

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.07.2018

CORAM:

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN
AND
THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

W.A.No.1267 of 2014 & MP No.1 of 2014
and W.A.No.40 of 2015 & MP No.1 of 2015

WA No.1267 of 2014

1. The Secretary to Government of Tamil Nadu,
School Education Department
Fort St. George, Chennai 9.
2. The Director of School Education,
College Road,
Chennai 6.
3. The Chief Educational Officer,
Coimbatore District,
Coimbatore.
4. The District Educational Officer,
Tirupur,
Coimbatore District ... Appellants/Respondents

S.Veerabadran
Physical Education Teacher
T.Duraisamy Gowder Higher Secondary School,
Seeliyur, Coimbatore District

... Respondent/Petitioner

WA No.40 of 2015

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

2. The Director of School Education,
College Road,
Chennai 6.
3. Directorate of Pension,
No.259, Anna Salai, 3rd Block,
2nd Floor, Teynampet,
Chennai 600 006.
4. The Chief Educational Officer,
Nagercoil,
Kanyakumari District.
4. The District Educational Officer,
Nagercoil,
Kanyakumari District. ... Appellants/Respondents

versus

P.Mabel Flora ... Respondent/Petitioner

Appeals filed against the order passed by this Court dated 01.04.2013 and 17.12.2013 passed in W.P.Nos.7627 of 2006 & 26885 of 2013 respectively.

Prayer in W.P.Nos.7627 of 2006:-

Writ Petition filed under Article 226 of the constitution of India, seeking for issuance of Writ of Certirarified Mandamus calling for the records of the second respondent issued in MM.No.22559/T3(4)/05 dated 24.3.2005 and quash the same and issue direction to the respondent to count the service rendered by the petitioner as Physical Education Teacher in recognized Metro Matriculation School Karamadai Road, Mettupalayam Taluk Coimbatore District for the purpose of pay fixation and pension and other benefits.

W.P.Nos.26885 of 2013

Writ Petition filed under Article 226 of the constitution of India, praying for the issue of Writ of Certirarified Mandamus Calling for the records of the 3rd respondent issued in Letter No.O.Mu.34595/2012/D1 dated 26/07/2012 and quash the same and issue a consequential direction to the respondents to count the service rendered by the petitioner as Secondary Grade Teacher in recognized Sree Venkateswarar Matriculation Hr.Sec.School Royapettah in Chennai for the purpose of pay fixation and pension and other benefits

For Appellant : Mr.K.Karthikeyan
(in both the Appeals) Government Advocate

For Respondent : Mr.R.Saseetharan
(in WA No.1267/14)

Ms.S.Harsini
for M/s.Rohini Ravikumar
(in WA No.40/15)

C O M M O N J U D G M E N T

(Judgment of the Court was delivered by R.SUBRAMANIAN, J.)

The appellants challenge the correctness of the orders of the learned Single Judges dated 17.12.2013 made in WP No.26885 of 2013 and the order dated 01.04.2013 made in WP No.7627 of 2006. The common question involved in the Writ Petitions relate to the entitlement of the petitioners in the Writ Petitions/respondents in these appeals to the benefit of the services rendered by them in recognised Matriculation School for the purpose of fixation of their pension and other benefits.

2. While the petitioner in WP No.7627 of 2006 wanted the services rendered by him in a Matriculation School, as a Physical Education Teacher, for the purposes of fixation of pay and pension, similar prayer was sought for by the petitioner in WP No.26885 of 2013, with reference to the services rendered by her in Sree Venkateswara Matriculation Higher Secondary School, Royapettah, between 01.06.1981 to 07.06.1996.

3. The claim of the respondents in these Writ Petitions is that they are entitled to the benefits of G.O.Ms.No.18, Education Science and Technology (T.2) Department, dated 09.01.1997, passed in favour of one individual by name M.Jayaraj, for counting services rendered by them in Private Schools. They would also rely upon G.O.Ms.No.143 dated 30.01.1987, in and by which, it is claimed that services rendered by one Fr.Stanislaus in Don Bosco Matriculation School Panaji, Goa, from 01.06.1966 to 13.06.68 and Don Bosco Matriculation School, Madras, from 04.06.1973 to 23.05.1980 were included for the purpose of calculation of their pension and other benefits.

