

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 28.11.2018
CORAM
THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

W.P Nos.22500 to 22502 of 2009

WP.No.22500 of 2009

R.Pandikannu

... Petitioner

vs.

- 1.The Government of Tamil Nadu,
rep. by its Secretary to Government,
Education Department,
Fort St. George, Chennai - 600 009.
 - 2.The Joint Director of School Education,
College Road, Chennai - 600 006.
 - 3.The Chief Educational Officer,
Tirunelveli.
 - 4.The District Educational Officer,
Tirunelveli.
 - 5.The Secretary,
S.N.Ramasamy Raja Hr. Sec. School,
Sri Gomathipuram-627 756,
Tirunelveli District.
- ... Respondents

AND

WP.No.22501 of 2009

N.Kamala

... Petitioner

vs.

- 1.The Government of Tamil Nadu,
rep. by its Secretary to Government,
Education Department,
Fort St. George,
Chennai - 600 009.
- 2.The Joint Director of School Education,
College Road, Chennai - 600 006.
- 3.The Chief Educational Officer,
Nagapattinam.
- 4.The District Educational Officer,
Mayiladuthurai.

5.The Headmaster,
Government Hr. Sec. School,
Kuttalam 609 801.

... Respondents

AND

WP.No.22502 of 2009
R.Seethalakshmi

... Petitioner

vs.

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

2.The Joint Director of School Education,
Higher Secondary Vocational Education,
College Road, Chennai - 600 006.

3.The Chief Educational Officer,
Nagapattinam.

4.The District Educational Officer,
Mayiladuthurai.

5.The Secretary,
Vallivallam Desikar Hr. Sec. School,
Vallivallam, Nagapattinam District.

6.The Secretary,
Kasturibai Gandhi Kanya Gurukulam
Girls Higher Secondary School,
Vedaraniyam 614 810.
Nagapattinam District.

... Respondents

Common Prayer: Writ Petitions filed under Article 226 of Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records relating to the order of the 2nd respondent in Proceedings No.Na.Ka.72535/V1/E3/2009 dated 03.09.2009, quash the same and consequently direct the Respondents 1 to 4 regularize the service of the petitioners with B.T. time scale of pay from 23.09.1994 and to pay B.T. scale from 23.09.1994 to 09.06.2002 by applying G.O.68 School Education Department dated 20.03.2007.

(In all the WPs)

For Petitioner : M/s.P.Mahalakshmi

For Respondents : Mr.R.Govindasamy (for R1 to R4)
Special Government Pleader

No Appearance (for R5 and R6)

COMMON ORDER

These writ petitioners were preferred by the petitioners to quash the order passed by the 2nd respondent /The Joint Director of School Education, Chennai No.Na.Ka.72535/V1/E3/2009 in proceedings dated 03.09.2009 and consequently directing the respondents 1 to 4 to regularize the service of the petitioners with B.T. time scale of pay by applying G.O.68 School Education Department dated 20.3.2007.

2.Brief case of the petitioners:

The facts of the case is that the 1st respondent /Secretary to government Education Department, Chennai issued G.O.Ms.No. 1719 dated 14.9.1978 is the vocational scheme is to be opened in all the Higher Secondary Schools in Tamil Nadu . The qualification for appointment of Vocational Instructors in Higher Secondary Schools has also been prescribed in the said G.O. The above G.O. the entire vocational scheme in Government Higher Secondary School is left to the local Headmasters and the Parents Teachers Associations. In the case of Aided Managements, the Correspondents are empowered to make the appointments.

3.These petitioners was appointed by the 5th respondent as a part time typewriting Vocational Instructors in Office Secretaryship course. The appointment was approved by the 3rd respondent in his proceedings K.Dis.No.39040/D2/84 dated 25.10.1984. An issue with regard to regularization of Vocational Instructors came up before the Tamil Nadu Administrative Tribunal in O.A.No.3280 of 1992 and after considering various aspects of the matter, by order dated 18.6.1993, the Tribunal observed that the proper basis for regularization would be only from the date of appointment.

