

(2011) 07 MAD CK 0257

In the Madras High Court

Case No : Writ Petition No. 9046 of 2007

S. Selvamani

APPELLANT

Vs

The State of Tamil Nadu

RESPONDENT

Date of Decision : 06-07-2011

Acts Referred:

Citation : (2011) 07 MAD CK 0257

Hon'ble Judges : Vinod K. Sharma, J

Bench : Single Bench

Advocate : S. Veeranasamy, for the Appellant; S. Bharathi, Government Advocate for R-1 to R-3, for the Respondent

Final Decision : Allowed

Judgement

Vinod K. Sharma, J.—The Petitioner has invoked the writ jurisdiction of this Court, with a prayer for issuance of a Writ in the nature of Certiorari, to quash the impugned order dated 09.02.2007, passed by the first Respondent, vide which the request of the Petitioner for approval of his appointment has been declined in view of G.O. Ms. No. 525 Education Department dated 29.12.1997, and consequently, for a direction to the Respondents to approve the appointment of the Petitioner with effect from 02.06.1981 with all the consequential benefits.

2. In the Affidavit filed in support of this writ petition, the Petitioner has pleaded, that he was appointed as Secondary Grade Teacher, by the Aided Primary School, Kallupalam, Idaicode Post, Kanyakumari District / fourth Respondent. The school is aided primary school and having Standards I to V, with teaching in Tamil and Malayalam medium.

3. It is the case of the Petitioner, that he has not been paid salary from the date of his appointment, in spite of a direction given by this Court in a batch of Writ Petitions, directing the State to release the grant for the teachers working in the Institution.

4. It was in pursuance of the directions issued by this Court, G.O. Ms. No. 1442

Education Department dated 14.09.1987 was issued, creating temporary posts in the concerned schools, including the fourth Respondent school.

5. The Petitioner had made representation for the grant of approval. As no response was received, the Petitioner filed a writ petition No. 15266 of 2001, to consider the representation dated 27.06.1999 and 24.04.2001 and for passing appropriate orders for the release of teaching grant and to approve his appointment from 1981.

6. The writ petition was disposed of by an order of this Court dated 09.03.2004, directing the Respondents to dispose of the representation of the Petitioner dated 27.06.1999 and 24.01.2001 on merits, in accordance with law, after affording an opportunity to the Petitioner, within a period of eight weeks, from the date of receipt of the order.

7. It is the case of the Petitioner, that before the representations could be considered, the Institution filed a writ petition in W.P. No. 2004 of 2004 challenging the staff fixation order, asking the school to surrender one post. The said writ petition was allowed on 21.11.2006. The operative portion of the order reads as under:

2. The grievance of the Petitioner is that the Petitioner's school is granted recognition with aid from standards I to v. and totally one Headmaster and two Secondary Grade Teacher posts are sanctioned, out of which

one Secondary Grade Teacher post is rendered as surplus by the impugned order. The Full Bench judgment of this Court in the decision made in W.A. No. 313 of 2006 dated 04.11.2006 held that while sanctioning the post as per G.O. Ms. No. 525 each standard should be sanctioned with one teacher and therefore, applying the said principle for the Petitioner's school with standards I to V, minimum five teacher posts are eligible to be sanctioned for Tamil medium and five teacher posts for Malayalam Medium. Since the Petitioner's school is aided lingual school in this case, three posts sanctioned including the Headmaster, out of which one is rendered as surplus, is contrary to the decisions cited above. Therefore, the impugned order is set aside and this writ petition is allowed accordingly. No costs.

8. In spite of the specific directions issued by this Court in W.P. No. 2004 of 2004, the impugned order was passed, denying the benefit to the Petitioner, in view of G.O. Ms. No. 525 Education Department dated 29.12.1997.

