

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 11.09.2018

CORAM:

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

W.P.No.5249 of 2009

C.Tamil Selvi

... Petitioner

Vs

- 1.State of Tamil Nadu,
rep. by its Secretary to Government,
School Education Department,
Fort St. George,
Chennai-9.
 - 2.The Director of School Education,
College Road,
Chennai-6.
 - 3.The Joint Director of School Education,
(Higher Secondary-Vocational Education),
College Road,
Chennai-6.
 - 4.The Chief Educational Officer,
Virudhunagar.
 - 5.The District Elementary Officer,
Virudhunagar.
 - 6.The Secretary/Correspondent,
SNG Girls Higher Secondary School,
Thiruthangal,
Virudhungar District.
- ... Respondents

Petition is filed under Article 226 of the Constitution of India for the issuance of writ of mandamus directing the second respondent to appoint the petitioner on regular time scale of pay with effect from 10.06.2002 on which date G.O.No.74, dated 10.06.2002 has been issued by the first respondent and pay all attendant benefits to the petitioner.

For Petitioner : Mr.R.Saravanakumar
For Respondents : Mr.R.Govindasamy (for R1 to R5)
Special Government Pleader
No Appearance (for R6)

O R D E R

This writ petition has been filed by the petitioner seeking a writ of mandamus directing the second respondent to appoint her on regular time scale of pay with effect from 10.06.2002, on which date G.O.Ms.No.74, dated 10.06.2002, came to be issued by the first respondent and to pay all attendant benefits.

2. The case of the petitioner is that on 12.07.1993, she was appointed as Vocational Instructor in the 6th respondent school and the petitioner was fully eligible to be considered for regularisation. The petitioner has been handling 28 periods per week, which was the work load prescribed for all categories of teachers and she has been working permanently without any break in service on consolidated pay since her initial appointment till date. The respondent authorities selected 361 Vocational teachers for regularisation and in the first phase, certain Vocational teachers were regularised vide G.O.No.680, dated 20.09.1996 and the balance 126 Vocational teachers were given time scale of pay vide G.O.No.74, dated 10.06.2002, in and by which, the Vocational Instructors irrespective of whether they were working as single part time or double part time were brought under time scale of pay.

3. According to the petitioner, when the 3rd respondent called for list of qualifying teachers to be regularised under G.O.No.74, the name of the petitioner was not recommended and on an enquiry, she was informed that while G.O.No.680, dated 20.09.1996 was issued certain Vocational Instructors, who were appointed prior to 20.09.1996 were not considered and hence in order to accommodate them, the said G.O.No.74 was being issued. The petitioner was also informed that her name would be recommended for regularisation at a later period.

4. On 14.05.2003, 30.12.2003, 29.09.2004, 24.05.2006, 20.12.2006, 21.05.2007 and 21.05.2008, the petitioner made representations to the 3rd respondent to consider her name for regularisation, as she was appointed on 12.07.1993. Despite receipt of the same, the third respondent did not take any action on the representations of the petitioner.

5. According to the petitioner, the 2nd respondent addressed the 1st respondent for regularisation of those teachers who were working without any break in service as Vocational Instructors on regular basis and accordingly, as per the directions of the 2nd respondent the respective 3rd respondent of the District called for a fresh list of Vocational Instructors during October 2006, who were working as on date without any break in service with full educational qualification. Accordingly, the respective Chief Educational Officers of the District collected the details of Vocational Instructors who were working without any break in service and will full qualification through the respective Correspondents/Headmasters. However, contrary to the legitimate expectation, the 6th respondent did not forward the name of the petitioner to the 4th respondent for onward transmission to the 2nd respondent.

6. According to the petitioner, when the petitioner approached the 6th respondent and requested to send her name to the 3rd respondent, the 6th respondent refused to send details. Thereafter, the petitioner approached the 4th respondent and requested them to include her name for being considered for regularisation on the ground that she has been working from 1993 and possessed requisite qualification and also working without any break in service. For that, the 4th respondent replied that they are in the process of preparing list of persons who were appointed after 1996. The 4th respondent also informed that the Vocational teachers who were appointed in the month of June 2000 shall be made permanent, whereas the petitioner who was appointed in July 1993 would be deprived of her regularisation. On 29.12.2006, the petitioner made a representation to the 3rd respondent. However, the request of the petitioner for regularisation was not considered by the 3rd respondent. Subsequently, the 1st respondent issued G.O.No.35, School Education Department, dated 09.02.2007.

