



W.P.(MD) Nos.18672 and 18675 of 2020

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

ORDERS RESERVED ON : 05.03.2024

ORDERS PRONOUNCED ON : 26.03.2024

CORAM

THE HON'BLE MR.JUSTICE MUMMINENI SUDHEER KUMAR

W.P.(MD) Nos.18672 and 18675 of 2020

W.P.(MD) No.18672 of 2020:

Narayanan

... Petitioner

Vs.

- 1.The Government of Tamil Nadu,
Rep., by its Secretary,
Department of Education,
St. George Fort, Chennai.
- 2.The Director of School Education,
College Road, Chennai-9.
- 3.The Chief Educational Officer,
Tirunelveli,
Tirunelveli District.
- 4.The District Educational Officer,
Cheranmahadevi,
Tirunelveli District.



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5. The Correspondent,
Senaithalaivar Higher Secondary School,
Ambasamuthiram, Tirunelveli.

... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India to issue Writ of Certiorarified Mandamus, calling for the records relating to the impugned order of the 2nd respondent in Mu.Mu.No.48290/D2/E3/2013 dated 09.03.2020 and quash the same as illegal and consequently direct the respondents to grant selection grade of pay scale to the petitioner with effect from 01.11.1995.

W.P.(MD) No.18675 of 2020:

Chellapandian

... Petitioner

Vs.

1. The Government of Tamil Nadu,
Rep., by its Secretary,
Department of Education,
St. George Fort, Chennai.
2. The Director of School Education,
College Road, Chennai-9.
3. The Chief Educational Officer,
Tirunelveli,
Tirunelveli District.
4. The District Educational Officer,
Cheranmahadevi, Tirunelveli District.



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5. The Correspondent,
Senaithalaivar Higher Secondary School,
Ambasamuthiram, Tirunelveli.

... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India to issue Writ of Certiorarified Mandamus, calling for the records relating to the impugned order of the 2nd respondent in Mu.Mu.No.50846/D2/E3/2019 dated 20.10.2020 and quash the same as illegal and consequently direct the respondents to grant selection grade of pay scale to the petitioner with effect from 11.03.1996.

In both cases:

For Petitioner	:	Mr.S.Chellapandian
For RR1 to 4	:	Mr.V.Om Prakash Government Advocate
For R5	:	No appearance

COMMON ORDER

As the issue that arises for consideration in both the writ petitions is one and the same, both were heard together and are being disposed of by this common order.



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2. The petitioners herein were appointed as Secondary Grade Teachers in the 5th respondent-School on 01.11.1995 and 11.03.1996 respectively and their appointments were also approved by the 4th respondent through proceedings dated 14.12.1995 and 20.03.1996 respectively. Both the petitioners were holding the qualification of Bachelors Degree together with Bachelor Degree in Education, i.e., B.Ed. The petitioners herein claim for counting of their services from the date of their initial appointment with effect from 01.11.1995 and 11.03.1996 respectively for the purpose of granting Selection Grade scale in terms of the policy of the Government providing for awarding of Selection Grade/Special Grade etc., on completion of service of 10 years/20 years respectively. The claims of the petitioners were rejected by the 4th respondent by issuing the impugned orders dated 09.03.2020 and 20.10.2020 respectively on the ground that the service rendered by the petitioners as Secondary Grade Teachers prior to undergoing the Training in Child Psychology will not be counted for the purpose of granting Selection Grade. Aggrieved by the said orders, the petitioners approached this Court.



