



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 21.01.2015

CORAM :

THE HONOURABLE MR. JUSTICE K. RAVICHANDRABABU

Writ Petition (MD) No. 7596 of 2013

WEB COPY

B. Mary Theresa

...Petitioner

Vs.

1. The Government of Tamil Nadu,
Rep by its Secretary,
School Education Department,
Fort St., George,
Chennai 9.

2. The Director of Elementary Education,
College Road, Chennai 6.

3. The District Elementary Educational Officer,
Tirunelveli, Tirunelveli District.

4. The Additional Elementary Educational Officer,
Radhapuram, Tirunelveli District.

5. The Manager, Raja Primary School,
Eachadi 627 113,
Radhapuram Taluk,
Tirunelveli District.

..Respondents

Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus, calling for the records of the 3rd respondent herein in Ne.Mu.No. 6000 / (A5) A6/05 dated 26.10.2006 in so far it relates to the approval of the appointment of the petitioner herein with effect from 26.05.2005 as Secondary Grade Teacher instead of 2.6.2003 and the consequential order of the 4th respondent in Na.Ka.No.594/ A3/ 13 dated 22.04.2013 and quash the same and consequently direct the respondents herein to approve the appointment of the petitioner herein as Secondary Grade Teacher with effect from 2.6.2003 and pay salary from 2.6.2003 to 25.5.2005 with all attendant benefits and privileges.

For Petitioner : Mr. T. Pon Ramkumar

For Respondents : Mr. V. Muruganandam,
Additional Government Pleader.

ORDER

The present writ petition has been filed challenging the order of the third respondent, dated 26.10.2006 insofar as it relates to the approval of the appointment of the petitioner only with effect from 26.05.2005 as Secondary Grade Teacher instead of 02.06.2003 and the consequential order of the fourth respondent dated 22.04.2013. The petitioner prays for a direction to the respondents to approve the appointment of the petitioner with effect from 02.06.2003 and pay salary from 02.06.2003 to 25.05.2005.



2.The case of the petitioner is as follows:-

She was appointed as a Secondary Grade Teacher in 5th respondent school on 04.02.1998. She is a graduate in B.A and B.Ed., degree. Subsequently, in the year 2003, she was promoted as Middle School Headmaster in the fifth respondent school. The first respondent Government issued G.O.Ms.No.559, School Education Department dated 11.07.1995 against the appointment of graduate teachers in the Secondary Grade Post. Batch of writ petitions were filed challenging the said Government Order and by an order dated 29.06.2001, the Division Bench of this Court directed the authorities to approve the appointments which were made on or before 19.05.1998 by giving appropriate training. Thereafter, G.O.Ms.No.155, School Education Department, dated 03.10.2002 came to be issued enabling the teachers to undergo one month Child Psychology Training and to approve such appointment from the date of completion of such training. The petitioner though appointed on 04.02.1998 (i.e.,) much earlier to the cut off date fixed by the Hon'ble Division Bench namely, 19.05.1998, he was not sent for Child Psychology Training as per G.O.Ms.No.155, School Education Department, dated 03.10.2002 and therefore, she filed W.P.No.17140 of 2003 and obtained interim direction for sending her to Child Psychology Training. In spite of an order passed in the above said writ petition, the petitioner was not sent for the said training and consequently, a contempt petition in Cont.P(MD)No.237 of 2005 came to be filed and thereafter, the petitioner was sent for one month Child Psychology Training on 25.05.2005. After completion of such training, the third respondent approved the appointment of the petitioner only from 25.06.2005 whereas all the teachers were sent for training in 2003 were given regularisation with effect from 02.06.2003. Therefore, the present writ petition has been filed seeking for approval of appointment from 02.06.2003 on which date the first batch of teachers were sent for training.

3.The third respondent filed a counter affidavit and contested the writ petition by stating that the petitioner's appointment was regularized rightly from 25.06.2005 on which date, she has completed the Child Psychology Training.

4.Heard bothsides.

5.Learned counsel appearing for the petitioner submitted that on the very same set of facts several writ petitions were filed by other teachers and this Court allowed the writ petitions and directed the respondents therein to approve the appointment of the petitioners therein with effect from 02.06.2003 and pay salary for the left out period. The recent decision was passed in W.P.No.513 of 2012, dated 26.03.2013.

6.Mr.V.Muruganandam, learned Additional Government Pleader appearing for the respondents fairly submitted that the issue involved in this case is squarely covered by the above decision which in fact was passed by following the earlier decision of this Court.

7.It is not in dispute that the delay in sending the petitioner for such Child Psychology Training was not due to the fault of the petitioner and on the other hand, the Department has delayed in sending the petitioner after a period of two years. Further, a perusal of the above referred order passed by this Court would show that the petitioner is also similarly situated and entitled to the very same relief. For proper appreciation, the relevant paragraphs 7 to 11 are extracted hereunder:-



"7. The aforesaid facts are not in dispute. The petitioner is entitled to the benefit of G.O. (Ms) No. 155, School Education Department, dated 03.10.2002, but, he was not sent for Child Psychology Training in 2003. Hence, he was forced to file W.P. No. 17139 of 2003 seeking a direction for sending him to Child Psychology Training. An interim direction was also issued on 04.07.2003 in W.P.M.P. No. 21426 of 2003 in W.P. No. 17139 of 2003, directing the respondents/authorities to send the petitioner for Child Psychology Training. However, after two years, the petitioner was sent for Child Psychology Training for a period of one month from 25.05.2005 to 24.06.2005. The petitioner was sent for Child Psychology Training only after he had filed a contempt petition.

