

(2008) 12 MAD CK 0216

In the Madras High Court

Case No : Writ Petition No. 3489 of 2003

Jerald Ravi

APPELLANT

Vs

The Additional Assistant Elementary Educational Officer,
CKRC Middle School and The District Educational Officer

RESPONDENT

Date of Decision : 12-12-2008

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2008) 12 MAD CK 0216

Hon'ble Judges : M. Jaichandren, J

Bench : Single Bench

Advocate : V. Raghavachari, for the Appellant; D. Geetha Additional Government Pleader for (R1 and R3) and S.M. Edward Stanley, for (R2), for the Respondent

Judgement

M. Jaichandren, J.—Heard the learned Counsel appearing for the petitioner and the learned Counsels appearing for the respondents.

2. The petitioner has stated that he had joined the second respondent institution, on 1.8.95, after having completed his Bachelor of Arts Degree in the year, 1992. He has also completed his post graduate course. He was taking classes for the students of standards VI and VIII. The second respondent school had sought for the approval of the petitioner's appointment from the first and third respondents. On 13.3.96, the first respondent had passed an order, refusing to grant the approval, on the ground that only lady teachers should be appointed to handle the classes for the primary and the middle schools.

3. It had been further stated that a post graduate candidate is not qualified to be appointed to the middle school. Further, the appointment of teachers for primary and middle schools should be routed only through Secondary Grade Teacher posts. Hence, the petitioner had challenged the said order, before this Court, by way of a writ petition, in W.P. No. 5007 of 1996. It was held that the impugned order cannot be set aside, in view of the order passed by the Division Bench of this Court, upholding G.O.Ms. No. 559, dated 11.7.95. However, this Court, by its

order, dated 9.6.2001, directed that individual cases ought to be looked into and necessary orders should be passed on merits. Even after the disposal of the said writ petition the petitioner had continued to be in employment of the second respondent school. While so, a notice had been issued, on 27.12.2002, relying on G.O.Ms. No. 155, dated 3.10.2002, wherein directions had been issued for regularising the appointment of graduate teachers, appointed between 11.7.95 and 19.5.98. A notice had been issued to the second respondent school to offer its explanation regarding the appointment of the petitioner. Further, directions were issued directing the second respondent school to stop the salary being paid to the petitioner and to recover the salary paid to the petitioner for the months of November and December, 2002. In such circumstances, the petitioner has preferred the present writ petition, under Article 226 of the Constitution of India.

4. At this stage of the hearing of the writ petition, the learned Counsel for the petitioner had submitted that the petitioner has been, subsequently, regularised in service and therefore, the only issue to be decided by this Court would relate to the recovery of the amount paid to the petitioner, as salary, for the months of November and December, 2002.

5. The learned Counsel appearing for the respondents 1 and 3 has not refuted the statements made by the learned Counsel appearing on behalf of the petitioner.

6. In view of the submissions made by the learned Counsel appearing on behalf of the petitioner and on a perusal of the records available, this Court is of the considered view that the recovery of the amounts paid to the petitioner, as salary, for the months of November and December, 2002, by the impugned proceedings, cannot be sustained. It is not in dispute that the petitioner had been employed in the second respondent school as a Middle School Teacher. Even though her appointment had not been approved by the first and the third respondents at the time of the passing of the impugned proceedings, dated 27.12.2002, his appointment has been, subsequently, approved by the authorities concerned.

7. It is well settled that the amounts paid as salary cannot be recovered, unless such payment had been made based on the misrepresentation or fraud committed by the person, whose salary had been ordered to be recovered. In the present case, the petitioner had been paid the salary for the months of November and December, 2002, as he was employed as a Middle School Teacher in the second respondent school. It is not the case of the respondents that the salary for the months of November and December, 2002, had been paid to the petitioner due to his misrepresentation or fraud. In such circumstances, the recovery of the amounts paid to the petitioner, as salary, for the months of November and December, 2002, cannot be sustained. Hence, the respondents are directed to repay to the petitioner the said amounts recovered from him, within a period of twelve weeks from the date of receipt of a copy of this order. Accordingly, the writ petition is disposed of, with the above directions. No costs.