

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.07.2017

CORAM :

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

Writ Petition No.33405 of 2003
and
WPMP.Nos.40420 and 40421 of 2003

A.Premnath

.. Petitioner

Vs.

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

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

3.The District Education Officer,
Thuckalay and Post, K.K.District.

4.The Correspondent,
Bapuji Memorial Hr. Sec. School,
Manavalakurichi – 629 252.
K.K.District.

5.The Principal,
District Institute of Education and Training,
Therur, K.K.District.

.. Respondents

PRAYER: Petition under Article 226 of the Constitution of India seeking issuance of a writ of Certiorarified Mandamus to call for the records relating to the order of the first respondent issued in G.O.Ms.No.155,

School Education (D2) Department, dated 03.10.2002 and the consequential order of the second respondent passed in his proceedings Na.Ka.No.87909/D(3)/(4)/02, dated 26.05.2003 and the final order of the third respondent issued in Na.Ka.No.1520/A2/03, dated 03.10.2003, to quash the same insofar as the direction to take steps to refund arrears paid, direction to pay salary only after completing the training alone are concerned and direct respondents 1 to 3 to continuously pay salary and other benefits from the date of the petitioner's appointment, i.e., 04.11.1996, and forthwith send the petitioner for one month Child Psychology Training through the 5th respondent.

For Petitioner : Mrs.P.Mahalakshmi
For Mr.K.Vijaykumar

For Respondents: Mrs.K.Bhuvaneswari (for R1 to R3 & R5)
Government Advocate

ORDER

The petitioner has filed this writ petition seeking issuance of a writ of Certiorarified Mandamus to call for the records relating to the order of the first respondent issued in G.O.Ms.No.155, School Education (D2) Department, dated 03.10.2002 and the consequential order of the second respondent passed in his proceedings Na.Ka.No.87909/D3/(4)/02, dated 26.5.2003 and the final order of the third respondent issued in Na.Ka.No.1520/A2/03, dated 03.10.2003, to quash the same insofar as the direction to take steps to refund

arrears paid, direction to pay salary only after completing the training alone are concerned and direct respondents 1 to 3 to continuously pay salary and other benefits from the date of the petitioner's appointment, i.e., 04.11.1996, and forthwith send the petitioner for one month Child Psychology Training through the 5th respondent.

2. The facts in a nutshell are as under: The petitioner was appointed as Secondary Grade Teacher in the fourth respondent school, which is a minority school, on 04.11.1996. His appointment was approved by order dated 21.05.1997 of the third respondent with effect from the date of appointment and he was paid salary from the date of appointment till October, 2003.

3. It is stated that the Government issued G.O.Ms.No.394, Education, dated 12.09.1997 ordering that B.Ed. qualified candidates cannot be appointed in Secondary Grade vacancies in High and Higher Secondary School akin to another government order in G.O.Ms.No.559, Education, dated 11.07.1997 in respect of Secondary Grade vacancies in Primary and Middle Schools.

4. It is stated that the above said government orders were

challenged before this Court and ultimately, the Division Bench upheld the government orders, but held that the appointments made up to 19.05.1998, i.e., the date on which the learned Single Judge dismissed the writ petitions, can be approved, of course, based on the undertaking given by the learned Additional Advocate General to that effect.

5. It is averred that the government issued G.O.Ms.No.155, School Education (D2) Department, dated 03.10.2002, by which the government ordered that B.Ed. qualified candidates appointed up to 19.05.1998 in regular sanctioned post can be approved and they have to undergo one month training in Child Psychology in the District Institute of Education and Training (DIET).

6. It is stated that the respondent authorities gave training to the B.Ed. qualified teachers appointed in Secondary Grade vacancies up to 19.05.1998, through concerned DIETs from 02.05.2003 and the petitioner is not given one month training till date. When things stood thus, it is alleged that the second respondent issued proceedings dated 26.05.2003 to the effect that the candidates who underwent one month Child Psychology Training alone will be paid salary as Secondary

Grade Teacher and not other candidates. Thereafter, final orders were passed by the third respondent on 03.10.2003 to the very same effect.

7. Assailing the above said Government Order and the proceedings, the present writ petition is filed for the relief stated supra.

