



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 28.02.2018

CORAM

THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.(MD) No.20326 of 2013

and

M.P(MD)No.1 of 2013

K.Pitchai

... Petitioner

-vs-

1. The State of Tamil Nadu,
Represented by its Secretary to Government,
School Education Department,
Secretariat, Chennai-09.

2. The Director of School Education,
Directorate of School Education,
College Road, Chennai-06.

3. The District Educational Officer,
O/o.District Educational Officer,
Palani Post, Dindigul District.

4. The Principal Accountant General,
(Accounts & Entitlements),
No.361, Annasalai,
Chennai-600 018.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Mandamus, to direct the respondents to take into account the period I.e., from 09.06.1975 to 01.06.1991 served by the petitioner in the Dindigul Anguvilas Higher Secondary School without financial assistance for the purpose of pay fixation and pensionary benefits in the light of the order of this Hon'ble Court dated 26.06.2008 made in W.A.(MD) No.291 and 292/2008 and the Government Order (ID) No.125 School Education (VE) Department, dated 13.04.2010.

For Petitioner

: Mr.M.Saravanakumar

For R1 to R3

: Mr.R.Sethuraman,

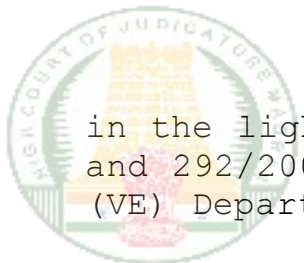
Special Government Pleader

For R4

: Mr.P.Gunasekaran

ORDER

The relief sought for in this writ petition is for a direction to direct the respondents to take into account the period of service from 09.06.1975 to 01.06.1991 served by the petitioner in the Dindigul Anguvilas Higher Secondary School without financial assistance for the purpose of pay fixation and pensionary benefits

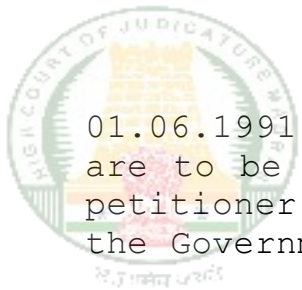


in the light of the order, dated 26.06.2008 made in W.A.(MD)No.291 and 292/2008 and the Government Order (ID) No.125 School Education (VE) Department, dated 13.04.2010.

2. The learned counsel appearing on behalf of the petitioner states that the petitioner was appointed as Secondary Grade Teacher in Anguvilas Higher Secondary School, Dindigul on 09.06.1975 in the sanctioned post, through District Employment Exchange. The contention of the writ petitioner is that he is working in the said School without salary from 09.06.1975. However, the approval was granted only with effect from 01.06.1991. Thereafter, the petitioner made several representations with the respondents through proper channel for recognizing the period from 09.06.1975 to 31.05.1991 but they have not passed any orders.

3. The learned counsel for the petitioner states that as per the Government Order issued in G.O.No.143, Education (V2) Department, dated 30.01.1987 stating that the period during which the Teacher had worked without aid could be taken into consideration for fixation of pay and pension. In this regard, the Government Order issued in G.O.Ms.No.18 Education, Science and Technology (D2) Department, dated 09.01.1997 in respect of one Mr.Jayaraj, working in Assamsam Higher Secondary School, regularizing the period during which there was no grant. Further, the first respondent vide G.O.Ms.No.314 School Education (D2) Department, dated 12.12.1999 has revoked G.O.Ms.No.18 Education, Science and Technology (D2) Department, dated 09.01.1997 and has held that the period prior to 01.06.1997 cannot be taken into consideration for fixation of pay or terminal benefits. At the outset, the writ petitioner claims that the period of service rendered by him from 09.06.1975 to 01.06.1991 to be regularised for the purpose of grant of pay and pension.

4. This Court is of an opinion that the very claim itself is untenable on the ground that the writ petitioner was appointed on 09.06.1975 by the Management of the Anguvilas Higher Secondary School, Dindigul. The said Anguvilas Higher Secondary School is not impleaded as party respondent in this writ petition. Admittedly, the writ petitioner was not receiving the Government salary from 09.06.1975 onwards. Further, it is admitted by the parties that the appointment of the writ petitioner was approved only with effect from 01.06.1991. Thus, for all purpose, the services rendered by the writ petitioner between 09.06.1975 to 01.06.1991 is the services rendered with the Management and the Management alone is liable to pay the salary to the Teacher, if any, in accordance with the Rules in force. However, Government salary cannot be paid during the said period in view of the fact that the appointment of the writ petitioner was not approved during the relevant point of time by the competent Educational authorities and the approval was granted only with effect from



01.06.1991. Thus, all Government benefits to the writ petitioner are to be extended from the date of approval from 1.06.1991. The petitioner has received the benefits as of now in accordance with the Government Orders in force.

