
(2012) 03 MAD CK 0050

In the Madras High Court

Case No : Writ Petition (MD) . No. 12525 of 2011 and M.P. No. 1 of 2011

S. Rasheetha Banu

APPELLANT

Vs

State of Tamil Nadu and Others

RESPONDENT

Date of Decision : 21-03-2012

Acts Referred:

Citation : (2012) 4 MLJ 198

Hon'ble Judges : N. Paul Vasanthakumar, J

Bench : Single Bench

Advocate : G. Sankaran, for the Appellant; S. Chandrasekar Government Advocate, for the Respondent

Final Decision : Allowed

Judgement

N. Paul Vasanthakumar, J.—The prayer in the Writ Petition is to issue a Writ of Mandamus directing the respondents 1 to 4 to approve the

appointment of the petitioner in the post of Secondary Grade Teacher in the fifth respondent Minority School with effect from 1.4.1998 and to pay

arrears of salary payable to her from the date of appointment along with interest and other consequential reliefs. The learned counsel appearing for

the petitioner submits that the petitioner is not pressing the prayer insofar as it relates to interest portion alone. The said submission made by the

learned counsel for the petitioner is recorded.

2. The facts of the case are as follows:

(i) The petitioner had completed Diploma in Teacher Education and he is eligible for appointment to the post of Secondary Grade Teacher. The

fifth respondent school is a Minority School, where the post of Secondary Grade Teacher became vacant due to the retirement of one S.

Murugan, who retired from service on 1.4.1998, in which the petitioner was appointed from 1.4.1998. The said post is a sanctioned and approved post. Seeking to approve the appointment of the petitioner as Secondary Grade Teacher, a proposal was submitted to the authority concerned and the same was not considered due to the pendency of minority declaration suit before the Court. The said proposal was returned with a direction to resubmit the same after the disposal of the Civil Suit and after obtaining minority status from the Government.

(ii) The fifth respondent Minority School was established in the year 1935 and is being administered by one Kadhar Mohideen. The said school was granted recognition up to standards 1 to 5. The fifth respondent school filed a Civil Suit in O.S. No. 455 of 1991, on the file of the learned Principal District Munsif, Tirunelveli, for declaration as Minority Institution. By Judgment and Decree dated 2.10.1992, the said suit filed by the fifth respondent school was dismissed. As against the same, the fifth respondent school filed an appeal in A.S. No. 3 of 1993, on the file of the learned Additional Subordinate Judge, Tirunelveli. By Judgment and Decree dated 10.9.1999, the said appeal was allowed reversing the Judgment and Decree dated 2.10.1992 passed by the learned Principal District Munsif, Tirunelveli.

(iii) Aggrieved against the said Judgment and Decree dated 10.9.1999, the department filed S.A. No. 125 of 2001 before this Court. By Judgment and Decree dated 29.4.2008, the said Second Appeal was dismissed thereby confirming the Judgment and Decree dated 10.9.1999 passed by the Lower Appellate Court. After the above Judgments were passed, declaring the fifth respondent school as a Minority Institution, the said proposal was re-submitted to the third respondent through the fourth respondent on 16.2.2000 seeking to approve the appointment of the petitioner as Secondary Grade Teacher. The fourth respondent herein forwarded the said proposal to the third respondent by proceedings dated 28.8.2000, wherein it is clearly stated that the petitioner was appointed on 1.4.1998 in the existing vacancy within the sanctioned strength, and therefore, her appointment can be approved.

(iv) Since the said Second Appeal was pending, the proposal submitted by the fifth respondent school was not approved. After the dismissal of the

said Second Appeal, the Government issued G.O.(2D), School Education Department, dated 1.2.2011, conferring minority status on the fifth respondent school from the academic year 1990 -1991 with a further direction that the appointment of the petitioner as Secondary Grade Teacher with effect from 1.4.1998 and the appointment of another person as Headmaster with effect from 1.9.1993 shall be approved and arrears of salary to the tune of Rs. 25,29,133/- in respect of the petitioner was also sanctioned. Even thereafter, the appointment of the petitioner was not approved and the petitioner is unable to get salary from 1.4.1998. The third respondent, thereafter, instead of approving the appointment of the petitioner, has chosen to write to the second respondent stating that the post in which the petitioner was appointed and working was surrendered on 31.7.2002 due to fall in strength, even though the fifth respondent school is having standards 1 to 5 and prayed for permission from the second respondent to re-allot the post to the fifth respondent school for approving the appointment of the petitioner.

