

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.08.2017

CORAM

THE HON'BLE MR. JUSTICE M.V.MURALIDARAN

W.P.No.11668 of 2013

K.Venkateswaran

.. Petitioner

vs

1. The State of Tamil Nadu,
rep. by its Secretary to Government,
School Education Department,
Fort St. George,
Chennai – 600 009.

2.The Director of School Education,
College Road,
Chennai-6.

3.The Joint Director,
(Vocational) Education,
College Road,
Chennai-6.

4.The Chief Educational Officer,
Ramanathapuram,
Tamil Nadu – 600 015.

5.The District Educational Officer,
Ramanathapuram.

6.The Secretary,
Rajah's Higher Secondary School,
Ramanathapuram.

.. Respondents

(Cause title of R4 and R5 amended as per the order
dt. 14.07.2017 in WMP.no.11247 of 2017)

Writ Petition filed under Article 226 of the Constitution of India for issuance of a writ of mandamus directing the respondents to absorb the petitioner as full time vocational Instructor Grade II as per seniority and pay the time scale in accordance with G.O.Ms.No.35, dated 09.2.2007.

For Petitioner : M/s.P.Mahalakshmi

For Respondents : Mr.K.Venkatramani
Additional Advocate General
assisted by
Mr.A.Rajaperumal
Additional Government
Pleader



This writ petition has been filed by the petitioner seeking a writ of mandamus directing the respondents to absorb him as full time Vocational Instructor Grade II as per seniority and to pay the time scale in accordance with G.O.Ms.No.35, dated 09.02.2007.

2. The case of the petitioner is that he was appointed as Vocational Instructor in General Mechanical Engineering in the 6th

respondent school on 17.08.1996 in a sanctioned post by the Management. However, the respondents have not considered the petitioner for regularization as full time Vocational Instructor till date, though the second respondent has called for particulars and details of the petitioner in terms of G.O.Ms.No.35, dated 09.02.2007. The further case of the petitioner is that the second respondent ought to have absorbed the petitioner, whereas the other junior Vocational Instructors, who were appointed later, were included in the list and regularised. According to the petitioner, he is entitled to be regularised as per G.O.Ms.No.35, dated 09.02.2007.

3. Resisting the writ petition, the fourth respondent has filed the counter-affidavit and is vague.

4. I heard M/s.P.Mahalakshmi, learned counsel for the petitioner and Mr.K.Venkatramani, learned Additional Advocate General for Mr.A.Rajaperumal, learned Additional Government Pleader appearing for the respondents. Perused the materials available on record.

5. The learned counsel for the petitioner submitted that the

petitioner who was fully qualified was appointed as Vocational Instructor on 17.08.1996 and the petitioner has to be upgraded as full time Vocational Instructor. He submitted that the other Vocational Instructors who were juniors to the petitioner were regularised. Therefore, the action on the part of the respondents in not considering the case of the petitioner for regularization as full time Vocational Instructor is totally erroneous and unreasonable.

6. Per contra, the learned Additional Advocate General submitted that originally the petitioner was appointed as single part-time teacher temporarily on 17.08.1996 and as per the policy decision, the single part-time teachers were not entitled to get absorption. He submitted that since the petitioner was appointed as temporary part-time Vocational Instructor, his name was not included in G.O.Ms.No.35, dated 09.02.2007 and that the petitioner has no right to claim absorption.

7. The grievance of the petitioner is that he was appointed by the school Management in a sanctioned post as early as on 17.08.1996 and in terms of G.O.Ms.No.35, dated 09.02.2007 and, therefore, he is entitled to get absorption. The further grievance of the petitioner is

that his juniors were absorbed, which has caused great hardship to him.

8. Once the Government thought it fit to regularize all similarly placed Vocational Teachers/Instructors under G.O.Ms.No.35, dated 09.02.2007, this Court does not see any iota of justification as to how the petitioner can be singled out from the benefit of regularization.

9. On a perusal of the typed set of papers, I find that under proceedings in Na.Ka.No.101568/VI/E1/2004, dated 13.03.2009, the respondents had called for particulars of the fully qualified Vocational Instructors appointed in the Government and Aided Higher Secondary Schools, who had been appointed by the Parent Teacher Association/Management and are working without any break in service in the said schools, including the petitioner. The fourth respondent vide proceedings dated 24.03.2009 called for certificate verification of the petitioner and the same was also duly complied with by the 6th respondent school. While so, why the respondent authorities have not regularised the services of the petitioner is not known.

