



RESERVED ON:20.06.2018
DELIVERED ON:27.06.2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

WEB COPY

DATED:27.06.2018

CORAM:

THE HONOURABLE MR.JUSTICE M.DURAI SWAMY
and
THE HONOURABLE DR.JUSTICE ANITA SUMANTH

W.A. (MD) No.336 of 2018

A.Arulchander

... Appellant/Petitioner

Vs.

1. The Government of Tamilnadu,
represented by its Secretary,
Finance (PGC) Department,
Fort St.George, Chennai-9.
 2. The Government of Tamilnadu,
represented by its Secretary,
School Education Department,
Fort St.George, Chennai-9.
 3. The Director of Elementary Education,
College Road, Chennai-6.
 4. The District Elementary Education Officer,
Tirunelveli District.
 5. The Assistant Elementary Education Officer,
Vasudevanallur Range,
Tirunelveli District.
 6. The Secretary,
Swamy Elementary School,
Dharugapuram,
Vasudevanallur Range,
Tirunelveli District.
- ... Respondents/Respondents

Prayer: Writ Appeal filed under Clause 15 of the Letter Patent
against the order, passed by this Court in W.P.(MD)No.2356 of
2011, dated 08.02.2017.

Prayer in WP(MD). 2356/ 2011 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a WRIT OF CERTIORARIFIED MANDAMUS, calling for the records relating to G.O.No.413 Finance (PGC) Department, dated 04-11-2010 issued by the 1st Respondent and Quash Para 8 and 9 of the said G.O. as it is illegal, irrational and arbitrary, in so far as it confines the benefits of old Pension Scheme and General Provident Fund "Only to persons who were appointed as Secondary Grade Teachers in the sanctioned regular posts in private aided Schools during the period from 11-07-1995 to 19-05-1998 and whose services were later regularized" and consequently direct the 1st Respondent to extend the benefit of old Pension Scheme and General Provident Fund to the Petitioner who joined the service/appointed prior to 01.04.2003 and to count the past service rendered for the purpose of pensionary benefits.

For Appellant : Mr.V.Muthuvelan

For Respondents : Mr.M.Jeyakumar
Additional Government Pleader

JUDGMENT

M. DURAISWAMY, J.

The above appeal arises against the order of dismissal of the writ petition in W.P.(MD)No.2356 of 2011.

2. The appellant/writ petitioner has filed the writ petition to issue a Writ of Certiorarified Mandamus to call for the records relating to G.O.No.413, Finance (PGC) Department, dated 04.11.2010 issued by the first respondent and to quash paragraph Nos.8 and 9 of the said G.O., insofar as it confines the benefits of old Pension Scheme and General Provident Fund " only to persons who were appointed as Secondary Grade Teachers in the sanctioned regular posts in private aided schools during the period from 11.07.1995 to 19.05.1998 and whose services were later regularised and consequently direct the first respondent to extend the benefit of old Pension Scheme and General Provident Fund to the petitioner who joined the service/appointed prior to 01.04.2003 and to count the past service rendered for the purpose of pensionary benefits.

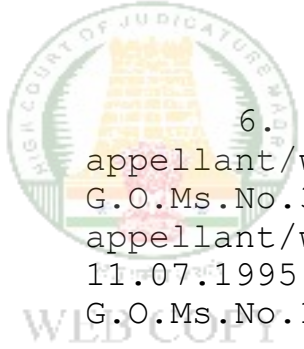
3. It is the case of the appellant/writ petitioner that he is working as a Secondary Grade teacher under the sixth respondent school. He was appointed on 03.03.2003 as a Secondary Grade teacher in the light of G.O.No.301 of 1999, dated 15.10.1999, where he was appointed to the backlog of its vacancies arisen in respect of Scheduled Caste / Scheduled Tribe category in the cadre of



Secondary Grade teacher in Government aided school. The eligibility for the SC/ST candidates for appointment was revised as "Degree with B.Ed.,". By virtue of such regularisation, the appellant/writ petitioner belonging to the Scheduled Caste community has been appointed by the sixth respondent's school. However, the appellant/writ petitioner's appointment was kept pending for getting clarification as to whether a candidate possessing B.A.(Economics) with B.Ed., and B.Com with B.Ed., fall under purview of the above referred G.O. By G.O.No.109, dated 16.08.2004, the first respondent clarified holding that those candidates possessing B.A.(Economics) with B.Ed., and B.Com with B.Ed., can be appointed in the Government Aided school, but held that the approval of such appointment will be effected only from the date of completion of child psychology training by the respective candidates. Accordingly, for the candidates who were appointed as a Secondary Grade teachers on or before adopting the Government Order in G.O.No.100, dated 27.06.2003, their post was approved by the fourth respondent on completion of child psychology training programme.

