



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 07.08.2018
CORAM

THE HONOURABLE MR.JUSTICE V.PARTHIBAN

WEB COPY

W.P. (MD) No.17613 of 2018

and

W.M.P (MD) No.15487 of 2018

1. Perunthalaivar Kamaraj
Higher Secondary School,
rep. by its Secretary
Meenakshipuram,
Rajapalayam Taluk,
Virudhunagar District.

2. S.Selvamani

... Petitioners

Vs.

1. The Government of Tamil Nadu
rep. by the Secretary,
School Education Department,
Fort. St. George,
Chennai - 600 009.

2. The Director of School Education,
D.P.I Compound,
Nunkambakkam College Road,
Chennai - 600 006.

3. The Joint Director of School Education,
(Vocational),
D.P.I. Compound,
Nunkambakkam College Road,
Chennai - 600 006.

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

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Mandamus directing the respondents to approve the appointment made by the first petitioner insofar as the appointment of the second petitioner (S.No.154), as Vocational Instructor is concerned, in terms with G.O.Ms.No.35, Education (Vocational) Department, dated 09.02.2007 with all monetary benefits, emoluments, seniority and service benefits attributable to the said post.

**ORDER**

This writ petition has been filed by the petitioner for issuance of a Writ of Mandamus directing the respondents to approve the appointment made by the first petitioner insofar as the appointment of the second petitioner(S.No.154), as Vocational Instructor is concerned, in terms with G.O.Ms.No.35, Education (Vocational) Department, dated 09.02.2007 with all monetary benefits, emoluments, seniority and service benefits attributable to the said post.

2.Mr.M.Joseph Thatheus Jerome, learned counsel appearing for the petitioner submitted that the relief claimed in the writ petition is squarely covered by the decision of this Court rendered in a batch of writ petitions in W.P(MD)Nos.31021 to 31027 of 2015 dated 17.04.2018. This Court, after consideration of elaborate submission made on behalf of either side, allowed the writ petitions and a direction was issued for regularizing the service of the vocational teachers as provided in G.O.Ms.No.35, dated 09.02.2007. The petitioner herein, according to the learned counsel for the petitioner, is identically placed as that of the petitioners in the batch of writ petitions. The operative portion of the order passed in the batch of writ petitions as found in paragraphs 15 to 19 are extracted below:-

"15. This Court has given its anxious consideration to the rival submissions of the learned counsels appearing for the petitioners and the learned Addl.Advocate General on behalf of the respondents and perused the entire materials available on record.

16. The contentions raised on behalf of the petitioners deserve a serious consideration for more one than reason. When these petitioners approached this Court in a batch of Writ Petitions in W.P.No.2423 of 2009 etc., this Court has considered the claim of the petitioners and passed orders on 21.3.2011 by directing the respondents therein to consider the claim of the petitioners along with similarly placed persons whose services were regularized under various Government Orders. From the detailed orders passed by the learned Judge, as he then was, has held that since the similarly placed the Vocational Teachers who were appointed after 1.4.1992 had been appointed on regular basis, the respondents cannot discriminate the petitioners Vocational Instructors, which clearly meant that there was no discretion accorded to the



Government to take any other view except to pass similar orders and grant regularization to the 34 Vocational Instructors including the petitioners herein. However, unfortunately, it appears that the Government had misconstrued the conclusion as if the entire decision was left open to the Government to take a call on the subject and rejected the claim of the petitioners. Such action on the part of the Government cannot be appreciated by this Court since the Government wittingly or unwittingly failed to read the entire order passed by this Court in the batch of Writ Petitions in W.P.Nos.2423 of 2009 etc., dated 21.3.2011 in proper perspective. Once this Court has come to the categorical conclusion that the petitioners cannot be discriminated in the matter of regularization and such a direction was issued on the basis that the persons who were appointed after 1.4.1992 were regularized, there was practically left nothing to the Government to decide except to pass a consequential order of regularization. Unfortunately, in this case, the Government has chosen to reject the claim of the petitioners on untenable grounds once again and driven the petitioners to approach this Court seeking for the above said reliefs.

