

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.08.2018

CORAM

THE HON'BLE MR. JUSTICE M.V.MURALIDARAN

W.P.Nos.7986 and 8015 of 2009
and
M.P.Nos.1 and 1 of 2009

V.Nazarayan

.. Petitioner in
W.P.No.7986/2009

S.Ravindran

.. Petitioner in
W.P.No.8015/2009

Vs.

1.State of Tamil Nadu,
rep. by its Secretary to Government,
School Education Department,
Secretariat,
Chennai-9.

2.The Director of School Education,
Chennai-6.

3.The Chief Educational Officer,
Villupuram,
Villupuram District.

4.The Inspector of Anglo Indian Schools,
DPI Compound,
Chennai-6.

5.The Correspondent,
Sacred Heart Convent Anglo India
Higher Secondary School,
Villupuram,
Villupuram District.

.. Respondents in
both WPs

Prayer in W.P.No.7986 of 2009: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus directing the respondents to upgrade the Part Time post (Computer Instructor) in the 5th respondent Management as regular time scale post so as to enable the management to regularize the services of the petitioner in time scale and confer all the consequential benefits.

Prayer in W.P.No.8015 of 2009: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus directing the respondents to upgrade the Part Time post (Commerce Assistant) in the 5th respondent Management as regular time scale post as P.G. Assistant (Commerce) as to enable the management to regularize the services of the petitioner in time scale and confer all the consequential benefits.

(In both the WPs)

For Petitioners : Mr.P.Ganesan
: for Mr.S.Mani
For Respondents : Mrs.M.E.Raniselvam
Addl. Government Pleader
for respondents 1 to 4
Mr.P.Godson Swaminath
: for respondent No.5

COMMON ORDER

These writ petitions have been filed by the petitioners seeking a writ of mandamus directing the respondents to upgrade the part time post (Computer Instructor) and (Commerce Assistant) respectively in the 5th respondent school as regular time scale post, so as to enable the Management to regularise the services of the petitioners in time scale and confer all the consequential benefits.

2. Since the issues involved in both the petitions are one of the same, both the writ petitions were heard together and disposed of by this common order.

3. Briefly stated case of the petitioners is as follows:

The petitioner in W.P.No.7086 of 2009, possessing M.Sc., (Computer Science), was working in the 5th respondent school on a consolidated pay of Rs.400/- per month from 1997 in a sanctioned post and he was still working as part time teacher taking classes for 28 periods that too in a Higher Secondary School standards.

4.The petitioner in W.P.No.8015 of 2009, possessing M.Com., and B.Ed.,, was working in the 5th respondent school on a consolidated pay of Rs.400/- per month from 2000 in the sanctioned post and he was still working as part time

teacher taking classes for 28 periods that too in a Higher Secondary School standards.

5. The common case of the petitioners is that though the Government took a policy decision to abolish the part time posts and nevertheless in the 5th respondent school alone, the petitioners have been still working as part time teachers. It is alleged that all the part time vocational teachers, who were working in the Government schools, have been regularised in G.O.Ms.No.74, School Education Department, dated 10.06.2002. Though in the State of Tamil Nadu both in the Government and Aided schools, all the part time teachers have been brought into regular time scale, only in the 5th respondent school alone the petitioners, who were working only as part time teachers.

6. According to the petitioners, though the Chief Educational Officer, Villupuram, issued a Circular calling for the list of part time teachers and their proforma and despite the 5th respondent school Management submitted the proforma of the petitioners to the Chief Educational Officer, Villupuram as well as to the Inspector of Anglo Indian Schools, till date no action has been taken.

7. The grievance of the petitioners is that when P.G. Assistants taking classes for the same students in the other subjects were getting Rs.19,000/- per month, the petitioners were receiving only Rs.400/- per month as consolidated basis. According to the petitioners, unless this Court directs the respondents to regularise their services by upgrading the post of part time teachers in Computer Assistant and Commerce Assistant respectively, they cannot get any benefit. Hence, the petitioners have filed these writ petitions.

8. Resisting the writ petition being W.P.No.7986 of 2009, the respondents 1 to 3 have filed counter stating that the 5th respondent school is a partly aided minority school only eligible for deficient grant that is the entire salary and other expenses are borne out by the school Management from the fees collected from the students. Only if there was a short fall, the deficiency was aided by the Government. The said deficiency grant was the discretion of the Government. All the appointments were made by the school Management and only approval was granted by the Inspector of Anglo Indian Schools.

