

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.03.2018

CORAM:

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

W.P.No.19869 of 2013

P.Danavelu

.. Petitioner

Vs.

1.The State of Tamil Nadu
rep. by its Secretary to Government,
School Education (G2) Department,
Fort St. George,
Chennai-9.

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

.. Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of Writ of Certiorarified Mandamus to call for the records connected with G.O.Ms.No.93, School Education (E2) Department, dated 06.04.2010 of the 1st respondent and quash the same in so far as it restrict the regularisation of service of the petitioner from the date of issuing the Government Order and consequently direct the respondents to regularise the service of the petitioner in the post of Craft Instructor with effect from 1996 onwards with all consequential benefits.

For Petitioner : Mr.G.Elanchezhiyan

For Respondents: Mr.R.Govindasamy

Special Government Pleader

O R D E R

The prayer in the writ petition is for a Writ of Certiorarified Mandamus to call for the records connected with G.O.Ms.No.93, School Education (E2) Department, dated 06.04.2010 of the 1st respondent and quash the same in so far as it restrict the regularisation of service of the petitioner from the date of issuing the Government Order and consequently direct the respondents to regularise the service of the petitioner in the post of Craft Instructor with effect from 1996 onwards with all consequential benefits.

2.The learned counsel for petitioner would submit that the petitioner was initially appointed as Craft Instructor (part time) with 8th Std pass and also with Technical Teacher Education qualification by the District Educational Officer, Ariyalur on 11.10.1985 and he was posted to Mullukurichi Panchayat Union Middle School, Senthurai Union, Perambalur District, then he joined duty on 21.10.1985 and as such he continued there till 06.11.2000. Thereafter the petitioner was transferred and posted to Vadakkalur Panchayat Union Middle School, Veppur Union, as the said Mullukuruchi Panchayat Union Middle School was upgraded as High School. Immediately the petitioner joined duty at Vadakkalur Panchayat Union Middle School. As such the petitioner was continuously working on consolidate pay till 05.04.2010, thereafter on 06.04.2010 he was appointed as Craft Teacher on regular time scale of pay by order of the Government in G.O.Ms.No.93, School Education (E2) Department, dated 06.04.2010. The petitioner has rendered meritorious service throughout his services.

3.The learned counsel for petitioner would submit that the Government have taken a policy decision in respect of the part-time and full time pre-vocational Instructor is concerned that those who have passed VIII Std with technical education certificate and with TTC will have to be appointed as Higher Grade Teacher and eligible to get higher grade teacher scale of pay and further says that those who are all passed SSLC, technical education certificate and with TTC will have appointed as Secondary Grade Teacher and they are all eligible to get secondary grade Teacher scale of pay. According to the Government policy the petitioner has passed SSLC in the year 1996 and also he has acquired technical education qualification, but he did not have TTC in Agriculture, because, the said Government Institute was closed by the Government in the year 1991 itself, that is why, he could not get teacher training certificate in Agriculture from the Government institute.

4.The learned counsel for petitioner would submit that the petitioner made several representations to the respondents with a request to appoint him as secondary grade teacher based on the Government policy by giving exemption from producing TTC Certificate as was given to others in G.O.Ms.No.1529, Education Department, dated 28.09.1988. After receiving his representation there is no response from the respondent herein.

5.The learned counsel for petitioner would submit that the Director of School Education, Chennai-6 in Na.Ka.No.53307/EF3/99 dated 08.01.2000 has issued a instruction to their subordinate that the particulars of the unqualified part time pre Vocational Instructor should be sent to this office immediately so as to get relaxation from the Government and to absorb them in the Secondary Grade Scale of Pay post. Based on that the District Elementary Educational officer also issued an instruction to their subordinates to send the said particular to the Director of School Education immediately. The petitioner came to understand that the above said proposal also has been sent to the Director of School Education within the stipulated time.

6.The learned counsel for petitioner would submit that thereafter the petitioner made another representation to the Chief Minister's Cell, Chennai in the year 2003. To this, the District Elementary Educational Officer has replied that there is a proposal pending with the Government with regard to appointment of Secondary Grade Teacher post. Orders are awaited, as soon as orders are obtained, the individual name will be considered for regularisation by appointing him in the Secondary Grade Teacher post. Thereafter there is no reply from the respondent herein.

7.The learned counsel for petitioner would submit that hence the petitioner was forced to file a Writ Petition in W.P.No.4812 of 2008 before this Court and prayed that to consider the claims of the petitioner to absorb the petitioner in the post of Secondary Grade Teacher, as per the Government Orders as given to others in G.O.Ms.No.1529, Education Department, dated 28.9.1988 and grant all consequential Benefits. After hearing both side arguments this Court has passed final order on 08.09.2008 that:

"For all the reasons stated above, the Writ Petition is allowed with a direction to the first respondent to consider the proposal of the Third respondent for relaxation of T.T.C.qualification so as

to regularise the petitioner in the time scale of pay as it was done in the case of others, as per G.O.Ms.1529, Education (Pus-1) Department, dated 28.09.1988 within a period of eight weeks from the date of receipt of a copy of this order. Connected miscellaneous petition is closed. No costs."

8.The learned counsel for petitioner would submit that after receiving this Court Order, the Government has issued an order in G.O.Ms.No.93, School Education (G2) Department, dated 06.04.2010 and granted relaxation for not completing TTC Training and also granted permission to appoint the petitioner on time scale of pay from the date of issuance of the Government Orders. Based on the Government Orders, the District Elementary Educational Officer, Perambalur has been issued an appointment order on time scale of pay with effect from 06.04.2010 in his Pro.Na.Ka.No.024/A2/2010 dated 06.10.2010, thereafter the petitioner's service was also regularised in the post of craft instructor with effect from 06.04.2010 in his order in Pro.Na.Ka.No.1191/A2/2011 dated 03.10.2011.