7. The grievance of the petitioner is that many of her juniors who joined subsequent to the petitioner were considered for regularisation. Thereafter also, the petitioner made several representations and the last representation of the petitioner was on 07.01.2009. Despite receipt of the same, the respondent authorities have not taken steps to regularise the services of the petitioner. Hence, the petitioner has filed the present writ petition.

8. Resisting the writ petition, the respondents 1 to 5 have filed counter stating that the 6th respondent school is a recognised non-minority private aided school governed by the provisions of the Tamil Nadu Recognised Private Schools (Regulation) Act, 1973 and the Rules made thereunder. It is stated that the petitioner was appointed by the school management in an unsanctioned post under self-finance subject

with Parent Teachers Association monthly remuneration and was working as single part time Vocational Instructor w.e.f. 12.07.1993 under the self-finance scheme. It is also stated that the petitioner was possessing B.Com. qualification at the time of her initial appointment and she has not possessed two years experience as mentioned in G.O.Ms.No.1719, dated 14.09.1978. The petitioner, subsequently qualified herself with M.Com., and B.Ed. with effect from May 1996.

9. According to the respondents 1 to 5, the petitioner was appointed by the 6th respondent school as single part time Vocational Instructor for teaching vocational courses under self-finance scheme. The Government has not sanctioned any post for this course and permission for opening the self-financing courses in Higher Secondary education has been issued with certain conditions. According to the respondents 1 to 5, no prior permission was obtained to fill up the post and as contemplated in the Act and prior permission is essential to appoint teachers in private, Government aided school from the competent authority.

10. The case of the respondents 1 to 5 is that the appointment of part time Vocational Instructors has been banned as per G.O.Ms.No.320 Education Department, dated 01.04.1992 and the petitioner has been appointed after the issue of G.O.Ms.No.320. Moreover, the courses which were started after 1991-92 were not entitled to Government Aid. Section 14-A of the Act clearly states that no grant shall be paid to any private schools established and any class or course of institution opened in such private school on or after the date of commencement of the academic year 1991-92. The part time Vocational Instructors working in an unsanctioned posts in the private aided Higher Secondary Schools in the Groups which were permitted to be opened after 01.04.1992 were not entitled for appointment legally. Hence, prayed for dismissal of the writ petition.

11. I heard Mr.R.Saravanakumar, learned counsel for the petitioner and Mr.R.Govindasamy, learned Special Government Pleader for respondents 1 to 5 and also perused the materials available on record. No representation on behalf of the 6th respondent.

12. The grievance of the petitioner is that she was appointed as Vocational Instructor in the 6th respondent school on 12.07.1993 on consolidated pay and she was working permanently without any break in service ever since the date of her initial appointment. The specific case of the petitioner is that though her juniors were considered for regularisation, her name was not considered for regularisation. Despite several representations made by the petitioner, her request was not

considered by the respondent authorities. Though the petitioner was possessing requisite qualification, her service was not regularised for one reason or the other.

13. Per contra, it is the case of the respondent authorities that the petitioner's appointment has been made by the 6th respondent school management in an unsanctioned post and the vocational course to which the petitioner was appointed for teaching has been permitted under condition that the above course will be functioning under self-financing scheme only and no Government grant would be paid. Further, all appointment procedures such as communal rotation, publicity of vacancy and prior permission were not followed in the case of the petitioner. Hence, the petitioner cannot seek regularisation of her service.

14. It is apposite to mention that the first representation of the petitioner seeking regularisation was on 14.05.2003. Thereafter, she made representations to the respondent authorities on 30.12.2003, 29.09.2004, 24.05.2006, 29.12.2006, 21.05.2007, 21.05.2008 and 07.01.2009 respectively. It is seen that till date the respondents authorities have not considered the representations of the petitioner and sent reply to her, which would show the lethargic attitude of respondent authorities. In the counter also, nothing has been stated that the representations of the petitioner were considered and duly intimated to her.

15. The learned counsel for the petitioner vehemently contended that the petitioner was appointed by the 6th respondent school on 12.07.1993 and the appointment order of the petitioner states that she has been appointed as part time Vocational Instructor and she will be paid consolidated salary of Rs.200/- from the funds of Parent Teachers Association. He would submit that earlier, 361 Vocational Instructors were identified to be regularised and under G.O.Ms.No.680, Education, Science & Technology (VE) Department, dated 20.09.1996, 361 and G.O.Ms.No.74, School Education Department, dated 10.06.2002, part time Vocational teachers were given time scale of pay and only the petitioner alone singled out.