4.The 1st respondent issued G.O.MS.No.834 dated 23.9.1994 and in that G.O. stated that the fully qualified Vocational Instructors are entitled to get B.T. scale of pay . The petitioners are fully qualified Vocational Instructors. Petitioners eligible to get the B.T. scale of pay from 23.9.1994 but the salary has not been fixed in the said scale of pay from 23.9.1994.

5.The 1st respondent subsequently issued G.O.Ms.No.,39 dated 12.2.1999 and accordingly the 3rd respondent, through proceedings in Na.Ka.No.20401/A6/98dated 6.8.1999, absorbed the petitioners as full time Vocational Instructors , but however with Secondary Grade Scale only with effect from 23.9.1994. In the said G.O.No.39 it has been stated that 73 Vocational Instructors who have been appointed prior to 16.7.1990 and are possessing the

requisite qualification to be appointed as full time Vocational Instructors as per G.O.834 could not get their appointments approved by the department due to administrative reasons and they are absorbed as full time Vocational Instructors only with secondary grade scale of pay even though they are fully qualified and are eligible to get B.T. scale of pay as per G.O. 834 dated 23.9.1994. Since the petitioner was not paid B.T. Scale of pay from 23.9.1994 the 2nd respondent herein, through his proceedings in R.C.No.139295/W26/92 dated 30.9.2002 instead of from 23.9.1994 the 2nd respondent in his proceedings in Na.Ka.No.5046/v1/el/2003-02 dated 22.5.2007 issued orders for regularizing the petitioners service from 23.9.1994 as per G.O.69 dated 20.3.2007 . The above proceedings was subsequently cancelled through his proceedings dated 15.6.2007 by the 2nd respondent stating that G.O.69 is applicable only to the less qualified Grade II Vocational Teachers and not to the fully qualified grade I Vocational Teachers.

6.Common Counter filed by the 3rd respondent:

The petitioner R.Pandikannu was appointed as Double Part time Vocational Instructor in the office secretary ship course for teaching typewriting with effect from 1.9.1984. As per G.O.Ms.No.1719 Education dated 14.9.1978 the appointment of part time Vocational Instructors in Aided Schools by the Correspondents of the schools is subject to the formal approval of the Chief Educational Officers. The appointment of the petitioner was approved by the third respondent in proceedings K.Dis.No.39040/D2/84 dated 25.10.1984.

7.The order dated 18.6.1993 of the Hon'ble Tamil Nadu Administrative Tribunal in O.A.No.3280 of 1992; Government passed orders in G.O.Ms.No.834 Edn. Science and Technology Department dated 23.9.1994 creating 1387posts of Vocational Instructors on regular time scale of pay Rs.1400-40-1600-50-2300-60-2600 to be filled up by the fully qualified part time teachers according to their seniority irrespective of whether they are working as Double or single part time Instructors with effect from the date of issue of these orders for a period upto 30.6.1995. In that G.O. it is also ordered that 1059 unqualified single and double part time Vocational Instructors will be given training at District Institute of Education and Training and on completion of training they will be appointed in the secondary grade teacher posts in the secondary grade scale of pay.

8.One Rajendran joined 5th respondent school as part time Vocational Instructor on 26.10.1984 who is junior to the petitioner by 25 days and he has been absorbed in the regular time scale of pay from 23.9.1994 as per G.O.Ms.No.834 EST dated 23.9.1994. the G.O.Ms.No.68 School Education dated 20.3.2007 stating the orders passed in W.P.No.11389 of 2003 to the effect

that the double part time instructors whose services are regularized as per G.O.Ms.No.712 Education dated 28.5.199- and G.O.Ms.No.967 Education dated 16.10.1992 are eligible to draw increments as per the date of their first regularization passed order that 689 Vocational Instructors as per the annexure one allowed to be sanctioned increments notionally from the date of their regularization with monetary benefit from the order of the G.O. i.e., from 20.3.2007.

