

(2011) 04 MAD CK 0403

Madras High Court

Case No: Writ Petition No. 11829 of 2006

S. Nalinakumari

APPELLANT

Vs

The State of
Tamilnadu and Sree
Devi Girls Higher
Secondary School

RESPONDENT

Date of Decision: April 27, 2011

Acts Referred:

- Constitution of India, 1950 - Article 226

Hon'ble Judges: M. Jaichandren, J

Bench: Single Bench

Advocate: K. RavichandraBabu, for the Appellant; K. Nagnathan, Government Advocate,
for the Respondent

Judgement

@JUDGMENTTAG-ORDER

M. Jaichandren, J.

Since, the issues involved in both the writ petitions are similar in nature, they have been taken up together and a final order is being passed.

W.P. No. 11863 of 2006:

2. With regard to the writ petition in W.P. No. 11863 of 2006, the Petitioner has stated that she had passed Master of Arts degree, as well as a B. Ed., degree. Based on her qualifications, she has been appointed as a Secondary Grade Teacher (Malayalam Medium), in the fourth Respondent school, with effect from 2.6.1997, in the vacancy that had arisen, on 31.5.1997, due to retirement of one Thulasibai Amma. After the appointment of the Petitioner, as a Secondary Grade Teacher, the Management of the fourth Respondent school had sent a proposal, on 2.6.1997, for the approval of the Petitioner's appointment, by the third Respondent. However, the proposal had been rejected by the second Respondent, on 7.11.1997, on the

ground that the graduate teachers cannot be appointed as Secondary Grade Teachers, based on G.O. Ms. No. 559, Education Department, dated 11.7.1995. The said Government Order had been challenged before this Court in a batch of cases. While passing the final order, in W.A. No. 991 of 1999, etc., batch, this Court, by an order, dated 29.6.2001, had protected the interest of the teachers, who had been appointed, between 11.7.1995 and 19.5.1998. Accordingly, the first Respondent had passed certain Government Orders, in G.O. Ms. No. 155, dated 3.10.2002, G.O. Ms. No. 34, dated 17.3.2003, and G.O. Ms. No. 36, dated 22.3.2005, whereby the graduate teachers, who had been appointed in the secondary grade posts, had been directed to undergo child psychology training, for a period of one month. After the completion of the training, the State Government had been directed to approve the appointment of the teachers. While so, the fourth Respondent school had filed a writ petition before this Court, in W.P. No. 1024 of 2004, praying for a writ of Mandamus to direct the Respondents therein to approve the Petitioner's appointment. By an order, dated 1.4.2004, this Court had directed the authorities concerned to consider the representation made by the Petitioner school and to pass appropriate orders thereon. Thereafter, the fourth Respondent school had filed another writ petition, in W.P. No. 4075 of 2005, seeking for a direction to send the Petitioner in the present writ petition for child psychology training, so as to enable her to obtain the necessary approval for her appointment. This Court had passed an order, on 29.4.2005, issuing a direction to consider the representation of the Petitioner for being sent for training in child psychology. Thereafter, pursuant to the said order, the Petitioner had been sent for child psychology training, for a period of one month, commencing from 25.5.2005 to 24.6.2005. Even after the completion of the said training, the appointment of the Petitioner had not been approved by the authorities concerned. In such circumstances, the Petitioner had preferred the present writ petition before this Court, under Article 226 of the Constitution of India.

3. In the counter affidavit filed on behalf of the third Respondent, it has been stated that one Thulasibai Amma, the secondary grade teacher in the fourth Respondent school, had retired from service, on 31.5.1997. Thereafter, the Petitioner had been appointed as a secondary grade teacher, in the fourth Respondent school, by the then Secretary of the School Committee, with effect from 2.6.1997, as she was fully qualified for the said post. However, the appointment of the Petitioner had not been approved, in view of the Government Order, in G.O. Ms. No. 559, School Education Department, dated 11.7.1995. Therefore, the appointment of the Petitioner had not been approved by the third Respondent.

