

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.08.2018

CORAM

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

W.P.Nos.34107 to 34112 of 2012
M.P.Nos.2, 2, 2, 2, 2 and 2 of 2012

1.J.A.Asirvatham
2.R.Joseph ... Petitioners in W.P.No.34107 of 2012

1.D.Perumal
2.M.Periyanayagam ... Petitioners in W.P.No.34108 of 2012

1.C.Amal raj
2.K.Raju
3.M.Thangam ... Petitioners in W.P.No.34109 of 2012

1.Jayalakshmi
2.Y.Arulraj ... Petitioners in W.P.No.34110 of 2012

S.Veeran ... Petitioner in W.P.No.34111 of 2012
R.Balraj ... Petitioner in W.P.No.34112 of 2012

Vs.

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

2.The Director of School Education,
D.P.I. Complex, College Road,
Chennai - 600 006.

3.The Inspector of Anglo Indian Schools,
D.P.I. Complex, College Road,
Chennai - 600 006. ... Respondents 1 to 3 in all WPs

4.St. Joseph's Anglo Indian Boys'
Higher Secondary School,
rep. by Correspondent,
Vepery,
Chennai-7. ... 4th Respondent in W.P.No.34107 of 2018

***St. Anthony's Anglo Indian High School,**

Pudupet,

Chennai-600 006. ...4th Respondent in W.P.No.34108/12

Compion Anglo Indian Boys

Higher Secondary School,

Tiruchy-1. ...4th Respondent in W.P.No.34109 of 2012

Bricks Memorial Anglo Indian

Higher Secondary School,

Ooty-643001. ...4th Respondent in W.P.No.34110 of 2012

St.Joseph's Girls Anglo Indian

Higher Secondary School,

Trichy-620 007.

...4th Respondent in W.P.No.34111 of 2012

St.Joseph's Girls Anglo Indian

Higher Secondary School,

Coonur.

...4th Respondent in W.P.No.34112 of 2012

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, calling for the records from the file of the first respondent dated 28.10.2011 made in letter No.3498/V.2/2007-19 and quash the same and consequently direct the respondents to regularise the service of the petitioners in terms of G.O.(Ms.)No.577 dated 01.04.1981 and G.O.(Ms)No.1065 Education Dept. dated 19.11.93 with effect from the petitioner's completion of five years of service as a contingent staff with all attendant service benefits payable to the petitioners.

and batch cases.

(In all the Wps)

For Petitioners

: M/s.G.Thilakavathy

Senior Counsel

for Mr.R.Gopinath

For Respondents : Mr.K.Venkatramani
Addl. Advocate General
assisted by
Mr.R.Govindasamy
Spl. Government Pleader
for respondents 1 and 2

M/s.A.Arul Mary (for R4)

No appearance (for R3)

COMMON ORDER

In this batch of cases, the petitioners are seeking a order in the nature of a writ of Certiorarified Mandamus to call for the records from the file of the first respondent dated 28.10.2011 made in Letter No.3498/V.2/2007-19, to quash the same and to consequently direct the respondents to regularize the service of the petitioners in terms of G.O.Ms.No.577, dated 01.04.1981 and G.O.Ms.No.1065, Education Department, dated 19.11.1993 with effect from the petitioners' completion of five years of service as a contingent staff with all attendant service benefits payable to the petitioners.

2. The facts in a nutshell are as under: The petitioners were appointed as consolidated employees by the fourth respondent school to the post of Sweepers, with permissible dearness allowance. The fourth respondent school is an aided institution functioning under the control of the second respondent, though the third respondent, which is in-charge of all the Anglo Indian Schools functioning within the State of Tamil Nadu. It is stated that the provisions of the Tamil Nadu Private School Regulations Act are implemented for administration of the school.

3. It is stated that by G.O.Ms.No.577, Education Department, dated 01.04.1981, the first respondent approved the proposal submitted by the second respondent for bringing the contingent staff in aided schools, who were in service for more than five years, who were assessed for grant to be brought into the time scale of pay. The benefit of the said government order is stated to have been extended to Anglo-Indian Schools which were given deficit grant by the proceedings of the third respondent dated 31.10.1983 in D.Dis.No.1485/A, dated 01.04.1981.

4. It is averred by the petitioners that the first respondent vide G.O.Ms.No.1065, Education Department, dated 19.11.1993, referring to the earlier government order and the proceedings of the third respondent, extended the time scale of

pay to persons who were in service for the period between 01.04.1980 and 01.04.1987 in all the Anglo-Indian Schools upon completion of five years of service.

5. On the basis of the above said government order, it is stated that the petitioners, who had been appointed by the fourth respondent/Management, were required to be brought into time scale of pay and suitable proposal of the management was submitted for approval of the third respondent.