9. It is stated in the counter that as per the proceedings of the Chief Educational Officer, dated 05.10.1989, the Computer Science Group was introduced as a vocational component of the General Stream and the

components of the group were Mathematics, Physics, Chemistry and Computer Science. By the proceedings dated 19.05.1997 of the Director of School Education issued an instruction that no grant could be sanctioned and no teacher would be sanctioned.

10. According to the respondents 1 to 3, the petitioner was appointed as Part Time Computer Science teacher on 05.06.1997 by the Management, which was illegal and the part time Computer Science teacher post sanctioned during the year 1989 was lapsed when the teacher appointed in that post retired/expired/relieved or went on voluntary retirement. Hence, there was no part time Computer Science teacher post in existence in 5th respondent school in 1997.

11. It is also stated in the counter that since the petitioner was only a Management teacher of Computer Science of a General Stream that too of a self-financing group, G.O.Ms.No.74, School Education, dated 10.06.2002 was not applicable and the said Government Order was only for regularisation of fully qualified part time vocational teacher in Government and Aided Schools, which was clarified in G.O.Ms.No.35, School Education Department, dated 09.02.2007. According to the respondents 1 to 3, Anglo Indian Schools were functioning on a self-finance basis and the role of the official respondents was only to ensure that the staff appointed has no requisite qualification.

12. The fourth respondent has filed counter in W.P.No.7986 of 2009, wherein it is stated that the 5th respondent Management has not obtained approval for the Computer Science fees collection from the Inspector of Anglo Indian Schools, Chennai and the teacher has been paid salary on temporary basis. It is stated that the Correspondent has not approached the Inspector of Anglo Indian Schools for approval of the post of Computer Science teacher even on temporary basis and the fees collected exclusively for Computer Science has not been remitted into the general fee collection for Standards I to XII approved by the Inspector of Anglo Indian Schools.

13. It is stated in the counter that the Director of School Education has sought for certain particulars from the Inspector of Anglo Indian Schools regarding regularisation of Computer Science teacher for part time teacher's working in the Anglo Indian Schools in Rc.No.31157/E/E1/09, dated 29.05.2009 and the Inspector of Anglo Indian Schools asked the concern of the Correspondent of the Schools. After getting the full particulars, the particulars so collected would be sent to the Government

through the Director of School Education for appropriate orders.

14. According to the fourth respondent G.O.Ms.No.74, dated 10.06.2002 speaks about the regularisation of the fully qualified part time vocational teachers and not part time teachers, who were working under academic stream.

15. The 5th respondent school filed the counter in W.P.No.7987 of 2009 stating that the school was not fully aided and the Government was paying only the pension and gratuity to the retired staff members of the school. The State Government permitted the school to collect fees from the students and the fees charges were in commensurate with the expenditure incurred by the school. It is stated that the qualification for appointment of teachers was prescribed under the Rules framed by the Government.

16. According to the 5th respondent, the post of Computer Science part time teacher fell vacant on account of the resignation of the previous incumbent Mr.P.John Kurubairaj on 27.03.1997 and in that vacancy the petitioner in W.P.No.7986 of 2009 was appointed by the school with effect from 05.06.1997. The petitioner in W.P.No.7986 of 2009 was fully qualified for that post and he continues to work in that post.

17. According to the 5th respondent, they submitted a proposal to the 4th respondent on 16.04.2007 to approve the appointment of the petitioner and despite receipt of the same, there was no response for a very long time. By the proceedings dated 11.06.2009, the 5th respondent was called for proposal to regularise the services of the petitioner in W.P.No.7986 of 2009 and the services of the part time vocational instructors working in similarly placed schools were regularised. According to the 5th respondent, non-regularisation of petitioner was highly arbitrary and discriminatory.

18. I heard Mr.P.Ganesan, learned counsel appearing for the petitioners, Mrs.M.E.Raniselvam, learned Additional Government Pleader appearing for the respondents 1 to 4 and Mr.P.Godson Swaminathan, learned counsel appearing for the 5th respondent in both the writ petitions and also perused the materials available on record.