4. It had been further stated that in the meantime, the students strength in the fourth Respondent school had reduced and therefore, the post, in which Thulasibai Amma, who had worked, till 31.5.1997, had been found to be surplus in nature, from the year 2000-2001 onwards, as per G.O. Ms. No. 525, School Education Department, dated 29.12.1997. Hence, the post had been surrendered to the Director of School Education, Chennai, by the Chief Educational Officer, Nagercoil, by his proceedings,

dated 28.8.2002. In such circumstances, the approval for the appointment of the Petitioner could not be granted and therefore, the request made by the fourth Respondent school for the approval of the Petitioner's appointment had been returned. Thereafter, the Secretary of the fourth Respondent school P. Velayudhan Pillai had been removed from the post of Secretary, with effect from 27.4.2003, by the President of the school committee. As such, there was no approved secretary, from 27.4.2003, onwards. Therefore, on 18.9.2004, the Tahsildar, Vilavancode, had been appointed as a special officer of the fourth Respondent school. While so, the Government of Tamil Nadu, by a Government Order, in G.O. Ms. No. 154, School Education (HSS-2) Department, dated 5.8.2005, had appointed the District Educational Officer, Kuzhithurai, as the Special Officer of the School and he had taken charge, on 9.8.2005.

5. It had also been stated that there had been certain civil proceedings, with regard to the minority status of the fourth Respondent school. Finally, it had been held that the fourth Respondent school does not enjoy the minority status. Therefore, it is clear that the appointment of the Petitioner ought to have been done by the fourth Respondent school, only after obtaining the prior permission of the educational authority. Since, the claims made by the Petitioner cannot be sustained in the eye of law, the writ petition is liable to be dismissed.

6. In view of the submissions made by the learned Counsels appearing for the parties concerned and in view of the averments made in the affidavit filed in support of the writ petition and in the counter affidavit filed on behalf of the third Respondent and on a perusal of the records available, it is seen that the Petitioner had been appointed in the fourth Respondent school, as a secondary grade teacher, with effect from 2.6.1997, in the vacancy that had arisen, on 31.5.1997, due to retirement of one Thulasibai Amma. Even if the said post had been found to be surplus in nature, subsequently, due to the falling strength of the students, it cannot be said that the appointment of the Petitioner was illegal and void.

7. Even though it had been stated that the post in question had been surrendered to the Director of School Education, Chennai, by the Chief Educational Officer, Nagercoil, vide his proceedings, dated 28.8.2002, Thulasibai Amma had been permitted to continue in the said post upto 31.5.1997. Thereafter, it would not be open to the educational authorities concerned to claim that the post, which had been validly surrendered, to be considered as surplus in nature. Even otherwise, the appointment of the Petitioner in the fourth Respondent school, with effect from 2.6.1997, had been protected, as she had undergone child psychology training, as per G.O. Ms. No. 155, dated 3.10.2002, G.O. Ms. No. 34, dated 17.3.2003, and G.O. Ms. No. 36, dated 22.3.2005. Accordingly, she would be entitled for a full salary, only after the completion of the said training, which qualifies her for being appointed as a secondary grade teacher in the fourth Respondent school.

8. It is noted that the Petitioner had completed the training, on 24.1.2005. It is not in dispute that the Petitioner had been working in the fourth Respondent school from the date of her initial appointment. Further, her appointment cannot be said to be illegal, especially, after she had undergone child psychology training, pursuant to the order passed by this Court and in view of the G.O. Ms. No. 155, dated 3.10.2002, G.O. Ms. No. 34, dated 17.3.2003, and G.O. Ms. No. 36, dated 22.3.2005.

9. The contention raised by the learned Counsel appearing on behalf of the Respondents 1 to 3 that the post had become surplus in nature, subsequently, due to the falling strength of the students cannot be a valid reason for the rejecting the approval of the appointment of the Petitioner. In case, a teacher is found to be surplus in nature, due to the falling strength of the students, the said teacher could be redeployed in the existing vacancy in other educational institutions, as per the relevant provisions of the law. However, it would not be open to the educational authorities concerned to remove the teacher from service on that score.