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3. It is the contention of the petitioners that their appointments were already approved and therefore, the question of treating their services as approved only on they undergoing the Training in Child Psychology does not arise and there cannot be any two approvals for the very same appointment. It is also contended that similarly situated candidates were extended the benefit of counting the service from the date of their initial appointment and this Court also passed various orders from time to time extending such benefits. They also placed reliance on a decision of a learned Single Judge of this Court in W.P.(MD) Nos.19571 to 19573 of 2013, dated 06.01.2014 and a judgment of a learned Division Bench of this Court in W.A.(MD) Nos.1455 to 1457 of 2014, dated 12.07.2017, confirming the orders of the learned Single Judge. The petitioners also placed on record the relevant proceedings issued by the respondents complying with the orders passed by the learned Single Judge in W.P.(MD) Nos.19571 to 19573 of 2013. Thus, the petitioners claim that they are also entitled to be treated on par with the petitioners in W.P.(MD) Nos.19571 to 19573 of 2013.



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4. On the other hand, the 4th respondent filed a counter affidavit contending that the service rendered by the petitioners prior to they undergoing the Training in Child Psychology cannot be counted for any purpose, in view of the judgment passed by this Court in W.A.Nos.991 of 1998 and batch cases and the consequential Government Order issued in G.O.(Ms) No.155, School Education Department, dated 03.10.2002. It is also contended that the view taken by the Division Bench in W.A.(MD) Nos.1455 to 1457 of 2014, dated 12.07.2017 is deviated and a contrary view was taken by another Division Bench in W.A.(MD) Nos.74 of 2015 and 957 of 2016, dated 21.03.2016. Thus, it is contended that both the judgments passed by two learned Division Benches were considered by another learned Single Judge of this Court while dealing with very similar issue in W.P. (MD) No.16 of 2015, dated 28.11.2018, wherein the learned Single Judge followed the decision of the learned Division Bench in W.A.(MD) Nos.74 of 2015 and 957 of 2016 after elaborately discussing the matter. Thus, it is contended that the petitioners are not entitled for counting of their services from the date of their appointment till the date of they undergoing Training in Child Psychology, in terms of G.O.(Ms) No.155, dated 03.10.2002.



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5. This Court has carefully considered the submissions made on either side and perused the entire material on record.

6. In order to appreciate the matter, it is necessary to refer to certain background facts, which are taken note of by the learned Division Bench in W.A.(MD) Nos.74 of 2015 and 957 of 2016, which read as under:

“4.The background which led to the issuance of such Government order to the teachers is that, the respondents were appointed as BT Assistants in Secondary Grade Teacher vacancies. In other words, the respondents Teachers did not possess requisite qualification required for the post of Secondary Grade Teachers or put in other words, they were over qualified. Therefore, the Government issued G.O.Ms.No.559 Education, Science and Technology Department dated 11.07.1995 and directed not to approve the appointment of BT Assistants/Tamil Pandits in Secondary Grade Teacher vacancies in future in all kinds of School including minority School. Subsequently, the Government passed another order in G.O.Ms.No.203 Education, Science and Technology Department dated 19.03.1996 making a slight change to G.O.Ms.No.559 by observing that the Government direct



that such an appointment, namely, BT Assistants/Tamil Pandits in the Secondary Grade Teacher vacancies should not be restored to after 11.07.1995. That being the date of issue of G.O.Ms.No.559. The Management in which the teachers like the respondents were working filed writ petitions, challenging the validity of G.O.Ms.No.559 dated 11.07.1995. Some of the writ petitions were dismissed and ultimately, the matter was heard by the Division Bench.

*5.The question which fell for consideration before the Division Bench was as to whether the BT candidates can be appointed as Secondary Grade Teachers up to 8th standard for which SSLC and TSLC of Secondary Grade or equivalent prescribed by the Act and Rules and G.O.Ms.No.559 issued by the Government directing the educational authorities not to approve the appointment to BT teachers in Secondary Grade Teacher vacancies is valid or not. The Division Bench in the case of **Secretary and Correspondent Uswathun Hasana Oriental (Arabic) Girls Higher Secondary School, Pallapatti, 6396 205, Karur District v. State of Tamil Nadu and others** reported in **2002 Writ L.R. 173** dismissed all appeals filed by the managements challenging G.O.Ms.559 dated 11.07.1995. In the judgment, the Division Bench upheld G.O.Ms.No.*



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559 dated 11.07.1995 and held that there was no violation of any right of the teacher much less Fundamental Rights of the Managements and further held that B.Ed Teachers do not possess the requisite qualification to be appointed in the vacancy in the Secondary Grade Teachers to teach up to 8th standard. Having held so, the question arose as to what course should be adopted in the case of persons who have already been appointed on the basis of the B.Ed qualification in the post of the Secondary Grade Teachers Tamil Pandits.

