



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED 21.03.2018
CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM
AND
THE HONOURABLE MRS.JUSTICE R.THARANI

W.P(MD).Nos.5294 and 5295 of 2018

1.S.Jane Jesu Darling ... Petitioner in W.P.(MD).No.5294/18
2.K.Sermadurai ... Petitioner in W.P.(MD).No.5295/18

Vs.

1. The Government of Tamil Nadu
Represented by its Secretary,
Department of Education,
St.George Fort,
Chennai 600 009.
2. The Director of School Education,
College Road,
Chennai-9.
3. The District Elementary Educational Officer,
Tirunelveli.
4. The Assistant Elementary Educational Officer,
Alangulam,
Tirunelveli.
5. Namachivaya Mudaliyar Memorial Middle School,
Kidaragulam,
Alangulam,
Tirunelveli District. ...Respondents in both petitions

PRAYER in W.P.(MD).No.5294 of 2018: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the records relating to the impugned order of the 3rd respondent in Na.Ka.No.2140(2)/B5/2015 dated 27.08.2015 and quash the same as illegal and consequently direct the respondents to approve petitioner's appointment as secondary grade Teacher with effect from 25.03.1998 with all service and monetary benefits.

PRAYER in W.P.(MD).No.5295 of 2018: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the records relating to the impugned order of the 3rd respondent in Na.Ka.No.2140(1)/B5/2015 dated 27.08.2015 and quash the same as illegal and consequently direct the respondents to approve petitioner's appointment as



secondary grade Teacher with effect from 18.02.1998 with all service and monetary benefits.

For Petitioner
in both cases : Mr.S.Chellapandian

For R1 to R4 in
both cases : Mr.VR.Shanmuganathan
Spl.Govt. Pleader

COMMON ORDER

These writ petitions have been filed challenging the impugned orders of the third respondent, dated 27.08.2015 and quash the same as illegal and consequently direct the respondents to approve the petitioner's appointment as Secondary Grade Teacher with effect from 18.02.1998 and 25.03.1998 respectively, with all service and monetary benefits.

2.Heard Mr.S.Chellapandian, learned counsel appearing for the petitioners and Mr.VR.Shanmuganathan, learned Special Government Pleader appearing for R1 to R4.

3.The issue involved in these writ petitions is squarely covered by the decision of the Division Bench of this Court in W.A (MD).No.74 of 2015 etc., batch, dated 21.03.2018. The operative portion of the judgment reads as follows:

" 9.The management of various Schools, which had appointed Teachers like the respondents had challenged the validity of G.O.Ms.No155 dated 03.10.2002 and the matter travelled upto the Division Bench and the Division Bench in the case of The State of Tamil Nadu and others v. Pallivasal Primary School reported in 2004-2-L.W. 591 upheld G.O.Ms.No.155 dated 03.10.2002. The only relief granted to the Teachers, who were appointed in Secondary Grade vacancies, is the grant of salaries, whereby restraining the department from effecting any recovery. Therefore, paragraph No.3(7) of G.O.Ms.No.155 alone was set aside and rest of the Government Order was upheld in the said decision. It was subsequently ordered that approval/confirmation of the appointment can be only after the date of completion of the child psychology training. Further the Division Bench observed that the past service I.e prior service child psychology training shall count. After the decision rendered in the case of Pallivasal has attained finality, the respondent/writ petitioners seek for salary for the earlier period as well as for other monetary benefits such as increment, selection grade and special grade, etc. We have



given our careful consideration. We find in paragraph No.7 of its judgment, the Hon'ble Division Bench has noted the various condition in G.O.Ms.No.155 and held that the respondent therein would be entitled to relief as granted to similarly placed teachers. If that is so, the ultimate conclusion would have been to grant benefit from the date of completion of the child psychology training. However in the penultimate portion of the order her salary has also been included. In our considered view, the direction to pay salary does not corroborate with the observation made by the Division Bench, in the decision in the case Suganthi Victoria. The Government had admitted that at best it can be taken as a decision pertaining to the said case on its factual matrix and that cannot be taken as a precedent. In the case of Government of Tamil Nadu v. Sri Rao Bahadur AKD Dharmaraja Girls Higher Secondary School in W.A.(MD)No.3442 of 2002 dated 08.09.2006, the Division Bench, relying on the decision of the case reported in 2002 Writ L.R. 173, held that the salary can be paid only after completion of the child psychology training and accordingly, allowed the Government appeal.

10.The learned counsel for the respondents/writ petitioners relied on certain other orders passed by various single Benches including one of us (TSSJ) and on perusal of the same, we find that in none of those decisions, the full effect of G.O.Ms.No.155 and the conditions therein have been thoroughly examined. Apart from that, the decision in the case of Pallivasal Primary School has not been specifically noted. Therefore, we are of the considered view, that those decisions cannot be referred to advance the case of the respondents/writ petitioners, though some of them have attained finality. Needless to state that if there has been a wrong decision, it cannot be treated as precedent.

11.In the light of the above reasoning, we are of the considered view that the order passed by the Writ Court directing disbursement of salary from the date of original appointment, cannot be sustained, in the light of explicit condition imposed in G.O.Ms.No.155, which was upheld by the Division Bench in a Public Interest Litigation. Thus, for the above reasons, the writ appeals filed by the department has to be allowed.



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12.The learned counsel for the respondents submitted that though there were about 3000 Teachers who were appointed in such improper manner as of now 300 Teachers would be entitled to monetary benefits and as remaining persons were already paid and they were protected by the Division Bench order from the effect of recovery, the learned counsel submitted that the respondent should be permitted to approach the Government by way of representation.

13.We make no positive observation on this request. But it is always open to the respondents/writ petitioners to approach the Government, if they so desire. For the above reasons, the writ appeals are allowed and the impugned orders are set aside and consequently, the writ petitions are dismissed. No Costs. Consequently M.P.(MD)Nos.1 and 2 of 2015 and C.M.P.(MD)No.5749 of 2016 are closed.

4.Following the above said judgment of the Division Bench, these writ petitions are dismissed with the same observation as made in the Division Bench judgment. No costs.

Sd/-
Assistant Registrar (W)

/True Copy/

Sub Assistant Registrar

To

1. The Secretary,
The Government of Tamil Nadu,
Department of Education,
St.George Fort,
Chennai 600 009.
2. The Director of School Education,
College Road,
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3. The District Elementary Educational Officer,
Tirunelveli.
4. The Assistant Elementary Educational Officer,
Alangulam,
Tirunelveli.

+1CC to Mr.S.Chellapandian, Advocate, SR.No.57027

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NS