

(2011) 01 MAD CK 0186

In the Madras High Court

Case No : Writ Petition No"s. 14934 and 14935 of 2010 and M.P. No"s. 1,1 of 2010

T. Rajalakshmi and C. Gunabushani

APPELLANT

Vs

Director of Elementary Education, District Elementary
Education Officer, Assistant Elementary Education Officer and
Ramalinga Mission Middle School

RESPONDENT

Date of Decision : 18-01-2011

Acts Referred:

Citation : (2011) 01 MAD CK 0186

Hon'ble Judges : Vinod K. Sharma, J

Bench : Single Bench

Advocate : K. Shahul Hameed, for the Appellant; E. Ranganayaki, for R1 to R3 and S.N. Ravichandran, for R4, for the Respondent

Final Decision : Allowed

Judgement

Vinod K. Sharma, J.—The grievance of the Petitioners in both the writ petitions are one and the same, these writ petitions are disposed of

by a common order.

2. The Petitioners in these writ petitions have invoked the writ jurisdiction of this Court with a prayer for issuance of writ of certiorari to quash the

order of the 4th Respondent relieving the Petitioners on their attaining the age of 58 years, with a consequent relief of directing the Respondents to

allow the Petitioners to continue in the service till the academic year 2010-2011.

3. The Petitioners in these writ petitions were born on 05.06.1952 and 30.06.1952 respectively and therefore the date of their superannuation

came to be 30.06.2010. The Petitioners, before their retirement, made a representation to the State Government as per G.O. Ms. No. 249,

Education dated 09.02.1959 seeking re-employment till the end of the academic year.

The G.O. Ms. No. 249, Education dated 09.02.1959 stands reiterated in subsequent G.O. Ms. No. 1643, Education dated 27.10.1988. To

support their stand that the Petitioners are entitled to reemployment till the end of academic year 2010-2011, have placed reliance on the judgment

of this Court in W.P. No. 29416 of 2006 [N. Munisamy v. Director of School Education W.P. No. 29416 of 2006, decided on 11.01.2007].

The operative part of which reads as under:

7. The purport of the said Government Order has been decided by this Court more than once. When dealing with the G.O. Ms. No. 1643,

Education (U2) Department, dated 27.10.1998, P.D. Dinakaran, J. in the order reported in 1998 WLR 77 (MANGAYARKARASI.B v. THE

DISTRICT COLLECTOR, SIVAGANGAI 1998 WLR 77) has held in paragraph 6 as follows;

6. The Government while passing the G.O. Ms. No. 1643, Education (U2) Department, dated 27.10.1988 has taken into consideration, the

existing strength of the staff as on the date of retirement of the Petitioner on superannuation, which includes the post held by the Petitioner till he

attains his superannuation and also the financial constraints if the Petitioner is reemployed till the end of superannuation and passed the said

Government Order. While so, I do not see any valid reason to refuse the reemployment to the Petitioner particularly when the District Elementary

Educational Officer himself has recommended for such reemployment of the Petitioner till the end of his superannuation. On the other hand, the

grievance of the Petitioner, is well founded because if the Petitioner is denied of his reemployment till the end of the academic year, the Petitioner

would be put into hardship and prejudice, particularly when he has served in the first Respondent school for nearly 35 years without any stigma.

Therefore, I am obliged to allow this writ petition as prayed for.

8. Inasmuch as the right of the reemployment is almost a matter of statutory right, I do not think that the reason adduced by the third Respondent in

the impugned order as also in the counter affidavit that the Petitioner has not rendered minimum required service for earning pension and therefore

he should be denied the said right is valid.

4. The learned Counsel appearing for the fourth Respondent i.e. the school, has taken a positive stand that in view of G.O. Ms. No. 1643,

Education dated 27.10.1988 that the Petitioners are entitled to reemployment and that the cases of Petitioners were duly recommended by the

State Government has rejected the request made.

5. The learned Counsel for the State appearing for the Respondents 1 to 3, opposes the writ petitions firstly on the ground that, after filing of the

writ petitions, an order had been passed declining the request of the Petitioners for reemployment on the ground that the Petitioners were

occupying surplus posts therefore the Petitioners cannot claim the right of reemployment as the order of rejection is under challenge. The learned

Government Advocate also contend that the judgment relied upon by the learned Counsel for the Petitioners would have no application to the facts

of the present case. The reason for non-employment of the Petitioners in the said case was that the Petitioners there had not completed 10 years of

service, whereas the Petitioners in the present case have completed more than 20 years of service and were declared surplus. Second contention

of the learned Government Advocate is that the object of G.O. Ms. No. 1643, Education dated 27.10.1988 is to see that the education of

children is not spoiled, but in the present case Petitioners were declared surplus and there are teachers to look after the students, therefore there is

no loss of education in case Petitioners are not re-employed, thus, the Petitioners have no enforceable right to approach this Court. On

consideration, I find force in the contention raised by the learned Counsel for the Petitioners. Once the G.O. Ms. No. 1643, Education dated

27.10.1988 is in force, it gives right of reemployment to the teachers, in case they are superannuate in the mid term. The benefit cannot be denied

on the reasons given by the Respondents. The contention of the learned Government Advocate that the writ petitions deserved to be dismissed for

want of challenge to order rejecting the representation, deserves to be noticed to be rejected for the reasons that the order is hit by principle of "lis

pendens". The relief claimed by the Petitioners is squarely covered by the earlier decision of this Court in W.P. No. 29416 of 2006 [N. Munisamy

v. Director of School Education, decided on 11.01.2007]. It is not open to the Respondents to decline the request of the Petitioners for re-

employment after it was made, as the Petitioners were superannuated during mid term, as the academic session came to end on 31.05.2010, where the retirement of the Petitioners was on 01.07.2010.

6. In view of the facts and circumstances stated above, the order rejecting the representation for reemployment made by the Petitioners, is

7. In the result, these writ petitions are allowed and the impugned order issued by the 4th Respondent rejecting the request of the re-employment

made by the Petitioners is quashed, and consequently writ of mandamus is issued directing the Respondents herein to grant re-employment of the

Petitioners for the academic year 2010-2011 with all consequential benefits. No costs. Connected miscellaneous petitions are closed.