



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 22.11.2016

CORAM:

THE HON'BLE MR.JUSTICE M.GOVINDARAJ

W.P. (MD) NO.6853 OF 2011

AND

M.P (MD) NO.1 OF 2011

P.V.Nakharathinam

... Petitioner

Vs.

1. Joint Director of School Education (Vocational)
College Road, Chennai - 600 006.

2. The Chief Educational Officer
Sivagangai District, Sivagangai.

3. N.Thilagam
Craft Teacher
Government Girls Higher Secondary School,
Rajaveethi, Coimbatore.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, for the issuance of Writ of Certiorarified Mandamus to call for the records relating to the impugned order passed by the first respondent in his proceedings Na.Ka.No.5046/V1/E1/2003 dated 14.05.2010 and quash the same as illegal and consequently, to direct the first respondent to refund the amount recovered in pursuance thereof and regularize the petitioner's services with effect from 16.10.1992 along with attendant monetary benefits.

For Petitioner : Mr.M.E.Elango

For Respondents

1 and 2 : Mr.S.Kumar

Additional Government Pleader

For R 3 : NA

O R D E R

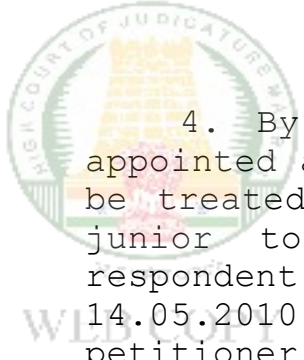
The writ petitioner was appointed as a single part-time Vocational Instructor on 03.10.1989. Subsequently, based on G.O.Ms.No.834, dated 23.09.1994, his services were regularised in the Post of Secondary Grade Teacher. Thereafter, his services were regularised as B.T. Assistant scale with effect from 10.06.2002, with notional effect from 23.09.1994. Pursuant to the appointment and transfer, the post vacated by the petitioner was reverted back to the department.

2. According to the learned counsel for the petitioner, the appointment of vocational training instructors has a checkered history.



Originally, the Government has appointed teachers to teach vocational course in Higher Secondary School on part time basis. Those who are working in one session are called single part time instructors and those who are working on both sessions are double part time instructors. When the Government decided to regularize the appointment of the vocational instructors, it gave preference to the double part time vocational instructors and regularized their services by virtue of G.O.Ms.No.712 dated 28.05.1990 and G.O.Ms.No.967 of 16.10.1992. This regularization was challenged before the Tamil Nadu Administrative Tribunal. The Tribunal in O.A.No.3280 of 1992, by its order dated 16.06.1993, has directed the Government to appoint the instructors counting their seniority on the basis of date of appointment without any discrimination as single part time or double part time instructors. Pursuant to the same, the Government issued G.O.Ms.No.834, by which 1387 posts of vocational instructors on regular time scale of pay of Rs.1400-40-1600-20-2300-60-2600 were ordered to be created with effect from 30.06.1995. It was decided to fill up the post from and among the qualified part time teachers according to their seniority irrespective of the fact as to whether they are working as 'double' or 'single' part time Instructors. It was further ordered that those fully qualified double part-time Instructors will be brought under regular time scale of pay mentioned above, but those who may not become eligible for being considered, would be brought under the time scale of pay after the revised order. Further, while fixing the seniority, it was decided that the single part-time Instructor who happened to be a senior to the junior most fully qualified double part time Instructors shall be brought under regular scale of pay with reference to the date of drawal of pay in regular time scale of by their junior. As per clause V of the said G.O., the remaining fully qualified single part-time Instructors and subsequently qualified (i.e.,) on or before 16.10.1992 double part-time Instructors be absorbed in existing vacant posts in the secondary grade scale of pay for the time being and appointed as Vocational Instructors in the B.T. Scale as and when posts become available under the Centrally Sponsored Scheme of Vocational Education.

