

(2015) 01 MAD CK 0188

In the Madras High Court

Case No : Writ Petition (MD) No. 15133 of 2014 and M.P. (MD) Nos. 1 and 2 of 2014

M. Chellathurai

APPELLANT

Vs

The Director of School Education and Others

RESPONDENT

Date of Decision : 21-01-2015

Acts Referred:

Citation : (2015) 01 MAD CK 0188

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

Bench : Single Bench

Advocate : Issac Mohanlal, for the Appellant; V. Muruganandham, Addl. Govt. Pleader, Advocates for the Respondent

Final Decision : Allowed

Judgement

K. Ravichandra Babu, J.—Mr.V.Muruganandham, learned Additional Government Pleader takes notice for the respondents and by consent of both the parties, the main writ petition itself is taken up for final disposal at the stage of admission.

2. This writ petition is filed seeking a Writ of Certiorarified Mandamus to call for the records relating to the impugned proceedings issued by the first respondent Director in Na.Ka.No. 73305/C5/E3/2008 dated 13.08.2008 and the consequent proceedings issued by the third respondent DEO in proceedings O.Mu.No. 7689/A4/2013 dated 14.03.2013 and O.Mu.No. 1640/A4/2014 dated 01.04.2014 and quash the same and further direct the respondents 1 to 3 to approve forthwith the petitioner's re-employment period from 01.10.2013 to 31.05.2014 as B.T. Assistant (Mathematics) in the fifth respondent School and disburse the salary including all attendant benefits.

3. The petitioner was working as B.T.Assistant in the fifth respondent School and attained the age of superannuation on 30.09.2013. Since such date of superannuation fell during the employment of academic year, he opted for re-employment and the Management accepted such request to appoint the

petitioner and allowed him to continue in the very same post till the end of academic year i.e. on 31.05.2014. Thereafter, the proposal for the said appointment sent by the Management came to be rejected by the third respondent by relying upon the proceedings of the first respondent dated 13.08.2008, only for the reason that the petitioner has not put in ten years of service as B.T.Assistant. Challenging the above said proceedings, the present writ petition is filed.

4. The learned Counsel appearing for the petitioner submits that the issue involved in this case is squarely covered by various decisions of this Court and one of the decision of this Court in W.P.(MD)No. 12920 of 2013 dated 02.08.2013.

5. The learned Additional Government Pleader submitted that the petitioner has not put in 10 years of service and his re-employment cannot be approved as per the proceedings of the first respondent dated 13.08.2008.

6. Heard the learned Counsel appearing for the petitioner and the learned Additional Government Pleader appearing for the respondents.

7. The very same proceedings of the first respondent dated 13.08.2008 came up for consideration before this Court in W.P.(MD)No. 12920 of 2013 stipulating that the re-employment can be given to the persons who have put in ten years of service. The said contention was rejected and this Court set aside the said order of the first respondent in the above said proceedings. The relevant paragraphs 5 and 6 reads as follows:

"5. The very proceedings dated 13.8.2008 of the Director of School Education, Chennai, has come up for consideration before this Court in W.P.No. 22093 and 25054 of 2008 reported in (2009) 2 MLJ 925 in the case of Emyammal Lalitha and another .Vs The Chief Educational Officer, Kancheepuram District, wherein the respondents therein have raised a contention that as the teacher therein had completed 10 years of service, and not eligible for pension, cannot as a matter of right seek for extension of service on reemployment basis. Rejecting the said contention the learned Judge of this Court, at para 15 of the said order, held as follows:

"15. The contention raised by the learned counsel for the respondents that in respect of W.P.No. 22093 of 2008, the writ Petitioner was appointed only in the year 2007 and she has not even completed ten years of service and she is not eligible for pension and therefore, she would not be entitled to have the right of reemployment deserves to be rejected as it has been enumerated in the above said Government Orders as well as the Judgements pronounced on the basis of the said Government Orders that three conditions to be fulfilled for the purpose of getting the right of reemployment are (i) the conduct of such teacher is satisfactory (ii) the teacher concerned is physically fit to continue till the end of the academic year and (iii) no disciplinary proceedings is pending against the said teacher. Admittedly, in respect of the petitioners in both the Writ Petitions, all the requirements are complied with and it is not even the case of the

respondents that the conditions stipulated in the Government Orders are not fulfilled. In such circumstances, there is no basis for the communication of the Director of School Education dated 13.8.2008 stating as if the teachers who are entitled to pensionary benefits, viz., the teachers who have completed ten years of service are alone entitled to the right of reemployment as it has been clearly asserted that the very concept of reemployment to the teacher, but for the purpose of students having the benefits of the service of such teacher and the eligibility of teacher to get pension is not a material fact."

6. Therefore, in view of the above said judgments, the impugned proceedings of the first respondent is set aside and the consequent proceedings of the District Educational Officer, Kuzhithurai, Kanyakumari District has no legs to stand and that the same is also set aside. The Correspondent, St. Antony's Girls High School, Thundathuvilai, Kanyakumari District, is directed to resubmit the proposals for extension of the services of the petitioner, B.T.Assistant (Science) forthwith. On receipt of the same, the District Educational Officer, Kuzhithurai, Kanyakumari District, is directed to pass orders on the proposals in terms of the judgments stated supra. The writ petition is allowed to the extent indicated above. No costs. Consequently, connected miscellaneous petitions are closed.

8. In fact, myself have considered the very same issue earlier in very many decisions and found that ten years of service is not required for giving re-employment and such service is to be considered only for considering the pensionary benefits of the teacher. Insofar as the claim of the petitioner for re-employment is concerned, the same having been considered by the Management and giving such benefit, the respondents are not entitled to reject the claim for approval of such appointment and pay the salary only for the reason that the petitioner has not completed ten years of service. Accordingly, as the present issue is directly covered by the decisions cited supra and in the light of the same, the writ petition is allowed and the impugned orders are set aside and the respondents are directed to approve the re-employment of the petitioner and pay the salary from 01.10.2013 to May 2014 as B.T.Assistant, within a period of eight weeks from the date of receipt of a copy of this order. Consequently, the connected Miscellaneous petition is closed. No costs.