

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.06.2017

CORAM

THE HON'BLE Mr. JUSTICE M. DHANDAPANI

W.P.Nos.8037 to 8041 of 2004
and WPMP Nos.9488, 9490, 9492, 9494 and 9496 of 2014

S.Mythili ... Petitioner in W.P.No.8037/2004
V.Rani ... Petitioner in W.P.No.8038/2004
R.Lily Pushpam ... Petitioner in W.P.No.8039/2004
M.Padmavathy ... Petitioner in W.P.No.8040/2004
N.Madhavi ... Petitioner in W.P.No.8041/2004

vs.

1. The Government of Tamil Nadu,
Rep. by its Secretary, School
Education Department,
Fort St.George, Chennai - 600 009.
2. The Director of School Education,
College Road, Chennai - 600 006.
3. The District Education Officer,
Thiruvarur, Thiruvarur District.
... R1 to R3 in all W.Ps.

The Correspondent,
St.Joseph's Girls Hr.Sec.School,
Mannargudi 614 001,
Thiruvarur District. सत्यमेव जयते
... R4 in W.P.8037 of 2004

The Correspondent,
St.John De Britto's High School
Pallan Koil, Thiruthurai Pundi T.K.
Thiruvarur Dist. WEB COPY
.. R4 in W.P.8038 of 2004

The Correspondent,
St. Therasa's Girls Hr. Sec. School,
Thiruthuraipundi,
Thiruvarur District.
.. R4 in W.P.8039,8040 and 8041 of 2004

Writ Petitions filed under Article 226 of the Constitution of India praying to issue a writ of Certiorarified Mandamus calling for the records relating to the order of the 1st respondent issued in G.O.Ms.No.155 School Education (D2) Department, dated 3.10.2002 and the Consequential order of the 2nd respondent passed in his proceedings Na/Ka No.87909/d(3)/(4)/02 dated 26.5.2003 and quash the same in so far as the direction to take steps to refund of arrears paid, direction to pay salary only after completing the training alone are concerned and direct the respondents 1 to 3 herein to continuously pay salary and other benefits from the date of the petitioners Appointments in W.P.No.8037/2004 i.e.14.6.1996, in W.P.No.8038/2004 i.e.2.9.1996 W.P.No.8039/2004 i.e.17.10.1996, in W.P.No.8040/2004 i.e.14.10.1996, in W.P.No.8041/2004 i.e.05.06.1997.

For Petitioners in
all the WPs : Ms.P.Mahalakshmi

For Respondents in: Mr.V.Jayaprakash Narayanan
all the WPs Special Government Pleader

C O M M O N O R D E R

All these petitioners were appointed as Secondary Grade Teachers in different minority schools and their appointment was also approved from the date of their appointment. Subsequently, the official respondents made recovery from the salary of the petitioners and their salary was stopped and enquiry was also ordered, since they have not completed Child Psychology Training. Challenging the above decision, the petitioners have filed the present writ petitions.

2. Admittedly, though the petitioners possess higher qualification, they have not completed Child Psychology Training. The Government issued G.O.Ms.No.559, Education Department dated 11.07.1995 ("G.O. Ms.No.559" for short) prohibiting appointment of B.Ed. qualified candidates in Secondary Grade vacancies in Primary and Middle Schools. The said Government Order was put to challenge in a batch of writ petitions and the same was dismissed. The writ appeals preferred challenging the order passed in the said batch of writ petitions were also dismissed vide order dated 29.06.2001, upholding the validity of G.O. Ms.No.559. Based on that, the Government issued G.O.Ms.No.155, School Education (D2) Department dated 03.10.2002 (for brevity "G.O. Ms.No.155") stating inter

alia that salary shall be stopped to such of those teachers who have not completed Child Psychology Training and that steps be taken to recover the salary already paid to them. G.O.Ms.No.155 was challenged in a batch of writ petitions, which was allowed by this Court. Aggrieved by the said order, the State preferred writ appeals, in The State of Tamil Nadu, represented by its Secretary, Education Department, Fort St. George, Chennai-9 and 2 others vs. Pallivasal Primary School, represented by its Correspondent, Mudukulathur [2004-2-L.W.591] and the same were allowed to a limited extent of directing that no recovery be made from the teachers to whom the Government had already released grants and paid salaries. In paragraphs 6 and 7, the Division Bench held as under:

"6 The Government Order No.155 directs recovery of salary paid to the appellants/petitioners on the ground that prior to their completing the training, they could not have held the posts that were held by them. There is no dispute about the fact that these persons had actually worked. Salary paid to persons who had actually rendered service cannot be regarded as amount paid as gratis. Moreover the Division Bench had noticed the fact that these persons had been working and had indicated that it would be equitable to allow them to remain in employment. It was left to the Government to devise a scheme by which these persons could acquire qualifications which were essential for holding the post to which they had been appointed at a time when they did not possess the qualification. The salary that had been paid to them during that period when they were actually teaching, even though without the requisite qualifications, in our view, is not an amount which they should be called upon to repay. It has been noticed by the Division Bench which upheld the G.O. Ms.No.559 that most of these teachers came from a poor background, that it was after a great deal of effort before that they could equip themselves to a limited extent and thereafter had been working in the schools for meager salaries. Directing such persons to repay huge amounts, huge amounts because the entire salary paid over a period of nearly nine years would amount to inasmuch as over five lakhs of rupees per person,

would cause untold hardship to such teachers. We, therefore, set aside that part of the Government Order, namely, sub para (vii) of Para 3 which directs recovery from these teachers.

