

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT****DATED: 01.03.2017****CORAM****THE HON'BLE Mr.JUSTICE R.SURESH KUMAR****WEB COPY****W.P. (MD) No.6097 of 2013**

K.Saravana Shanthi
Secondary Grade Teacher
Andal Aided Primary School
Srivilliputhur
Virudhunagar District

... Petitioner

-vs-

1. The District Elementary Educational Officer,
Virudhunagar.

2. The Additional Assistant Elementary Educational Officer,
Srivilliputhur.

3. The Secretary,
Andal Aided Primary School
Srivilliputhur,
Virudhunagar District

... Respondents

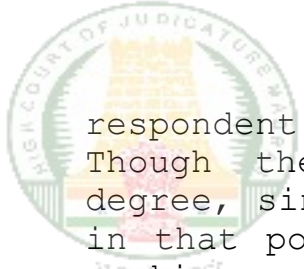
Prayer: Writ Petition filed under Article 226 of the Constitution of India for issuance of a writ of Certiorarified Mandamus to call for the entire records connected with the impugned order passed by the 1st respondent in Na.Ka.No.5888/Aa2/2011 dated 31.10.2011 and quash the same and consequently directing the respondents 1 and 2 to approve the appointment of the petitioner as Secondary Grade Teacher w.e.f. 06.04.1998 with all consequential benefits arising thereof.

For Petitioner	: Ms.M.Benazir Begum
For Respondents	: Mr.G.Muthukannan for R1 & R2 Government Advocate
For R 3	: No appearance

O R D E R

The prayer in the writ petition is for a Writ of Certiorarified Mandamus to call for the entire records connected with the impugned order passed by the 1st respondent in Na.Ka.No.5888/Aa2/2011 dated 31.10.2011 and quash the same and consequently directing the respondents 1 and 2 to approve the appointment of the petitioner as Secondary Grade Teacher w.e.f. 06.04.1998 with all consequential benefits arising thereof.

2. The short facts leading to the filing of this writ petition, according to the petitioner, is that the petitioner was appointed as Secondary Grade Teacher on 06.04.1998 at the third



respondent School, which is an aided approved Private School. Though the petitioner is having the qualification of B.Ed., degree, since only the post of Secondary Grade Teacher was vacant, in that post, the petitioner was appointed, as such she has been working as Secondary Grade Teacher from the date of appointment. Subsequently, when the proposal for such appointment of the petitioner had been sent by the third respondent School to the official respondents, who are the authorities to approve the appointment, the same was not done or had been rejected. Therefore, the petitioner's school Management ie., the third respondent herein had filed a writ petition in W.P.(MD) No.10122 of 2007, wherein, a prayer of Writ of Mandamus was sought for seeking a direction to the 2nd respondent, namely, the District Educational Officer, Virudhunagar, to approve the appointment of the Teacher, ie, K.Saravana Shanthi, ie., the petitioner herein as a Secondary Grade Teacher with effect from 06.04.1998 with all consequential benefits.

3. During the pendency of the said writ petition, the respondents, had passed an order dated 23.08.2007, whereby approving the appointment of the petitioner as Secondary Grade Teacher, from the date of appointment ie., 06.04.1998. Since the said order dated 23.08.2007 has been produced before this Court, recording the import of the said order, the learned Judge of this Court disposed the said writ petition ie., W.P.No.10122/2007, by order dated 12.03.2008. In the said writ petition, this Court has passed the following order:

"2.I am not traversing the facts of the matter, since according to the learned Additional Government Pleader, by proceedings, dated 23.08.2007, the District Elementary Educational Officer, Virudhunagar, has approved the appointment of the said teacher in the petitioner's school with effect from (*) 06.04.1998. In view of the same, since the request of the petitioner was already acceded by the second respondent, I am not inclined to grant further order in this writ petition. However, as per the said order, the petitioner has to undergo one month Child Psychology Training. The second respondent shall permit the petitioner to undergo the said training, within a period of 15 days from this date. It is needless to say that the petitioner is entitled for all consequential benefits, which he is legally entitled to. The second respondent shall disburse the said amount, within a period of one month, after the completion of the training."

