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K.JudIn Vs. the District Elementary

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Court : Chennai

Decided On : Jun-13-2012

Judge : D.Hariparanthaman, J.

Acts : Constitution of India - Articles 226

Appeal No. : W.P.(MD)No.8711 of 2011 and M.P.(MD) No.1 of 2011

Appellant : K.Judin

Respondent : The District Elementary

Advocate for Def. : Mr.V.Muruganantham, A.G.P., Adv.

Advocate for Pet/Ap. : Mr.G.Prabhu Rajadurai, Adv.

Judgement :

PRAYER

Writ petition is filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, to call for the recores relating to the proceedings in Na.Ka.No.1978/B1/2011 dated 06.07.2011 on the file of the 1st respondent and quash the same and further directing the respondents 1 and 2 to disturb the petitioner's salary.

ORDER

1. The petitioner was appointed as B.T.Assistant in History in the third respondent school on 05.06.2008 in the vacancy caused due to the dismissal of one Mr.Alagesan. The said Mr.Alagesan filed W.P.(MD) No.5698 of 2008, questioning the order dismissing him from service and the writ petition is still pending.

2. Even if Mr.Alagesan continued in service, he could have retired on 31.05.2010, on attaining the age of superannuation. Considering the said fact, the first respondent passed an order dated 01.04.2011, approving the appointment of the petitioner with effect from 01.06.2010. The petitioner could be entitled to approval from the date of his appointment subject to the result of W.P.(MD) No.5698 of 2008.

3. Even after the aforesaid order dated 01.04.2011, approving the appointment of the petitioner from 01.06.2010, the authority failed to release salary. Hence, he filed W.P.(MD) No.6346 of 2011 for direction to release his salary from 01.06.2010. This Court passed order dated 26.11.2011, directing the authorities to consider the grievance stated in the representation dated 28.05.2011 and pass order within a period of four weeks from the date of receipt of a copy of that order. In the said circumstances, the first respondent passed the impugned order dated 06.07.2011 suspending the order dated 01.04.2011, granting approval from 01.06.2010.

4. The petitioner has filed the present writ petition, seeking to quash the said order dated 06.07.2011.

5. Heard both sides.

6. Mr.V.Muruganantham, learned Additional Public Prosecutor has made his submissions based on instructions.

7. The impugned order dated 06.07.2011 is extracted hereunder:

8. There are two reasons given for passing the impugned order. The first reason is that W.P.(MD) No.6593 of 2008 preferred by Thiru.Alagesan, questioning his dismissal order is pending before this Court. In my view that reason could not stand for scrutiny. In the order dated 01.04.2011, the approval was granted only

with effect from 01.06.2010 since Thiru.Alagesan reached the age of superannuation on 31.05.2010. That is, even if Mr.Alagesan succeeds in the writ petition, he could not continue after 31.05.2010. Hence, the earlier approval order dated 01.04.2011 was passed granting approval of appointment with effect from 01.06.2010. Therefore, the first respondent is not correct in stating that the pendency of writ petition in W.P.(MD) No.6593 of 2008, would be an impediment in granting approval for the appointment of the petitioner with effect from 01.06.2010.

9. The other reason is that Mr.Alagesan, was not properly relieved from service on 31.05.2010. I am not able to understand this reason, since Mr.Alagesan was dismissed from service as early as in 2008 itself and he was not in service on 31.05.2010 when he reached the age of superannuation. Therefore, there is no question of relieving him from service would arise at all.

10. For all the above reasons, the writ petition is allowed and the impugned order is quashed. The respondents are directed to pay salary to the petitioner without delay from 01.06.2010, in any event, not later than 4 weeks from today. No costs. Consequently, connected miscellaneous petition is closed.

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