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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 18.09.2018

CORAM

THE HON'BLE MR.JUSTICE M.M.SUNDRESH

AND

THE HON'BLE MR.JUSTICE N.SATHISH KUMAR

W.A.(MD)No.457 of 2018

and

WP(MD)No. 5953 of 2016

- 1.The State of Tamil Nadu,
Rep. by its Secretary,
Education Department,
Secretariat, Chennai.
- 2.The Director of School Education,
Chennai - 6.
- 3.The Chief Educational Officer,
Tirunelveli.
- 4.The District Educational Officer,
Cheranmahadevi,
Tirunelveli District. ... Appellants/Respondents

Vs.

V.Balaganesan ... Respondent/Writ Petitioner

Writ Appeal filed under Clause 15 of Letter Patent against the order passed by this Court in W.P.(MD)No.5953 of 2016 dated 19.04.2017.

Prayer in WP(MD)No. 5953 of 2016 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Mandamus directing the respondents to pass an order of regularization on completion of 10 years of service i.e. with effect from 2004 with monetary benefits as per the order passed by this Honble Court in WP (MD)No.1401 of 2007 dated 24.01.2008 with all consequential benefits.

For Appellants : Mrs.S.Srimathi
Special Government Pleader
For Respondent : Mr.V.Paneerselvam

JUDGMENT

(Judgment of the Court was delivered by **M.M. SUNDRESH, J**)

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The Writ Appeal is directed against the order of the learned Single Judge, by which placing reliance on the earlier



order in W.P.No.4101 of 2007 dated 24.01.2008, it was held that the said order having become final, the same will have to be given effect to, though the Government Order in G.O.Ms.No.22, Personnel and Administrative Reforms Department, dated 28.02.2006 does not have application to the part time employees.

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2.We are not inclined to entertain this Writ Appeal for more than one reason. On an earlier occasion, a learned Single Judge, as then he was, by order dated 24.01.2008 made in W.P.No.4107 of 2007 was pleased to pass the following order:

"2.The case of the petitioners is that the first petitioner was appointed as part time sweeper on 28.04.1994, the second petitioner was appointed as part time sweeper - cum - watchman on 09.04.1992 after their names were sponsored by the Employment Exchange and they are fully qualified to hold the post of sweeper or watchman. Their initial appointment having been made through the Employment Exchange, there is no irregularity in the initial appointment also. The Petitioners have completed more than ten years of service and their services were not regularised. The Government issued G.O.Ms.No.123, Education Department dated 12.05.2000 and stated that the ban for absorbing the part time employees as regular employees was withdrawn and accordingly the part time employees shall be absorbed as regular employees of the Department. Based on the above Government order several part time employees were regularised by the Education Department. In Sivaganga District also, there were several part time employees who were regularised and permanently absorbed. The Government also issued G.O.Ms.No.22, Personnel and Administration Reforms Department, dated 28.02.2006 and stated that the daily wage employees working in all Government Department who have rendered ten years of service as on 01.01.2006 to be regularised by relaxing the rules, if it is liable to be relaxed.

3.The learned counsel for the petitioner submits that similarly placed persons filed the Writ Petition before the Madurai Bench of Madras High Court in W.P.(MD) No.11707 of 2006 and by order dated 22.12.2006 I have considered the same and gave a direction to appoint the petitioners therein in the regular time scale in the existing vacancies of class IV of Last Grade Government Servants in Tirunelveli Education District. Four weeks time was given to pass suitable orders. The said order was challenged by the District Educational Officer, Tirunelveli in W.A.(MD).No.391 of 2007 and by order dated 25.10.2007 the Bench dismissed the said Writ Appeal with a direction to comply with the order passed in the Writ Petition within four weeks. The said direction issued by me



in W.P.(MD).No.11707 of 2006 which was confirmed in W.A.No.391 of 2007 by order dated 25.10.2007 was also complied with by the Department on 30.11.2007. The objection raised in the counter affidavit is that the Writ Appeal filed by the Department namely, W.A.No..391 of 2007 was pending and therefore, the petitioners are not entitled to get the regularization of their services. Now, the Writ Petition having been dismissed and the said order having been implemented the said objection is unsustainable.

4.Hence the Writ Petition is allowed with a direction to regularize the services of the petitioners on their completion of ten years of service with time scale pay. The regularization order is directed to be passed by within four weeks from the date of receipt of a copy of this order and the arrears of salary payable to the petitioners pursuant to the regularization shall be paid within four weeks thereafter. Consequently, connected miscellaneous petitions are closed. No Costs."

This order has become final. Reliance has also been made on G.O.Ms.No.123 Education Department dated 12.05.2000 and G.O.Ms.No.22, Personnel and Administrative Reforms Department dated 28.02.2006 as well as earlier orders passed by this Court in W.P.No.4107 of 2007. As this order was neither challenged nor given effect to, the subsequent writ petition W.P.(MD) No.5953 of 2016 has been filed. It was accordingly allowed. Challenging the same, this writ appeal has been filed. From the above, we are of the view that the appeal is not maintainable as the order of the learned Single Judge in W.P.No.4107 of 2007 passed as early as on 24.01.2008 which has become final, is sought to be reviewed in this writ appeal filed by the appellants in the year 2017. Further, the order passed has been given effect to, though subject to the appeal. We are quite conscious of the fact and law that compliance will not bind the final order. Further, considering the facts as narrated above, we are inclined to dismiss the Writ Appeal.

3.Accordingly, we dismiss this Writ Appeal by non-suiting the appellant only on the ground of not challenging the order passed a decade ago. Further, we are not inclined to deal with the applicability of the Government Order in G.O.Ms.No.22, Personnel and Administrative Reforms Department dated 28.02.2006 to the part time employees. The issue is left open. No costs.

Sd/-

Assistant Registrar

/True Copy/



To

1. The Secretary,
Education Department,
State of Tamil Nadu,
Secretariat, Chennai.

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

3. The Chief Educational Officer,
Tirunelveli.

4. The District Educational Officer,
Cheranmahadevi,
Tirunelveli District.

+1cc to Mr.V.Paneerselvam, Advocate Sr.No.84975

SJ

VB/RP/SAR2/17.10.2018/4P/6C

W.A. (MD) No.457 of 2018
18.09.2018