8. Furthermore, it is admitted that others were sent for Child Psychology Training in 2003 and they were regularised as Secondary Grade Teachers with effect from 02.06.2003 and the petitioner was regularised only on 25.06.2005. In a similar case, this Court issued a direction to the respondents/authorities to regularise the service of the petitioner therein with effect from 02.06.2003. In that case also, the petitioner therein was sent for Child Psychology Training belatedly in 2005, like the petitioner herein. Paragraphs 6 to 11 of the said order, dated 06.11.2009 made in W.P. (MD) No. 1501 of 2006, is extracted as hereunder:-

"6. As far as the entitlement of salary only from the date of completion of the Training, my attention is drawn to the Judgment in the case of M. Sundersingh V. Government of Tamil Nadu, Rep. By its Secretary to Government, School Education Department and Others ((2006) 2 MLJ 784). That was a case where the petitioner therein was not even sent for the training as provided under G.O. Ms. No. 155, School Education (D-2) Department, dated 03.10.2002. Nevertheless, this Court, having regard to the benefit extended to similarly placed persons on the basis of the Government Order, for salary from 2.6.2003, had directed the payment of salary to that teacher as well. From the said Judgment, this Court has come to understand that, similarly placed persons have been given the benefit of salary from 02.06.2003 and in fact, those teachers who were not completed training were also extended such benefit. Denial of such benefit to the petitioner who has completed the training, of course, at a later point of time, cannot be denied.

7. There is one more aspect in this matter viz., when similarly placed persons were sent for training at the earliest point of time, the petitioner was not sent for training which made her to approach this Court for a direction and only after the direction of this Court, she was sent for training and the delay in completion of the training is also not on her part.

8. In these circumstances, I am of the opinion that the benefit given to the other similarly placed teachers



must also be extended in regard to the entitlement of salary.

9. Learned Additional Government Pleader would, however, submit that at the relevant point of time, when the petitioner was appointed, there was no vacancy and the vacancy arose only after 2.6.2004. In any case, the petitioner is not entitled to the salary for the period prior to 2.6.2004.

10. In my opinion, the said submission cannot be accepted for more than one reason. The said reason is adduced only in the counter affidavit and it does not reflect in the order. The order which is impugned in the writ petition must be judged on the basis of the reasons given in that order and the respondents cannot be allowed to improve their case by filing counter affidavit. Secondly, even assuming that there was no vacancy, on record, no material is placed to show that the post in which the petitioner was appointed was declared to be surplus and the school was intimated in this regard. In the absence of the above, it cannot be considered that the petitioner was appointed to the post which was declared to be excess. Hence, the submission of the learned Additional Government Pleader is liable to be rejected.

11. For the above reasons, the impugned order is set aside to the extent it restricted the payment of salary from 9.3.2005 and the denial of pensionary benefit. Consequently, there will be a direction to the respondents to pay the salary of the petitioner from 2.6.2003 onwards and extend the pensionary benefit as well. The writ petition is allowed to the extent as indicated above. Connected Miscellaneous Petition is closed. No costs."

9. Respondents 2 to 4 have stated that the case of the petitioner is different from the case of the petitioner in W.P. (MD) No. 1501 of 2006.

10. I do not agree with the statement made by the respondents 2 to 4. The aforesaid extracted paragraphs make it abundantly clear that the facts of the said case are similar to the present case on hand.

11. For all the aforesaid reasons, the Writ Petition is allowed and a direction is issued to the respondents to approve the appointment of the petitioner herein as Secondary Grade Teacher with effect from 02.06.2003 and pay salary from 02.06.2003 to 25.05.2005 with all attendant benefits, within a period of eight weeks from the date of receipt of a copy of this order. No costs. Consequently, the connected Miscellaneous Petition is closed".



8.Considering all the above stated facts and circumstances, I am of the view that the petitioner is entitled to succeed in this writ petition. Accordingly, the writ petition is allowed and the respondents are directed to approve the appointment of the petitioner as Secondary Grade Teacher with effect from 02.06.2003 and pay salary from 02.06.2003 to 25.05.2005 with all attendant benefits within a period of twelve weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(Writs)

/True copy/

Sub Assistant Registrar

To

1.The Secretary,
Government of Tamil Nadu,
School Education Department,
Fort St., George,
Chennai 9.

2.The Director of Elementary Education,
College Road, Chennai 6.

3.The District Elementary Educational Officer,
Tirunelveli, Tirunelveli District.

4.The Additional Elementary Educational Officer,
Radhapuram, Tirunelveli District.

+1CC to M/s.T.Pon Ramkumar, Advocate in SR.2602

+1CC to the Special Government Pleader in SR.2987

Writ Petition (MD) No.7596 of 2013
21.01.2015

sms

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