8. It is the contention of the learned counsel for the petitioner that the proceedings of the respondents runs counter to the decision of the Hon'ble Division Bench of this Court in the case of *Secretary and Correspondent, Uswathun Hasana Oriental (Arabic) Girls Higher Secondary School V. The State of Tamil Nadu rep. by its Secretary, Education Department and Others, 2002 Writ L.R. 173*, as it was categorically recorded in the said decision that the services of persons appointed prior to 19.05.1998 will be regularised.

9. It is further contended that the petitioner, who has been appointed in a regular vacancy, is ready and willing to undergo training, but the respondent authorities, vide the proceedings under challenge, directed to pay salary in the Secondary Grade scale afresh from the date of completion of training invoking the provisions of the

Government Order, referred supra, and the same is grossly illegal. In other words, the proceedings of the respondent authorities attempting to withhold or reduce salary of the petitioner is illegal and violative of Articles 14, 16 and 21 of the Constitution of India.

10. Per contra, the learned Government Advocate appearing on behalf of the respondent authorities reiterated the reasons that weighed with the official respondents in passing the impugned proceedings.

11. I heard Mrs.P.Mahalakshmi for M/s.K.Vijayakumar, learned counsel appearing for the petitioner and Mrs.K.Bhuvaneshwari, learned Government Advocate appearing for the respondents 1 to 3 and 5 and perused the documents available on record.

12. At the outset, it is to be noted that this Court, at the time of admission of the writ petition, passed an order of interim injunction restraining the respondent authorities from recovering/reducing/withholding the petitioner's salary from November, 2003 and records reveal that the said interim order operates even as on date. In other words, no recovery or reduction or withholding of petitioner's salary

was effected till date.

13. The point in issue in this writ petition is covered by the decision of this Court in *Secretary & Correspondent, Uswathun Hasana Oriental (Arabic) Girls Higher Secondary School V. The State of Tamil Nadu rep. by its Secretary, Education Department and Others*, 2002 Writ L.R. 173. The Hon'ble Division Bench of this Court while upholding G.O.Ms.No.559, dated 11.07.1995 held that B.Ed. qualified Teachers, appointed in Secondary Grade Teachers vacancy up to the dismissal of the writ petition are entitled to get relief and the Government was directed to formulate the modalities. The date of order in the writ petition by the learned Single Judge is 19.05.1998. The petitioner having been appointed in the fourth respondent school as Secondary Grade Teacher on 04.11.1996 and such appointment having been approved by the third respondent vide order dated 21.05.1997 from the date of appointment, his appointment is covered by the said Hon'ble Division Bench judgment cited above.

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14. The Government for implementing the said judgment, issued G.O.Ms.No.155 and granted relief to the Teachers appointed up to 19.05.1998 by giving one month Child Psychology Training.

15. In the case on hand, the fact that the petitioner's appointment was approved by the proceedings of the third respondent dated 21.05.1997, with effect from the date of his appointment, i.e., 04.11.1996, is not disputed. Admittedly, the said date is much prior to the cut off date (19.05.1998) prescribed in the order of the Division Bench.

16. In the result:

(a) this writ petition is allowed and the impugned order of the first respondent issued in G.O.Ms.No.155, School Education (D2) Department, dated 03.10.2002 and the consequential order of the second respondent passed in his proceedings Na.Ka.No.87909/D(3)/(4)/02, dated 26.05.2003 and the final order of the third respondent issued in Na.Ka.No.1520/A2/03, dated 03.10.2003, are quashed insofar as the direction to take steps to refund arrears paid, direction to pay salary only after completing the training alone are concerned;

(b) the respondents 1 to 3 are directed to continuously pay the salary and other benefits from the date of the petitioner's appointment, i.e. on 04.11.1996 and also send the petitioner for one month child Psychology Training through the 5th respondent. No costs. Consequently, connected WPMP.Nos.40420 and 40421 of 2003 are closed.

10.07.2017

Note: Issue order copy on 01.03.2018
vs

Index : Yes
Internet : Yes

To

1. The Secretary to Government,
School Education Department,
Fort St. George, Chennai – 9.
2. The Director of School Education,
College Road, Chennai – 6.
3. The District Education Officer,
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M.V.MURALIDARAN,J.

VS



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