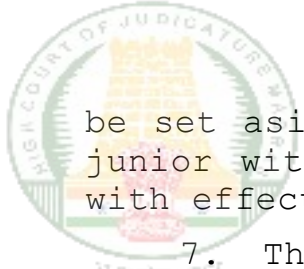
3. The writ petitioner, whose appointment as single part time vocational instructor on 03.10.1989, admittedly was fully qualified to be appointed as vocational instructor. But while G.O.Ms.No.834, dated 23.09.1994 was challenged in a batch of writ petitions before this Court, this Court by its order dated 08.07.2004 has given certain instructions in respect of the single part-time and double part-time instructors and their regularization. Direction No.3 issued was that single part-time instructors, who were otherwise qualified, shall be deemed to have been regularised with effect from the date on which any double part-time Instructors junior to them had been regularised and their seniority and length of service would be treated as such from the deemed date of regularization for all purpose.



4. By virtue of this order, the writ petitioner, who was appointed as single part-time teacher, was fully qualified, was to be treated as Senior to many of the double part-time instructor junior to them had been regularised. While so, the first respondent in his proceedings in Na.Ka.No.5046/B1/E1/2003 dated 14.05.2010 issued an order regularizing the services of the writ petitioner with effect from 23.09.1994 on notional basis and from 08.07.2004 with actual monetary benefits as per G.O.Ms.No.71, dated 18.03.2010. While passing such an order, the first respondent has directed recovery of the time scale of pay of Graduate Assistant category from 10.06.2002 to 07.07.2004 be remitted in Government account by the respective Headmasters of the School. Aggrieved by the order of the first respondent, the writ petitioner is before this Court.

5. According to the writ petitioner, he is a fully qualified single part time teacher appointed on 03.10.1989 and after undergoing all the litigation before the Tribunal and this Court, he was regularised with effect from 08.07.2004 with actual monetary benefits and from 23.09.1994 on notional benefits. Whereas, he was treated, as if he was appointed as an unqualified teacher whose cases were covered under G.O.Ms.No.71, Educational Department, dated 18.03.2010, in which, regularization orders were issued to the unqualified teachers with effect from 08.07.2004 with all monetary benefits and to recover the salary given in B.T. Assistant cadre from 10.06.2002 to 07.07.2004. According to the petitioner, he is fully qualified. He also relied on G.O.Ms.No.68, Educational Department, dated 20.03.2007, which pertains to fully qualified vocational instructors. Whereas, the Government has issued another order in G.O.Ms.No.69, Education Department, dated 20.03.2007, in respect of unqualified teacher. Those unqualified teachers were given benefits, after completion of the training prescribed by G.O.Ms.No.834 dated 23.09.1994 and notional benefits would be given from the date of regularization.

6. According to the petitioner, the G.O.Ms.No.69 pertaining to the unqualified teachers were implemented by G.O.Ms.No.71, dated 18.03.2010. The petitioner was also brought under the G.O.Ms.No.71 as per impugned order dated 14.05.2010. Therefore, the respondents have erroneously sought to recover the benefits given to him. It is the submission of the counsel for the petitioner that as per the orders issued by this Court in W.P.No.11389 of 2003 dated 08.07.2004, he should have been treated as senior to double part-time junior appointed later than him. Insofar as the third respondent is concerned, she was appointed on 04.10.1989, whereas the petitioner was appointed on 03.10.1989. At the time of regularization, she was regularised with effect from 16.10.1992 in view of the G.O.Ms.No.967 whereas she was erroneously fixed with effect from 23.09.1994 as per the order issued to the unqualified vocational training instructors. Therefore, it is the claim of the writ petitioner that the recovery order issued by the first respondent on 14.05.2010 has to

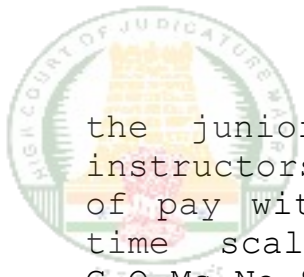


be set aside and his pay benefits shall be fixed on par with his junior with effect from the date of regularization of his junior with effect from 16.10.1992 in G.O.Ms.No.967.

7. The second respondent has filed a counter affidavit. According to the second respondent, the petitioner was absorbed in the secondary grade scale pay Rs.1200-30-1560-40-2040 with effect from 23.09.1994 according to the guidelines issued in G.O.Ms.No.834, dated 23.09.1994. Since G.O.Ms.No.967 dated 16.10.1992 was suspended by the Tamil Nadu Administrative Tribunal, by its order dated 18.06.1993, the petitioner may not have any legal right to claim the benefits under the above said G.O.Ms.No.967, dated 16.10.1992. The Government has ordered fixation of pay scale on regularization of Vocational Training Instructor on the basis of the order issued by the High Court, in W.P(MD)No.11319 of 2005 batch dated 08.07.2004. Whereas the third respondent was regularised with effect from 16.10.1992, the date of issuance of G.O.Ms.No.967 and her seniority was protected by the Court's order dated 24.06.2002. Therefore, the writ petitioner cannot compare himself with the third respondent and he is not entitled to relief as sought for by him.

