



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 05.02.2018

CORAM :

WEB COPY

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P.(MD)Nos.500 and 501 of 2014

K.Senthivel Murugan ... Petitioner in W.P(MD)No.500/2014
D.Arul Xavier ... Petitioner in W.P(MD)No.501/2014

Vs.

1. The Government of Tamil Nadu,
rep. by its Secretary,
School Education Department,
(Higher Secondary), Fort St. George,
Chennai - 9.
2. The Director of School Education,
E.V.K.Sampath Maligai,
D.P.I. Campus, Chennai - 6.
3. The Chief Educational Officer,
Virudhunagar District.
4. The District Educational Officer,
Srivilliputhur,
Virudhunagar District.
5. The Secretary,
Nadar Higher Secondary School,
Zamin Kollankondan - 626 142
Virudhunagar District.

... Respondents

Prayer: This writ petition is filed under Article 226 of Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records relating to the impugned order of the 2nd respondent in Na.Ka.No.42546/W5/E1/2012 dated 10.06.2013 and Mu.Mu.No.75530/W5/E1/2012 dated 16.12.2013 respectively and quash the same and direct the respondents 1 to 4 herein to count the service rendered by the petitioner from 05.04.1990 to 31.05.1994 and 07.03.1994 to 13.09.2001 respectively for fixation of pay, gratuity, leave pay, pensionary benefits and other benefits to the petitioner as per G.OP.(1D) No.125 dated 13.04.2010.

**COMMON ORDER**

The petitioners were appointed as P.G.Teachers in the fifth respondent school on 05.04.1990 and 07.03.1994 respectively. The petitioners appointment were however approved only on 01.06.1994 and 13.09.2001 respectively. The petitioners want the service rendered by them from 05.04.1990 to 31.05.1994 and 07.03.1994 to 13.09.2001 to be taken into account for fixation of pay, gratuity and other benefits. They moved the authorities in this regard. The authorities, by order dated 10.06.2013 and 16.12.2013 rejected the demand of the writ petitioners. The said proceedings are assailed in these writ petitions.

2.The petitioners placed reliance on G.O.Ms.No.18 dated 09.01.1997 issued in favour of Thiru.M.Jeyaraj, who worked as Headmaster of St. Pauls Mahajana High School, Thiruvottiyur, Chennai. In the case of said Jeyaraj, the school was a self financing institution from 09.04.1988 to 31.05.1991. Since there was no receipt of aid by the government, the management itself was disbursing his pay. With effect from 01.06.1991, the post of Headmaster was sanctioned. Based on the recommendation of the department, the Government granted permission for treating the period from 09.04.1988 to 31.05.1991 as service for all purposes including pay and pension. The said government order was however cancelled by G.O.Ms.No.314, School Education Department dated 12.12.1999. In the said G.O., it was stated that the issue was reexamined by the government. It was clearly mentioned that the period rendered prior to 01.06.1991 should be taken into account only for the purpose of counting the years of service for the purpose of promotion. The said period cannot be taken into account for fixing pay and pensionary benefits. This was assailed by two teachers by filing writ petitions. Those writ petitioners were dismissed. Challenging the dismissal of the said writ petitions, W.A.(MD) Nos.291 and 292 of 2008 were filed before the Division Bench of this Court and the Hon'ble Division Bench by order dated 26.06.2008 allowed the writ appeals. The government moved the Hon'ble Supreme Court and the same was dismissed in limini and that the government has since implemented the order of the Hon'ble Division Bench by issuing G.O.(ID) No.125 dated 13.04.2010.

3.The learned counsel appearing for the petitioner would submit that the case of the petitioners herein were similar in every respect to the petitioners who filed W.A.(MD) Nos.291 and 292 of 2008. The learned counsel would also strongly contend that the earlier decision of the Hon'ble Division Bench reported in **2006(4) MLJ 1580 (S.Devakadaksham V. District Educational Officer)** must be ignored as *per incuriam*.

4.The learned Special Government Pleader appearing for the respondents 1 to 4 would however prays for dismissal of the writ petitions by placing reliance on the order dated 16.08.2012 made in



W.P. (MD) No.4994 of 2009.

5. Heard the learned counsel on either side.

6. After hearing the learned counsel on either side, this Court is of the view that the writ petitions deserve to be dismissed.

