

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 10.09.2018

CORAM:

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

W.P.No.28473 of 2013 and
M.P.No.1 of 2013 and WMP.No.25740 of 2017

D.Gunasekar

... Petitioner

/Vs/

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

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

3.The Joint Director,
(Vocational) Education,
College Road,
Chennai - 600 006.

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

5.The District Educational Officer,
Villupuram District.
Villupuram.

6.The Head Master,
Government Girls Higher Secondary School,
Ulundurpet - 606 107,
Villupuram District.

... Respondents

Prayer: Writ Petition filed under Article 227 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus to call for the records relating to the order of the 1st respondent in Letter No.36317/pa/ka.2 (2) / 2012-3 dated 01.06.2015 and consequential order of the 3rd respondent in Na.Ka.No.10770/VI/E1/2016 dated 30.05.2016 and

quash the same and consequently direct the respondents 1 to 3 to absorb the petitioner as full time vocational instructor as per various Government Orders of the 1st respondent.

[Prayer amended as per order in W.M.P.No.35876 of 2017 in W.P.No.28473 of 2013, dated 14.12.2017].

For Petitioner : M/s P. Mahalakshmi

For Respondents : Mr.K.Balamurugan
Government Advocate

O R D E R

This writ petition is preferred by the petitioner against the order of the respondent in Na.Ka.No.10770/V1/E1/2016 dated 30.05.2016 and quash the same and consequently direct the respondents 1 to 3 absorb the petitioner as full time vocational instructor as per various Government orders of the 1st respondent.

2. Brief case of the petitioner:

The facts of the case is that the petitioner is M.Com., M.Ed., M.Phil., is fully eligible for the appointment for teaching posts in the school level. The petitioner was appointed as vocational instructor through Parent's Teacher Association to teach the subject Accountancy and Auditing on 1.9.1995. The Government called for the list of vocational instructors appointed prior to 20.9.2006 wanted to regularize their service with time scale of pay in G.O.Ms.No.74 education department dated 10.6.2002. The petitioner fully qualified and eligible to get the benefit under G.O.Ms.No.74 however his name was left out in that list due to the non-application of mind on the part of the department and therefore the petitioner made a request to the 4th respondent to extend the benefit as per above G.O. on 23.12.2002 the 4th respondent forwarded the same to 3rd respondent and the 6th respondent also through its letter dated 29.8.2003 forwarded the particulars to 3rd respondent. The 3rd respondent verified the certificates and service particulars and submitted to report to 2nd respondent on 21.2.2005. The petitioner for regularization the Government issued another G.O.Ms.No.35 School Education Department dated 9.2.2007 and again the petitioner name was not included in the said list. At this juncture it is pertinent to note that persons who are all juniors to that of the petitioner are regularized and brought to time scale of pay. 4th respondent by his proceedings in Na.Ka.No.2847/A1/2005, recommended the petitioner name to the 3rd respondent for regularizing the service as per G.O.Ms.No.35

dated 9.2.2007. In spite of various recommendations and inspections made by the authorities the Government failed to regularize the petitioner's service therefore petitioner approached this Hon'ble court filed W.P.No.28669 of 2007. This court was pleased to dispose of the said writ petition on 30.8.2007 directing the 1st and 2nd respondents to consider his representation within a period of six weeks from the date of receipt of a copy of the order. The 2nd respondent compliance to the order of this court made W.P.No.28669 of 2007 issued a proceedings in Na.Ka.No.90080/V1/E1/07 dated 23.1.2008, stating that the petitioner name was not forwarded by the 4th respondent and therefore his name was not included in the G.O.Ms.No.35 dated 9.2.2007 in spite of the petitioner name is recommended to the govt. for obtaining specific order and same will be considered. The 2nd respondent in his proceedings dated 23.1.2008 is contra to the facts of the case of the petitioner, the petitioner under a bonafide belief, based on the assurance given under the same proceedings that his name is recommended to the Government for consideration is waiting for regularization till date. It is shock and surprise of the petitioner instead of absorbing the petitioner as full time vocational instructor with salary, rejected the claim of the petitioner under proceedings in Na.Ka.No.100326/V1/E1/2012 dated 5.3.2013 by citing that proposal for regularization to time scale pay is rejected by Government in letter No.259(ID) school education (VE) dated 5.7.2012.

3.Counter objections by the 5th respondent:

The Government had ordered to upgrade the Government girls high school, Ulundurpet into Higher secondary school and to start general and vocational subjects as per need, during the academic year 1994-95 vide G.O.Ms.No. 572 Education, Science and Technology Department dated 11.7.1994 based on the said govt.order the 4th respondent had also permitted the 6th respondent to provide general and as well as vocational subjects in the school and to appoint the qualified vocational instructors by parent teachers association of the school. The petitioner with the qualification B.Com.B.Ed, M.Com,M.Ed degrees was appointed to teach the subject of Accountancy and auditing by the 6th respondent on 1.9.1995 as vocational instructor for that subject.

