

(2015) 01 MAD CK 0160

In the Madras High Court

Case No : Writ Petition (MD) No. 57 of 2013

E. Jeya Sekar Elisha

APPELLANT

Vs

The Director of Elementary Education

RESPONDENT

Date of Decision : 19-01-2015

Acts Referred:

Citation : (2015) 01 MAD CK 0160

Hon'ble Judges : K. Ravichandra Babu, J.

Bench : Single Bench

Advocate : V. Panneer Selvam for C.S. Associates, for the Appellant; V. Muruganandam, Additional Government Pleader, Advocates for the Respondent

Final Decision : Disposed off

Judgement

K. Ravichandra Babu, J.—The petitioner is aggrieved against the order of the second respondent dated 27.07.2012 and consequently sought for a direction to the respondents to approve his appointment as Headmaster of Elementary School from 03.10.2001 to 31.03.2003 in the scale of pay of Secondary Grade Teacher and to pay salary for the period from 01.04.2003 to 31.08.2004 as Secondary Grade Teacher.

2. The case of the petitioner is as follows:

He passed the Diploma in Teacher Education in 2001 and was selected and appointed as a Headmaster of Elementary School by the fourth respondent-Management, on 03.10.2001. Though proposal for approval of such appointment was sent by the Management, the same was not approved only on the reason that the petitioner was not having five years teaching experience. Thereafter, the petitioner was redesignated as Secondary Grade Teacher on 31.03.2003 and proposals were submitted seeking for approval for such appointment. Though the second respondent approved the appointment of the petitioner as Secondary Grade Teacher, however, allowed the monetary benefit only with effect from 01.09.2004. Hence the present writ petition is filed seeking for the above stated

relief. 3. The learned counsel for the petitioner submitted that even though the petitioner was appointed as Headmaster on 03.10.2001 without having 5 years teaching experience, such appointment having been made subsequent to G.O. Ms.No.97, School Education Department, dated 05.07.2001, through which requirement of such experience qualification has been relaxed, the petitioner is entitled to get his appointment approved as Headmaster, however with Secondary Grade scale of pay till he acquires 5 years teaching experience.

4. Per contra, the learned Additional Government Pleader appearing for respondents 1 to 3, submitted that at the time of appointing the petitioner as a Headmaster of Elementary School, he was not having 5 years teaching experience, and therefore, such appointment was not approved.

5. Heard the learned counsel on either side and perused the materials placed before this Court.

6. In this case, it is seen that the petitioner was originally appointed as a Headmaster of Elementary School on 03.10.2001 and admittedly, on the said date, he was not having 5 years teaching experience. But, a perusal of G.O. Ms.No.97 dated 05.07.2001 would show that such condition imposing 5 years teaching experience for the post of Headmaster, has been relaxed. Therefore, the petitioner is entitled to get his post of Headmaster of Elementary School approved, however, with Secondary Grade scale of pay, till he acquires 5 years teaching experience. But in this case, the petitioner did not continue in the post of Headmaster and on the other hand, subsequently he was redesignated and appointed as Secondary Grade Teacher with effect from 01.04.2003. Though such appointment was approved by the Department, the monetary benefits were paid only with effect from 01.09.2004 and not from the date of appointment, viz. 01.04.2003. There is no reason stated either in the order of approval or in the counter affidavit as to why his salary was paid only with effect from 01.09.2004.

7. At this juncture, it is useful to refer to the decision of a Division Bench of this Court in W.A.(MD)No.776 of 2010 dated 31.01.2011, wherein the Hon"ble Division Bench has observed at paragraphs-3 to 6 as follows:

"3. The learned counsel for the appellant submitted that several persons were appointed in similar manner as Middle School Headmasters/Headmistresses and Government issued G.O. Ms.No.97, School Education Department, dated 05.07.2001, and granted relaxation to all such persons. He also submitted that taking note of the said Government Order, a learned Single Judge of this Court in W.P.2725 of 1998, decided on 07.11.2002, set aside the re-fixation and recovery orders insofar as one R.Rama Devi, a similarly placed person, was concerned. The same is the view taken by one of us (NPVJ) in W.P.(MD)No.1799 of 2006, dated 09.11.2006. In W.P.(MD)Nos.3983 and 3134 of 2006, dated 04.10.2007 and W.P.(MD)No.9497 of 2005, dated 28.09.2007, the same was the view taken by this Court.

4. The learned counsel for the appellant further submitted that the said

Government Order as well as the orders passed of this Court were not placed before the learned Single Judge and therefore the learned Single Judge has dismissed the writ petition. Learned counsel for the appellant further submitted that the Government now issued G.O.(3D) No. 58, School Education (P1) Department, dated 22.06.2009, implementing the order of this Court, dated 28.09.2007, passed in W.P. (MD)No.9497 of 2005.

5. Learned counsel for the appellant also submitted that under Section 20(3) of the Tamil Nadu Recognised Private Schools (Regulation) Act, 1973, as amended by Act 11/1999, the Government is vested with power to grant relaxation, either prospectively or retrospectively, to any person or class of persons from possessing the qualifications prescribed under Section 19 of the Act relating to age and experience for appointment as teacher or other employee in any private schools and that being so, G.O. Ms.No.97, dated 05.07.2001, passed after the amendment Act 11/1999, the Government is very much have power to issue such order and therefore the order refixing the salary of the appellant cannot be sustained and therefore the order passed by the learned Single Judge has to be set aside and the writ petition filed by the appellant has to be allowed.

6. The learned Government Advocate appearing for respondents 1 and 2 fairly submitted that in view of issuance of G.O. Ms.No.97, School Education Department, dated 05.07.2001, no separate relaxation is required to be obtained by the appellant and the earlier orders of this Court were also allowed to become final and implemented."

8. Considering the above said facts and circumstances of the case and the above decision of the Hon"ble Division Bench, I am of the view that the petitioner is entitled to get salary as Secondary Grade Teacher with effect from 01.04.2003 and also to get his appointment approved as Headmaster from 03.10.2001 to 31.03.2003, however with the salary of Secondary Grade Teacher only for that period. Accordingly the following order is passed:

(1) The respondents are directed to approve the appointment of the petitioner as Elementary School Headmaster with effect from 03.10.2001 to 31.03.2003 and pay the salary in the scale of pay of Secondary Grade Teacher for that period.

(2) The respondents are directed to pay the salary to the petitioner as Secondary Grade Teacher from 01.04.2003 to 31.08.2004.

(3) The respondents shall implement the above said order within a period of twelve weeks from the date of receipt of a copy of this order.

9. The writ petition is disposed of accordingly. No costs.