6. It is the case of the petitioners that the only condition contemplated in the said government orders is that they should have completed five years of service between 01.04.1980 and 01.04.1987 and all the petitioners satisfy the said condition and are entitled to absorption in the post they were working in the regular establishment on time scale of pay applicable to the post.

7. It is alleged that finally the first respondent, vide proceedings dated 28.10.2011, had indicated that the respective management should bear the cost for such regularization and had further indicated that the management should not include the expenditure on that account in the deficit grant and refrain from making a claim to the Department to compensate the differential grant amount.

8. Assailing the said proceedings dated 28.10.2011 of the first respondent, the present batch of writ petitions are filed.

9. The learned Senior Counsel appearing on behalf of the petitioners contended that inasmuch as the petitioners had put in far more years of service than the five years of service as contemplated in G.O.Ms.No.577, dated 01.04.1981 and G.O.Ms.No.1065, dated 19.11.1993, the first respondent ought to have extended the benefit of regularization and granted the time scale of pay with necessary grant.

10. She further contended that when there are specific government orders requiring the services of the petitioners to be regularized by taking into account the need of service of such contingent staff to be brought under regular establishment, denial of such benefits to the petitioners is violative of Articles 14, 19(1)(g) and 21 of the Constitution of India.

11. Per contra, the learned Additional Advocate General appearing on behalf of respondents 1 and 2 reiterated the stand taken by the respondent authorities while passing the impugned order and prayed for dismissal of the writ petition.

12. I heard M/s.G.Thilakavathy, learned senior counsel for Mr.R.Gopinath, Mr.K.Venkatramani, learned Additional Advocate General assisted by Mr.R.Govindasamy, learned Special Government Pleader for the respondents 1 and 2 and M/s.A.Arul Mary, learned counsel for the 4th respondent in all the writ petitions and perused the documents available on record. No representation on behalf of the 3rd respondent.

13. In the case on hand, the initial appointment of the petitioners or their continuation in employment till date as consolidated employees is not disputed by the respondent authorities. In fact, the plea of the petitioners of continuation in service is fortified by the learned counsel appearing for the fourth respondent school.

14. Moreover, it is not in dispute that the fourth respondent school is an aided school and it is governed by the provisions of the Tamil Nadu Private School Regulations Act.

15. Under identical circumstances, in respect of one P.Gnana Pragasam, who was appointed as Sweeper-cum-Gardner on 3.1.1966 and retired from service after working for more than forty years, this Court by order dated 3.12.2012 passed in W.P.(MD) No.10915 of 2007, held as under:

"6. The Petitioner was appointed as Sweeper cum-Gardner on 3.1.1966 and retired from service after working for more than forty years. Though beneficial Government Orders came to be passed in the year 1977 and 1981 in G.O.Ms.No.52 and G.O.Ms.No.577 respectively, granting regularization of service with time scale of pay to the persons similarly situated like that of the petitioner, there was no reason as to why the petitioner was not granted such benefit.

7. On the other hand, the contention of the respondents that G.O.Ms.No.577 was not applicable to the aided Teacher Training Institute, cannot be

sustained in view of the fact that when G.O.Ms.No.577, dated 01.04.1981 was passed by the Education Department, there was no such discrimination made in the said Government order. A perusal of G.O.Ms.No.577 would show that the contingent staff in aided schools who had put in not less than five years of service as on 1.4.1979 shall be given the time scale of pay w.e.f. 1.4.1979. While passing the said Government Order, there was no distinction made between the aided schools and the aided Teacher Training Institutes. It is also not in dispute that the Teacher Training Institutes are also coming under the purview and control of the school Education Department. That being the position, there cannot be any discrimination between the contingent staff of aided schools and the aided Teacher Training Institutes. Even assuming so, the very conduct of the first respondent in granting regularization of service to similarly situated persons in G.O.Ms.No.156, dated 23.6.1981 and G.O.Ms.No.46, dated 8.2.2000 shows that they applied the very same G.O.Ms.No.52 to those persons who were also working as contingent staff in Teacher Training Institutes. Thus the petitioner is entitled to the relief and the conduct of the first respondent in rejecting his claim undoubtedly is an act of discrimination which violates Article 14 of Constitution of India.

8. In fact this Court in a decision reported in 2009 Writ LR 43 cited supra had observed that the petitioner therein having satisfied the minimum required continuous service of five years is entitled for regularization of his service as per G.O.Ms.No.52, Finance(FRII) Department, dated 14.1.1977. The institution in the said Writ Petition, wherein the contingent staff worked also was a Teacher Training Institute. By considering all the above facts and circumstances, the learned Judge held that the petitioner therein was entitled to regularization of his service.

