

(2015) 02 MAD CK 0139

In the Madras High Court

Case No : Writ Petition MD No. 14262 of 2012

D. Franklin Joseph Swamidoss

APPELLANT

Vs

The Director of Elementary Education and Others

RESPONDENT

Date of Decision : 11-02-2015

Acts Referred:

Citation : (2015) 02 MAD CK 0139

Hon'ble Judges : V.M. Velumani, J.

Bench : Single Bench

Advocate : G. Prabhu Rajadurai, for the Appellant; T.S. Mohamed Mohideen, Additional Government Pleader, Advocates for the Respondent

Final Decision : Dismissed

Judgement

V.M. Velumani, J.—This Writ Petition has been filed by the petitioner to direct the respondents to approve the petitioner's appointment in the post of B.T. Grade Middle School Head Master in the fourth respondent School from 01.06.2000 and to pay the petitioner's salary for the period from 01.06.2000 to 21.12.2005 in consideration of the petitioner's representation, dated 10.03.2011 to the first respondent through the third respondent.

2. The case of the petitioner is that he was appointed as B.T. Grade Middle School Headmaster with effect from 01.06.2000 in the fourth respondent School, which is a minority School. In view of G.O.(Ms) No. 1297, Education Department, dated 21.07.1979, the Headmaster post was upgraded in the Middle School from Secondary Grade to B.T. Grade. The fourth respondent forwarded the proposal to the third respondent on 05.07.2000 for approval of the petitioner's appointment. According to the petitioner, the fourth respondent School is a minority aided institution. In the fourth respondent School, the post of Secondary Grade Middle School Headmaster fell vacant from 01.06.2000. Therefore, the fourth respondent School appointed the petitioner in the vacancy on 01.06.2000 as B.T. Grade Middle School Headmaster as per G.O.(Ms) No. 1297, Education Department, dated 21.07.1979. According to the petitioner, such designation was

given in view of the said Government Order, upgrading the post of Headmaster in the Middle School from Secondary Grade to B.T. Grade. The fourth respondent forwarded the proposal of the petitioner's appointment to the third respondent on 05.07.2000. The third respondent, by order dated 31.12.2001, returned the said proposal by stating that orders had not been passed upgrading the post of Secondary Grade Headmaster to B.T. Grade Headmaster. In the meanwhile, the fourth respondent sent a representation to the first respondent to pass necessary orders upgrading the post of Secondary Grade Headmaster to B.T. Grade Headmaster. The first respondent did not pass orders on the representation, dated 10.09.2001. Therefore, the fourth respondent filed W.P.(MD) No. 14267 of 2002 before this Court. This Court, by order dated 25.04.2002, directed the first respondent to consider the said representation and pass orders.

3. The first respondent by his proceedings, dated 22.12.2005, upgraded the post of Headmaster into that of B.T. Grade Middle School Headmaster. However, due to some disputes in the Management of the fourth respondent School, the proposal for approval for the appointment of the petitioner was not resubmitted. The third respondent recorded the appointment of the Correspondent of the fourth respondent only in the year 2008. The Correspondent, by his representation, dated 20.01.2008, forwarded the petitioner's appointment for approval. This Court, by order dated 11.02.2008, in W.P.(MD) No. 1125 of 2008, directed the respondents 1 and 2 therein to pass appropriate orders on the proposal submitted by the third respondent therein on 20.01.2008, appointing the petitioner as Middle School Headmaster. The second respondent by order dated 30.04.2008, approved the appointment of the petitioner with effect from 22.12.2005.

4. The petitioner worked from 01.06.2000 as B.T. Grade Middle School Headmaster. Hence, he is entitled to salary from that date. Due to some dispute in the fourth respondent Management, the fourth respondent did not take any interest in taking up the issue.

5. According to the petitioner, he worked as B.T. Grade Middle School Headmaster, as per G.O.(Ms)No. 1297, Education Department, dated 21.07.1979. The upgradation to the post of Headmaster in the Middle School from Secondary Grade to B.T. Grade, is automatic. In any event, he is entitled to salary to the post of B.T. Assistant.

6. The petitioner gave a representation, dated 10.03.2011 and has filed the present writ petition to approve his appointment as B.T. Grade Middle School Headmaster in the fourth respondent School with effect from 01.06.2000 and pay his salary from 01.06.2000 to 21.12.2005, considering his representation, dated 10.03.2011.