19. According to the learned counsel for the petitioners, the petitioners were appointed as part time teachers in a sanctioned post in the 5th respondent school. Though through out the State, both in the Government and Aided schools, all the part time teachers have been brought

into regular time scale, the petitioners, who were working as part time teachers from 1997 and 2000 respectively have not been brought into regular time scale and they were paid only consolidated pay of Rs.400/- per month.

20. According to the learned Additional Government Pleader appearing for the State Government, the petitioners were paid salary from the fees collected exclusively from the students and therefore, it is not an aided post. He would submit that Anglo Indian schools were functioning on a self-finance basis and the petitioners were not entitled to get regularisation and/or upgradation as sought for by them.

21. Learned counsel appearing for the 5th respondent submitted that the petitioners were fully qualified for the post they held and they have been appointed in the sanctioned post. According to the learned counsel, the workload assigned to the petitioners was 28 periods a week and the need of the school was taken into account while assigning the workload to the petitioners. He argued that though the 5th respondent school submitted a proposal to the 4th respondent on 16.04.2007 to approve the appointment of the petitioners, till date there was no response. According to the learned counsel, the petitioners were working from 05.06.1997 and 07.06.2000 respectively and they are entitled to get regularisation of their service.

22. Though the respondents 1 to 3 contend that the appointment of the petitioners were illegal and in Aided schools, persons appointed by the Management in self-financing Group cannot claim teacher post, nothing has been produced by the State Government to show that the appointments of the petitioners were illegal and they have been appointed by the Management in self-financing Group.

23. In their counter, the 4th respondent/Inspector of Anglo Indian Schools stated that by the proceedings in Rc.NO.31157/E/E1/09, dated 29.05.2009, the Director of School Education had sought for particulars from them qua regularisation of part time teachers (Computer Science) and (Commerce Assistant). Pursuant to the proceedings of the Director of School Education, dated 29.05.2009, the Inspector of Anglo Indian Schools submitted particulars as called for to the Government for orders. It is noted that no material has been produced to show that the Government had passed an order.

24. The case of the petitioners is that the Chief Educational Officer has called for proforma of the petitioners and pursuant to the direction of the Chief

Educational Officer, the 5th respondent school Management had also submitted the proforma both to the Government and the Inspector of Anglo Indian Schools. Despite receipt of the same, till date no action was taken. The aforesaid statement of the petitioners was corroborated by the statement of the 5th respondent school.

25. As stated supra, nothing has been produced by the State Government to show that the petitioners were working in a non-sanctioned post. In fact, the 4th respondent has also not stated anything that the petitioners were working in a non-sanctioned post.

26. Since the petitioners were working as a part time Computer Instructor and Computer Assistant in the 5th respondent school from 1997 and 2000 respectively and are handling Standards XI and XII for nearly 28 periods per week and they were paid consolidated pay of a meagre sum of Rs.400/- per month and also considering the fact that there was no bad remarks on the petitioners for past 18 and 22 years respectively, it would be appropriate to direct the Government to consider the claim/grievance of the petitioners as a special case.

27. It is pertinent to note that only pursuant to the instructions issued by the Government, the private schools was appointing temporary instructors as part time instructor. Whenever part time posts were sanctioned, according to workload, the private schools were enabling to have double part time teachers.

28. It is also pertinent to point out that in number of schools as standards increased, the workload was correspondingly increased and the teacher was given double part time and they also handling 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. The petitioners have given an illustration - in the same school, a regular teacher was paid the time scale and other leave perquisites, whereas the other teachers like the petitioners though attending the school in the morning and leaving in the evening and were taking classes, they were paid less salary, which would clearly shows that the part time teachers were discriminating.

29. Nothing has been produced to show that the petitioners were appointed in the non-sanctioned post. According to the petitioners, the petitioner in W.P.No.7986 of 2009 was appointed as part time teacher (Computer Instructor) which was a sanctioned post right from 1988.

As far as the petitioner in W.P.No.8015 of 2009 is concerned, he was appointed on 07.06.2000 as part time teacher (Commerce Assistant), which was also a sanctioned post right from 1986. The said fact has not been denied by the official respondents. No material has been produced by the official respondents to show that the part time teachers not only the 5th respondent school, the other schools were not regularised.