9.The second respondent in his proceedings R.C.No.5046/VI/E1/2003-02 dated 22.5.2007 passed order that the petitioner who was absorbed as Vocational Instructor Grade 2 as per G.O.Ms.No.834 Education dated 23.9.1994 has been absorbed as Vocational Instructor Grade I notionally from 23.9.1994 with monetary benefit from 8.7.2004 as per G.O.Ms.No.69 school Education dated 20.3.2007. Subsequently the order passed by the second respondent in R.C.No.5046-VI/E/2003-2-2 dated 22.5.2007 on the ground that the petitioner was already absorbed in the Vocational Instructors Grade I post. Proposal for regularizing services of 201 Vocational Instructors whose regularization of services was cancelled like the petitioner to under consideration with the Government as per the intimation made in proceedings R.C.No.72535/VI/E3/2009 dated 3.9.2009 of the second respondent.

10.The learned counsel for the petitioners submits that the impugned order of the 2nd respondent is an outcome of total non application of mind and as such the same is liable to be set aside. A bare perusal of the impugned order of the 2nd respondent would show that he has not at all referred to G.O.68 dated 20.3.2007 as directed by this Hon'ble Court in its earlier order dated 3.7.2009. When the 2nd respondent was specifically directed to consider the representation of the petitioner in the light of G.O.68 dated 20.3.2007, the 2nd respondent is stopped from applying once again G.O.69 to the case of the petitioner and consequently rejecting his claim.

11.The learned counsel for the petitioners submits that the 1st respondent has already passed G.O.68 and directed to regularize the service of the fully qualified Vocational Instructors in respect of 689 Vocational Instructors. While the Government has passed already a G.O. to regularize the service of fully qualified Vocational Instructors, the 2nd respondent is not justified in seeking once again a clarification from the Government in respect of fully qualified Vocational Instructors.

12.The learned counsel for the petitioners submits that the 2nd respondent ought to have noted that several persons junior to the petitioner have got their appointments approved with time

scale of pay from 23.9.1994 as per G.O.834. Even the lesser qualified teachers who were appointed on 5.10.1996 have also been regularized. However, the petitioner alone has not got his post regularized even though he got the Secondary Grade time scale of pay from 23.9.1994.

13.The learned Special Government Pleader appearing for the respondents 1 to 4 opposed the submissions of the petitioners and sought for dismissal of the writ petition.

14.I have heard M/s.P.Mahalakshmi, learned counsel for the petitioners and Mr.R.Govindasamy, learned Special Government Pleader for the respondents 1 to 4 and perused the entire materials available on record. No representation on behalf of the respondents 5 and 6.

15.In the given case on hand, the petitioner was appointed as double part time vocational instructor in typewriting course in the year 1984 and as per the directions of this Court in W.P.No.12123 of 2009, a proposal regarding the regularization of service of 201 vocational instructors was cancelled and now is in the consideration of the Government. The respondents admitted the fact that the matter regarding regularization is under the consideration of the Government. Therefore, I am inclined to allow the writ petition on the grounds raised by the petitioner.

16.In the result:

(a) all the Writ Petitions are allowed;

(b) the impugned order in Na.Ka.No.72535/V1/E3/2009 dated 03.09.2009 passed by the 2nd respondent in all the writ petitions are quashed;

(c) the respondents 1 to 4 are directed to regularize the service of the petitioners with B.T. time scale of pay from 23.09.1994 and to pay B.T. scale from 23.09.1994 to 09.06.2002 as per G.O.No.68 School Education Department dated 20.03.2007. No costs.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

vs

To

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

2.The Joint Director of School Education,
College Road,
Chennai - 600 006.

3.The Chief Educational Officer,
Tirunelveli.

4.The District Educational Officer,
Tirunelveli.

5.The Chief Educational Officer,
Nagapattinam.

6.The District Educational Officer,
Mayiladuthurai.

7.The Headmaster,
Government Hr. Sec. School,
Kuttalam 609 801.

8.The Secretary,
S.N.Ramasamy Raja Hr. Sec. School,
Sri Gomathipuram - 627 756,
Tirunelveli District.

9.The Secretary,
Vallivallam Desikar Hr. Sec. School,
Vallivallam, Nagapattinam District.

10.The Secretary,
Kasturibai Gandhi Kanya Gurukulam
Girls Higher Secondary School,
Vedaraniyam 614 810.
Nagapattinam District.

+3ccs to M/s.P.Mahalakshmi, Advocate, S.R.No.81272

W.P.Nos.22500 to 22502 of 2009

VBA (CO)

RRS (03/04/2019)

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