7. The second respondent filed counter affidavit denying the various allegations made in the affidavit. As per G.O.(Ms) No. 1297, Education Department, dated 21.07.1979, upgradation of Headmaster in the Middle School from Secondary

Grade to B.T. Grade, is not automatic. The post of Middle School Secondary Grade Headmaster in the fourth respondent School was upgraded as B.T. Grade Middle School Headmaster only on 22.12.2005. Hence, the petitioner is entitled to salary for the post B.T. Grade Headmaster only from that date. The respondents 1 to 3 have no power to upgrade the post with retrospective effect. There is no proof that the petitioner had five years of teaching experience and that he is eligible to be appointed as B.T. Assistant. The petitioner can claim salary for the period from 01.06.2000 to 21.12.2005 only from the funds of the fourth respondent. The petitioner failed to exercise his legal right to claim salary from the fourth respondent, who employed him and extracted work from him for the period from 01.06.2000 to 21.12.2005 without having upgraded B.T. Grade Headmaster post. The post of Secondary Grade Middle School Headmaster would not be converted as vacancy of B.T. Grade Headmaster, as it requires upgradation order by the competent authority. For the illegality and irregularity committed by the fourth respondent, the petitioner has no right to claim salary from the Government and he has liberty to claim salary from the fourth respondent for his services from 01.06.2000 to 21.12.2005. The petitioner is eligible for pension under Contributory Pension Scheme and he is not eligible for old pension scheme, since he was not employed in the upgraded B.T. Grade Headmaster post till 21.12.2005. The petitioner has not challenged the order passed by the first respondent in proceedings Ni.Mu.No. 23703/G3/02. G.O.(Ms) No. 1297, Education Department, dated 21.07.1979, prescribes only the method of appointment and the qualification for appointment and it does not speak about automatic upgradation. Only by an order of the competent authority, a post shall be upgraded. The said upgradation of post only prospective in nature. Retrospective upgradation is not authorised by the first respondent. Hence, the petitioner has no right to claim salary from the respondents 1 to 3, for the period in which he worked without having upgraded post of B.T. Grade Headmaster and therefore, prayed for dismissal of the writ petition.

8. Heard the learned counsel appearing for the parties.

9. The request of the fourth respondent to approve the appointment of the petitioner as B.T. Grade Middle School Headmaster was returned by the third respondent, by his proceedings, dated 28.03.2001. The third respondent has also stated that separate order for upgradation of Middle School Secondary Grade Headmaster to B.T. Grade Headmaster was not obtained. The fourth respondent applied on 10.09.2001 for upgradation and submitted the required form duly filled up. The first respondent, by proceedings, dated 22.12.2005, upgraded the post of Headmaster as B.T. Grade Middle School Headmaster. Consequent to the said order, the fourth respondent by order, dated 29.12.2005, appointed the petitioner as B.T. Grade Headmaster with effect from 22.12.2005. Subsequently, the fourth respondent by his letter dated 20.01.2008, requested the second respondent to approve the appointment of the petitioner as B.T. Grade Headmaster with effect from 01.06.2000. The second respondent did not pass orders. Therefore, the petitioner has filed W.P.(MD) No. 1125 of 2008. This Court,

by order dated 11.02.2008, directed the respondents 1 and 2 therein to pass appropriate orders on the proposal submitted by the third respondent therein within six weeks from the date of receipt of a copy of that order. The second respondent by order, dated 30.04.2008, approved the appointment of the petitioner with effect from 22.12.2005. Neither the fourth respondent nor the petitioner challenged order of the first respondent, dated 22.12.2005, upgrading the post of Secondary Grade Middle School Headmaster to B.T. Grade Middle School Headmaster only with effect from 22.12.2005. The said order has become final. Further, the order dated 29.12.2005 of the fourth respondent shows that the petitioner obtained five years experience only on 31.05.2005.

10. Therefore, the writ petition is dismissed. No costs. It is open to the petitioner to give a representation to the fourth respondent Management for salary for the period from 01.06.2000 to 21.12.2005. On receipt of such representation, the fourth respondent may consider the same on merits and in accordance with law.