



W.A(MD)No.1650 of 2016

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 13.03.2024

CORAM:

**THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN
and
THE HON'BLE MR JUSTICE K.K. RAMAKRISHNAN**

W.A(MD)No.1650 of 2016

N.Mallika

....Petitioner/Appellant

Vs.

1.The Director of Elementary Education,
DPI Compound, College Road,
Nungampakkam,
Chennai.

2.The District Elementary Educational Officer,
District Elementary Educational Office,
Dindigul,
Dindigul District.

....Respondents/Respondents

PRAYER: Writ Appeal filed under Clause 15 of the Letters Patent, to set aside the order made in W.P(MD)No.14129 of 2016, dated 05.08.2016.



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For appellant : Mr.S.Karthik
For Respondents : Mr.D.Sadiq Raja
Additional Government Pleader

JUDGMENT

(Judgment of the Court was made by V.BHAVANI SUBBAROYAN,J.)

This Intra Court appeal is directed against the order passed by the writ Court, dated 05.08.2016 in W.P(MD)No.14129 of 2016.

2. The writ petitioner/appellant has filed the writ petition seeking writ of mandamus directing the respondents to give promotion to him from Secondary Grade Teacher to Graduate Assistant Teacher Maths as per the G.O.Ms.No.136 dated 20.06.1999 and refixing the pay scale as per the seniority and educational qualification of the petitioner based on the representation, dated 14.08.2014.

3. According to the writ petitioner/appellant, she was originally appointed as Secondary Grade Teacher on 12.06.1991 in Palani Adivaram Municipal Middle School. She completed B.Sc., (Maths) in November 1993 and B.Ed., degree (Maths) in may 1996 and therefore, she became eligible for promotion to the post



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of Graduate Teacher. In the meanwhile, G.O.Ms.No.136, School Education Department, dated 20.05.1999 was issued providing promotion to Secondary Grade Teachers, who completed general studies along with degree in Education, as Graduate Teachers. In spite of the said Government Order, the case of the petitioner was not considered. However, after a long time, she was given promotion to the post of Graduate Teacher, on 18.12.2007 and she was further promoted as Middle School Headmaster, on 19.08.2015, after seven more years. It is her claim that the said Government Order has not been properly given effect to in her case.

4. The learned Single Judge was of the view that the Government Order was issued almost 17 years ago, there is no semblance of proof to show that the petitioner had given any representation either in 2000 or 2005 seeking implementation of the said Government order in her favour. Secondly, at the time when the petitioner was given promotion to the post of Graduate Teacher on 18.12.2007, she has not accepted the said promotion under protest nor she made any claim that she should be given retrospective promotion by applying the said Government Order. Again, when she was given further promotion to the post of



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Middle School Headmaster on 19.08.2015, the petitioner has not given any representation stating that she should be given notional promotion to the post of Graduate Teacher on the basis of the said Government Order. Therefore, the petitioner cannot now canvass before this Court that she came to know about the issuance of the said Government Order, only in 2014, when the said Government Order was issued almost 17 years ago and dismissed the writ petition.

5. Challenging the same, the writ petitioner has filed the present writ appeal.

6. The learned counsel appearing for the appellant would submit that the G.O.Ms.No.136 of the School Education Department, dated 20.05.1999 has clearly given direction to the concerned D.E.E.Os., and order to promote the available B.Ed., qualified Teacher working in the Secondary Grade post in union, if no one is available and thereafter, call for the appointment through Teachers Recruitment Board. The petitioner has to be given promotion notionally, but the learned Writ Court has not considered the same.



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7. The learned Additional Government Pleader appearing for the respondents would submit that the appellant was originally appointed as a Secondary Grade Teacher on 12.06.1991 in Palani Adivaram Municipal Middle School. She became eligible for promotion as B.T.Assistant. When B.T.Assistant posts were allotted to various schools in the cadre of B.T.Assistants in Maths and Science, no post was allotted to the School in Palani District. One B.T.Assistant in Maths by name S.Radha was appointed through the Teachers Recruitment Board in the year 2005. The appellant was originally appointed on consolidated pay and was brought to time scale of pay on 29.07.1991 in an order issued subsequently on 07.07.2010. At the relevant point of time ie., in the year 2006 when a fresh candidate B.T(Maths) was recruited by the teachers recruitment board. Accordingly, the petitioner could not raise any objection. However, the appellant was promoted as B.T.Assistant in the month of December 2007 and Middle School Headmaster on 19.08.2015. Further, her regularization was only in the year 2010 from the date of initial appointment. She did not raise any objection in the year 2010. Even before the issue of the Tamil Nadu Pension Rules, 1978, there was no provision to add service prior to regularisation. The appellant retired only in the year 1991 which reveals the appellant is covered by



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the said Pension Rules and his pension calculation was made based on that rules.

The appellant accepted the promotion as B.T.Assistant in the year 2007 without any objection and without any request for retrospective regularization. Even at the time of promotion as Middle School Headmaster, she did not raise the issue and has not given any representation regarding the notional promotion as B.T.Assistant. The appellant was silent till she came to know about the Government Order in the year 2014 and till that time she did not represent in any manner. Now, after 17 years, the appellant cannot raise the issue. As no valid reasons assigned or justifiable cause was shown to file a writ petition after 17 years.

8. The petitioner grievance is that she was appointed as Secondary Grade Teacher on 12.06.1991 in Palani Adivaram Municipal Middle School. She completed B.Sc., (Maths) in November 1993 and B.Ed., degree (Maths) in may 1996 and therefore, she became eligible for promotion to the post of Graduate Teacher as per G.O.Ms.No.136, School Education Department, dated 20.05.1999. In spite of the said Government Order, the case of the petitioner was not considered. However, after a long time, she was given promotion to the post of



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Graduate Teacher, on 18.12.2007 and she was further promoted as Middle School Headmaster, on 19.08.2015, after seven more years. It is her claim that the said Government Order has not been properly given effect to in her case.