3. The third respondent has filed a counter affidavit, wherein it is mentioned about the Judgment and Decree passed in the said Second Appeal and the Government Order issued in G.O.(2D) No. 12, School Education Department, dated 1.2.2011. Further, it is stated that as per the Government Order issued in G.O. Ms. No. 525, School Education Department, dated 29.12.1997, the fifth respondent school originally had four Secondary Grade Teachers and one Headmaster and after the academic year 2003 - 2004, the students strength reduced, and therefore, three posts of Secondary Grade Teachers were surrendered to the Government and from the year 2003 onwards, the fifth respondent school is functioning with one Secondary Grade Teacher and one Headmaster.

4. Heard the learned counsel for the petitioner and the learned Government Advocate appearing for respondents 1 to 4. Though notice was served on the fifth respondent school, no one appears for the fifth respondent school.

5. The issue to be decided in this Writ Petition is as to whether the petitioner was appointed in a sanctioned post. Admittedly, on 1.4.1998, the post of Secondary Grade Teacher became vacant and the petitioner was appointed in the sanctioned post. The only objection raised is that the fifth respondent school was not declared as a Minority Institution. On a perusal of

the records, it is seen that the Civil Suit filed by the fifth respondent school was dismissed and the Judgment and Decree passed by the Lower Court was reversed in the appeal filed by the fifth respondent school, which was confirmed in the said Second Appeal filed by the department. The Government also sanctioned arrears of salary payable to the petitioner. The fall in strength of the students took place in the year 2003 - 2004, which cannot be a ground to reject the approval of appointment of the petitioner from 1.4.1998.

6. The issue involved in this Writ Petition was already considered by a Division Bench of this Court in W.A. No. 1263 of 2001, dated 22.1.2004.

In the said Judgment, it is held that if a person is appointed in a sanctioned post, the approval of appointment cannot be rejected and if there is fall

in strength and the post become surplus, after granting approval of the post, the said teacher along with post could be transferred/deployed to a

needy school. The said Judgment of the Division Bench was followed in W.P. (MD). No. 11353 of 2008, dated 11.9.2009. As against the said

order dated 11.9.2009, the department preferred W.A.(MD). No. 703 of 2009. A Division Bench of this Court, by Judgment dated 1.2.2011,

dismissed the said Writ Appeal.

7. Applying the said Judgments to the facts of the present case and having regard to the undisputed fact that the Government has issued G.O.(2D),

School Education Department, dated 1.2.2011, conferring minority status on the fifth respondent school from the academic year 1990 -1991 and

directed that the appointment of the petitioner as Secondary Grade Teacher with effect from 1.4.1998 shall be approved and arrears of salary

payable to the petitioner was directed to be paid, in my considered opinion, there can be no impediment for the respondents to approve the

appointment of the petitioner as Secondary Grade Teacher with effect from 1.4.1998. In the result, the Writ Petition is allowed and the third

respondent is directed to approve the appointment of the petitioner as Secondary Grade Teacher with effect from 1.4.1998 with salary and other

benefits. It is made clear that if any post is to be re-allotted to the fifth respondent school with retrospective effect, the second respondent is

directed to do the same so as to enable the third respondent to approve the appointment. Since the petitioner is still in service, the fifth respondent

school is directed to send salary bill of the petitioner from 1.4.1998 through the fourth respondent, who in turn is directed to forward the same to

the third respondent for appropriate orders. The entire exercise is directed to be completed within a period of three months from the date of

receipt of a copy of this order. No costs. Consequently, connected Miscellaneous petition is closed.