9.The learned counsel for petitioner would submit that since the petitioner regularisation of service order issued after lapse 25 years he is facing heavy financial loss and also service Benefits and also he could not get pension and pensionary benefits after his retirement. Hence the petitioner submitted representations to the respondents on 29.12.2011 and 26.06.2013 and requested to issue a regularisation order from the date of passing Minimum General Educational Qualification. But there is no reply.

10.Per contra the learned counsel for respondent would submit that it is also submitted that based on the representations of the petitioner and the proposal with regard to absorb the similarly placed teachers were sent to the Government for getting orders and the same was pending upto 05.04.2010 and orders was passed by the Government only 06.04.2010. Hence, the request of the petitioner to regularize the said post w.e.f. 1996 and the request to appoint him as Secondary Grade Teacher Time Scale post is not maintainable either in law or on facts.

11.The learned counsel for respondent would submit that the petitioner's request to issue a regularization order from the date of passing Minimum General Educational qualification i.e., from 1996 will not be possible for consideration. Further, there

is no provision to give retrospective regularization by relaxing the rules from the year 1996 onwards. The petitioner was working as Craft Instructor as part time and getting consolidated pay upto 05.04.2010. Hence, the petitioner is not eligible to get permanent post from the date of possessing minimum educational qualification ie., from the year 1996.

12.Heard Mr.G.Elanchezhiyan, learned counsel for the petitioner and Mr.R.Govindasamy, learned Special Government Pleader for the respondents and perused the entire records.

13.The petitioner was initially appointed as Craft Instructor (Part-Time) on 11.10.1985 with 8th Std pass along with Technical Teacher Education qualification by order of the District Educational Officer and posted to Mullukuruchi Panchayat Union middle school. Subsequently the Government has taken policy decision in G.O.Ms.No.1366, Education Department, dated 05.09.1986 that those who are passed S.S.L.C, Technical Education Certificate and T.T.C will have to be appointed as Secondary Grade Teacher and they are eligible to get Secondary Grade Teacher Scale of Pay. As per the Government policy the petitioner has passed S.S.L.C in 1996 and he could not get T.T.C (Agriculture) from the Government Institution because the said Institution was closed by the Government itself in way back.

14.The petitioner could not get his T.T.C. certificate from the Government Institution, it is not a fault on the petitioner because the said Institution itself was closed by Government. In the other cases the respondent has sent a proposal for relaxation of the T.T.C. qualification as the institute itself was closed. The Government was also issued relaxation order in the year 1988 itself in respect of 7 individual in G.O.Ms.No.1529, Education Department, dated 28.09.1988 and appointed them on Secondary Grade Teacher Post and the respondent also has been considered the request of the similarly placed person Mr.Muthukumar in Pro.Na.Ka.No.5046/V1/2003-01, dated 31.05.2007 and regularized his service from 16.10.1992. But the very same Government has issued relaxation order to the petitioner case only in the year 2010 based on the proposal dated 28.01.2000 and 07.02.2003 and based on the Court Order dated 08.09.2008. If the Government would have been passed relaxation order in the right time, based on the proposal sent by the DEO, the petitioner also would have been obtained regularisation order in the right time, therefore it is clear that the delay in passing order on the said proposal is only on the part of the respondent, that to the petitioner cannot be penalized. Hence the impugned order is liable to be set aside in

respect of restricting the regularisation of service of the petitioner from the date of issuing the Government Order is concerned.

15.The petitioner has joined duty as Craft Instructor (part-time) in 1985 and got to Secondary Grade Teacher Scale of Pay on 06.04.2010 and he was allowed to retire from service on 31.07.2016 without any pension benefits. The non-regularisation of the service of the petitioner from 1996 to 05.04.2010 is not only deprived the livelihood of the petitioner and also against the Article 21 of the Constitution of India. The petitioner has lost his service benefits such as pay increments, seniority, promotion including his terminal benefits. Having allowed to work nearly 28 years of service, now the respondents have been depriving the petitioner's terminal benefits is nothing but illegal and arbitrary and hence it is liable to be set aside.

16.The respondent should have acted in a fair manner in regard to extension of the benefits given to similarly placed person, they should not acted in a discriminatory manner and should not take different stand between the equals. For one set of the employee they have been regularised with retrospective effect and the same was denied to other set of employees. From the above it is clear the respondent has acted in a discriminated manner and it is against the Article 14 of the Constitution of India and hence the impugned order is liable to be set aside.

17.In the result:

(a) the writ petition is allowed and the impugned order passed by the respondent in G.O.Ms.No.93, School Education Department, dated 06.04.2010 is set aside in so far as it restrict the petitioner time scale appointment from the date of the Government Order;

(b) the respondents are directed to appoint the petitioner in the post of Craft Instructor on Secondary Grade Teacher Time Scale of Pay from the date of passing S.S.L.C notionally w.e.f. 08.01.2000 (i.e.,) from the date of proposal sent by the respondent and calculate the service for the purpose of pension and grant pension with all benefits from the date of retirement on 31.07.2016;

(c) the said exercise shall be completed within a period of eight weeks from the date of receipt of a copy of this order. No costs.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

vs

To

1.The State of Tamil Nadu
rep. by its Secretary to Government,
School Education (G2) Department,
Fort St. George,
Chennai-9.

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

+1cc to Mr.G.Elenchezhiyan, Advocate Sr.22156

W.P.No.19869 of 2013

srg 20/09/2018

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