4. The learned Single Judge, who decided the Writ Petition in WP No.26885 of 2013, followed the judgment in WP No.7627 of 2006 dated 01.04.2013. The judgment in WP No.7627 of 2006 is

under challenge in Writ Appeal in WA No.1267 of 2014, while the judgment in WP No.26885 of 2013 is under challenge in WA No.40 of 2015. The moot question that arises, in both these Appeals, is as to whether the respondents in these Appeals would be entitled to inclusion of the services rendered by them in Private Unaided Schools for the purposes of calculation of their pension.

5. By G.O.Ms. No.314, School Education D2 Department, dated 12.12.1999, the Government had considered the inclusion of the services rendered by individual Teachers in unproved posts in recognised Schools. The Government had clarified that the services rendered in recognized Schools can be taken into account for the purposes of promotion. The said services, however, will not be counted for the purposes of fixation of salary and for grant of pensionary benefits. As a consequence of the said G.O., several orders of recovery were passed against the teachers. The recovery orders as well as the validity of G.O.Ms.No.314, were challenged in batch of Writ Petitions, before this Court. The Writ Petitions were dismissed by the learned Single Judge, however, with the direction to the Authorities to give opportunity to individuals for the purpose of quantifying the amount to be recovered from each other.

6. The said order of the learned Single Judge was challenged in Writ Appeal Nos.648 of 2003 etc. batch (S.Devakadasham v. District Educational Officer, Villupuram and others, reported in 2006 (4) MLJ 1580. A Division Bench of this Court after having considered the circumstances under which, the relevant Government Orders came to be issued upheld G.O.Ms.314 dated 12.12.1999. After elaborately considering the import of the provisions of the Tamil Nadu Recognised Private Schools (Regulation) Act as well as the Constitutional Mandate for imparting Primary and Secondary Education, the Division Bench had observed as follows:

"36. It is now well settled that the Government is obliged to sanction grant for payment of salary to a person appointed to a post, only if it is a sanctioned post. The posts held by the appellants got sanctioned by the Government only under G.O.Ms.Nos.340 and 341 dated 01.04.1992. Therefore, the appellants are not entitled to the benefit of counting past services rendered by them prior to the sanction of their posts."

7. The contentions of the appellants in the said case relying upon the judgment of the Hon'ble Supreme Court in State

of Rajasthan v. Senior Higher Secondary School, Lachhmangarh, reported in AIR 2005 SC 3541, were also rejected by the Division Bench holding that the teachers in Private Schools deserved to be treated on par with the Teachers of the Government Institution only to the extent possible. Pointing out the observations of the Hon'ble Supreme Court to the effect that the provisions of the Act should be liberally interpreted in favour of the teaching class except where the statute may compel otherwise, the Division Bench came to the conclusion that the provisions of the Tamil Nadu Recognised Private Schools (Regulation) Act, and the Rules framed under make the case on hand fall under the above qualifying statement of the Hon'ble Supreme Court.

8. We have heard Mr.K.Karthikeyan, learned Government Advocate appearing for the appellants, Mr.R.Saseetharan learned counsel appearing for the respondent in WA No. 1267/2014 and Ms.S.Harsini, learned counsel appearing for M/s.Rohini Ravikumar for the respondent in WA No.40/2015.

9. Mr.K.Karthikeyan, learned Government Advocate appearing for the appellants would rely upon the above Division Bench Judgment of this Court and contend that inasmuch as G.O.Ms.314 has been upheld by the Division Bench, there is no question of extending the benefits of G.O.Ms.No.18 dated 09.01.1997 to the respondents in these appeals.

10. Per contra, Mr.R.Saseetharan, learned counsel appearing for the respondents in Writ Appeal No.1267 of 2014 would contend that the benefit of the inclusion of the service in recognized Schools should also be taken into account relying upon the Government Order in G.O.Ms.37 dated 05.01.1983, a copy of the said Government Order is also placed before us by the learned counsel. From the said Government Order, we are unable to gather conferment of any such benefit to the teachers in question. He would also invite our attention to the judgment of another Division Bench of this Court in Gabriel Jeleston and P.George Vincent v. Government of Tamil Nadu, rendered in Writ Appeal (MD) Nos.291 and 292 of 2008 dated 26.06.2008. Drawing our attention to the fact that the Division Bench in Gabriel Jeleston's case had in fact struck down G.O.Ms.No.314 and directed conferment of the benefits of G.O.Ms.No.18 dated 09.01.1997 and G.O.Ms.No.143 dated 30.01.1987 on the appellants therein. Mr.R.Saseetharan would contend that there is an apparent conflict between the two Division Bench judgments of this Court.