16. The argument advanced by the learned counsel for the petitioner deserves a serious consideration, as G.O.Ms.No.680, dated 20.09.1996 provides as under:

"2. However, the Director of School Education in his letter third and fourth read above has reported to the government that 346 private individuals have sofar been appointed against G.O.Ms.No.991 Education datd 16.7.90, since employees from Government/quasi government departments or other institutions as ordered in the G.O. second read

above, were either not available or not forthcoming to work as part time vocational instructors for some reasons. It has further been reported that among the 346 appointees, 235 are fully qualified and the remaining are less qualified. It has also been reported that the chief educational officers have not approved many of such appointments and hence many of them are working without salary. The Director of school education in his letter third read above has stated that sanctioned part time vocational instructors posts are available for all such irregular appointments and has requested that their appointments may be approved relaxing the G.O. second read above, since they are continuously working in Higher secondary vocational courses and their services are essential for running the courses."

Thus, it is seen that by the aforesaid G.O., even irregular appointments of Vocational Instructors were ordered to be regularised.

17. By an order dated 21.03.2011 in W.P.No.2423 of 2009 etc. batch, the learned Single Judge of this Court held that "since the similarly placed Vocational Teachers who were appointed after 01.04.1992 had been appointed on regular basis, the respondents cannot discriminate the petitioners namely, 34 Vocational Instructors, which clearly meant that there was no discretion accorded to the Government to take any other view except to pass similar orders and grant regularization to the 34 Vocational Instructors including the petitioners herein".

18. It is pertinent to note that the fact that the petitioner has been fully qualified and has been engaged as Vocational Training Instructor uninterruptedly since her initial appointment has not been disputed and the only reason for her non-regularization is her appointment was in an unsanctioned post, which reason, cannot be accepted by this Court on the basis of the admitted fact that the persons who were appointed even after 01.04.1992 had been accommodated and regularized under various Government Orders.

19. There is no convincing reason from the side of the respondents as to why the petitioner was singled out when similarly placed persons were regularised. In this case, it is more than demonstrated that the petitioner has been similarly placed as that of the other Vocational Teachers covered under G.O.Ms.No.35, dated 09.02.2007. Therefore, this Court does not see any reason for denying the petitioner's absorption.

20. Since the petitioner was working as a part time Vocational Instructor in the 6th respondent school from 1993 and handling classes for nearly 28 periods per week and she was paid consolidated pay of a meagre sum per month and also considering the fact that there was no bad remarks on the petitioner for past 25 years, it would be appropriate to direct the Government to consider the claim/grievance of the petitioner as a special case.

21. It is pertinent to note that only pursuant to the instructions issued by the Government, the private schools and/or aided schools, as the case may be, were appointing temporary Instructors as part time Instructors. Whenever part time posts were sanctioned, according to workload, the private schools were enabling to have double part time teachers.

22. It is also pertinent to point out that in number of schools as standards increased, the workload has correspondingly increased and the teacher was given double part time and they also handled classes along with other teachers running even to 28 periods. As a result of the same, they are all put into mental agony not only out of poor payment, but also over workload. For example - in the same school, a regular teacher was paid the time scale and other leave perquisites, whereas the petitioner though attending the school in the morning and leaving in the evening and was taking classes, she was paid less salary, which would clearly shows that the part time teacher was discriminating.

23. Though the respondents 1 to 5 contended that the petitioner was appointed in an unsanctioned post, nothing has been produced to prove the same.

24. In the light of the undisputed facts that the petitioner was working from 1993 onwards with unblemished record and that the several representations of the petitioner right from 2003 to 2009 were unanswered by the respondent authorities till date and more so the petitioner seeks regular time scale of pay only from 10.06.2002, this Court directs the respondent authorities to appoint the petitioner on regular time scale of pay with effect from 10.06.2002 as a special case and pay all attendant benefits. The said exercise shall be completed within a period of twelve weeks from the date of receipt of a copy of this order.

With the above observation and direction, the writ petition is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

To

- 1.The Secretary to Government,
School Education Department,
Fort St. George,
Chennai-9.
- 2.The Director of School Education,
College Road,
Chennai-6.
- 3.The Joint Director of School Education,
(Higher Secondary-Vocational Education),
College Road,
Chennai-6.
- 4.The Chief Educational Officer,
Virudhunagar.
- 5.The District Elementary Officer,
Virudhunagar.

+1cc to Mr.R.Saravanakumar, Advocate sr.no.63222

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skv(co)
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