

R.Bharathi, and ors. Vs. the District Elementary, and ors.

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Court : Chennai

Decided On : Aug-09-2010

Judge : K.B.K.Vasuki, J.

Acts : Constitution Of India - Article 226

Appeal No. : W.P. No. 18810 of 2009 & M.P. No. 2 of 2009 W.P. Nos.18811 and 21834 of 2009 & M.P. Nos.1 of 2009

Appellant : R.Bharathi, and ors.

Respondent : The District Elementary, and ors.

Advocate for Def. : Mrs. E.Ranganayaki, Adv.

Advocate for Pet/Ap. : Mr. S.N.Ravichandran, Adv.

Judgement :

1. On consent, the writ petitions are taken up for final hearing.
2. All these writ petitions are filed to quash the order of the second respondent dated 01.03.2007 in Na.Ka.No.1886/A1/2005, in and under which, the amount mentioned in the last column of the order against each of the petitioners representing the quantum of the salary received by the petitioners in their capacity as Headmasters Middle School, is sought to be recovered on the ground that their appointment as Headmasters Middle School for want of five years experience as B.T. Headmaster is contrary to the relevant G.O. pertaining to appointment. As all

the writ petitions are for identical relief based against the order passed by the second respondent and is passed on same set of facts, involving identical issue, all the three writ petitions are disposed of by common order.

3. The petitioners in W.P. Nos.18810 and 18811 of 2009 are issued with same order, whereas the petitioner in W.P. No.21834 of 2009 is issued with separate but identical order, all are even dated having even proceedings number issued by the second respondent. All the three schools, in which respective petitioners are working as Headmasters Middle School are situated in different places at Nagapattinam District and coming under the jurisdiction of the respondents 1 and 2 / the District Elementary Educational Officer and the Additional Assistant Elementary Educational Officer, Nagapattinam District. The petitioners were originally employed as secondary grade teachers and the post of secondary grade teacher was upgraded as B.T. Grade Assistant in G.O.Ms.No.1297 Education Department dated 27.07.1979. Thereafter, the petitioners were, in the respective third respondent School appointed as Headmasters upon the vacancy arising due to the retirement of the previous Headmasters and their appointment as secondary grade teachers and their appointment as Headmasters are also duly intimated to the respondents 1 and 2 and are duly approved by them. The petitioners were also being paid the salary, originally due to the secondary grade teachers, thereafter, due to the Headmasters Middle School from the date of their appointment. Whiles, the orders impugned herein, came to be passed by the second respondent for recovery of the amount noted in the orders and the said order is passed on the basis of the audit objection to the effect that the petitioners do not possess five years experience as secondary grade teachers.

4. The impugned orders are challenged in all these writ petitions, mainly on the ground that the orders are passed without jurisdiction and without any notice to the respective individuals. It is seriously argued by the learned counsel for the petitioners that neither any rule nor the relevant G.O. relating to the appointment of secondary grade teacher and Headmaster Middle School prescribing five years experience and no amendment was till date brought to the relevant rules to that effect. It is further argued by the learned counsel for the petitioners that identical orders came up for judicial review on earlier occasion before this Court and those

orders are after detailed discussion set aside by our High Court. The learned counsel for the petitioners would make an appeal to this Court to deal with the impugned orders herein in the same manner in the light of the earlier orders of this Court.

5. Heard the rival submissions made on both sides.

6. It is not in dispute that there is no rule, which prescribes five years experience as secondary grade teacher is one of the qualifications for being promoted as Headmaster Middle School. The post of secondary grade teacher was early as on 1979 up graded as B.T. Grade teacher, which is the feeder category of promotion and the petitioners are appointed as B.T. Grade Headmasters Middle School as they possess required educational qualification for the post concerned. The learned counsel for the petitioner has brought it to the notice of this Court, the unreported Judgments made in the earlier writ petitions filed against similar orders of recovery,

1) order dated 12.08.2008 in W.P. Nos.13700 to 13702 of 2004

2) order dated 07.01.2010 in W.P. No. 5591 of 2000 and

3) order dated 05.01.2007 in W.P. Nos.14683, 15725 and 15726 of 2004. In all these writ petitions, our High Court has, after considering various aspects i.e. original appointment of the petitioners, their subsequent up-gradation, their appointment as Headmasters Middle School and due approval granted by the Education Department for the payment of salary as Graduate Headmasters for the services rendered by the petitioners is pleased to set aside the impugned orders. In one of the Judgments of our High Court has also considered the action of the Government in relaxing five years experience in respect of one of the B.Ed. Grade Headmasters by name Thiru. M.Kannan working in Kalukkanimuttam, Mayiladuthurai Taluk, Thiruvarur District and in the other matter, the authority concerned complied with the direction of this Court in granting exemption to yet another B.T. Grade Headmaster. The learned counsel for the petitioners also cited the authority reported in 2009(1) Supreme Court 163 in Syed Abdul Qadir and others v. State of Bihar and others, for legal proposition that the salary paid to the

petitioners is for the services rendered by them as B.T. Grade Headmasters and even assuming it to be true that the appointment to the post of Headmaster is erroneous and is contrary to the G.O., the petitioners cannot be, for no suppression of facts or any other fault on their part, penalised by seeking recovery of the salary paid to them for the services rendered by them as B.T. Grade Headmasters.

7. Here, in this case, the order of the first respondent in treating the appointment of the petitioners as contrary to the G.O. is not only based on no rule, but also passed without giving any notice to the petitioners in this regard, thereby the order passed by the first respondent is not only illegal and is without jurisdiction but is also in violation of the principles of natural justice. As rightly argued by the learned counsel for the petitioners, the amount all along paid to them was for the services rendered by them as such no recovery can be effected in respect of the pay already received by the petitioners. Viewing from any angle, the impugned orders are liable to be set aside.

8. In the result, the writ petitions are allowed as prayed for. The miscellaneous petitions are closed. No costs.

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