7 A submission was also made for some of those among the appellants/petitioners that they have not been paid salary by the State. The State was not under any obligation to pay salary to persons who were not qualified and who have been appointed contrary to Government Order. Such persons must have been paid some amount by the management who employed them. Government cannot be directed to shoulder that liability for payment to such persons and in cases where payment had not been made. What has been said by us in relation to the persons who had received salary and recovery from whom has been held by us to be unwarranted, would apply to the Government as well as any direction to it to pay salary to a large number of such persons who did not, at the relevant time, possess the prescribed qualification, would result in a huge burden being imposed on the Government even when it had committed no wrong."

3. It is also pertinent to point out that the judgment of the Division Bench in Pallivasal Primary School (supra) has been subsequently followed by a learned Single Judge of this Court in M.Sundersingh v Government of Tamil Nadu, rep. by its Secretary to Government, School Education Department and others [(2006) 2 M.L.J. 784], the operative portion of which would run thus:

"9 The Government for implementing the said judgment, issued G.O. Ms.No.155 and granted relief to the teachers appointed upto 19.5.1998 by giving one month Child Psychology Training. The earlier condition imposed that the teachers shall be appointed through Employment Exchange and following communal roster was also removed by the subsequent G.O. Ms.No. 34 dated 17.03.2003. In view of the said order, there is no impediment for the grant of approval of the appointment of the petitioner by the respondents after giving one month Child Psychology Training.

10 The only other reason stated in the impugned order is that in Standards 1 to 5, only female teachers can be appointed. The said condition was also removed by the Government by issuing subsequent Government Orders and now only 1/3rd posts are reserved for women teachers. In view of the removal of all disqualifications attached to the petitioner's appointment by subsequent Government Orders, petitioner is entitled to get his appointment approved and it is for the respondents to arrange for giving one month Child Psychology Training to the petitioner to satisfy the condition imposed in G.O. Ms.No.155 dated 3.10.2002."

4. Learned counsel for the petitioners submitted that the petitioners have completed Child Psychology Training as per G.O.Ms.No.155 as on 31.05.2003.

Following the aforesaid judgment of the Division Bench of this Court in Pallivasal Primary School (supra), these petitions are allowed to the limited extent of directing that no recovery be made from the petitioners to whom the Government have already released grants and paid salaries. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Asst.Registrar (CS II)

/true copy/

Sub Asst. Registrar

gms

To

- 1 The Secretary, School Education Department,
Fort St.George, Chennai - 600 009.
Government of Tamil Nadu,
2. The Director of School Education,
College Road, Chennai - 600 006.
3. The District Education Officer,
Thiruvavarur, Thiruvavarur District.

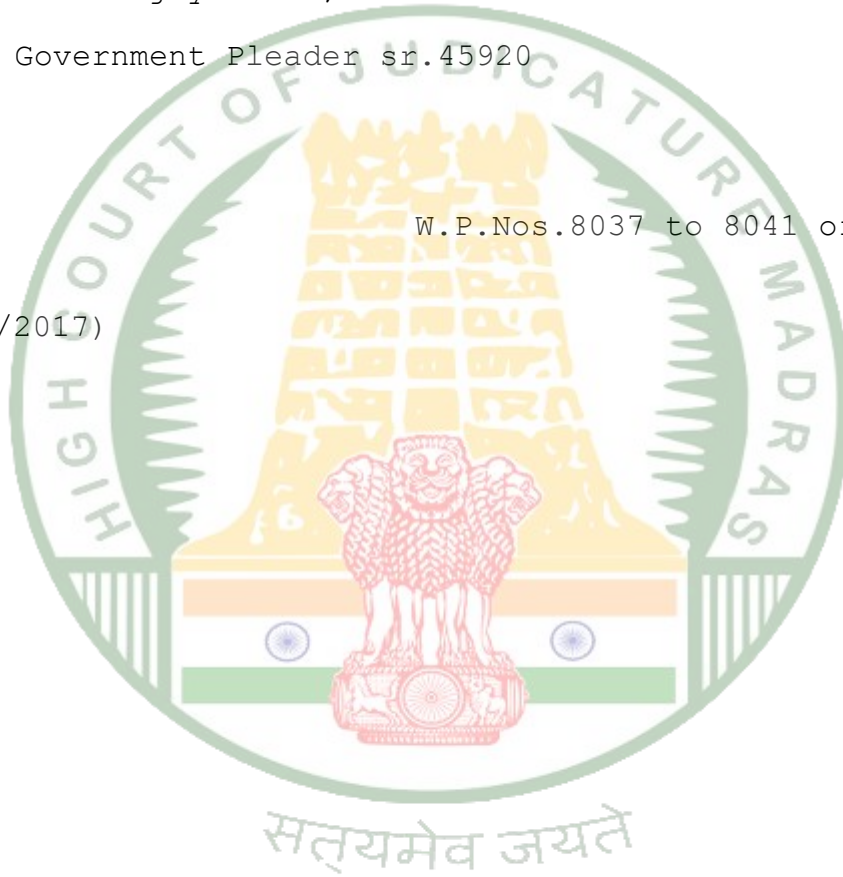
4. The Correspondent, St. Therasa's Girls Hr. Sec. School, Thiruthuraipundi, Thiruvarur District.
5. The Correspondent, St. Joseph's Girls Hr. Sec. School, Mannargudi 614 001, Thiruvarur District.
6. The Correspondent, St. John De Britto's High School Pallan Koil, Thiruthurai Pundi T.K. Thiruvarur Dist.

+1cc to Mr.K.Vijayakumar, Advocate sr.45363

+1cc to Government Pleader sr.45920

W.P.Nos.8037 to 8041 of 2004

sj(co)
ss(11/8/2017)



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