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W.P.No.4396 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	19.12.2023
Pronounced on	03.01.2024

CORAM:

THE HON'BLE Ms.JUSTICE **R.N.MANJULA**W.P.No.4396 of 2020

R. Mary Selvarani

... Petitioners

Vs.

1. The Government of Tamil Nadu
Rep by its Principal Secretary,
School Education Department,
Fort St. George, Chennai 600 009.
2. The Director of School Education,
D.P.I. Campus, College Road,
Nungambakkam, Chennai-600 006.
3. The Chief Educational Officer,
Nagercoil, Kanyakumari District.
4. The District Educational Officer,
Nagercoil, Kanyakumari District.
- 5 Little Flower Girls Higher Secondary School,
Rep by its Headmaster and Correspondent,
Ramaputhur, Nagercoil 629004,
Kanyakumari District.

... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of



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India, to issue a Certiorarified Mandamus calling for the records pertaining to Government Letter No. 12951/PaKa6(1)/2019 dated 18.11.2019 issued by the 1 respondent, quash the same and direct the respondents to regularize the period of services of the petitioner between 20.12.1986 to 31.05 1995.

For Petitioner : Mr.R.Subramanian

For Respondents : Mr.R.Ramanlal, Addl.Advocate General
assisted by Mr. P.Sanjai Gandhi,
Government Advocate for RR1 to 4

ORDER

This Writ Petition has been filed seeking issuance of Writ of Certiorarified Mandamus calling for the records pertaining to Government Letter No.12951/PaKa6(1)/2019 dated 18.11.2019 issued by the 1st respondent, quash the same and direct the respondents to regularize the period of services of the petitioner between 20.12.1986 to 31.05 1995.



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2. The Petitioner has been appointed as B.T.Assistant on 20.12.1986 at the 5th respondent's school during the academic year 1986-87. Even though the strength of school was so high and required eleven B.T Assistants, only nine posts of B.T. Assistant were sanctioned. The petitioner has been taking classes continuously from 20.12.1986 to 31.05.1995. By virtue of the G.O.Ms.No. 950 Education/D1/Department dated 31.07.1989, two more B.T. Assistant posts, one Tamil Pandit, one Physical Education Teacher, one Junior Assistant and one Record Clerk posts were sanctioned on condition that the 5th respondent's school has to give security to the salary to be disbursed to the additional staffs, which was inclusive of the petitioner as well. The 5th respondent's school did not furnish the security and hence, the petitioner was not paid with the salary as per G.O.Ms.No.950 Education/D1/Department dated 31.07.1989. The petitioner was working as B.T. Assistant without any salary from 20.12.1986 to 31.05.1995. On 01.06.1995, the 5th respondent's school appointed the petitioner as Secondary Grade Teacher and he worked there till 22.09.1998. On 23.03.1998, he was promoted as B.T. Assistant and continued till 21.09.1998. On 22.09.1998 the petitioner was promoted as P.G.Assistant in English and he continued to work in the said post.



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2.1. The petitioner and the school were making several representations to regularise the petitioner's services and pay him the salary for the period from 20.12.1986 to 31.05.1995. But there was no response. On 04.12.2014, the petitioner gave a representation to the 1st respondent for regularisation of service for the above said period. As the same was not considered, he filed a writ petition in W.P.No.17877 of 2015 and in which, a direction to the 1st respondent was given on 26.03.2019 regarding the payment of salary for the period from 20.12.1986 to 31.05.1995.

2.2. Subsequently, the 1st respondent conducted an enquiry; however vide impugned government letter No.12951/PaKa6(1)/2019 dated 18.11.2019 rejected the same on the ground that the 5th respondent's school did not comply with the condition of furnishing security as stated in G.O.Ms.No.950 Education/D1/Department dated 31.07.1989. Aggrieved over the same, the petitioner has filed this writ petition.

3. Heard, Mr.R.Subramanian, learned Counsel for the petitioner and Mr.R.Ramanlal, learned Additional Advocate General for the respondents 1 to 4 and perused the materials available on records.



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4. Mr.R.Subramanian, learned counsel for the petitioners submitted that for the non compliance on the part of the 5th respondent, the petitioner should not be penalised. The 1st respondent omitted to take note of the staff-student ratio and the requirement of further number of staffs ought to have been considered and additional posts should have been sanctioned. As per the government orders, the post have to be sanctioned in accordance with the strength of the students as fixed by the educational authorities. The petitioner was paid with the salary for the period from 19.11.1986 to 19.12.1986 and 08.06.1988 to 05.09.1988, in leave vacancy prior to the issuance of G.O.Ms.No.950 Education/D1/Department dated 31.07.1989. The G.O.Ms.No.950 Education/D1/Department dated 31.07.1989 itself would show that there were two vacancies existing in the post of B.T.Assistant and the petitioner was working regularly for the entire period from 20.12.1986 to 31.05.1995. Even though the petitioner has worked till 33 years due to non regularisation of the period between 20.12.1986 to 31.05.1985, the petitioner has lost the retirement and other service benefits.