6.The State Government through learned Additional Advocate General took a stand that they will consider the case of such Teachers who were appointed in Secondary Grade Teacher vacancies with B.Ed qualification and the Government will give the practical training or even choose to individually examine each case on its own merits. Recording the said submission, this Court directed the Government to complete the exercise as proposed by them within the time frame. This observation was made while dismissing the appeals and the writ petitions filed by the Management/petitioners.

7.Pursuant to which, G.O.Ms.No.155 dated 3.10.2002 was issued. The said Government Order



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provided for imparting one month child psychology training for all those Teachers, who possessed B.Ed qualification and appointed in Secondary Grade vacancies, which appointment was held to be not sustainable by the Division Bench. As the Teachers does not possess the requisite qualification, the Government, while granting such concession imposed a condition, which appears to have been unequivocally accepted by the Teachers. Otherwise they would have lost the chance of getting absorbed into service. The question would be as to whether the Teachers would be entitled to get salary from the date of first appointment, I.e. the order of irregular appointment and as to whether they would be entitled for salary in the Secondary Grade scale from the date of completion of child psychology training. There can be no controversy on the aspect as the Government order clearly stipulates as to from what date the Secondary Grade scale of pay is liable to be paid to those Teachers including the respondents. This is contained in Clause 3(iii) of G.O.Ms.No.155 dated 03.10.2002, which reads as follows:

“(iii) மேற்கண்ட நியமனங்கள்
அரசனைக்குப் புறம்பாக
செய்யப்பட்டுள்ளதாலும், இந்நியமனதாரர்களால்



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தொடர்ப் பட்ட ரிட் மனுக்கள் மற்றும் அதனை எதிர்த்து தள்ளுபடி செய்யப்பட்டுள்ளதாலும் மேற்கண்ட நியமனங்களுக்கு நியமன முதல் ஒப்புதல் வழங்கி, அந்நாள் முதல் ஊதியம் வழங்க இயலாது. எனவே, மேற்கண்ட பயிற்சியை முடித்த நாளிலிருந்து இவர்களுக்கு முறையான இடைநிலை ஆசிரியர்களாக நியமன ஒப்புதல் அளித்து, அந்த நாளிலிருந்து மட்டுமே இடைநிலை ஆசிரியர் ஊதியம் வழங்க வேண்டும் என்று ஆணையிடப்படுகிறது.”

8. Another condition, which would be relevant for the present case is clause 3(viii) of G.O.Ms.No.155 dated 03.10.2002, which reads as follows:

“(viii) மேற்கண்ட நபர்கள் நியமன ஒப்புதலின்றி பணிபுரிந்த காலத்தை அங்கீகரிக்கப்பட்ட தனியார் பள்ளிகளில் பதவி உயர்வுக்கோ ஊதிய நிர்ணயத்திற்கோ, ஓய்வூதியப் பயன்கள் வழங்குவதற்கோ கணக்கில் கொள்ளக் கூடாது என்றும் தெரிவிக்கப்படுகிறது.