8. Heard both sides.

9. The admitted facts are that the writ petitioner was appointed as part time vocational training instructor in Higher Secondary School, with effect from 03.10.1989 and the same was approved. Vide G.O.Ms.No.712 dated 28.05.1990 and G.O.Ms.No.967, dated 16.10.1992, the Government has sanctioned appointment of 800 posts vocational instructor in Higher Secondary School in the scale of pay of Rs.1400-40-1600-20-2300-60-2600 with effect from 01.04.1990 so as to absorb fully qualified double part time vocational instructors on regular basis, vide G.O.Ms.No.967 and another 587 posts were sanctioned in the same scale of pay and to abolish equal number of part time teachers. Accordingly, the double part time teachers were regularised in the Higher Secondary School. Thereafter, the above said G.O.Ms.No.712 dated 28.05.1990 and G.O.Ms.No.967 dated 16.10.1992 were challenged before the Tamil Nadu Administrative Tribunal and the Tamil Nadu Administrative Tribunal gave a finding that there shall be no discrimination between single part time vocational instructors and double part time vocational instructors and thereby suspended the operation of the abovesaid G.Os'. The Tribunal directed the Government to appoint part time vocational instructors on taking into account their respective date of appointment for deciding the seniority. This order relates to issuance of G.O.Ms.No.834, by which, 1387 post of vocational instructors on regular time scale of pay of Rs.1400-40-1600-20-2300-60-2600 with effect from the date of issuance of G.O., dated 23.09.1994. According to the said G.O., seniority among the single part time and double part time vocational instructors will be fixed on the basis of seniority. Though single part time instructors who happened to the senior to



the junior most fully qualified double part time vocational instructors will be ranked senior and brought under regular scale of pay with reference to the date of drawal of pay and regular time scale of pay by the junior, subsequently, the said G.O.Ms.No.834, dated 23.09.1994 was also challenged by the persons, who had already been appointed from double part time instructor post. It is pertinent to point out there are two batches of writ petitions one W.P.No.11389 of 2003 by qualified vocational instructor and another in W.P.No.9780 of 1995 and batch, dated 08.07.2004. Insofar as the qualified teachers are concerned, this Court has given following directions:-

"(1) The impugned G.O.Ms.No.834 Education Science and Technology (HS.II) Department dated 23.09.1994 is quashed to the extent and so far as it takes away the vested right of regularisation already conferred on the Double Part-time instructors as per G.O.Ms.Nos.712 of 1990 and 967 of 1992.

(2) Such Double Part-time instructors, who were regularised pursuant to the aforesaid G.O.Ms.Nos.712 of 1990 and 967 of 1992 shall continue to enjoy the status they had acquired, including the regular increments as per their original date of regularisation.

(3) Single Part-time instructions, who were otherwise qualified, shall be deemed to have been regularised with effect from the date on which any Double Part-time instructors junior to them had been regularised and their seniority and length of service would be treated as such from the deemed date of regularization for all purpose.

(4) All such double part time instructors and single part time instructors, who are deemed to have been regularised, as per the directions contained in paragraphs 2 and 3 shall be entitled to the benefit of notional increment in the regular scale of pay applicable to them from the deemed date of their regularization. However, no amount shall be paid towards such notional increment.

(5) No recovery shall be made from any of the double part time teachers or single part time teachers. While realigning the seniority of the single part teachers viz-a-vis double part time teachers, there shall not be any reduction in scale of pay already drawn by the double part time teachers and no recovery shall be made."

10. Insofar as the unqualified teachers are concerned, this Court has issued the following directions:-



"(i) Unqualified vocational instructors who have been subsequently adjusted against secondary grade scale of pay on completion of their training, as envisaged in G.O.Ms.No.834, dated 23.9.1994, shall be deemed to have been regularised in B.T. scale of pay with effect from the dates of their regularisation in the secondary grade scale of pay and their seniority would be counted on the basis of such deemed date of regularisation.

