

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 20.12.2018

CORAM:

THE HONOURABLE MRS.JUSTICE V. BHAVANI SUBBAROYAN

W.P.No.16644 of 2008

Sundari

.. Petitioner

Vs

- 1.The Secretary to Government of Tamil Nadu,  
Education Department,  
Fort St.George,  
Chennai 9.
  - 2.The Director of Elementary Education,  
DPI Complex, College Road,  
Chennai 6.
  - 3.The District Elementary Educational Officer,  
Thanjavur.
  - 4.Tamil Nadu Sugar Corporation Limited,  
Rep by its Chairman Cum Managing Director,  
Chennai.
  - 5.Arignar Anna Sugar Mills Limited,  
Rep by Chief Executive,  
Karungulam,  
Thanjavur District.
- .. Respondents

Prayer:- Writ Petition has been filed under Article 226 of Constitution of India, to issue a Writ of Mandamus directing the respondents to absorb the petitioner in the Government sanctioned aided post in pursuance of the regularization issued by the 4<sup>th</sup> respondent in Ref.No.1/School/Estt/93-94/F2 dated 20.05.2004 from the year 1987, in the 4<sup>th</sup>&5<sup>th</sup> respondents school and further grant her all consequential service and monetary benefits.

For Petitioner : Mr.Venkataramani  
Senior Counsel for Mr.M.Muthappan

For R1 to R3 : Mr.K.Karthikeyan  
Government Advocate

For R4 and R5 : Mr.R.Parthiban

## ORDER

This Writ Petition has been filed seeking for a direction to the respondents to absorb the petitioner in the Government sanctioned aided post in pursuance to the regularizations issued by the 4<sup>th</sup> respondent dated 20.05.2004 from the year 1987, in the respondents' school and further to grant her all consequential service and monetary benefits.

2. The petitioner claims that she was appointed as a Secondary Grade Teacher in the fifth respondent school on 05.12.1985. The appointment was made through the advertisement in 'Dinamalar' and the interview was conducted by the 5<sup>th</sup> respondent when the school was a primary school.

3. The petitioner would further contend that the school was upgraded as Middle School in the year 1987 and as High School in the year 1990. The petitioner who joined as a secondary grade teacher was appointed as Headmistress (Incharge) of the school with effect from 01.11.1987 and she served till March 1993 as Head Master with a salary of Rs.1800/-. The fifth respondent school was converted into an aided school and a secondary grade teacher was allotted by the Government to the school.

4. The petitioner seems to have sought to regularize her service in that post by making several representation. However, her representation was not considered, but in the year 1989, another secondary grade teacher post was sanctioned by the Government to the fifth respondent's school, to which, the petitioner was made representation to appointed her as secondary grade teacher, whereas her juniors were filled in the post sanctioned by the Government were drawing higher salary than the petitioner. The petitioner was forced to make several representation to the respondents, however, the second respondent had regularized the petitioner's service only with effect from 01.06.1993, by order dated 25.07.1993.

5. The petitioner has filed W.P.No.4169 of 1995, praying to absorb her from the date of appointment as a Secondary Grade Teacher and also for further appoint her as Headmistress. This Court, by order dated 17.08.2001, has held that the petitioner is entitled for regularization of her services from the date of her initial appointment from 06.10.1985, but at the same time rejected her claim in respect of appointment to the post of Head Mistress. Aggrieved by the same, the petitioner preferred a Writ Appeal No.2087 of 1997. During the pendency of the appeal, the third and fourth respondents issued an order regularizing the petitioner's service in the cadre of Secondary Grade Teacher from 06.10.1985, i.e. the original date of appointment.

6. The petitioner having been regularized from the year 1985 is entitled to be fit in any one of the posts sanctioned by the Government right from the year 1987 and her services have to be regularized in any one of the sanctioned posts granted by the Government. The petitioner has awaited long and was issued for superannuation in the year 2009, which had forced the petitioner to make representation dated 10.09.2007. The petitioner has filed this Writ Petition seeking for a direction to absorb the petitioner in the Government sanctioned aided post pursuant to the regularization from the year 1987.

7. The fifth respondent had filed counter affidavit by contending that the petitioner in the Writ Petition has taken up the plea that she has to be appointed in the Government post at the fag end of the service. Therefore, the delay of more than two decades in making her claim from the date of her appointment is entitled and the Writ Petition is liable to be dismissed on the ground of delay and laches.

8. Apart from that, the Writ Petitioner had been initially appointed and filed Writ Petition seeking for regularization of service from the date of her original appointment and also sought for a direction to appoint her as a Head Mistress to the fifth respondent school. However, the said Writ Petition was partly allowed as far as the prayer seeking for regularization from the date of the initial appointment and the remaining prayer was dismissed. Thereafter, the petitioner was regularized with effect from the date of her original appointment after a lapse of two decades. The petitioner has approached this Court without any basis when she has initially filed a Writ Petition with the similar prayer in W.P.No.2551 of 2008, which was dismissed as withdrawn and the prayer sought for in this Writ Petition which was also for the same prayer and the present writ petition is barred by res-judicata.

9. Heard, the learned counsel for the petitioner and learned counsel for the respondents and perused the available materials on records.

10. On perusal of the documents and upon the parties concerned and heard the learned counsel for the parties concerned, wherein, the learned counsel for the respondents drew this Court's attention to the order passed in W.A.No.2087 of 2001 dated 04.10.2007. The Hon'ble Bench while dismissed the appeal filed by the petitioner as against the order passed in W.P.No.4193 of 1995 had categorically held that the petitioner has not challenged the appointment then made by the Government issued the sanctioned post.

11. Apart from that, the petitioner prayer seeking absorptions in the Government sanctioned aided post cannot be granted at this juncture as the petitioner has superannuated as early as in the year 2009 and the petitioner has not made out any application seeking for amendment of the appeal and notional benefits even assuming the contention of the petitioner is accepted and it is seen from the record that the petitioner did not possess five years of teaching experience in the recognized school in the capacity of BT or B.Ed Assistant as the petitioner was only working in the capacity as primary and secondary grade teacher and not as a B.Ed Assistant when the Government sanctioned post to the fifth respondent school. When the petitioner did not possess sufficient qualification and the Government sanctioned the post of secondary grade teacher, to which, the petitioner was not qualified, this Court of the view that the petitioner's prayer cannot be maintained. Under these circumstances, the prayer of the petitioner seeking absorptions cannot be granted as this Court finds no merits.

12. Accordingly, the Writ Petition is dismissed.  
No Costs.

Sd/-  
Assistant Registrar(Co)  
//True Copy//  
Sub Assistant Registrar

raja/vji  
To

1. The Secretary to Government of Tamil Nadu,  
Education Department,  
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2. The Director of Elementary Education,  
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3. The District Elementary Educational Officer, Thanjavur.
4. The Chairman Cum Managing Director,  
Tamil Nadu Sugar Corporation Limited, Chennai.
5. The Chief Executive,  
Arignar Anna Sugar Mills Limited,  
Karungulam, Thanjavur District.

+1 CC TO GOVERNMENT PLEADER SR.NO.89440  
+1cc to Mr. , Advocate SR.No. 8933

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