10. In such circumstances, this Court finds it appropriate to direct the Respondents 1 to 3 to consider the proposal made by the fourth Respondent for the approval of the appointment of the Petitioner as a secondary grade teacher in the fourth Respondent school atleast from 31.5.1997, when the post had fallen vacant, on the retirement of the Thulasibai Amma and to fix the scale of pay of the Petitioner from 24.6.2005, after she had completed the child psychology training, as per the earlier directions issued by this Court, as expeditiously as possible, preferably not later than a period of twelve weeks from the date of receipt of a copy of this order. The writ petition is ordered accordingly. No costs.

W.P. No. 11829 of 2006:

11. With regard to the writ petition in W.P. No. 11829 of 2006, it has been stated that the Petitioner had obtained B.A. degree (Tamil) in the year, 1985, and M.A. degree (Tamil) in the year, 1987, from the Madurai Kamaraj University. She had also got M. Phil. degree, in first class, in the year, 1988. Further, she had passed B. Ed., degree examination conducted by Annamalai University in the month of September, 1990.

12. It had been further stated that the Petitioner had been appointed as a P.G. Assistant (Tamil) in the fourth Respondent School, on 31.8.2002, with the basic scale of pay of Rs. 6,500/-, with usual allowances, in the scale of Rs. 6,500-200-10,500, in the vacancy that had arisen due to the retirement of one S. Vijayalakshmi Amma, who had attained the age of superannuation, on 31.8.2002.

13. It has been further stated that the Management of the fourth Respondent School had sent a proposal to the third Respondent for the approval of the Petitioner's appointment. However, the said S. Vijayalakshmi Amma had filed a writ petition before this Court in W.P. No. 37538 of 2002, seeking re-employment till the end of the academic year, upto 31.5.2003, even though she had attained the age of superannuation, on 31.8.2002. The proposal that had been sent for approving the

appointment of the Petitioner, had been returned by the third Respondent, on 6.11.2002, only for the reason that the writ petition filed by S. Vijayalakshmi Amma was pending on the file of this Court and an interim order had been granted in the said writ petition.

14. It had been further stated that the said writ petition had been allowed by this Court, on 29.8.2003, and consequently, S. Vijayalakshmi Amma had been permitted to get salary from 1.9.2002 to 31.5.2003, by treating the said period as re-employment period. The re-employment of S. Vijayalakshmi Amma had ended, on 31.5.2003. Thereafter, there was no legal impediment for the grant of approval of the Petitioner's appointment, by the educational authorities concerned, as the Petitioner had been working as the P.G. Assistant (Tamil), from 1.9.2002 and therefore, she is entitled to get her salary from the date of her initial appointment, or atleast from 1.6.2003, when the re-employment of S. Vijayalakshmi Amma had come to an end. In the meantime, the first Respondent had appointed the third Respondent as the special officer to administer the fourth Respondent school, as per the Government order, in G.O. Ms. No. 154, dated 5.8.2005, in view of the alleged maladministration in the management of the fourth Respondent School. However, in spite of several representations, the Respondents had not approved the appointment of the Petitioner in the fourth Respondent school, till date and as such, the Petitioner had been denied her salary, from 1.6.2003, in the scale of pay of Rs. 6,500-200-10,500. In such circumstances, the Petitioner had preferred the present writ petition before this Court, under Article 226 of the Constitution of India.

