

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 27.06.2011

CORAM:

THE HONOURABLE MR.JUSTICE K.VENKATARAMAN

W.P.(MD)No.5577 of 2011

and

M.P.(MD)No.1 of 2011

K.Vijayarani

: Petitioner

Vs.

1.The Director of School Education,
College Road, Nungambakkam,
Chennai-600 006.

2.The Chief Educational Officer,
Theni.

3.The Headmaster,
Government Higher Secondary School,
Kandamanur, Theni District.

: Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India praying for the issue of a Writ of Mandamus, directing the respondents to give re-employment to the petitioner till the end of academic year i.e, 31.05.2011.

For Petitioner : Mr.R.Subramanian

For Respondents : Mr.S.Chandrasekar
Government Advocate

ORDER

The petitioner has come up with the present Writ Petition for a Mandamus, directing the respondents to give re-employment to her till the end of the academic year viz., 31.05.2011.

2. The short matrix of the matter is set out hereunder:

On 10.08.2003, the Teachers' Recruitment Board conducted a special recruitment test for absorbing qualified Anganwadi workers as B.T.Assistants. The petitioner, who has worked as Anganwadi Worker, has applied for the same and was selected on 09.07.2004. She was absorbed as B.T. Assistant and posted at the third respondent school. Her retirement date fell on 28.02.2011 in the middle of the academic year. She is entitled for re-employment till the end of the academic year viz., till

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31.05.2011. She has enclosed the fitness certificate and approached the second and third respondents. She was under hope that she would be given re-employment from 01.03.2011 to 31.05.2011. Since no steps have been taken to provide her re-employment, she has filed the present Writ Petition.

WEB COPY 3. Counter-affidavit has been filed on behalf of the second respondent, wherein only one objection has been taken for providing re-employment to the petitioner. It is stated that the petitioner was appointed in the year when she was aged 53 years and she has got four years and eight months of service only. The re-employment will arise, only if the teachers completed ten years of service, as per the proceeding of the first respondent dated 13.08.2008. Since the petitioner has not rendered ten years of service, she is not entitled for re-employment.

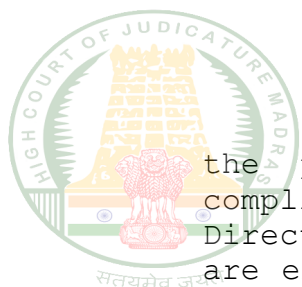
4. On the basis of the above pleadings, I have heard the learned counsel appearing for the petitioner and the learned Government Advocate appearing for the respondents.

5. The re-employment is automatic as provided in G.O.Ms.No.1643, Education(U2) Department, dated 27.11.1988. It is not the case of the respondents that a teacher is not entitled for re-employment. The only objection that has been taken is that the petitioner has not completed ten years of service and hence, she is not entitled for re-employment. A Division Bench of the Principal Bench as early as in the year 1994 has held that re-employment is automatic. It has been followed by several decisions rendered by the Principal Bench as well as by this Bench. I had an occasion to consider this aspect in a decision in *G.DANIEL GUNASEELAN v. THE DISTRICT ELEMENTARY OFFICER, CHENNAI NORTH AND 4 OTHERS* reported in 2007 (4) L.W. 333, and I have held that re-employment is automatic and it needs not be even pleaded by the teachers concerned. Three aspects that have to be seen for giving re-employment are that

- (i) the pension papers should have been submitted;
- (ii) the teacher concerned shall possess the fitness for such re-employment; and
- (iii) the character of the teacher should be good.

6. In the given case on hand, it is not the case of the respondents that the teacher in question lacks in the above aspects. The only thing, as stated already, is that the petitioner is not completed ten years of service. The second respondent relies on the proceeding of the first respondent dated 13.08.2008 in this regard. However, I am of the considered view that the said instruction given by the first respondent has no legs to stand, in view of the Government Order passed by the Government in G.O.Ms.No.1643, Education(U2) Department, dated 27.11.1988. That apart, as stated already, the Division Bench of this Court, in more than one case, has held that re-employment is automatic for a teacher, who retires in service, during the middle of the academic year.

7. In fact, the learned counsel appearing for the petitioner relied on a decision in *W.Emymmal Lalitha v. Chief Educational Officer* reported in 2009(2) MLJ 925, wherein this Court has held as follows:



"When all the three conditions to be fulfilled for the purpose of getting the right of re-employment are complied with, there is no basis for the communication of the Director of School Education stating as if the teachers who are entitled to pensionary benefits alone are entitled to the right of re-employment. As it has been clearly asserted that the very concept of re-employment is not for the purpose of providing employment to the teacher, but for the purpose of the students having the benefit of the service of such teacher and the eligibility of the teacher to get pension is not a material fact."

8. The petitioner has obtained an interim order and continued in service till 31.05.2011. In view of the same, the respondents are directed to settle the entire salary to the petitioner from 01.03.2011 to 31.05.2011. The said amount shall be payable to the petitioner, within a period of six weeks from the date of receipt of a copy of this order.

9. The Writ Petition stands ordered accordingly. Consequently, the connected miscellaneous petition is closed. No costs.

sd/-

Assistant Registrar (RTI)

/True Copy/

Sub Assistant Registrar (C.S)

To

1. The Director of School Education,
College Road, Nungambakkam,
Chennai-600 006.
2. The Chief Educational Officer,
Theni.
3. The Headmaster,
Government Higher Secondary School,
Kandamanur,
Theni District.

+ 1 cc to The Special Government Pleader, SR No.20397

Order made in
W.P. (MD) No.5577 of 2011

Dated:- 27.06.2011

SML
RJ/13.7.11
3p/5c