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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 10.09.2024

CORAM:

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

W.P(MD)No.20804 of 2024

and

W.M.P(MD)No.17624 of 2024

D.Vijay Rathinaraj

... Petitioner

Vs.

1.The Director of Primary Education(Aided Schools),
O/o.The Director of Primary Education,
Chennai.

2.The District Educational Officer(Primary Education),
The District Educational Officer,
Theni.

3.The Correspondent,
U.C.Primary School,
Thandapalayam, Thenkarai,
Periyakulam, Theni District.

4.The CSI Primary School,
Koompatti, Watrap Union,
Virudhunagar District.

... Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India, to issue a writ of Certiorarified Mandamus, calling for the records relating to the order passed by the 2nd respondent in his proceedings in Na.Ka.No. 961/A2/2024 dated 05.08.2024 and quash the same as illegal and consequently directing the Respondents to pay salary to the petitioner for the services



rendered by him as the Secondary Grade Teacher in 4th respondent School for the period between 19.09.2014 and 31.12.2020.

For Petitioner : M/s.H.Jasima Yasmin
for M/s.Ajmal Associates

For Respondents : Mr.N.Satheesh Kumar
Additional Government Pleader for R1 & R2
* * * * *

ORDER

The instant writ petition has been filed by a Secondary Grade Teacher appointed in an minority aided institution, challenging the order passed by the second respondent on 05.08.2024, rejecting the request of the petitioner for payment of arrears of salary for the period between 19.09.2014 and 31.12.2016(wrongly mentioned as 31.12.2020).

2.The petitioner herein was originally appointed as a Secondary Grade Teacher in the fourth respondent minority institution. Since the appointment was not approved on the ground that the petitioner has not passed TET examination, the petitioner has approached this Court by filing W.P.(MD)No. 1706 of 2016, seeking to quash the said order. By way of interim order dated 27.01.2016 in W.P.(MD)No.1469 of 2016, this Court had directed the disbursement of the salary. The said order was put to challenge in W.A.(MD)No. 711 of 2016. By way of an order dated 21.04.2016, this Court has directed the



State to disburse the salary in the course of the employment of the petitioner and not to remove her from service till the Hon'ble Supreme Court reviews its decision in *Ashwini Thanappan v. Director of Education reported in 2014 (8) SCC 272*.

3.The petitioner's request for approval was again rejected on **31.12.2014** and the same was challenged by the petitioner in W.P.(MD)No.1706 of 2016 along with other writ petitions. The said writ petition was also disposed of directing the authorities to disburse the salary and the petitioner should not be removed from service. However, the writ Court has made it clear that the order is subject to the final outcome of the case pending before the Hon'ble Supreme Court in *Ashwini Thanappan v. Director of Education reported in 2014 (8) SCC 272*. The writ Court has further pointed out that the petitioner shall not claim any equity on account of this order.

4.Pursuant to the order of this Court, the District Elementary Educational Officer, Virudhunagar has passed an order on 04.02.2017, releasing the salary grant of the writ petitioner without any further monetary benefits. On 23.11.2018, the District Educational Officer, Sivakasi has passed an order approving the appointment of the writ petitioner w.e.f.19.09.2014, the date on



which she joined as a Secondary Grade Teacher. The said order has not been recalled either by the same Officer or by the Higher Officials.

5.The contention of the learned Counsel appearing for the petitioner is that she had not received salary from 19.09.2014 till 31.12.2016 (wrongly mentioned as 31.12.2020 in the prayer). Once approval order has been granted w.e.f.19.09.2014, the authorities are duty bound to release the arrears of salary to the petitioner for the period during which work was extracted from him. However, under the impugned order, the request of the petitioner has been rejected on the ground that in the previous writ petitions order in W.A.(MD)No. 711 of 2016 and W.P.(MD)No.10750 of 2014 etc. batch case, there was a direction only to disburse salary grant and not for payment of arrears of salary.

6.The learned Additional Government Pleader appearing for the respondents had relied upon the order of this Court in the above said Writ appeal and Writ court and contended that the order dated 23.11.2018, approving the appointment of the writ petitioner w.e.f.19.09.2014 has been passed without properly appreciating the judgment of this Court and therefore, the present impugned order has to be sustained.



7.I have carefully considered the submission made on either side and perused the materials available on record.

8.As per the law prevailing on the date of passing of the order in W.A.(MD)No.711 of 2016 and W.P.(MD)No.1706 of 2016, this Court had directed the authorities to release the salary grant alone. In compliance with the said order, the salary grant has been released by way of order dated 04.02.2017. Thereafter, relying upon the Hon'ble Division Bench judgment in the case of ***State rep. by its Secretary to Government Vs. Government Film and TV Employees Welfare Association & Others.*** reported in ***2016 (7) MLJ 155***, order has been passed on 23.11.2018 granting approval to the appointment of the writ petitioner w.e.f.19.09.2014 on the ground that TET is not mandatory for being appointed as a Teacher in an minority institution. As long as the said order of the Hon'ble Division Bench is not reversed by the Hon'ble Supreme Court or the Hon'ble Supreme Court takes a different view in ***Ashwini Thanappan v. Director of Education, reported in 2014 (8) SCC 272***, the authorities are duty bound to disburse the salary from the date of granting approval to the appointment of the writ petitioner.



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9. In view of the above said deliberations, the order impugned in the writ petition is hereby set aside and the respondents are directed to disburse the salary of the writ petitioner w.e.f. 19.09.2014 till 31.12.2016. Accordingly, this writ petition stands allowed to the extend as stated above. However, it is made clear that the order of this Court is always subject to the result of the orders of the Hon'ble Supreme Court in *Ashwini Thanappan v. Director of Education*, reported in 2014 (8) SCC 272.

10. With the above said observations, this writ petition stands allowed to the extend as stated above. No costs. Consequently, connected miscellaneous petition is also closed.

10.09.2024

NCC : Yes/No
Index : Yes / No
Internet : Yes / No
RJR



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R.VIJAYAKUMAR, J.

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