4. The appellant/writ petitioner contended that his appointment was made before the implementation of G.O.No.100, ie., on 03.03.2003 and hence, the approval will cover by G.O.No.109, dated 16.08.2004. In the meantime, as per the direction issued by the fourth respondent, the appellant/writ petitioner underwent child psychology training and he was also issued with child psychology training certificate, dated 24.12.2007. Only after such undergoing of child psychology training, the appellant/writ petitioner's appointment was approved with effect from 22.12.2007 by the fourth respondent, by his proceedings dated 01.02.2008.

5. In the meantime, the new Pension Rules came to be enacted on 01.04.2003, whereby as per the new Pension Scheme, the persons who were appointed on or after 01.04.2003, shall not be eligible for pension or gratuity and they will be allowed in Contributory Pension Scheme as envisaged in G.O.Ms.No.430, Finance (Pension), dated 06.08.2004. The Secondary Grade Teachers, who were appointed before 01.04.2003 and whose approval of appointment was made after the completion of child psychology training, ie., after the implementation of the new Pension Scheme, ie., 01.04.2003, challenged the said G.O., in a batch of writ petitions in W.P.Nos.10447 and 5174 of 2008, 4537 of 2009, 1375 of 2010, W.P.Nos.12280 to 12282 of 2010 and this Court passed an order extending the benefit of old Pension Scheme and General Provident Fund Scheme with regard to the persons who were appointed during the period from 11.07.1995 to 19.05.1998. However, such benefits were not extended to the similarly placed teachers who were appointed after 19.05.1998. In these circumstances, the appellant/writ petitioner filed the writ petition challenging G.O.No.413, dated 04.11.2010.



6. According to the respondents, the case of the appellant/writ petitioner is required to be considered only as per G.O.Ms.No.301 School Education, dated 15.10.1999. Further the appellant/writ petitioner was not appointed during the period from 11.07.1995 to 19.05.1998 and hence, he is not covered by G.O.Ms.No.155 School Education (D2) Department, dated 03.10.2002.

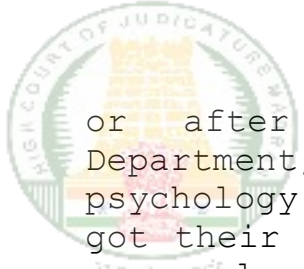
7. The learned single Judge dismissed the writ petition by finding that the services of the appellant/writ petitioner was an unqualified one from 03.03.2003 to 21.12.2007 and his appointment came to be approved only on 21.12.2007 on completion of child psychology training. Further the learned single Judge found that the qualified service of the appellant/writ petitioner commences only from the date of possessing of all qualifications for the said post ie., from 21.12.2007, but not from the date of his appointment.

8. The learned Counsel appearing for the appellant/writ petitioner submitted that apart from the contentions stated above, the appellant/writ petitioner is entitled to the benefits under the Government Order in G.O.Ms.No.122, Department of Adidravidar and Tribal Welfare, dated 02.08.2005.

9. However, the learned Additional Government Pleader submitted that under the said G.O., the benefits were extended only to the candidates belonging to the Scheduled Caste and in the case of Scheduled Caste, the permission was granted by the Government for appointment of B.Ed., qualified persons in Secondary Grade teacher's post and those candidates are entitled to approval from the date of their initial appointment.

10. Heard Mr.V.Muthuvelan, learned Counsel appearing for the appellant/writ petitioner and Mr.M.Jeyakumar, learned Additional Government Pleader and perused the materials available on records.

11. It is pertinent to note that G.O.Ms.No.155, dated 03.10.2002 makes it clear that the candidates who were appointed as Secondary Grade teachers between 11.07.1995 and 19.05.1998 shall undergo child psychology training and that on completion of such training, they will be entitled to approval and that they shall not be entitled to any other benefits. The virus of G.O.Ms.No.155 was upheld by the Division Bench of this Court in ***the State of Tamil Nadu and Others Vs. Pallivasal Primary School, Mudukulathur reported in 2004(2) LW 591***. However, the Division Bench quashed Clause 3(vii) of the said G.O., which directs the recovery of salary paid.



or after 01.04.2003 vide G.O.Ms.No.259, Finance (Pension) Department, dated 06.08.2003. The teachers, who went for child psychology training pursuant to G.O.Ms.No.155, dated 03.10.2002, got their appointment approved on completion of such training and approval were after 01.04.2003. Therefore, there arose a question as to whether their services prior to training could be counted for pension in view of the introduction of Contributory Pension Scheme. The teachers moved this Court in W.P. No.26933 of 2007 etc., batch and the writ petitions were allowed by this Court and upheld G.O.Ms.No.155 and directed counting of their past services for pension. Thereafter, G.O.No.413, Finance (PGC) Department, dated 04.11.2010 came to be passed extending the old Pension Scheme and General Provident Fund as applicable to the teachers appointed between 11.07.1995 and 19.05.1998, who underwent child psychology training and got approved on completion of such training. It was also made clear that the said G.O., is not applicable to the teachers appointed after 19.05.1998.