4.As per the orders of the Government in G.O.Ms.No.991 Education Department dated 16.7.1990 the services of the 2596 qualified vocational instructors who were appointed prior 16.7.1990 were regularized and they were brought under regular

time scale of pay from 20.9.1996. In the said G.O. it has been ordered that, in future the individual persons should not be appointed and the persons working in the Government and the Government undertakings only to be appointed has part time vocational instructors. As persons working in Government and Government undertaking have not turned up for appointment laid down in the Government order stated supra, necessary modified orders were issued in G.O.Ms.No.680 Education department dated 20.9.1996 to the effect that the individual persons may be appointed as part time vocational instructors. As such 235 individual qualified persons they were brought into regular service along with 126 qualified part time vocational instructors on part with the 235 persons but not include^{3d} in the list to Government were brought under regular time scale of pay utilizing the vacant secondary grade teacher posts, as grade II part time vocational instructors, notionally with effect from 20.9.1996 but without any monetary benefit.

5.The names of certain persons working as vocational instructors who were appointed by the parent teacher association were omitted in the list sent to Government for orders of regularization of their services. The petitioner was one among them. ^{2nd} respondent based on the orders of the Government in G.O.MS.No.35 School Education (V.E.) department dated 9.2.2007 the particulars of the petitioner was sent to the ^{2nd} respondent by the ^{4th} respondent by letter Na.Ka.No.2847/A1/2005 dated 18.2.2007. In turn the ^{2nd} respondent had sent necessary proposal to the Government for the regularization of service of the petitioner.

6.That the proposal in respect of the petitioner was rejected by the Government vide letter dated 259(ID) school education (VE) dated 5.7.2012. The petitioner was suitably informed by the ^{2nd} respondent in proceedings Na.Ka.No.100326/V1/E1/2012 dated 5.3.2013 that the proposal sent to Government in respect of him was rejected by the Government.

7.As per this court order the ^{3rd} respondent called for the report from the ^{4th} respondent and the ^{4th} respondent sent his report to the ^{3rd} respondent vide in his proceeding No.Na.Ka.1860-A1/2011 dated 2.3.2016 . After receipt of the report from the Chief Educational Officer, Villupuram the third respondent passed the said impugned order and rejected the petitioner's claim, since the petitioner is not eligible to regularize his service as per the G.O.Ms.No.35 Educational department dated 9.2.2007 and also the proposal sent by the

school to regularize 271 vocational teachers have been rejected by the Government. Hence, the Government Advocate who appears for the respondent prayed this Court for dismissal of the writ petition.

8. Heard the arguments on either side and perused the entire materials available on record.

9. The impugned order of the 2nd respondent in Na.Ka.No.100326/VI/E1/ 2012 dated 5.3.2013 by rejecting the claim of the petitioner to regularize as full time vocational instructor is totally erroneous unreasonable, against law, facts and circumstances of the case. The 2nd respondent ought to have considered that the petitioner was appointed as early as 1.9.1995 in the sanctioned post and whereas the other vocational instructors who were appointed later on and who were juniors to the petitioner were benefited under various Government G.Os. The 2nd respondent erred in rejecting the claim of the petitioner citing a Government letter, for the reason that no Government letter can override a Government order and the same cannot be contra to the G.O.s issued by the Government. Thus failing to appreciate the same proves the non applicability of mind in the entire case by the respondents.

10. This Court's absolute view that the 2nd respondent ought to have noted that the petitioner is having requisite qualification, experience and seniority as well and thus entitled to be regularized as per various G.Os of the Department. The 2nd respondent failed to apply his mind properly to various G.Os relevant to vocational instructors such as G.O.Ms.No.358 dated 18.8.1997, G.O.Ms.No.74 dated 10.6.2002; and more specifically G.O.Ms.No.35 dated 9.2.2007 whereby the list of part time vocational instructors to be made full time vocational instructor. Thus as per the aid G.O. the petitioner is entitled to get her service regularized with the salary.

11. The learned counsel for the petitioner submits that the petitioner is fully qualifies as per G.O.Ms.No. 5 dated 4.1.2000 and appointed prior to 20.9.1996 and hence the petitioner ought to be upgraded as full time vocational instructor, and entitled for the service benefits from the date of upgradation. Therefore, the writ petition is liable to be allowed.

12. In the result:

a) The writ petition is allowed by setting aside the order of the 1st respondent in Letter No.36317/pa.ka.2(2) /2012-3 dated 01.06.2015 and consequential order of the 3rd respondent in Na.Ka.No.10770/V1/E1/2016 dated 30.05.2016.

b) The respondents 1 to 3 are hereby directed to absorb the

petitioner as full time vocational instructor from 01.09.1995 and pay back all the service and monetary benefits.

c) The said exercise shall be completed within a period of eight weeks from the date of receipt of this order. No costs. Consequently, connected M.P.No.1 of 2013 and W.M.P.No.25740 of 2017 are closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

vs

To

- 1.The Secretary, Government of Tamil Nadu,
School Education Department,
Fort St. George, Chennai-600 009.
- 2.The Director of School Education,
College Road, Chennai - 600 006.
- 3.The Joint Director,
(Vocational) Education,
College Road, Chennai - 600 006.
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- 5.The District Educational Officer,
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- 6.The Head Master,
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+1 cc to Mrs.P.Mahalakshmi, Advocate Sr.No.62381

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M.P.No.1 of 2013 and W.M.P.No.25740 of 2017

KK(CO)

CSL/20.03.2019