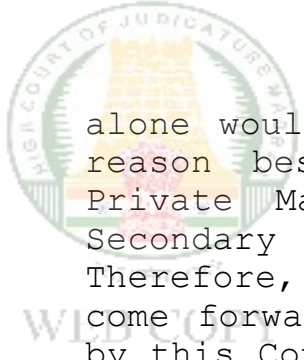
<https://hcservices.ecourts.gov.in/ReserveBench> In pursuance to the said orders passed by this Court, the Director of Teacher Education, Research and Training, Chennai, by his proceedings dated 22.04.2008 directed the petitioner and other



similarly placed persons to go for Child Psychology Training for one month from 28.04.2008 till 28.05.2008. Pursuant to the said directive issued by the Director of Teacher Education, Research and Training, the petitioner has also undergone the one month Child Psychology Training. Since the petitioner has completed the said training also and her appointment dated 06.04.1998, since has also been approved by the competent authority, the petitioner had requested for necessary pay benefits including the salary before the respondents, for which, the first respondent has passed the impugned order dated 31.10.2011 in Na.Ka.No.5888/Aa2/2011. In the said order, the first respondent has stated that since the petitioner was having the qualification of B.Ed., degree and with that qualification, the petitioner had been appointed as Secondary Grade Teacher and therefore, as per the orders of this Court, the petitioner had been permitted to go for Child Psychology Training in consonance with G.O.Ms.No.155 and the petitioner also completed the said training only on 28.05.2008. Therefore, only from that date alone, she would be entitled for getting absorption and time scale of pay and therefore, based on that, she would be entitled to get time scale of pay only from that date, ie., 28.05.2008 and therefore, she would not be entitled to get any time scale of pay from the date of her original appointment ie., from 06.04.1998. Challenging the said order, the petitioner has come out with the present writ petition.

5. The learned counsel for the petitioner would submit that in spite of the appointment of the petitioner dated 06.04.1998, having been approved by the competent authority, by their proceeding dated 23.08.2007 and the petitioner also has completed the one month Child Psychology Training as directed by the official respondent, of course, pursuant to the direction issued by this Court in the earlier round of litigation filed by the third respondent School, the petitioner has not been given the benefit of time scale of pay from the date of original appointment. Instead, the impugned order proceeds to say that she would be entitled only from the date, she completed the Child Psychology Training, which is totally against the order of approval granted by themselves as well as the orders of this Court. Therefore, the learned counsel for the petitioner would submit that the impugned order is totally unlawful and unjustifiable. Therefore, it is liable to be interfered with.

6. Per contra, the learned Government Advocate for the respondents would submit that even though the petitioner had been appointed as Secondary Grade Teacher at the third respondent School on 06.04.1998, her appointment had not been approved by the competent authority in a vacancy arises for appointment to the post of Secondary Grade Teacher, instead, the person, who got the <https://hcjudiciary.gov.in/home> services, ie., the specialised qualification ie., the Child Psychology Training, which is part and parcel of the curriculum of Diploma in Teacher Education or Secondary Grade Teacher course,

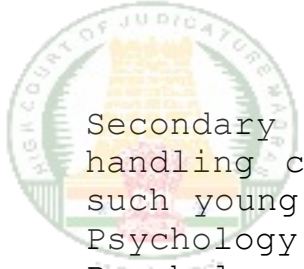


alone would be appointed. However, in number of Schools, for the reason best known to them, the respective Management of the Private Management School has appointed indiscriminately only Secondary Grade Teacher, with the qualification of B.Ed. Therefore, in order to regularise these people, the Government come forward to issue G.O.Ms.No.155. When the issue was decided by this Court, it was decided that those who had already appointed an Secondary Grade Teacher with B.Ed., qualification, shall be sent for one month Child Psychology Training and only after successfully completed the said training alone, they will be permitted to appoint the Secondary Grade Teacher. The learned Government Advocate would submit, only in that context, even though the petitioner had been appointed on 06.04.1998, her approval has not been approved. Therefore, pursuant to the direction issued by this Court in the said order in W.P.No.10122 of 2007 dated 12.03.2008, by proceeding dated 22.04.2008, the Director concerned has issued proceeding permitting the petitioner to go for one month Child Psychology Training. The petitioner has admittedly completed the said training only on 28.05.2008 and only from that date, she would be eligible and entitled to claim the salary of Secondary Grade Teacher by way of time scale of pay, since she become qualified only from that date.

7. Insofar as the the order dated 23.08.2007, by which, the approval of the petitioner was made from the original date of appointment ie., 06.04.1998, is concerned, the learned Government Advocate would submit that even the said order, dated 23.08.2007, is with condition that such approval shall be subject to the one month Child Psychology Training to be completed by the petitioner. Therefore, even the said approval was given on 23.08.2007, date backs and effective from 06.04.1998 and the petitioner shall be entitled to claim time scale of pay, only on completion of one month Child Psychology Training. Therefore, the impugned order passed giving such benefits of time scale of pay to the petitioner from the date she completing the training ie., on 28.05.2008 is fully justifiable and it is in consonance with G.O.Ms.No.155 only and therefore, the impugned order requires no interference from this Court.