10. The argument advanced by the learned counsel for the petitioner deserves a serious consideration. Earlier when similarly placed persons approached this Court in a batch of writ petitions, being W.P.No.2423 of 2009 etc., this Court has considered the claim of the petitioners therein and passed orders on 21.03.2011 by directing the respondents therein to consider the claim of the petitioners along with similarly placed persons whose services were regularized under various Government Orders. The learned Single Judge of this Court held that since the similarly placed Vocational Teachers who were appointed after 01.04.1992 had been appointed on regular basis, the respondents cannot discriminate the petitioners therein namely, 34 Vocational Instructors, which clearly meant that there was no discretion accorded to the Government to take any other view except to pass similar orders and grant regularization to the 34 Vocational Instructors, including the petitioners therein.

11. Once this Court has come to the categorical conclusion that the petitioners in W.P.No.2423 of 2009 etc. batch, cannot be discriminated in the matter of regularization and a direction was issued on the basis that the persons who were appointed after 01.04.1992 were regularized, there was practically nothing left for the Government

to decide except to pass a consequential order of regularization/ absorption. Unfortunately, in this case, the respondent authorities have not considered the claim of the petitioner. On the other hand, they evaded to regularise the services of the petitioner.

12. It is to be noted that after passing G.O.Ms.No.35, dated 09.02.2007, a list containing 15 names, including the petitioner, whose names were omitted to be included in G.O.Ms.No.35, was sent to the first respondent for consideration. It is seen from the list that the petitioner's name finds place at Serial No.5. It is also to be seen that since Serial No.13 (Sakthivel) was denied regularisation, he filed W.P.(MD) No.3316 of 2008 before the Madurai Bench of Madras High Court seeking to appoint him as Vocational Teacher on regular time scale basis in the sanctioned vacancy in pursuance of G.O.Ms.No.35, dated 09.02.2007. As against the order passed in the writ petition, writ appeal being W.A.(MD) No.208 of 2012 was preferred by Sakthivel. When the writ appeal came up for hearing on 03.11.2016, the learned Special Government Pleader sought time to comply with the order for regularising the services of Sakthivel and pending appeal the first respondent passed G.O.(2D)No.12, dated 23.02.2017 regularising the services of Sakthivel as Vocational Teacher. By the

judgment dated 27.02.2017, recording the Government Order, a Division Bench of Madurai Bench of Madras High Court disposed of the writ appeal.

13. It is pertinent to note that the fact that the petitioner has been fully qualified and has been engaged as Vocational Training Instructor uninterruptedly since his initial appointment has not been disputed and the only reason for his non-regularization appears to be that he was appointed temporarily, which reason, cannot be accepted by this Court on the basis of the admitted fact that the persons who were appointed even after 01.04.1992 had been accommodated and regularized under various Government Orders. If the appointment of the petitioner was temporary, why the respondent authorities have included the name of the petitioner in the list and have also done certificate verification.

14. There is no convincing reason from the side of the respondents as to why the petitioner was singled out when similarly placed Sakthivel and others were regularised. In this case, it is more than demonstrated that the petitioner has been similarly placed as that of the other Vocational Teachers covered under G.O.Ms.No.35, dated

09.02.2007. Therefore, this Court does not see any reason for denying the petitioner's absorption.

15. In the result:

(a) this writ petition is allowed;

(b) the respondents are directed to pass orders regularizing the services of the petitioner as Vocational Instructor as provided for under G.O.Ms.No.35, dated 09.02.2007 and grant all attendant benefits, viz., seniority and other monetary benefits;

(c) the said exercise shall be completed within a period of eight weeks from the date of receipt of copy of this order. No costs.