9. Applying the said decision, to the facts and circumstances of the present case as well as by considering the very conduct of the first respondent in regularization of service of the similarly situated persons through G.O.Ms.No.156, dated 23.12.1997 and G.O.Ms.No.46, dated 8.2.00 I find every justification in allowing this Writ Petition. Accordingly, the Writ Petition is allowed

and the impugned order is set aside. The respondents are directed to regularize the service of the petitioner w.e.f. 01.04.1979 on par with that of the similarly placed persons and extend all the monetary benefits by passing suitable orders within a period of eight weeks from the date of receipt of a copy of this order."

16. The learned Additional Advocate General appearing on behalf of the respondent authorities is not in a position to dispute the applicability of the above said order. The Additional Advocate General also not produced any appeal proceedings against the said order.

17. A perusal of the typed set of documents filed by the petitioners shows that similar orders passed by this Court had been implemented by the Government.

18. Under such circumstances, this Court finds no just and reasonable cause to take a different stand than the one taken in the above said decision.

19. For the foregoing reasons, these writ petitions are allowed and the impugned proceedings of the first respondent are quashed with a direction to the first respondent to regularize the services of the petitioners on a par with similarly placed persons and extend all the monetary benefits by passing suitable orders in the light of G.O.Ms.No.577, dated 01.04.1981 and G.O.Ms.No.1065, dated 19.11.1993. Such orders shall be passed by the first respondent 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.

सत्यमेव जयते
Sd/-

Assistant Registrar(CS IX)
Dated;31/08/2018

***Corrected order
to be issued**

Sd/-

Sub Assistant Registrar
Dated:20/09/2018

//True Copy//

Sub Assistant Registrar

vs
To

1.The Secretary,
Government of Tamil Nadu,
School Education Department,
Fort St. George, Chennai-9.

To be substituted
to the order already
despatched on 4/9/2018

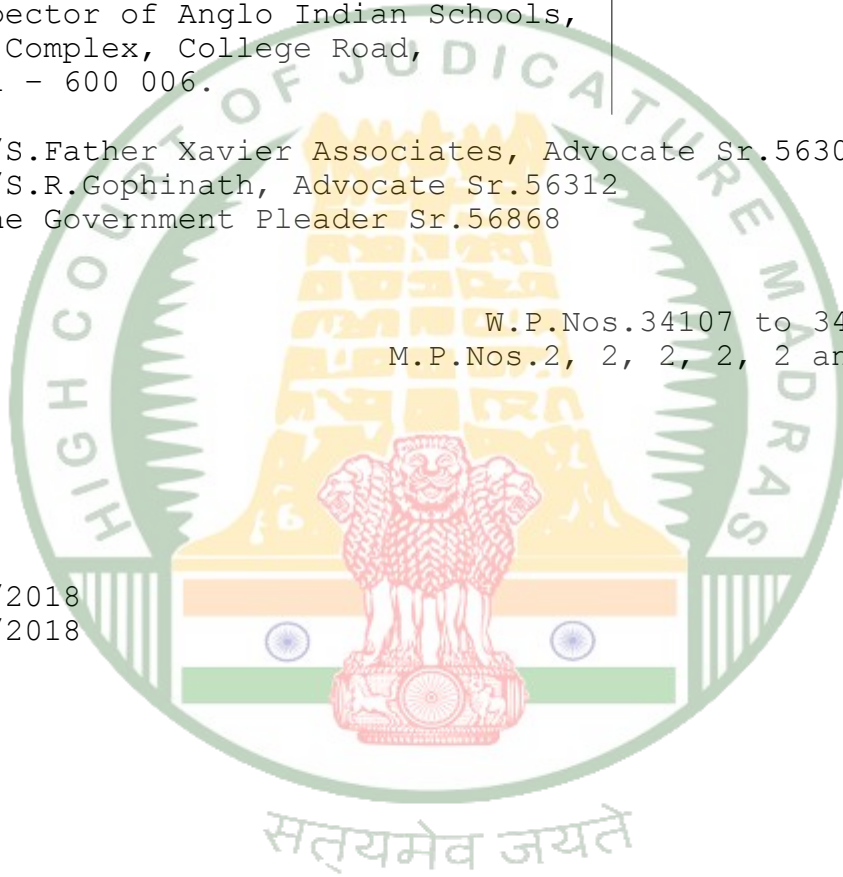
2.The Director of School Education,
D.P.I. Complex, College Road,
Chennai - 600 006.

3.The Inspector of Anglo Indian Schools,
D.P.I. Complex, College Road,
Chennai - 600 006.

+2cc to M/S.Father Xavier Associates, Advocate Sr.56309
+2cc to M/S.R.Gophinath, Advocate Sr.56312
+1cc to the Government Pleader Sr.56868

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M.P.Nos.2, 2, 2, 2, 2 and 2 of 2012

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srg 20/09/2018



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