15. In the counter affidavit filed on behalf of the third Respondent, it has been stated that the then secretary of the fourth Respondent school had submitted the proposal to the third Respondent for the approval of the appointment of the Petitioner, with effect from 1.9.2002. Since, one S. Vijayalakshmi Amma had filed a writ petition, in W.P. No. 37538 of 2002, before this Court, for the sanctioning of her re-employment, with effect from 1.9.2002 to 31.5.2003, and as she had also obtained an order of interim injunction, the proposal sent by the fourth Respondent school for the approval of the appointment of the Petitioner had been rejected by the third Respondent, as per the proceedings, dated 6.11.2002. Therefore, the proposal made by the fourth Respondent school had become invalid, as the Petitioner had been appointed, on 1.9.2002, in spite of the fact that the sanctioned post was not available, at the relevant point of time for making such an appointment. While so, the then Secretary of the fourth Respondent school P. Velayudhan Pillai had been removed from the post of Secretary of the said school, with effect from 27.4.2003, by the President of the school committee. Hence, there was no approved Secretary holding the said post from 27.4.2003 onwards. The fourth Respondent school was under the direct payment, from 27.4.2003 to 17.9.2004. From 18.9.2004, the Tahsildar, Vilavancode, had been appointed as the special officer of the fourth Respondent School, as per the proceedings of the District Collector, Kanyakumari District, dated 18.9.2004. Since, the various disputes

had arisen amongst the members of the school committee, the Government of Tamil Nadu had issued an order in G.O. Ms. No. 154, School Education, (HSS-2) Department, dated 5.8.2005, appointing the District Educational Officer, Kuzhithurai, as the special officer of the fourth Respondent school and he had taken charge of the said school from 27.4.2003 onwards. As the fourth Respondent school has no approved secretary, no proposal can be validly submitted for the approval of the appointment of the Petitioner. Hence, the writ petition filed by the Petitioner is devoid of merits and therefore, it is liable to be dismissed.

16. In view of the submissions made by the learned Counsels appearing for the parties concerned and in view of the averments made in the affidavit filed in support of the writ petition and in the counter affidavit filed on behalf of the third Respondent and on a perusal of the records available, it is seen that the Petitioner had been appointed as a P.G. Assistant (Tamil) on 31.8.2002, in the fourth Respondent school.

17. Even though a request had been made by the Secretary of the fourth Respondent school for the approval of the appointment of the Petitioner, the third Respondent had rejected the requests only for the reason that one S. Vijayalakshmi Amma had continued her re-employment from 1.9.2002 to 31.5.2003, pursuant to an order passed by this Court in W.P. No. 37538 of 2002.

18. It is not in dispute that the Petitioner possesses the necessary qualifications to be appointed as a P.G. Assistant (Tamil) in the fourth Respondent school. However, the request made by the secretary of the fourth Respondent school to the educational authority concerned for the approval of the Petitioner appointment had been rejected, as there was no vacancy in the sanctioned post for making such an appointment at the relevant point of time. Thereafter, due to certain disputes had arisen amongst the school committee, a special officer had been appointed by the proceedings of the District Collector, Kanyakumari District, dated 18.9.2004, by a Government Order in G.O. Ms. No. 154, School Education, (HSS-2) Department, dated 5.8.2005. The District Educational Officer, Kuzhithurai, has been appointed as the special officer of the fourth Respondent school from 9.8.2005. However, the contention raised on behalf of the Respondents 1 to 3 that no approval of the appointment of the Petitioner can be granted, as there is no approved Secretary for the fourth Respondent school cannot be countenanced. Once, a proposal had been validly made by the Secretary of the fourth Respondent school, on 20.6.2005, it is for the educational authority concerned to have considered the same and granted the approval, as per law, atleast from 1.6.2003, as the re-employment of vijayalakshmi Amma had come to an end, on 31.5.2003.

19. Further, even if Vijayalakshmi Amma had continued in her post, as a secondary grade teacher, upto 31.5.2003, pursuant to an order passed by this Court, in W.P. No. 37538 of 2002, the Petitioner should have been accommodated in the post, as a secondary grade teacher, in the fourth Respondent school, from 1.6.2003.

20. In such circumstances, this Court finds it appropriate to direct the Respondents 1 to 3 to consider the request made on behalf of the fourth Respondent school, for the approval of the appointment of the Petitioner, as P.G. Assistant (Tamil), from 1.6.2003, and consequently, fix the pay scale of the Petitioner and to pass appropriate orders thereon, as expeditiously as possible, preferably not later than a period of twelve weeks from the date of receipt of a copy of this order.

The writ petition is ordered accordingly. No costs.