

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 31-10-2008

Coram:

THE HONOURABLE MR.JUSTICE M.JAICHANDREN

W.P.No.101 of 2003

K.Giriya

.. Petitioner

Versus

1. Director of Matriculation Schools,
Chennai-6.
2. Inspector of Matriculation Schools,
Coimbatore Region, Coimbatore-45.
3. Correspondent/Chairman,
Bharatiya Vidya Bhavan Matriculation
Higher Secondary School,
582, D.B.Road, R.S.Puram,
Coimbatore-641 002.

.. Respondents

Prayer: Petition filed seeking for a writ of Certiorarified Mandamus, calling for the records pertaining to the order passed by the third respondent Management in their Proceedings No.Nil, dated 6.7.2000, and the consequential Office Note No.Nil, dated 12.7.2001 and quash the same, and direct the respondents to pay salary to the petitioner as in the month of July 2002, Award Selection Grade with effect from 7.6.1999 and to pay 12 months Dearness Allowance withheld from 1.4.1999 to 31.3.2000 and confer all the consequential benefits with interest @ 18%.

For Petitioner : Mr. S. Mani for
Mr.C.Selvaraju

For Respondents : Ms.D.Geetha
Additional Government Pleader(R1 & R2)
Mr.V.Vasudevan for
M/s.Aiyar & Dolia (R3)

J U D G E M E N T

Heard the learned counsel appearing for the petitioner and the learned counsels appearing for the respondents.

2. The petitioner has stated that she is a qualified person with M.Com., and B.Ed., degrees. Based on her qualifications the third respondent management had appointed the petitioner as a Nursery teacher, on 17.8.83. Later, she was confirmed in service, on 17.8.84. Thereafter, she was promoted as a Secondary Grade Teacher and posted in the third respondent school, on 7.6.89. Even though she was due for Selection Grade, on 7.6.99, it was postponed on the ground that dearness allowance was stopped for 12 months for certain serious lapses alleged against her. However, no charges had been framed against the petitioner and no enquiry was conducted for the alleged lapses. Therefore, the denial of Selection Grade to the petitioner is arbitrary, illegal and unsustainable in the eye of law. Even though the petitioner had been paid in the scale of pay of Rs.5500/- (basic pay), along with the other allowances amounting to Rs.8321/- upto the month of July, 2002, she was paid the basic pay of Rs.5,000/-, without any other allowance, in the month of August, 2002. Such reduction in her basic pay and the denial of dearness allowance, house rent allowance and city compensatory allowance to the petitioner is without any justification.

3. In the counter affidavit filed on behalf of the third respondent the averments made on behalf of the petitioner have been denied. It has been specifically stated that the writ petition is not maintainable as the third respondent school is a private unaided school. It has been further stated that in spite of repeated instructions having been issued to the petitioner to improve her performance she had not improved her performance. Further, the petitioner was not able to enforce discipline in her class. Due to her poor performance and indifference the management of the third respondent institution had decided to withhold the Selection Grade for the year 2001 - 2002. During the year 2002-2003, a panel consisting of the Principals and the subject teachers of other schools were appointed to evaluate the performance of the institution in general and the standard of the teaching staff in particular. After making the assessment, the panel had recorded certain adverse remarks against the petitioner relating to her teaching abilities. Therefore, the management of the third respondent institution had thought it fit to withhold the dearness allowance payable to the petitioner for the period between April, 1999 and March, 2000. Since it was not by way of a punishment no enquiry had been held in that regard.

4. Ms.D.Geetha, the learned Additional Government Pleader, appearing on behalf of the first and second respondents had also submitted that the third respondent school is a private unaided institution as it does not receive any grant from the State Government. Therefore, the petitioner cannot be permitted to agitate her grievances against the third respondent school, before this court, by way of filing a writ petition, under Article 226 of the Constitution of India.

5. The learned counsel appearing on behalf of the petitioner has not been in a position to show that the third respondent school is an institution coming under the definition of 'State', under Article 12 of the Constitution of India.

6. In such circumstances, without going into the merits of the case, the writ petition is dismissed as not maintainable. No costs.

sd/-
Asst.Registrar

/true copy/

Sub Asst.Registrar

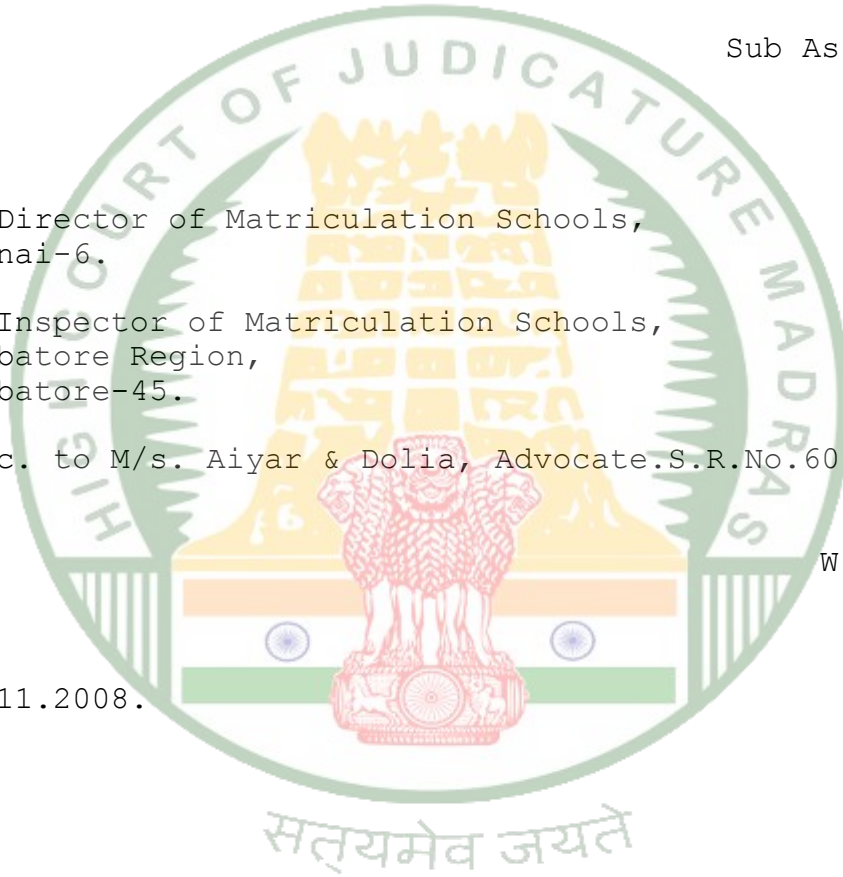
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To

1. The Director of Matriculation Schools,
Chennai-6.
 2. The Inspector of Matriculation Schools,
Coimbatore Region,
Coimbatore-45.
- + 1 c.c. to M/s. Aiyar & Dolia, Advocate.S.R.No.60541.

W.P.No.101 of 2003

MS (CO)
GSK 18.11.2008.



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