30. In the light of the undisputed fact that the petitioners were working from 1997 and 2000 onwards and there were no bad records against them and the proposal sent by the 5th respondent to the 4th respondent as well as the Government are pending under consideration and till date no orders have been passed on it and also considering the fact that the 5th respondent has no objection in regularising the services of the petitioners, this Court directs the official respondents liable to be considered the grievance of the petitioners.

31. In the result:

- (a) both the writ petitions are allowed;
- (b) the respondents 1 to 4 are hereby directed to upgrade the Part Time post (Computer Instructor) in the 5th respondent School as regular time scale post so as to enable the 5th respondent Management to regularize the services of the petitioner in W.P.No.7986 of 2009 in time scale;
- (c) the respondents 1 to 4 are hereby directed to upgrade the Part Time post (Commerce Assistant) in the 5th respondent School as regular time scale post so as P.G. Assistant (Commerce) as to enable the 5th respondent Management to regularize the services of the petitioner in W.P.No.8015 of 2009 in time scale;
- (d) the respondents 1 to 4 are directed to confer all the consequential benefits to both the petitioners;
- (e) the said exercise shall be done within a period of eight weeks from the date of receipt of a copy of this order.

No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

To

1.The Secretary to Government,
School Education Department,
Secretariat, Chennai-9.

2.The Director of School Education,
Chennai-6.

3.The Chief Educational Officer,
Villupuram, Villupuram District.

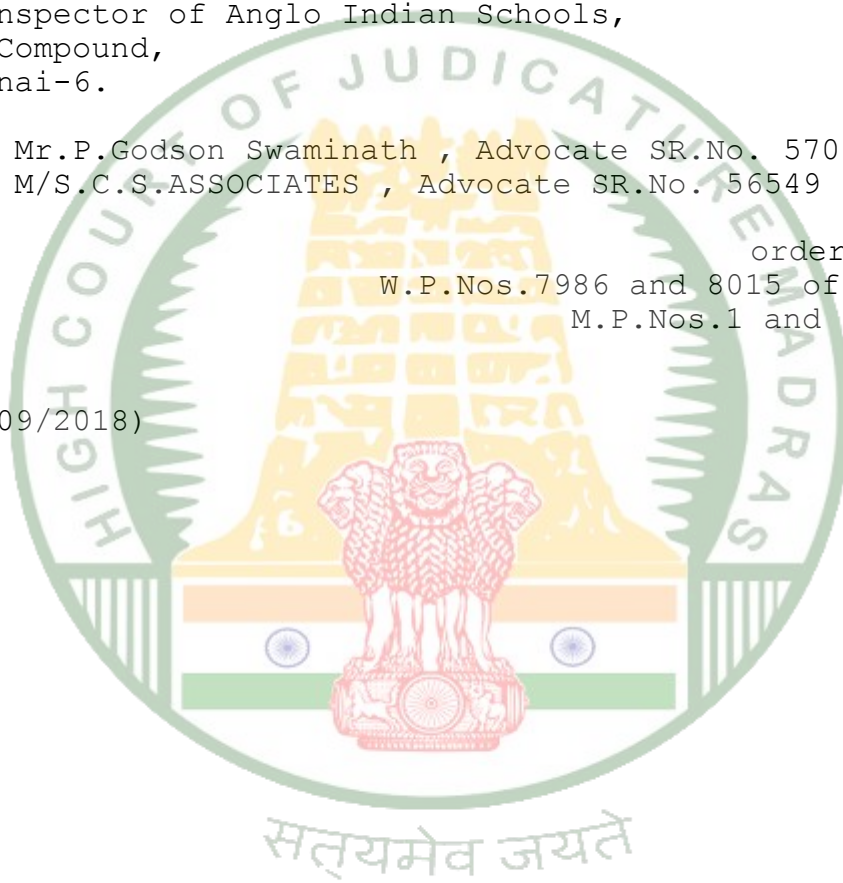
4.The Inspector of Anglo Indian Schools,
DPI Compound,
Chennai-6.

+1cc to Mr.P.Godson Swaminath , Advocate SR.No. 57063

+1cc to M/S.C.S.ASSOCIATES , Advocate SR.No. 56549

order made in
W.P.Nos.7986 and 8015 of 2009 and
M.P.Nos.1 and 1 of 2009

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ASK(12/09/2018)



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