இடைநிலை ஆசிரியர் பணியிடத்தில் நியமிக்கப்படும் பட்டதாரி/தமிழாசிரியர் தகுதி பெற்ற நபர்களுக்கு இடைநிலை ஆசிரியர்களுக்கான ஊதிய விகிதம்தான்



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வழங்கப்படும் என்றும், வேறெந்த சிறப்புச் சலுகையும் அளிக்கப்படமாட்டாது என்றும். அவர்கள் இடைநிலை ஆசிரியராக பணியாற்றும் காலத்தில் உயர் கல்வித் தகுதிக்கான சிறப்பு ஊதிய உயர்வு வழங்கும் திட்டம் இவர்களுக்குப் பொருந்தாது என்றும், இதற்கான உறுதிமொழிச் சான்று சம்பந்தப்பட்ட நபர்களிடமிருந்து பெறப்பட வேண்டுமென்றும் தெரிவிக்கப்படுகிறது.”

9.The management of various Schools, which had appointed Teachers like the respondents had challenged the validity of G.O.Ms.No155 dated 03.10.2002 and the matter travelled upto the Division Bench and the Division Bench in the case of **The State of Tamil Nadu and others v. Pallivasal Primary School** reported in **2004-2-L.W.591** upheld G.O.Ms.No.155 dated 03.10.2002. The only relief granted to the Teachers, who were appointed in Secondary Grade vacancies, is the grant of salaries, whereby restraining the department from effecting any recovery. Therefore, paragraph No.3(7) of G.O.Ms.No.155 alone was set aside and rest of the Government Order was upheld in the said decision. It was subsequently ordered that approval/confirmation of the appointment can be only after the date of completion of the



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*child psychology training. Further the Division Bench observed that the past service I.e prior service child psychology training shall count. After the decision rendered in the case of Pallivasal has attained finality, the respondent/writ petitioners seek for salary for the earlier period as well as for other monetary benefits such as increment, selection grade and special grade, etc. We have given our careful consideration. We find in paragraph No. 7 of its judgment, the Hon'ble Division Bench has noted the various condition in G.O.Ms.No.155 and held that the respondent therein would be entitled to relief as granted to similarly placed teachers. If that is so, the ultimate conclusion would have been to grant benefit from the date of completion of the child psychology training. However in the penultimate portion of the order her salary has also been included. In our considered view, the direction to pay salary does not corroborate with the observation made by the Division Bench, in the decision in the case Suganthi Victoria. The Government had admitted that at best it can be taken as a decision pertaining to the said case on its factual matrix and that cannot be taken as a precedent. In the case of **Government of Tamil Nadu v. Sri Rao Bahadur AKD Dharmaraja Girls Higher Secondary***



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School in W.A.(MD)No.3442 of 2002 dated 08.09.2006, the Division Bench, relying on the decision of the case reported in 2002 Writ L.R. 173, held that the salary can be paid only after completion of the child psychology training and accordingly, allowed the Government appeal.”

7. From the above, it is evident that the appointment of the candidates possessing B.Ed., qualification in the post of Secondary Grade Teacher is not permissible with effect from 11.07.1995, i.e., the date on which G.O.(Ms) No.559 was issued. For all the candidates, who were appointed to the post of Secondary Grade Teacher after 11.07.1995, their services were refused to be recognised by the Government Authorities and the challenge that was made to the Government Orders *vide* G.O.(Ms) No. 559, dated 11.07.1995 and G.O.(Ms) No.203, dated 19.03.1996 resulted in extending certain concessions to the teachers who were appointed in violation of G.O.(Ms) No.599 by issuing G.O.(Ms) No.155, dated 03.10.2002 and it is only in terms of G.O.(Ms) No.155, dated 03.10.2002, all the Secondary Grade Teachers, who were appointed contrary to G.O. (Ms) No.559, dated 11.07.1995 are able to continue in service. But, for the



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concession extended by the State through G.O.(Ms) No.155, dated 03.10.2002, all such Teachers appointed contrary to G.O.Ms.No.559, dated 11.07.1995 should have been out of service.