4.1. In respect of the above submissions, the learned counsel for the



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petitioner cited the following decisions:

Sl. No	Citations submitted by the learned counsel for the petitioner	Reported in
1	Union of India and another Vs. Shri R.c.D'Souza	AIR 1987 SUPREME COURT 1172
2	O.A.Chinna Alagi Vs. State of Tamil Nadu rep. by the Secretary to government and others	2008-1-L.W.192
3	The judgement of Division Bench of Madras High Court in W.A.No.1552 of 2016 dated 08.07.2021	
4	the judgement of the Orissa High Court: Cuttack in WP.(C) NO.19346 of 2021 dated 14.09.2022	

5. Mr.R.Ramanlal, learned Additional Advocate General for the respondents 1 to 4 submitted that the petitioner has been appointed as against the unsanctioned post and actual sanction for the post has been accorded only from 01.06.1995. So the regularization can be done only from the date when the post was sanctioned and not any time earlier. As per G.O.Ms.No.314, School Education Department dated 12.11.1999, the services of an individual who worked in a non sanctioned post can be taken into account only for promotion and not for pension or fixation of salary. Even as per the appointment order dated 01.06.1995, the vacancy is only as against one Anne Mary Celine who retired on 31.05.1995. Unless the period of service rendered by the petitioner prior to sanction is regularized, the benefit of pension in respect of those period cannot be given.



6. The petitioner was first appointed on 20.12.1986 as a B.T. Assistant. Subsequently, the 5th respondent's school has been addressing the 1st respondent to sanction the additional posts taking into account of the Student -Teacher ratio. After repeated representations, the 1st respondent had sanctioned two B.T.Assistant along with other posts by virtue of issuance of the G.O. Ms. No.950 Education/D1/Department dated 31.07.1989. The petitioner was very much in service during the said period. However, fund has been allotted for excess teaching post by virtue of G.O.Ms.No.31, School Education Department dated 25.07.1987, however with a condition that the 5th respondent's school should furnish security, but the same was not done. The 5th respondent's school did not furnish security and in view of that posts which are permitted vide G.O.Ms.No.950 Education/D1/Department dated 31.07.1989 were not sanctioned and they remained non sanctioned. In the above G.O.Ms.No.950 Education/D1/Department dated 31.07.1989, there was a condition to produce the security; but the 5th respondent's school omitted to produce the security and that was reflected on the petitioner's service.

7. The consideration shown by the 1st respondent for sanctioning



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additional posts would show that during the relevant point of time, the petitioner's school was in need of additional teachers especially in the grade of B.T.Assistant. The petitioner continued to work from her date of appointment till her appointment as B.T.Assistant and that was not objected by the respondents and the petitioner's service in each category was also continuous without any break. But the learned Additional Advocate general for the respondents submitted that the period for which an individual had served in a non sanctioned post can be taken into account only for promotion and not for pension or fixation of salary.

8. The learned counsel for the petitioner attracted the attention of the Court to the judgement of the Orissa High Court: Cuttack rendered in WP.(C) No.19346 of 2021 dated 14.09.2022 to emphasise his point that the definition of '*employee*' under Section 2(e) of the Payment of Gratuity Act, 1972 would include any employee employed on daily wages in any establishment, factory, mine, etc., other than an apprentice. In this regard, it is appropriate to extract the relevant paragraphs of the said judgment as under:

“18. It is amply clear from the definition of "employee",



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as defined under Section 2(e) of the P.G. Act, 1972, that the employee means any person other than an apprentice, employed on wages, in any establishment, factory, mine etc., to do any skilled, semi-skilled, or an unskilled, manual, supervisory, technical or clerical work, whether the terms of such employment are express or implied, but does not include any such person, who holds a post of Central Government or State Government and is governed by any Act or by any rules providing for payment of Gratuity.

19. Admittedly, the P.G. Act, 1972 is applicable to the Petitioner's establishment. There is no such provision under the P.G. Act, 1972 that the same is only applicable to permanent employee of an Establishment. Rather, from the definition of "employee" as defined under Section 2(e) of the P.G. Act, 1972, it is amply clear that, except apprentice, the definition of Employee covers all persons."

9. It is further submitted that the continuation of service within the meaning of the Payment of Gratuity Act, 1972 is defined under Section 2A of the Payment of Gratuity Act, 1972. As the petitioner was in continuous service from 20.12.1986 to 31.05.1995, his eligibility to cover under the Payment of Gratuity Act, 1972 cannot be denied.