9. The contention of the Petitioner is that G.O. Ms. No. 525 Education Department dated 29.12.1997 has been wrongly interpreted, by ignoring the directions of the Hon'ble Full Bench of this Court in the case of DIRECTOR OF ELEMENTARY EDUCATION, CHENNAI -6 AND OTHERS v. S. VISILA and Anr. (2006 (5) C.T.C. 385) wherein the Full Bench was pleased to interpret the G.O., as under:-

23. Keeping in view the various relevant aspects, we feel that G.O. Ms. No. 525

dated 29.12.1997 should be interpreted in the following manner:

1. The ratio of students teacher strength as indicated in the G.O., should be primarily considered by taking each individual standard / section as a unit.

2. The minimum strength of teachers required obviously should not fall below the number of Standard / Section in a school. In the other words, if there are five standards, obviously the minimum number of teachers should be five, out of which one would be the Headmaster.

3. If the students' strength in a particular standard exceeds 60, at that stage, an additional section is required to be created requiring the sanction of second teacher and the strength reaches 100, the post of a third teacher is required.

4. Even after maintaining the aforesaid ratio by taking into account the students' strength of each individual standard and additional section, as the case may be, by keeping in view the teacher -students ration 1: 40 of the entire school if the teachers strength is required to be increased, the same has to be allowed, but in no case, the teachers' strength should be less than the number of standards including the additional sections. If more teachers are thus sanctioned keeping in view the over all strength of the school, the authorities of the school should create additional section in respect of any particular Standard according to the need and convenience keeping in view the standard of education. This requirement is not only in respect of aided Schools or Government Schools, but also in respect of any Private Recognized School. In other words, this ratio is to be maintained for any school, which requires recognition.

5. It would be obviously open to the Government to formulate appropriate norms in consonance with the above observation and provisions of the Constitution.

10. The learned Counsel for the Petitioner, contends that the impugned order cannot be sustained in law, as it is not only contrary to the decision of the Full Bench of this Court, referred to above, but also, contrary to the specific directions issued by this Court in W.P. No. 2004 of 2004 dated 21.11.2006.

11. This writ petition, in fact, seeks the same relief, which was sought by the Institution. The Petitioner, in fact, should have enforced the directions given by this Court in W.P. No. 2004 of 2004 decided on 21.11.2006.

12. This writ petition is being entertained, only for the reason that in spite of the decision in favour of the fourth Respondent's school, the Respondents have not taken any steps to implement the judgment of this Court, for which the Petitioner cannot be allowed to suffer, for want of action on the part of the fourth Respondent.

13. At the same time, it has to be seen, that the Petitioner has been working since 1981, and in spite of the directions issued by this Court on 09.03.2004, the Petitioner has not prosecuted his remedy in accordance with law. Prima facie, the Petitioner is negligent in enforcing his right. Instead of getting the order dated

09.03.2004 passed in W.P. No. 15266 of 2011 enforced, the Petitioner has chosen to file another writ petition, after the decision of this Court in W.P. No. 2004 of 2004.

14. The impugned order, cannot be sustained in law, as it is not only contrary to the decision of Hon"ble Full Bench of this Court in the case of DIRECTOR OF ELEMENTARY EDUCATION, CHENNAI -6 AND OTHERS v. S. VISILA and Anr. (cited supra), but contrary to the decisions of this Court in W.P. No. 2004 of 2004 decided on 21.11.2006.

15. Consequently, this writ petition is allowed and the impugned order of the first Respondent dated 09.02.2007 is quashed.

16. In the facts and circumstances of the case, it is not necessary to direct the Respondents to re-consider the decision and pass fresh order, as the post of the Petitioner stands approved by this Court, vide order dated 21.11.2006 in W.P. No. 2004 of 2004. The Respondents are under the legal obligation to implement the said order, and grant approval to the appointment of the Petitioner.

17. However, keeping in view the fact, that the Petitioner has been negligent in prosecuting his remedy, the arrears of salary shall be restricted to three years and two months prior to the date of filing of this writ petition on 01.11.2007 (i.e., w.e.f. 01.09.2004), till the date of payment.

18. The arrears of salary due to the Petitioner is directed to be released within a period of three months, of the date of receipt of a certified copy of this order.