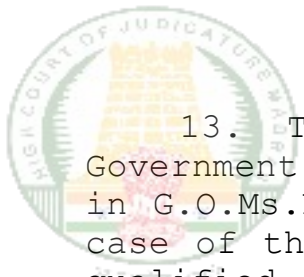
(ii) Inter-se-seniority of such persons shall be dependent upon their initial entry as part time vocational instructors, whether single or double.

(iii) Increments shall be calculated notionally from the deeded dates of their regularisation.

(iv) However, arrears on account of difference in the scale of pay and on account of notional increments are not payable and such persons shall be paid salary in B.T. scale from the date of judgement only by taking into account the notional increments."

11. It is also pertinent to note that G.O.Ms.No.358, Educational Department, dated 18.08.1997, is with regard to training to the unqualified vocational instructor and posting them in Secondary Grade Teacher post, according to which, the unqualified part time vocational instructors were named as vocational instructor grade II. They were posted in the scale of pay of Rs.1200-30-1560-40-2040. Those teachers after completion of training could be adjusted against the regular vacancies which arose at Grade I posts. The important point is that these unqualified teacher who were appointed in the Secondary Grade Teacher posts, Grade II of vocational instructor with the time scale of pay of Rs.1200-30-1560-40-2040 are entirely a different class and they cannot be compared by the respondents with writ petitioner. The difference between the writ petitioner and unqualified teachers was that the writ petitioner was posted in adjusted vacancy as Secondary Grade Assistant post for want of vacancy in Vocational Instructor Grade I, but entitled to scale pay of B.T. Assistant. Whereas, the unqualified teachers were directed to undergo training within the time stipulated by the Government and once they qualified, they would be posted against the vacancy, arising in Grade I. Till such time, they were posted in the time scale of pay of Rs.1200-30-1560-40-2040.(2300).

12. While implementing G.O.Ms.No.69 dated 23.03.2007, by way of G.O.Ms.No.71 dated 18.03.2010, the Government has regularised the appointment of unqualified vocational training instructors. The petitioner was brought under G.O.Ms.No.71, as if he is an unqualified vocational training instructor.



13. This Court, after going into the various orders issued by Government as well as by the Courts, finds that Government Order in G.O.Ms.No.71 dated 18.03.2010 has been wrongly imported in the case of the petitioner. Therefore, the writ petitioner was fully qualified to hold the post of vocational training instructor and he is entitled to get the pay of B.T. Assistant, as held by the Division Bench of this Court in W.P.No.11389 of 2003 dated 08.07.2004.

14. It is important to note that till the vocational training instructors are holding the post of Secondary Grade Assistants, they are paid salary at Rs.1200-30-1560-40-2040 (2300) as and when they are regularised in Grade I post they are entitled to B.T Assistant Scale of pay of Rs.1400-40-1600-20-2300-60-2600. The third respondent is also similarly placed, whose salary was fixed at Rs.1200-30-1560-40-2040 (2300) initially and on regularization, she was given B.T Assistant scale with effect from 16.10.1992 in view of G.O.Ms.No.97. As per G.O.Ms.No.834, the writ petitioner is entitled to be ranked above his double part time vocational instructor. Therefore also, this writ petitioner is entitled to the relief claimed by him.

15. Accordingly, the impugned order in Na.Ka.No. 5046/V1/E1/2003 dated 14.05.2010 insofar as fixing the date of regularization of the petitioner in view of G.O.Ms.No.71 is concerned, is set aside and consequential recovery ordered by the respondents is also set aside. The respondent nos.1 and 2 are directed to consider the case of the petitioner in light of all the Government Orders and fix his seniority at appropriate place comparing with the third respondent, within a period of six weeks from the date of receipt of a copy of this order.

16. With the above directions, this writ petition is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS-III)

/True Copy/

Sub Assistant Registrar

To

1. The Joint Director of School Education (Vocational)
College Road, Chennai - 600 006.

2. The Chief Educational Officer
Sivagangai District, Sivagangai.

+1cc to Mr.M.E.Elango, Advocate SR.No.72405

SKN/TK

VB/JC/SAR2/06/09/2017/7P/4C