7. It is beyond dispute that the services put in by the writ petitioners for the period from 05.04.1990 to 31.05.1994 and 07.03.1994 to 13.09.2001 were not sanctioned posts. The Director of School Education, Madras issued proceedings in Rc.No.310135/W15/68 dated 29.06.1989 granting provisional permission for the upgradation of the aided High schools noted in the Annexure into Higher Secondary Schools during the year 1989 - 90, on the strength of the specific declarations given by the correspondents that they will not ask for any grant for the higher secondary schools for three years. The fifth respondent school is one such school mentioned in the Annexure. The proceedings issued by the District Educational Officer, Virudhunagar dated 17.05.1995 clearly states that the appointment of Senthilvel Murugan though was made in 05.04.1990, the government grant would be eligible only from 01.06.1994. Likewise, in the case of Arul Xavier, 13.09.2001 was the date when the government grant was released. Though the learned counsel for the petitioner wanted this Court to follow the order dated 26.06.2008 made in W.A.(MD) Nos.219 and 292 of 2008, this Court cannot do so. It had been conclusively demonstrated that the Hon'ble Division Bench while allowing W.A.(MD) Nos.291 and 292 of 2008, had taken into account a bogus document. That apart, the attention of the Hon'ble Division Bench was not drawn to the earlier decision of the Division Bench reported in **2006(4) MLJ 1580 (S.Devakadaksham V. District Educational Officer)**. That is why in a subsequent case, a learned Judge of this Court dismissed W.P.(MD) No.4494 of 2009 and did not follow the order made in W.A.(MD) No.291 and 292 of 2008. The relevant portions in Paras 20 and 21 of the order dated 16.08.2012 in W.P.(MD) No.4494 of 2009 are as under:

"20. As rightly contended by the learned Additional Government Pleader, the Division Bench, in its judgment in W.A.Nos.291 and 292 of 2008, took into account G.O.Ms.No.143, which was a bogus one. Furthermore, the judgment of the Division Bench in **S.DEVAKADAKSHAM's case** (cited supra) was not brought to the notice of the Division Bench which heard the writ appeals in W.A.Nos.291 and 292 of 2008. The judgment **S.DEVAKADAKSHAM's case** (cited supra) disposed a batch of writ appeals and the Division Bench considered extensively the provisions of Tamil Nadu Recognised Private Schools (Regulation) Act 1973 and has recorded a finding that the service rendered in a non-sanctioned post could not be counted for the purpose of pension and pay fixation. All the Teachers, who were granted benefit based on G.O.Ms.No.18, faced recovery proceedings, based



on G.O.Ms.No.314, referred to above. The action based on G.O.Ms.No.314 was upheld by the Division Bench in its judgment in **S.DEVAKADAKSHAM's case** (cited supra). However, two cases escaped from the net and writ appeals preferred by those two Teachers in W.A.Nos.291 and 292 of 2008 alone were allowed on the sole ground that they were discriminated in the matter of counting the service rendered in the non-sanctioned post, based on the benefit given to a teacher in terms of G.O.Ms.No.18.

21.As stated above, the judgment of the Division Bench in **S.DEVAKADAKSHAM's case** (cited supra) rendered in a batch of cases, was not brought to the notice of the later Division Bench. The Division Bench categorically held that the action of the Government in withdrawing G.O.Ms.No.18, in G.O.Ms.No.314, is perfectly in order. It is made clear that the person, who rendered service in non-sanctioned post, could not claim to count the same for the purpose of pay fixation and pension. Hence, I am of the view that the reliance placed on by the petitioner on G.O.Ms.No.18 and Division Bench judgment in W.A.Nos.291 and 292 of 2008 are of no use, in view of the judgment of the Division Bench in **S.DEVAKADAKSHAM's case** (cited supra)."

8.Likewise, this Court is also not inclined to follow the Division Bench decision dated 26.06.2008 made in W.A.(MD) Nos.291 and 292 of 2008 and following the order dated 16.08.2012 made in W.P.(MD) No.4494 of 2009, it dismisses this writ petition as devoid of merits. No costs.

Sd/-

Assistant Registrar (CS-III)

/True Copy/

Sub Assistant Registrar

To

1. The Secretary,
Government of Tamil Nadu,
School Education Department,
(Higher Secondary), Fort St. George,
Chennai - 9.

2. The Director of School Education,
E.V.K.Sampath Maligai,
D.P.I. Campus, Chennai - 6.



3. The Chief Educational Officer,
Virudhunagar District.

4. The District Educational Officer,
Srivilliputhur,
Virudhunagar District.

+ 2 CC TO Mr.T.PON RAMKUMAR, ADVOCATE IN SR No. 46298
+ 1 CC TO SPECIAL GOVERNMENT PLEADER IN SR No. 46867

ARUL

TE/KKR/SAR-2 : 20/04/2018 : P/C

W.P. (MD) Nos. 500 and 501 of 2014
05.02.2018