

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.02.2018

CORAM :

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN
AND
THE HONOURABLE MR.JUSTICE P.VELMURUGAN

W.A.No.978 of 2016

K.Nallasivan Appellant
Vs.

1. State of Tamil Nadu,
Rep. by the Secretary
Education Department,
Secretariat, Chennai-9.
2. The Director of Elementary Education,
College Road, Chennai.
3. The District Elementary Educational Officer,
Tirunelveli District, Tirunelveli. Respondents

Prayer: Writ Appeal is filed under Clause 15 of the Letters Patent against the order dated 10.02.2016 made by this Court in W.P.No.12846 of 2015.

WP.No.12846/2016:Writ petition filed under Article 226 of the Constitution of India, praying for the issuance of writ of certiorarified mandamus to call for the entire records pursuant to the impugned G.O.Ms.No.155, school Education (D2) Department, dated 03.10.2002 issued by the first respondent herein to quash the same insofar as the clause (iii) and clause (viii) are concerned and consequently to direct the respondents to approve the appointment of the petitioner and continue in service in the sanctioned post and to pay the salary from 24.11.1997 to 24.06.2005 to the petitioner along with the pension benefits.

For Appellant : Mr.M.Saravanakumar

For Respondents: Mr.K.Karthikeyan,
Government Advocate (Education)

JUDGMENT

[Judgment of the Court was made by P.VELMURUGAN, J.]

This writ appeal has been filed against the order 10.02.2016 made in W.P.No.12846 of 2015.

2 At one point of time, the Government permitted the aided schools in the State of Tamilnadu to appoint B.Ed., teacher in Secondary Grade Teacher vacancies before 11.07.1995, due to non-availability of the candidates with D.T.Ed., qualification. The Government issued G.O.Ms.No.559, Education, Science and Technology Department, dated 11.07.1995, wherein it was stated that B.Ed., candidates cannot be appointed in Secondary Grade Teacher posts and in those cases approval of appointment will not be granted. The petitioner, who possessed B.Ed., was appointed as Secondary Grade Teacher on 09.12.1996. The above said G.O.Ms.No.559, dated 11.07.1995, was questioned and the same was upheld by a learned Single Judge and against the order of the learned Single Judge, batch of writ appeals were filed. The writ appeals were rejected by the Division Bench of this Court by judgment dated 29.06.2001 and the concession made by the then Additional Advocate General that the teacher appointed from 11.07.1995 to 19.05.1998, the date of dismissal of the batch of writ appeals and writ petitions, could be trained in child psychology in order to protect the service of those teachers, was recorded.

3 The G.O.Ms.No.155, School Education Department, dated 03.10.2002 was issued by the Government, wherein, the B.Ed., candidates, who are appointed after 11.07.1995, were permitted to undergo one month child psychology training at their own cost and it was categorically stated that the salary could not be paid to those teachers from the date of their initial appointment and could be paid from the date of regularization after completion of the one month Child Psychology training.

4 The petitioner challenged the above G.O.Ms.No.155, dated 03.10.2002 by way of writ petition in W.P.No.12846 of 2015 seeking to quash the G.O.Ms.No.155, School Education (D2) Department, dated 03.10.2002, issued by the first respondent herein insofar as the Clause (iii) and Clause (viii) are concerned and consequently direct the respondents to approve the appointment of the petitioner and continue in service in the sanctioned post and to pay the salary from 24.11.1997 to 24.06.2005 to the petitioner along with pension benefits.

5 The learned Single Judge based on the judgement of the Division Bench of this Court reported in 2004 2 LW 591, has dismissed the prayer insofar as quashing of Clause (iii) is concerned and allowed the prayer insofar as quashing of Clause (viii) is concerned by order dated 10.02.2016.

6 Aggrieved against the said order dated 10.02.2016, the petitioner has come forward with the present writ appeal.

7 The learned counsel for the petitioner would submit that the petitioner, who possessed B.Ed., was appointed as Secondary Grade Teacher on 09.12.1996, since the Government permitted to appoint the B.Ed., candidates to the post of Secondary Grade Teacher. The petitioner is also entitled to get salary from the date of initial appointment. The learned single Judge failed to consider the orders relied on by the petitioner in the W.P.No.12846 of 2015, wherein, writ petitions seeking similar prayer were allowed.

8 The learned Government Advocate (Education) appearing for the respondents would submit that the issue raised by the petitioner has already been elaborately dealt with by the Division Bench of this Court and passed the judgment, which is reported in 2004 2 LW 591. The learned Single Judge, based on the above said decisions rendered by the Division Bench, has passed the order, which does not warrants any interference of this Court.

9 We have heard the learned counsel appearing on either side and perused the available materials.

10 On a perusal of the records it reveal that the petitioner prayed to quash the G.O.Ms.No.155 dated 03.10.2002 insofar Clause (iii) and Clause (viii) is concerned in the writ petition. The Division Bench of this Court has elaborately gone into the issue and rendered a judgement and the same is also reported in 2004 2 LW 591, wherein, Clause (iii) of the G.O.Ms.No.115 was confirmed and quashed Clause (viii) regarding counting of service for pension benefits. The learned Single Judge by following the above decisions rendered by the Division Bench of this Court, partly allowed the prayer sought for by the appellant. We do not find any special and extraordinary circumstances to take a different view in this matter, since the very same issues had already decided by the Division Bench of this Court and the learned Single Judge has followed the decisions rendered by the Division Bench reported in 2004 2 LW 591.

11 In the result, the writ appeal stands dismissed. No costs.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

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To

1. The Secretary,
Education Department,
Secretariat, Chennai-9.
2. The Director of Elementary Education,
College Road, Chennai.
3. The District Elementary Educational Officer,
Tirunelveli District, Tirunelveli.

+1cc to M/s.M.Saravanakumar, Advocate SR.NO.10172
+1cc to Government Pleader SR.NO.9776

VSNII(CO)
sm:7.9.2018

W.A.No.871 of 2016

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