date of his appointment, the appellant was terminated by an order of the Chief



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Educational Officer.

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- The appellant challenged it in W.P.No.10311 of 1988 and this later came to be transferred to the State Appellate Tribunal (SAT). In its order dated 21.03.2001, the Tribunal allowed the appellant's application on the ground that even though the appellant's appointment was only a temporary, he is still entitled to a fair dealing and relied on the authorities in ***Manager Govt. Branch Press and another Vs. D.B.Belliappa*** [AIR 1979 SC 429] and in ***V.P.Ahuja Vs. State of Punjab*** [2001 (3) SC 239] and directed the authorities to appoint the appellant to the post of Drawing Master, and if no such post was available, then, to such post to which the post of Drawing Master might have been merged.
- The order passed by SAT was challenged by the department in W.P.No.5901 of 2002. The First Bench of this Court in its order dated 04.07.2002 had observed that that the appellant was appointed on a temporary basis essentially because there was no vacancy at the relevant time, and proceeded to direct the authorities to appoint him in a regular post of Drawing Master at



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the same School where he was originally appointed since there was a vacancy at the relevant time. The First Bench had also emphasized that the said order was passed on a specific understanding that the appellant herein should not claim any back salary.

- As invariably happens, the authorities did not react or respond to the orders of this Court and it invariably requires an action for contempt of court to trigger them into action. That happened in the instant case too, when the appellant filed a Contempt Petition in Cont.P.No.1025 of 2003, and this resulted in the authorities issuing an order of appointment dated 04.10.2004.
- Thereafter, the appellant has approached the 3rd respondent, the Chief Educational Officer with his representation dated 12.03.2008 requiring the authority to regularize his appointment from the date of his original appointment on 06.08.1988. This was declined by the 3rd respondent vide his proceedings dated 17.09.2010.
- Aggrieved by the said proceedings of the 3rd respondent, the



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appellant has approached this Court in W.P(MD)No.5029 of 2011 for a Certiorarified Mandamus for setting aside the proceedings of the 3rd respondent, the Chief Educational Officer, dated 17.09.2010 and to give retrospective regularization of petitioner's service from the date of his appointment on 06.08.1988. The learned single Judge, vide his order dated, 22.12.2017, narrated the entire facts as has been narrated above, and took a cue from the order of the First bench in W.P.No.5901 of 2002, (wherein the Court has underscored the fact that the appellant would not be entitled to any back wages) and refused the order of regularization of the appellant's service from the date of original appointment.

3. This order is under challenge in this Writ Appeal. Heard both sides. The learned counsel for the appellant submitted that before the learned single Judge, the appellant had taken out a miscellaneous petition for amendment seeking regularization from the expiry of one month period. This miscellaneous petition also came to be dismissed. His contention was that inasmuch as the First Bench had directed his appointment to a regular vacancy of Drawing Master in the Government Higher Secondary School, Nattalam within one month from its order, the authorities ought



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to have appointed. The appointment was ultimately made only upon the appellant moving the Court with a petition to initiate action for contempt.

4. This Court carefully weighed the submissions of the learned counsel for the appellant and perused the records. The operative portion of the order of the First Bench in W.P.No.5901 of 2002 reads as below:

*“4. From the arguments, it is made out that there is one post of Drawing Master in the Government Higher Secondary School, Nattalam of Kanyakumari District. The first petitioner is directed to consider the case of the first respondent for being appointed as Drawing Maser in permanent vacancy in the second petitioner's school. This exercise shall be made within a period of one month from the date of receipt of a copy of this order. **It is made clear that this order is being passed on the specific understanding that the first respondent shall not claim any back salary.** We also make it clear that inasmuch as the first respondent has succeeded in the Tribunal, the appointment shall be made without reference to age qualification”.*

If this operative portion is carefully scanned, it becomes understandable that the First Bench had recognized not only the existence of a vacancy in the school concerned, but also added a rider to it and recorded that the appellant would not be entitled to any back salary. And, when ultimately



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the appointment was made on 04.10.2004 pursuant to filing of a petition by the appellant for initiating an action for contempt, the contempt petition was closed without a qualification. This Court therefore, finds that the approach of the learned single Judge cannot be faulted, and consequently, the order of the learned single Judge cannot be interfered with.

5. Accordingly, this Writ Appeal is dismissed. No costs. Consequently, connected miscellaneous petition is closed. The only relief, which this Court is interested in giving to the appellant is to relieve him from paying a cost of Rs.5,000/- imposed by the learned single Judge.

(N.S.S., J.) (P.V.M., J.)
10.04.2024

Index : Yes / No
Neutral Citation : Yes / No
CM



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To,

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