

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 23.02.2017

CORAM

THE HONOURABLE MR.JUSTICE P.N.PRAKASH

Writ Petition No.18777 of 2003

S.Jesi Prema

.. Petitioner

Versus

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

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

3.The District Education Officer,
Erode.

4.The Correspondent/Secretary,
C.S.I. Girls Higher Secondary School,
Erode.

.. Respondents

Prayer: Petition filed under Article 226 of the Constitution of India to issue a writ of certiorarified mandamus calling 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 2nd respondent passed in his proceedings Na.Ka.87909/D(3)/(4)/02 dated 26.05.2003 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 to pay salary and other benefits from the date of the petitioners appointments i.e. 01.03.1996.

For Petitioner : Mr.A.Saravanan

For Respondents: Mr.V.Jayaprakash Narayanan,
Special Government Pleader
R1 to R3

Mr.D.R.Nixon for R4

O R D E R

In this writ petition, the petitioner has challenged the validity of G.O. Ms. No.155, School Education (D2) Department, dated 03.10.2002 and has sought for certain consequential reliefs.

2. When this petition was taken up for hearing, Mr. Jayaprakash Narayan, learned Special Government Pleader brought to the notice of this Court the Division Bench judgment of this Court in the State of Tamil Nadu and others vs. Pallivasal Primary School represented by its Correspondent, Mudukulathur reported in 2004-2-Law Weekly 591 wherein it has been held as follows:

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. So far as the approvals / confirmation is concerned, Government was not under any duty to approve or confirm the appointment of appellants / petitioners who did not

possess the qualifications prescribed when, they were improperly appointed to the posts. Their position cannot be equated to that of those who possess the qualification and had been duly appointed. Their remaining in their post was only by reason of a sympathetic view taken by the Division Bench which had upheld the Government Order which had directed that persons with B.Ed. Qualification are not to be appointed in Secondary Grade vacancies.

8. Their right to be regarded as persons eligible for confirmation/ approval can be said to arise only after they acquired, after their training, a minimum prescribed qualification. The Government here has shown great concession to them by allowing them to retain their position even without obtaining the requisite diploma or certificate in child psychology by giving to them training in child psychology. We see nothing wrong in the Government directing that their approval / confirmation can only be on and after the date they complete the training. Their past service however shall count for pension.

11. We, therefore, allow the writ appeals and writ petitions to the limited extent of directing that no recovery be made from the persons to whom the Government had already released grants and paid salaries. The writ appeals / writ petitions are disposed of accordingly. Connected miscellaneous petitions are closed."

3. In the result, the writ petition is allowed to the limited extent of directing that no recovery be made from the petitioner to whom the Government had already released grants and paid salaries. No costs. Consequently, connected WMP is closed.

Sd/-

Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

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To

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rep. by its Secretary,
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PVS (CO)
Eu 20.03.17



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