13. The appellant/writ petitioner who is a Post Graduate, was appointed as a Secondary Grade teacher on 03.03.2003 contrary to the ban imposed in G.O.No.155, dated 03.10.2002. As per G.O.No.413, Finance (PGC) Department, dated 04.11.2010, the teachers appointed after 19.05.1998 are not entitled to the benefits of the said G.O. The G.O.No.413, Finance (PGC) Department, dated 04.11.2010 was passed as per the directions of this Court and also speaks about the B.Ed., teachers employed in Secondary Grade vacancies between 11.07.1995 and 19.05.1998.

14. It is also pertinent to note that the appellant/writ petitioner failed to fulfil the pre-requisite qualification of certificate for undergoing one month child psychology training as stipulated in G.O.Ms.No.301, dated 15.10.1999. The B.Ed., teachers covered in G.O.Ms.No.155, dated 03.10.2002 were appointed when the validity of G.O.Ms.No.559, dated 11.07.1995 was under challenge. G.O.Ms.No.301, dated 15.10.1999 is a concession to SC/ST candidates by relaxing G.O.Ms.No.559, dated 11.07.1995, when there is non-availability of SC/ST candidates with Secondary Grade teacher certificate. Therefore, once relaxation is issued in G.O.Ms.NO.301, dated 15.10.1999, the appellant/writ petitioner cannot compare his case with B.Ed., teachers, who were appointed in violation of G.O.Ms.No.559, dated 11.07.1995. The appointment of the appellant/writ petitioner is in violation of the conditions stipulated in G.O.Ms.NO.301 and when he was not qualified due to the non-possession of bachelor degree in the required subject. In spite of it, the appellant/writ petitioner was allowed to qualify himself by undergoing one month child psychology training and he got himself qualified only from 21.12.2007. When the appellant/writ petitioner was qualified only on 21.12.2007, he cannot be allowed to extend the benefit granted in G.O.Ms.No.413 and the same cannot be termed as discriminatory and arbitrary.



15. The appellant/writ petitioner was not possessing Secondary Grade teacher certificate which is the basic qualification for the post of Secondary Grade teacher. The appellant/writ petitioner was not qualified to be appointed as Secondary Grade teacher or B.Ed., teacher by virtue of his educational qualifications. He acquired B.A. Degree in History in December 2003, only after the appointment on 03.03.2003 as un-qualified Secondary Grade teacher in the sixth respondent school. As per G.O.Ms.No.301, dated 15.10.1999, if qualified Secondary Grade teachers are not available for the Secondary Grade teacher vacancies, reserved for Scheduled Castes and Scheduled Tribes, the B.Ed., teachers shall be appointed in the said vacancies after obtaining non-availability certificate of candidates in the Scheduled Castes and Scheduled Tribes from the District Employment Exchange and the second condition was that before appointing such B.Ed., teachers, the said teachers themselves should undergo one month child psychology training in the respective District Institute of Education and Training.

16. As already stated, the appellant/writ petitioner was not qualified for Secondary Grade teacher. Therefore, he underwent child psychology training and completed the same only on 21.12.2007. The appellant/writ petitioner was eligible to get approval for his appointment only from 22.12.2007, i.e., the date on which he was qualified. That apart, the appellant/writ petitioner was appointed only on 03.03.2003 and not during the crucial period from 11.07.1995 to 19.05.1998 which alone is covered by G.O.Ms.NO.155, dated 03.10.2002. The Government introduced the new Pension Scheme called Contributory Pension Scheme in respect of the employees recruited on or after 01.04.2003 as per G.O.Ms.No.430, dated 06.08.2003. In these circumstances, the relief sought for by the appellant/writ petitioner cannot be granted to him. The learned single Judge has rightly dismissed the writ petition.

17. For the reasons stated above, we do not find any ground to interfere with the order passed by the learned single Judge. The Writ Appeal is liable to be dismissed. Accordingly, the same is dismissed. No costs.

Sd/-

Assistant Registrar(AS)

/True Copy/

Sub Assistant Registrar

To

1. The Secretary,
Government of Tamilnadu,
Public Relations Department,
Fort St.George, Chennai-9.



2. The Secretary,
Government of Tamilnadu,
School Education Department,
Fort St.George, Chennai-9.

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3. The Director of Elementary Education,
College Road, Chennai-6.

4. The District Elementary Education Officer,
Tirunelveli District.

5. The Assistant Elementary Education Officer,
Vasudevanallur Range,
Tirunelveli District.

+ 1 cc TO The Special Government Pleader in SR No. 70234

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AE/SKN RSK/SAR2/06.07.2018/7P/7C

**JUDGMENT MADE IN
W.A. (MD) No.336 of 2018
27.06.2018**