01.08.2017

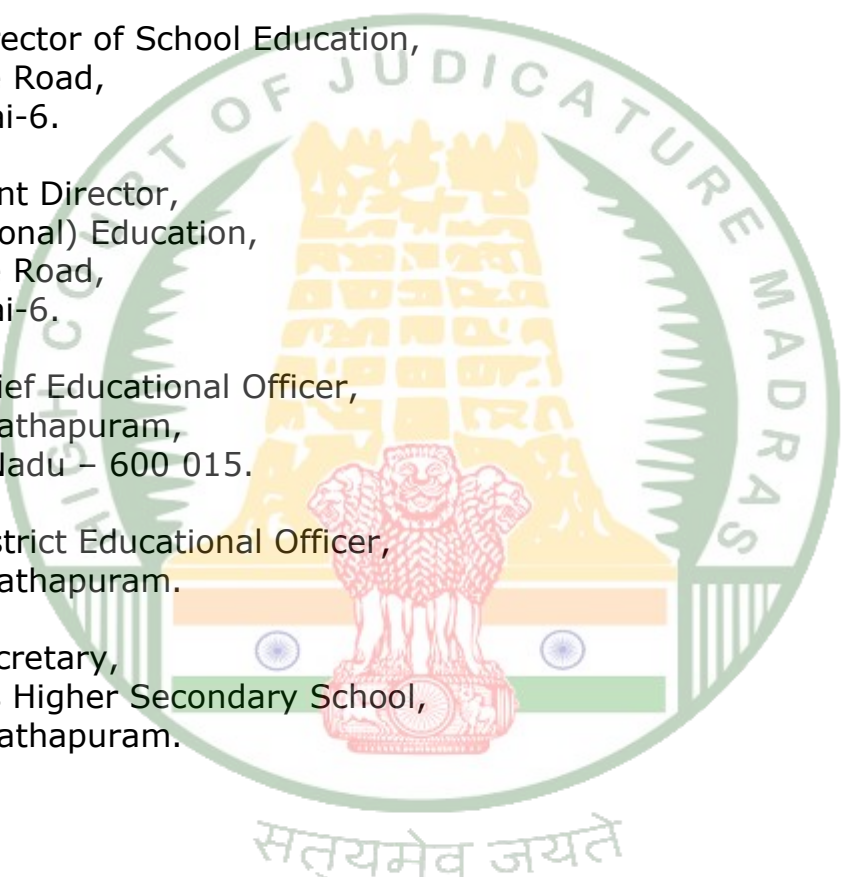
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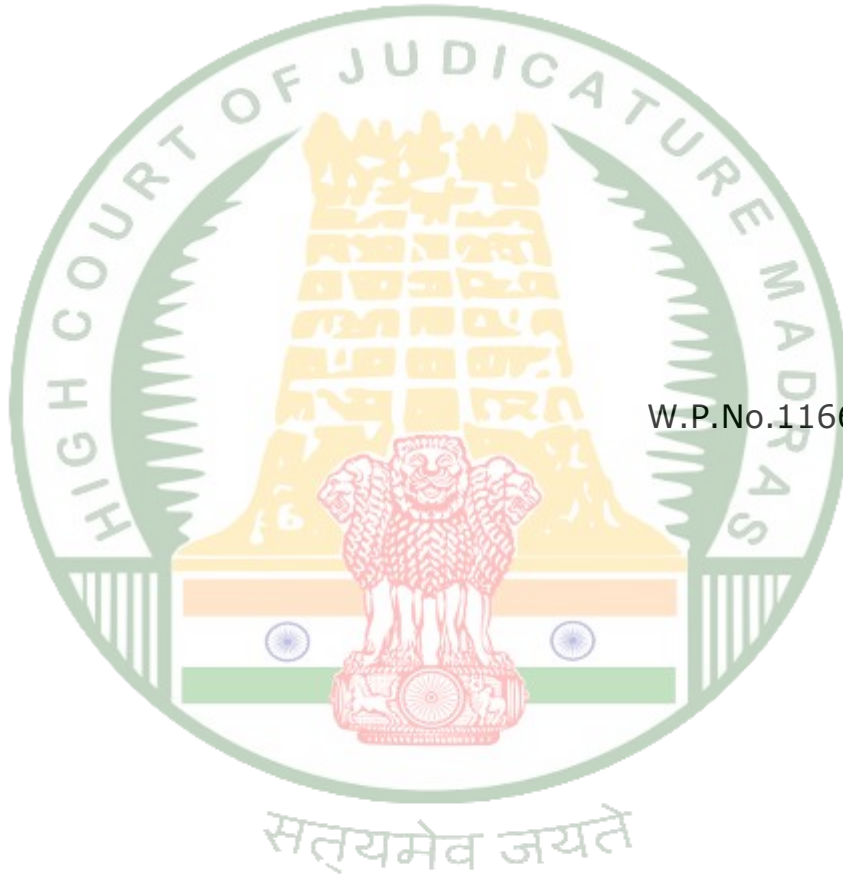
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M.V.MURALIDARAN, J.

VS



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