
(1999) 11 MAD CK 0062

In the Madras High Court

Case No : Writ Petition No. 10231 of 1991

D.P. Pushparani, Secondary Grade Teacher, St. Therasa's R.C.
Middle School

APPELLANT

Vs

The Government of Tamil Nadu

RESPONDENT

Date of Decision : 17-11-1999

Acts Referred:

Citation : (1999) 11 MAD CK 0062

Hon'ble Judges : E. Padmanabhan, J

Bench : Single Bench

Advocate : Joseph Thatheus Jerome, for the Appellant; A. Kandasamy, Spl.
Govt. Pleader, for the Respondent

Final Decision : Dismissed

Judgement

E. Padmanabhan, J.—The Writ Petitioner prays for the issue of a Writ of certiorarified Mandamus to call for the records made in the order of the first Respondent in G.O. Ms. No. 559, Education (D2) Department, dated 11.7.1995 and consequential proceedings of the second and third Respondents made in Mu. Mu. No. 48356 EG 3/98 dated 8.3.1999 and Mu. Mu.2748/B4/98 dated 22.4.1999 respectively and quash the same and direct the Respondents herein to approve the appointment and to pay all the arrears of salary and consequential benefits in so far as the Petitioner's appointment at least from 10.6.1998 as Secondary Grade Teacher in St. Therasa's R.C. Middle School, Thevaram, Theni District is concerned.

2. With the consent of counsel for either side, the Writ Petition itself was taken up for final disposal.

3. Counsel on either side submitted then-respective submissions.

4. Concedingly as regards the first portion of the prayer, viz., the challenge to G.O. Ms. No. 559, Education (D2) Department dated 11.7.1995, the Writ Petition deserves to be dismissed, following the order of S.S. Subramani, J. passed in

W.P. Nos. 6388 etc. batch dated 19th May 1998. In the said batch of Writ Petitions, S.S. Subramani, J had upheld the validity of G.O. Ms. No. 559 Education, Science and Technology Department dated 11.7.1995 and as such the first portion of the prayer in the Writ Petition has to be dismissed. In fact, in other writ Petitions, I have taken identical views, following the judgment of S.S. Subramani, J. as well as P. Shanmugam, J. As the validity of G.O. Ms. No. 559, Education, Science and Technology Department, dated 11.7.1995 had been upheld the relief prayed for in this Writ Petition with respect to the challenge made to the very same Government Order has to be repelled.

5. As regards the consequential order which is being challenged viz., Mu. Mu. No. 48356 EG 3/98 dated 8.3.99 and Mu. Mu. No. 2748/B4/98 dated 23.4.1999 passed by the Respondents 2 and 3, Mr. Joseph Thatheus Jerome contended that de hors G.O. Ms. No. 559 Education (D2) Department dated 11.7.1995, the Writ Petitioner has got the right to continue in the post of secondary grade teacher as she had been appointed much prior to the commencement of the said Government Order dated 11.7.1995. While elaborating this contention, learned Counsel for the Petitioner contended that the Petitioner came to be appointed in the fourth Respondent school as early as 12.8.1992 in the secondary grade post and the said appointment has been approved by the District Secondary Education Officer, which appointment had been approved and her salary has been paid till 31.5.1984. Counsel for the Petitioner also pointed out that the Petitioner had been appointed as secondary grade teacher in the place of one Seenithai, who retired on reaching the age of superannuation on 31.5.1992 and therefore, the Government Order in question will not disable the Petitioner being continued in the third Respondent school. The earlier Writ Petition filed by the school came to be dismissed.

6. Mr. Kandasamy, Special Government Pleader appearing for the Respondents 1 to 3 contended that G.O. Ms. No. 559 Education, Science and Technology Department dated 11.7.1995 had already been upheld and therefore, the Petitioner cannot be allowed to continue from the date of the said notification.

It was further pointed out by the Special Government Pleader that the appointment of the Petitioner in the fourth Respondent school had been approved by the authorities as the said appointment is in relation to G.O. Ms. No. 559, Education dated 11.7.1995 as the Petitioner possesses higher qualification, viz., M.A. and B. Ed, and not a diploma in teacher's education.

7. Originally, it was also pointed out that to controvert the said contention raised by the learned Counsel for the Petitioner, certain ear her developmeents had been placed before the Court. According to the Special Government Pleader, Tiruvalluvar Middle School, Gudalur, a recognised private school was closed, as there were serious disputes. One Seenithai was holding a post in the said school and consequent to the closure of the said Thiruvalluvar Middle School, the said Seenithai was transferred along with the post allotted to the fourth Respondent school ,Chinnamanur in terms of the statutory provisions of the Tamil Nadu

Private School (Regulations) Act, 1973. The post transferred is a redeployment post and the said Seenithai retired on 31.5.1992. Thereafter the management of the fourth Respondent school, appointed the Petitioner as a Secondary Grade Teacher from 12.8.1992 which fell vacant on 1.6.1992.