17. Moreover, as rightly contended by the learned counsel for the petitioners, that the introduction of Section 14(A) of the Tamil Nadu Private Schools (Regulation) Act has no bearing on the issue of regularization of Vocational Teachers, since the grant in aid was stopped only in respect of regular academic subjects and the Vocational Training Programme is admittedly a centrally sponsored scheme. Further, the posts of Vocational Training Instructors pertain to the individuals concerned and not attached to the institution in which the person is working and once the person retires or resigns for any other reason, the post is kept vacant and it reverted back to the department and it is recycled with other incumbents on the basis of seniority. This fact is also admitted in various letters and instructions by the Government. Moreover, it is also to be seen that the fact that all these petitioners have been fully qualified and have been engaged as Vocational Training Instructors uninterruptedly since their initial appointment has not been disputed and the only reasons for their non-regularization is because of the introduction of Section 14(A) in the Tamil Nadu Private Schools (Regulation) Act which reason, was discountenanced by this Court on the basis of the



admitted fact that the persons who were appointed even after 1.4.1992 had been accommodated and regularized under various G.Os. Therefore, the reason given in the impugned order, per se, is arbitrary, unjust and unreasonable and the same cannot be countenanced either in law or on facts.

18. Once the Government thought fit to regularize all similarly placed Vocational Teachers under G.O.Ms.No.35, dated 9.2.2007 and the names of the petitioners found place in the list annexed to the said G.O., this Court does not see any iota of justification as to how these petitioners can alone be singled out from the benefit of regularization. The plea of the Government as conveyed through the learned Addl.Advocate General that after introduction of Section 14(A) of the Tamil Nadu Private Schools (Regulation) Act, the question of regularization of these petitioners does not arise, is nothing but a flimsy and specious argument and has to be rejected outright. Even assuming the argument can be advanced for the sake of resisting the claim of the petitioners, such argument deserves to be brushed aside, since that would only result in flagrant violation of Articles 14 and 16 of the Constitution of India as there cannot be any differential treatment in respect of same set of employees. In this case, it is more than demonstrated that the petitioners have been similarly placed as that of other Vocational Teachers covered under G.O.Ms.No.35, dated 9.2.2007. Therefore, this Court does not see any semblance of legal basis for denying them the benefit of regularization.

19. For the aforesaid reasons, this Court is of the considered view that these petitioners have made out a clear case for grant of relief as sought for. Accordingly, the Writ Petitions are allowed and the respective orders passed by the authorities, impugned in the Writ Petitions, are hereby set aside. The respondents/competent authorities are directed to pass orders regularizing the service of the petitioners as Vocational Teachers as provided for under G.O.Ms.No.35, dated 9.2.2007 and grant all attendant benefits, viz., seniority and other monetary benefits. The direction of this Court shall be complied with, within a period of eight weeks from the date of receipt of copy of this order. No costs.



3.The above submission made on behalf of the petitioner has not been disputed by the learned Special Government Pleader appearing for the respondents. Therefore, the direction as contained in the above order passed in the batch of writ petitions dated 17.04.2018 would hold good for the present petitioner as well. The respondents are directed to pass orders regularizing the service of the petitioner as Vocational Teacher in terms of G.O.Ms.No.35 dated 09.02.2007 and grant all attendant benefits, viz., seniority and other monetary benefits. The direction of this Court shall be complied with, within a period of eight weeks from the date of receipt of a copy of this order.

4.With the above direction, this Writ Petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS-III)

/True Copy/

Sub Assistant Registrar(Cs-I)

To

1. The Secretary to Government of Tamil Nadu,
School Education Department,
Fort. St. George,
Chennai - 600 009.
2. The Director of School Education,
D.P.I Compound,
Nunkambakkam College Road,
Chennai - 600 006.
3. The Joint Director of School Education,
(Vocational),
D.P.I. Compound,
Nunkambakkam College Road,
Chennai - 600 006.
4. The Chief Educational Officer,
Virudhunagar,
Virudhunagar District.

+1cc to Mr.M.Joseph Thatheus Jerome, Advocate Sr.No.77561

+1cc to Spl.Government Pleader Sr.No.77791

SKN

VB/RSK/SAR1/24.08.2018/5P/7C