11. We have considered the rival submissions. It is unfortunate that the decision in S.Devakadasham's case, referred to supra, wherein the validity of G.O.Ms.No.314 dated 12.12.1999 was upheld, was not brought to the notice of the Division Bench which subsequently considered the very same issue in Gabriel Jelestin's case. While the judgment of the Division Bench in S.Devakadasham's Case, takes into account the impact of the Government Orders vis-a-vis the provisions of Tamil Nadu Recognised Private Schools (Regulation) Act, and the Rules made there under, the subsequent judgment of the Division Bench proceeds, on the basis of G.O.Ms.No.18 and G.O.Ms.No.143. We are constrained to point out that in a later judgment, a learned Single Judge of this Court in K.Pitchai v. The State of TamilNadu made in WP (MD) No.20326 of 2013 dated 28.02.2018, has after referring to the various Government Orders and found that the Government Order in G.O.Ms.No.143, Education (D2) Department, dated 30.01.1987 does not exist at all and it is a fake Government Order. In view of the above said conclusion of the learned Single Judge and the fact that the decision of the subsequent Division Bench was rendered in ignorance of the earlier Division Bench, the dictum of the earlier Division Bench, which is more elaborate, is entitled to more credence than the decision of the subsequent Division Bench, the Hon'ble Supreme Court in Sri Jagannath Temple Managing Committee v. Siddha Math and Others, reported in 2015 (16) SCC 542, has held that a subsequent decision of the Co-equal Bench rendered in ignorance of the earlier decision of the Division Bench cannot be said to be a binding precedent.

12. A learned Single Judge (Hon'ble Mr.Justice M.Srinivasan), as he then was, of this Court in The Special Tahsildar No.III v. Rangasamy Reddiar, reported in 1988 (1) MLJ 317, had after referring to the judgment of the Full Bench of Patna High Court reported in AIR 1897 Patna 191, had held that when there are conflicting judgments of Co-equal Benches, it is open to the subsequent Bench to follow the decision which states the law more elaborately and accurately. Thus, looked at from any angle, the judgment of the Division Bench in Gabriel Jelestin's case, rendered in ignorance of the earlier Division Bench Judgment in S.Devakadasham's case, cannot be treated as a binding president. Further, the judgment of the Division Bench in Gabriel Jelestin's case has taken note of the Government Orders in G.O.Ms.No.143, which has been held to be a fake Government order by this Court in WP (MD) No.20326 of 2013.

13. In view of the above, we are constrained to follow the judgment of the Division Bench in S.Devakadasham's Case, Reported in 2006 (4) MLJ 1580. In view of the categorical

pronouncement of the Division Bench in S.Devakadasham's Case, with which we agree, we are of the considered opinion that the judgments impugned in these Appeals viz., the judgment in WP No.26885 of 2013 and judgment in WP No.7627 of 2006 directing conferment of the benefits on the respondents in these Writ Appeals deserve to be set aside and they are accordingly set aside. The Writ Appeals stand allowed and both the Writ Petitions will stand dismissed. However, in the circumstances, there will be no order as to costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS VII)

//True Copy//

Sub Assistant Registrar

jv
To

1. The Secretary to Government,
Government of Tamil Nadu
School Education Department
Fort St. George, Chennai 9.
2. The Director of School Education,
College Road, Chennai 6.
3. The Chief Educational Officer,
Coimbatore District, Coimbatore.
4. The District Educational Officer,
Tirupur, Coimbatore District
5. The Director, Directorate of Pension,
No.259, Anna Salai, 3rd Block,
2nd Floor, Teynampet, Chennai 600 006.
6. The Chief Educational Officer,
Nagercoil, Kanyakumari District.
7. The District Educational Officer,
Nagercoil, Kanyakumari District.

+1cc to Mr.R.Saseetharan, Advocate, S.R.No.44153

W.A.No.1267 of 2014 & MP No.1 of 2014
and W.A.No.40 of 2015 & MP No.1 of 2015

NMI (Co)
CS/01/08/18