8. The petitioners herein are the persons, who were appointed much after 11.07.1995 and contrary to the orders issued in G.O.(Ms) No. 559, dated 11.07.1995. There is no dispute on the factual aspects. If that be the case, they are entitled for all service benefits strictly in terms of G.O. (Ms) No.155, dated 03.10.2002 only. They are not entitled to make any claim contrary to the terms of the said Government Order in G.O.(Ms) No. 155, dated 03.10.2002. As such, as held by the learned Division Bench in W.A.(MD) Nos.74 of 2015 and 957 of 2016, the service, i.e., rendered by the petitioners prior to, they completing the Training in Child Psychology cannot be counted for any purposes and it is only from the date of acquiring the Training in Child Psychology, the petitioners are entitled for counting of their services for all practical purposes, including for the purpose of grant of Selection Grade, Special Grade, etc. The claim of the petitioners that their services were duly approved and they have been drawing salary from the



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date of such approval etc., are all not matters that would confer additional benefit on the petitioners. No doubt, in some of the cases relied upon by the petitioners, certain benefits were extended on the ground that there cannot be two approvals for an appointment and the initial approval is only to be taken into consideration and as such, the petitioners are also entitled for counting of such service etc., are concerned, the petitioners are not entitled for extending such benefit, as all such benefits were extended in those cases without taking note of G.O.(Ms) No.155, dated 03.10.2002.

9. As rightly contended by the learned Government Advocate, the conflict between the two Division Benches, that is in W.A.(MD) Nos.1455 to 1457 of 2014, dated 12.07.2017 and W.A.(MD) Nos.74 of 2015 and 957 of 2016, dated 21.03.2018 was elaborately considered by a learned Single Judge of this Court in W.P.(MD) No.16 of 2015 and the learned Single Judge having elaborately discussed the matter, has chosen to follow the decision of the learned Division Bench in W.A.(MD) Nos.74 of 2015 and 957 of 2016, dated 21.03.2018 and observed as under:

“8.This Court had the benefit of going



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through the Division Bench Judgment rendered in earlier Division Bench judgment of this Court in W.A(MD) Nos.1085 and 1086 of 2014 dated 12.07.2017 and the Judgment rendered in writ appeal Nos.74 of 2015 and 957 of 2016 dated 21.03.2018 which were relied by the learned counsel for the petitioner and the learned Government Pleader respectively. The prior judgment relied by the learned counsel for the petitioner does not indicate the history of G.O(Ms) No.155 and the other Government orders which have been referred by the learned counsel for the petitioner in his affidavit. The Later judgment of this Court has indicated the entire history of passing G.O(Ms)No.155 dated 03.10.2002 and had come to the conclusion that the Secondary Grade scale shall be granted to the teachers appointed without adequate qualification only on completion of Child Psychology Training course.”

10. From the above, it is evident that the petitioners herein, who are not entitled to legally claim the benefits, which are being claimed by them in the present writ petitions directly in view of G.O.(Ms) No.155, dated 03.10.2002, are making an attempt to get those benefits indirectly by



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way of claiming parity with other similarly placed candidates, who were benefited by the orders passed by this Court on an earlier occasion.

11. This Court, having taken note of the over all fact situation, especially the condition imposed in G.O.(Ms) No.155, dated 03.10.2002, is of the considered view that the benefits that were extended by virtue of various orders passed by this Court without noticing the conditions imposed in G.O.(Ms) No.155, dated 03.10.2002 and without noticing the background facts, cannot be extended to the petitioners and they are not entitled to claim parity with such candidates.

12. In the light of the above, this Court is in complete agreement with the view taken by the learned Single Judge of this Court in W.P.(MD) No.16 of 2015 and accordingly, these writ petitions are liable to be dismissed and they are accordingly, dismissed. No costs.

NCC : Yes/No
Index : Yes/No
Internet : Yes
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26.03.2024



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To

- 1.The Secretary to Government,
State of Tamil Nadu,
Department of Education,
St. George Fort, Chennai.
- 2.The Director of School Education,
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MUMMINENI SUDHEER KUMAR, J.

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Pre-delivery Order made in
W.P.(MD) Nos.18672 and
18675 of 2020

26.03.2024