8. The said appointment of the Writ Petitioner on 12.8.1992 was approved by the Assistant Educational Officer, Chinnamanur by proceedings dated 31.1.1994 subject to the condition that as soon as Thiruvalluvar Middle School, Gudalur rectifies all the defects and when the authorities retransferred the post from the fourth Respondent school to the said Tiruvalluvar Middle School, Gudalur appointment will come to an end. In other words, so long as the post is not transferred to the Thiruvalluvar Middle School, Gudalur, the Petitioner is able to hold the post.

9. It is admitted that the recognition to the Tiruvalluvar Middle School was restored by virtue of Court proceedings and one post of secondary grade teacher was re-transferred back to the said school. But the Petitioner had not been retransferred to the said Thiruvalluvar Middle School as per the condition accorded in the appointment/approval order. Consequently, the payment of salary to the Petitioner was stopped from 1.6.1994.

10. The fourth Respondent School actually filed W.P. No. 18902 of 1994 on the file of this Court challenging the said action of retention of the said post held by Seenithai in the fourth Respondent school. The Writ Petition was dismissed. Then the fourth Respondent school preferred an appeal. The Division Bench also by judgment dated 31.3.1996 dismissed the Writ Appeal holding that the fourth Respondent school cannot retain the post, after the retirement of the incumbent and it is open to the fourth Respondent school to seek for permission of appointment of additional post if the students strength warrants.

11. Thereafter, the Petitioner had been appointed in the fourth Respondent school. The Petitioner under the guise of transfer was appointed at St. Theresa's R.C. Middle School, Thevaram, Theni District in another retirement vacancy on 10.6.1998.

12. Learned Counsel for the Petitioner wants to stress the earliest appointment of the Petitioner as early as 10.6.1992. For that matter at least the date of appointment of 10.6.1992 as continuous appointment and, therefore, G.O, Ms. No. 559, Education dated 11.7.1995 will have no application. This contention raised by the learned Counsel for the Petitioner cannot be sustained nor on facts it could be countenanced. The Petitioner's appointment in the fourth Respondent school is an independent appointment and in a retirement vacancy and the said appointment being after 11.7.1995, the Petitioner has no right to continue as a Secondary Grade teacher with higher qualification and it is impermissible in terms of G.O. Ms. No. 559, Education Department, dated 11.7.1995.

13. It is rightly contended that the Petitioner cannot club the earlier appointment and claim that she has been appointed prior to the commencement of G.O. Ms.

No. 559, Education Department dated 11.7.1995. The Petitioner is a new appointee after the commencement of G.O. Ms. No. 559 Education Department dated 11.7.1995 and therefore, the attempt on the part of the counsel for the Petitioner to get over G.O. Ms. No. 559, Education Department dated 11.7.1995 is nothing but a frustrated attempt and the same cannot be sustained.

14. It would be useful to refer to the very condition subject to which appointment of the Petitioner had been approved. The relevant portion of the proceedings reads thus.

15. In the said communication sent to the Petitioner, the above is specifically set out and having any benefit of approval of her appointment subject to stipulation she could not press her present appointment should he tagged on to the earlier appointment made on 12.8.1992. Such a contention cannot be countenanced.

16. The fourth Respondent school on the earlier occasion filed a Writ Petition which was dismissed and the fourth Respondent school took up the matter on appeal. The Division Bench of this Court, while confirming the order of the learned single Judge, rejected the claims of the fourth Respondent school. It is held thus:

If the Petitioner is in need of an addition of post it is open to the Writ Petitioner to make a request for grant of an additional post. However, as far as the post occupied by Seenithai, to which Pushparani came to be appointed, on the retirement of Seenithai, is concerned, cannot be retained by the Petitioner. Hence, the learned single Judge is justified in rejecting the Writ Petition. We see no reason to interfere with the same.

As such the fourth Respondent school is bound by said judgment of the Division Bench, it is true that the Writ Petitioner herein was not a party, but the effect of the said Division Bench judgment would bind the Petitioner herein. The effect of the Division Bench is that the Petitioner will not be entitled to any relief in this Writ Petition as well.

17. In any view of the matter, the Writ Petitioner cannot tag on the present appointment after the Government Order with the earlier appointment as the said appointment was subject to condition. When once, the post has been retransferred to Thiruvalluvar Middle School, it cannot be assumed that the Petitioner is entitled to continue in the post and subsequent appointment of the Petitioner in a retirement vacancy in the fourth Respondent school after the impugned G.O. will not enable her to extricate herself. In the circumstances, this Court holds that there are no merits in the Writ Petition and the same is dismissed. Consequently connected W.M.P. Nos. 14492 and 18861 of 1999 are also closed. The parties shall bear their respective costs.