8. This Court has considered the rival submissions made by both sides and also perused the records.

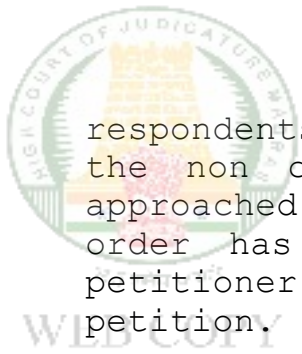
9. It is an admitted fact that the petitioner had been appointed as Secondary Grade Teacher on 06.04.1998 at the third respondent School. Admittedly, the petitioner did not have the qualification of Secondary Grade Teacher Training Certificate ie., Diploma in Teacher Education, instead, she is having the higher qualification of B.Ed. Degree. Those who had the qualification of B.Ed. Degree and had been appointed in Secondary Grade Teacher post had to be regularised by sending those incumbents for a one month Child Psychology Training. The reason being that the



Secondary Grade Teacher post is only meant to those, who are handling classes from 1 to 3. Therefore, a Teacher, who handle such young children must have been trained with the subject 'Child Psychology' and since in the B.Ed., curriculum, the Child Psychology Training is not part of that, such arrangement was made that those, who are having with the qualification of B.Ed., had to be sent for Child Psychology training and only thereafter, their continuance in the Secondary Grade Teacher be permitted. Here, in the case in hand, since the petitioner had not been sent for training for 10 years and her appointment also dated 06.04.1998 was approved, the School Management, where the petitioner was working, has rightly approached this Court by filing writ petition in W.P.No.10122 of 2007.

10. During the pendency of the said writ petition, by order dated 23.08.2007, the first respondent herein, who is the competent authority to approve the appointment of the petitioner, had given order of approval for the said appointment of the petitioner with effect from 06.04.1998, the date actually, the petitioner was appointed. The said factor has been recorded by this Court in the order dated 12.03.2008 as has been extracted hereinabove. The learned Judge, after having recorded the said proceeding, had said that "it is needless to say that the petitioner is entitled for all consequential benefits, which she is legally entitled to. The respondent shall disburse the said amount, within a period of one month." The very sentence, as referred to above, made by the learned Judge, in the said order, makes it abundantly clear that the petitioner shall be entitled to claim all benefits ie., salary under time scale of pay, which is available or applicable for the Secondary Grade Teacher posting, for which, the petitioner was appointed and in fact, the said salary due was directed to be paid to the petitioner within a period of one month.

11. As against the said order, no appeal seems to have been filed and in fact, the respondents acted upon as per the order of this Court, cited supra, by issuing subsequent proceedings dated 22.04.2008 by the Director of Teacher Education, through which, the petitioner was sent for one month Child Psychology Training. Since part of the order has already been complied with, the respondents cannot, now turn around and say through the impugned order dated 31.10.2011 that the petitioner, even though, had been appointed from 06.04.1998 and her appointment also had been approved from that date, she would not be entitled to get the salary, ie., time scale of pay from that date, she would be entitled to salary, from 28.05.2008 only. That stand now taken by the respondents through the impugned order is totally against the order of the very same authority dated 23.08.2007, which has been <https://hcservices.hcma.gov.in/hcservices/> by this Court in the judgment cited supra and also runs contra to the directive issued by this Court in the said order, through which, this Court has given the direction to the



respondents to disburse the salary within one month. As against the non compliance of the order, rightly, the petitioner had approached this Court, by way of contempt proceedings. Since the order has been passed, this Court, by giving liberty to the petitioner to challenge that order, has closed the said contempt petition.

12. Therefore, the present impugned order is no doubt is in utter violation of the earlier order passed by the very same authority, which has been taken into account by this Court in the very same order itself cited supra. Hence, the impugned order would not stand in the legal scrutiny, because the appointment of the petitioner from 06.04.1998, having been approved from that date and the petitioner has also completed the Child Psychology Training from 28.04.2008 to 28.05.2008, the present stand taken by the first respondent to consider the candidature of the petitioner for giving time scale of pay only from that date 28.05.2008 is totally absurd and unjustifiable. In view of the above, this Court has no hesitation to hold that the impugned order is liable to be set aside.

13. In the result,

(i) the impugned order is quashed.

(ii) The respondents, especially, the first respondent is hereby directed to calculate the service benefits ie., salary due for the petitioner from her original date of appointment ie., from 06.04.1998 for the Secondary Grade Teacher post with time scale of pay and disburse the same to the petitioner within a period of six weeks from the date of receipt of a copy of this order.

14. With these directions, the writ petition is allowed. No costs.

Sd/-

Assistant Registrar(Crl Side)

/True Copy/

Sub Assistant Registrar

To

1. The District Elementary Educational Officer,
Virudhunagar.
2. The Additional Assistant Elementary Educational Officer,
Srivilliputhur.

+1cc to Ms.M.Benazir Begum, Advocate Sr.No.12491

RR

VB/MR/KKR/SAR3/18.07.2017/6P/4C