



W.A(MD)No.986 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 20.11.2024

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**THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN
and
THE HONOURABLE MS.JUSTICE R.POORNIMA**

W.A(MD)No.986 of 2019

T.Padma Thangam

... Appellant /
Writ Petitioner

Vs.

1.The Directorate of School Education,
College Road,
Chennai – 600 006.

2.The District Educational Officer,
Thuckalay,
Kanyakumari District.

3.The Corporate Manager,
Corporate Management,
Kanyakumari Diocese,
Kanyakumari District.

... Respondents /
Respondents

Prayer: Writ Appeal filed under Clause 15 of Letters Patent, to set aside the order dated 13.06.2017 in W.P(MD)No.2775 of 2009 on the file of this Court.

For Petitioner : Mr.S.Xavier Rajini



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For Respondents : Mr.M.Siddharthan
Additional Government Pleader
for R.1 & R.2

ORDER

Heard both sides.

2.The appellant Mrs.T.Padma Thangam was appointed as Physical Education Teacher in L.M.S Girls Higher Secondary School, Neyyoor. The appointment order dated 11.10.2001 reads that she has been appointed in the vacancy created on account of the incumbent, namely, Tmt.Beatrice Sathiadhas. She worked in the said School till 08.01.2003. According to her, her appointment was withdrawn and in her place Tmt.S.Glory Bai was appointed. Subsequently, S.Glory Bai's appointment was also duly approved. The petitioner sought payment of salary arrears for the period when she worked as a Physical Education Teacher at Neyyoor. Since her request was not considered, she filed W.P(MD)No.9003 of 2007. The said writ petition was disposed of on 08.01.2008 with a direction to the District Educational Officer, Thuckalay to consider her request. Pursuant to the said direction, order dated 10.02.2009 was passed rejecting the petitioner's request. Challenging the same, the



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petitioner filed W.P(MD)No.2775 of 2009. The said Writ Petition was dismissed vide order dated 13.06.2017 in the following terms:

“4.The learned Additional Government Pleader appearing for the respondents 1 and 2 has contended to the effect that during educational years 2001-2002 and 2002-2003, excessive post for Physical Education Teacher is available and question of new appointment does not arise. But the third respondent without availing the excess post, has erroneously appointed the petitioner and therefore, the second respondent has rightly passed the impugned order.

5.In fact, this Court has perused the impugned order passed by the second respondent, wherein it has been clearly observed that during the relevant educational period, excess post of Physical Education Teacher is available in CSI. Only on that ground, appointment of the petitioner has not been approved.

6.Considering the fact that the third respondent has appointed the petitioner in contravention of availability of excess post of Physical Education Teacher, this Court is of the view that the second respondent has rightly refused to approve the appointment of the petitioner. Therefore, viewing from any angle, the impugned order of the second respondent does not suffer from any infirmity and therefore, the present Writ Petition deserves to be dismissed.”

Challenging the same, this intra-Court appeal has been filed.



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3.The learned counsel appearing for the appellant submitted that the order passed by the Department is bereft of particulars. It states that on account of availability of surplus teachers in other Schools run by the corporate Management, the vacancy in question at Neyyoor could not have been filled up. But then, the details regarding surplus teachers has not been spelt out in the orders passed by the District Educational Officer, Thuckalay.

4.This submission of the learned counsel for the appellant is well founded. But then, the appellant cannot be granted any relief. This is for a simple reason. Copy of the proceedings dated 25.11.2006 issued by the District Educational Officer, Thuckalay approving the appointment of S.Glory Bai has been enclosed in the typed set of papers. It is seen therefrom that Beatrice Sathiadhas was promoted on 11.10.2001 and in the resulting vacancy S.Glory Bai was appointed with effect from 19.01.2004 and that the same stood approved. In other words, S.Glory Bai appointment was only as against the vacancy created by the promotion of Beatrice Sathiadhas. The Government can be directed to pay the petitioner's salary for the period from 11.10.2001 to 03.01.2003 only if her appointment is approved by the second respondent. When the second respondent had already approved the appointment of S.Glory Bai as against the vacancy created by the promotion of Beatrice Sathiadhas, the



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second respondent cannot be once again mandated to approve the appointment of the writ petitioner / appellant.

5.It is true that after appointing the petitioner, the Corporate Manager submitted the proposal to the Department for approving her appointment. During the pendency of this process, S.Glory Bai was appointed. Thus, the Corporate Management themselves had given a go-bye to the petitioner's appointment. In other words, her case was dropped like a hot potato. Her proposal has become infructuous. The Department cannot be directed to pay the salary arrears to the petitioner alone. Payment of salary has to be preceded by approval of the appointment. In this case, approval is not possible for the reason mentioned supra.

6.Even if we set aside the order impugned in this writ petition on the ground that it is non speaking, the only course of action we can adopt is to remand the matter to the file of the Department for fresh consideration. In other words, the Department should be called upon to indicate the number of surplus teachers who were then available under the Corporate Management. This would be a futile exercise. Since S.Glory Bai's appointment was approved only as against the vacancy created by the promotion of Beatrice Sathiadhas, in



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respect of the very same vacancy, the petitioner's appointment cannot be approved. The orders impugned by the appellant are sustained.

7.This Writ Appeal stands dismissed. There shall be no order as to costs.

[G.R.S., J.] [R.P., J.]
20.11.2024

NCC : Yes / No
Internet : Yes / No
Index : Yes / No
MGA

To

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