9. It is seen from the records that as per the G.O.Ms.No.79 School Education Department, dated 14.06.2002 the school was not upgraded. Further, the said G.O.Ms.No.136 is applicable to the teachers who are working in the Panchayat Union Schools and not applicable to the Municipality. The petitioner is working in the Palani Adivaram Municipal Middle School.

10. The said G.O.Ms.No.136, School Education Department, dated 20.05.1999 states as follows:

“தொடக்கக் கல்வித் துறையில் ஊராட்சி ஒன்றிய நடுநிலைப் பள்ளிகளில் உள்ள 100 இடைநிலை ஆசிரியர் பணியிடங்களை 100 பட்டதாரி ஆசிரியர் பணியிடங்களாக 1998-99 நிதி ஆண்டிலிருந்து நிரந்தரமாக மாற்றிக் கொள்வதற்கும், அவ்வாறு மாற்றப்படும் பணியிடங்களில் 50 கணித பட்டதாரி ஆசிரியர்களையும் 10 அறிவியல் பட்டதாரி ஆசிரியர்களையும் பதவி உயர்வு மற்றும் நேரடியாக நியமனம் மூலம் செய்து கொள்ள அனுமதி வழங்கி அரசாணை நிலை எண்.189, பள்ளிக் கல்வி, நாள் 4.6.98ல் ஆணை வெளியிடப்பட்டது. தற்போது தொடக்கக் கல்வி இயக்குநர் 1999-2000ம் ஆண்டில் நடுநிலைப் பள்ளிகளில் உள்ள 100 இடைநிலை ஆசிரியர் பணி இடங்களில் 50 பணியிடங்களை கணிதப் பட்டதாரி ஆசிரியர் பணியிடங்களாகவும் 50 பணியிடங்களை அறிவியல் பட்டதாரி ஆசிரியர் பணியிடங்களாகவும்



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மாற்றுவதற்கு அனுமதி வழங்கக்கோரி கருத்துரு அனுப்பி உள்ளார்.

2.தொடக்கக் கல்வி இயக்குநரின் கருத்துரு அரசினால் பரிசீலிக்கப்பட்டு ஏற்றுக் கொள்ளப்பட்டது. தொடக்கக் கல்வித் துறையில் ஊராட்சி ஒன்றிய நடுநிலைப் பள்ளிகளில் தற்போது உள்ள 100 இடைநிலை ஆசிரியர் பணியிடங்களை 100 பட்டதாரி ஆசிரியர் பணியிடங்களாக ரூ.5500-175-9200 என்ற ஊதிய விகித ஏற்ற முறையில், 1999-2000ம் நிதி ஆண்டிலிருந்து நிரந்தரமாக மாற்றிக் கொள்வதற்கும், அவ்வாறு மாற்றப்படும் பணியிடங்களில் 50 கணித பட்டதாரி ஆசிரியர்களையும் 50 அறிவியல் பட்டதாரி ஆசிரியர்களையும் பதவி உயர்வு மற்றும் நேரடியாக நியமனம் மூலம் செய்து கொள்ள அனுமதித்து அரசு ஆணையிடுகிறது.

3.மேலும் இத்திட்டத்தினை 1999-2000ம் ஆண்டில் 6,7,8 வகுப்புகளில் வருகை புரியும் மொத்த மாணவர் எண்ணிக்கை 100க்கு மேலாக உள்ள ஊராட்சி ஒன்றிய நடுநிலைப் பள்ளிகளில் அமுல்படுத்த வேண்டும் என்று ஆணை பிறப்பிக்கப்படுகிறது.

4.பட்டதாரி ஆசிரியர் பணியிடங்களை அந்தந்த ஊராட்சி ஒன்றிய அலகில் பணிபுரிந்து வரும் பொதுக் கல்வித் தகுதி மற்றும் தொழிற்கல்வி தகுதிகள் பெற்று பணிபுரிந்து வரும் இடைநிலை ஆசிரியர்கள் மற்றும் அதே ஊதிய விகிதத்தில் பணிபுரியும் சிறப்பாசிரியர்களைக் கொண்டு பதவி உயர்வு மூலம் நிரப்பிக் கொள்ள அரசு ஆணையிடுகிறது. அந்தந்த ஒன்றியத்தில் மேற்குறித்த தகுதிகள் பெற்று ஆசிரியர்கள் பதவி உயர்வு மூலம் நிரப்புவதற்கு எவரும் இல்லையெனில், அப்பணியிடங்களை ஆசிரியர் தேர்வு வாரியம் மூலம் பட்டியல் பெற்று நேரடியாக நியமனம் செய்து கொள்ளவும் அரசு ஆணையிடுகிறது.□

11. That being the case, the petitioner is not eligible under the G.O.Ms.No. 136, School Education Department, dated 20.05.1999. The said Government Order is not applicable to the teachers, who are working in the Municipal Corporation Schoos and it is only applicable to the teachers, who are working in the Panchayat Union Schools.



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12. In view of the this writ appeal is dismissed. No costs.

[V.B.S.,J.] [K.K.R.K.,J.]
13.03.2024

Index : Yes / No
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To

- 1.The Director of Elementary Education,
DPI Compound, College Road,
Nungampakkam,
Chennai.
- 2.The District Elementary Educational Officer,
District Elementary Educational Office,
Dindigul,
Dindigul District.



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and
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