10. The petitioner was in continuous service and he has worked for



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more than 31 years. Her past services were not included in view of the fact that the post for which she was appointed remained unsanctioned before 01.06.1995. Even though the additional posts were sanctioned in the year 1989 itself, the 5th respondent did not grab the opportunity by furnishing appropriate security. The 5th respondent's school accommodated the petitioner in one way or other by ensuring that her services are not broken at any point to time. By considering petitioner's services for 9 years, the 5th respondent's school which is an aided minority, inducted him any of the available sanctioned vacancy and thus, she was appointed in the vacancy of one Anne Mary Celine who has retired on 01.06.1995 as a Secondary Grade Teacher. As the additional posts were sanctioned subsequently vide G.O.Ms.No.523/School Education (D1) Department dated 29.12.1997, the petitioner was promoted to B.T.Assistant on 23.03.1998 with effect from 01.06.1997.

11. So far as the premature payment of gratuity is concerned, there cannot be any denial on the part of the petitioner, because the petitioner was in continuous service. Similarly placed persons whose services rendered in the unsanctioned posts were given with benefit of pension



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inclusive of such period. Exactly similar matter is involved in WA.No.1552 of 2016 and in which, the Hon'ble Division Bench of this Court by an order dated 08.07.2021 has made a reference about G.O.(1D) No.413 School Education Department dated 27.11.2015 and an order has been passed in respect of some other teacher to consider his services rendered in the non sanctioned posts for calculating the pensionary benefits is extracted as hereunder:

“10. It is further pointed out that by proceedings dated 10.04.2014, the representations of the writ petitioner was considered by the fourth appellant, namely the District Educational Officer and was rejected as per G.O. Ms. No.314 School Education Department dated 12.12.1999. However, it appears that there was a contempt petition filed by the writ petitioner for non-compliance of the order. In order to close the said contempt petition, G.O. (1D) No.413 School Education Department dated 27.11.2015, has been issued, the operative portion of which is as follows:

“5, மேற்காண் சூழ்நிலையில். நீதிமன்ற அவமதிப்பினை தவிர்க்கும் பொருட்டு பள்ளிக் கல்வி இயக்குநரின் பரிந்துரையை ஏற்று. சென்னை உயர்நீதிமன்ற அரசு கூடுதல் தலைமை வழக்கறிஞரின் 23/6/2015 நாளிட்ட சட்டக் கருத்தின்படி. இந்நேர்வில் தாக்கல் செய்யப்பட்டுள்ள மேல்முறையீட்டில் வெளியிடப்படும் தீர்ப்பாணைக்கு உட்பட்டு மற்றும் இந்நேர்வினை முன்னுதாரணமாக கருதக் கூடாது என்ற நிபந்தனையின் அடிப்படையில். நீதிப்பேராணை மனு எண்,3434/2012 மீதான 28/1/2014



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நாளிட்ட தீர்ப்பாணையினை செயல்படுத்தும் பொருட்டு ஏற்கனவே தக்கலை மாவட்டக் கல்வி அலுவலரால் மனுதாரரின் கோரிக்கை மனுவினை நிராகரித்து வெளியிடப்பட்ட செயல்முறைகள் ந.க.எண்.1010/அ2/14 நாள் 10/4/2014-ஐ நீக்கம் செய்து. மனதாரர் திரு.ஜார்ஜ் ஸ்டீபன் என்பவர் கன்னியாகுமரி மாவட்டம். முனகுமுடு புனித ஜோசப் மேல்நிலைப்பள்ளியில் அரசால் அங்கீகரிக்கப்படாத பணியிடத்தில் அறிவியல் பாட பட்டதாரி ஆசிரியராக 01/09/1985 முதல் 31/07/2000 வரை பணியாற்றிய காலங்களை அவர் சார்பிலான ஊதிய நிர்ணயம் மற்றும் ஓய்வூதியப்பயன்கள் வழங்கிட கணக்கில் கொள்வதற்கு தகுதியான பணிக்காலமாக அனுமதித்து ஆணை வழங்கலாம் என முடிவு செய்து அவ்வாறே அரசு ஆணையிடப்படுகிறது.”

12. When similarly placed persons were given with the benefit of calculating the past services rendered in the unsanctioned posts for the purpose of retirement and pensionary benefits, such benefit can also be extended to the petitioner also. The respondents ought to have considered earlier mentioned government orders before passing the impugned order. Had that been the case, the respondents would have considered the petitioner's claim positively. However, the said benefit of allowing the petitioner to calculate her services rendered in the unsanctioned post between the period from 20.12.1986 to 31.05.1995 would be limited for



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the purpose of getting the retirement and pensionary benefits alone.

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With this limited relief this Writ Petition is **disposed of**. No costs.

03.01.2024

Index : Yes

Internet : Yes

Speaking

Neutral Citation : Yes

jrs



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R.N.MANJULA, J.

jrs

To

- 1.The Principal Secretary,
Government of Tamil Nadu
School Education Department,
Fort St. George, Chennai 600 009.
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D.P.I. Campus, College Road,
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