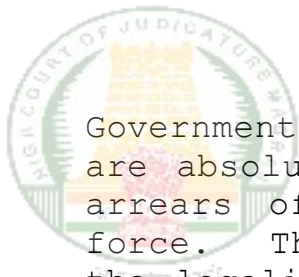
5. The second point to be considered is that the writ petitioner got approval of his appointment on 1.6.1991. However, the present writ petition is filed on 13th December 2013, after a lapse of about 22 years from the date of grant of approval on 1.6.1991. It is pertinent to note that the writ petitioner had not made any claim soon after the grant of approval on 1.6.1991. Contrarily, the writ petitioner has filed the present writ petition on 13th December 2013 after attaining the age of superannuation on 31.10.2011. It is further to note that the present writ petition was filed even after two years from the date of retirement. In all respects, the Teachers like the petitioner are developing the case for getting monitory benefits, after retirement by citing one or other Government Order, which was issued by the Government. The teachers are having the habit of filing this writ petition in order to secure fixation of pay by citing one or other order. The Government is also not regulating these Government Orders and issuing orders without even referring the source of that order. Therefore, the authorities competent are also responsible for the Financial loss to the State Exchequer. The Secretary, Finance Department has to institute appropriate action and prosecution, if necessary, against all these educational authorities, who are indulging in grant of such pay, contrary to the pay Rules in force.

6. The learned counsel appearing on behalf of the Principal Accountant General contended that the G.O.Ms.No.143 Education (V2) Department, dated 30.01.1987, which is a parent Government Order is a fake Government Order. On verification, no such Government Order was passed by the Government at all. Whether any prosecution or criminal complaint is lodged in respect of the fake Government Order produced by some of the teachers are not known. Government has to verify how many consequential Government Order are passed and monetary benefits were granted to such similarly placed teachers. The actions taken by the Government in this regard are not explained by the respondents.

7. The learned counsel for the respondents are also unable to ascertain whether any criminal case in respect of the fake Government Order issued in G.O.Ms.No.143 Education (V2) Department was filed or not. If at all, Government Order is produced by a teacher, the competent authority is bound to verify the Government Order and other consequential orders and then to pay the amount of revised pay and grant arrears of pay.

<https://hcservices.ecourts.gov.in/hcservices/>

8. This Court is witnessing several batches of writ petitions claiming monetary benefits by the retired teachers by citing one



Government Order or other. Ultimately, the poor tax payers money are absolutely misused by this public officials by granting such arrears of pay to the teachers, contrary to the pay rules in force. The source and the origin of such Government Orders and the legality of such Government Order are also be to examined by the competent officials including the Finance Department of the Government. Periodical inspections and the scrutinising these Government Order cited by various other Teachers are also certainly required. When it is brought to the notice of this Court that the Government Order in G.O.Ms.No.143 Education (V2) Department, dated 30.01.1987 is a fake Government Order and the benefit granted to one Devakadaksham was subsequently cancelled in view of the order passed by the Hon'ble Division Bench of this Court in the case of ***S.Devakadasham vs. District Educational officer, District Education Office, Villupuram District and others reported in (2006) 4 MLJ 1580*** and the relevant paragraph of the Division Bench judgment is extracted hereunder:-

"39.Lastly it was contended that the order impugned in the writ petition, G.O.Ms.No.314 Education dated 12.11.1999 was based only upon G.O.Ms.No.439 dated 5.5.1993 and that therefore, the justification now sought to be provided by the respondents, by relying upon various Government Orders and statutory provisions, should not be accepted. In support of such a contention, the learned senior counsel relied upon a Constitution Bench judgment of the Supreme Court in Mohinder Singh Gill and another v. Chief Election Commissioner, New Delhi and others AIR 1978 SC 851; (1978) 1 SCC 405, wherein it was held that the validity of an order passed by a statutory functionary should be judged only by the reasons contained in the order and they cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. That was a case arising out of an order passed by the Election Commission. Here we are concerned with the orders passed by administrative authorities and not a "statutory functionary" and hence the said judgment does not apply to the case on hand."

9.In yet another case of V.Mariappan vs. Secretary to Government, School Education Department in W.P.(MD)No.4494 of 2009, dated 16.08.2012, the Court observed as follows:-

"16.As far as G.O.Ms.No.143 that is relied on by the learned counsel for the petitioner is concerned, the same is a bogus one. The letter dated 10.04.2012 written by the Deputy Secretary to Government, School Education Department, Chennai, makes it very clear that the said Government Order was a fictitious one. When this Court passed an order dated 16.03.2011 in W.P.No.7818 of 2009



(KAMALABAI AMALADASS VS. THE SECRETARY TO GOVERNMENT AND OTHERS) to consider the representation of the petitioner in the said writ petition seeking to count the service rendered by her in the non-sanctioned post in an aided school, for the purpose of pension, the said Government letter was issued. The contents of the said letter dated 10.04.2012 is extracted hereunder:

"Sir

Sub: School Education - Writs- WP No.7818/2009- filed in the Madras High Court by Tmt.Kamalabai Amaladass seeking retirement benefit-Judgment delivered-Action taken report called for-Regarding.

Ref: Copy of the order from Madras High Court in W.P.No.7818/2009, dated 16.03.2011.

I am directed to invite your attention to the reference cited wherein, the Madras High Court has given direction to the Government to consider the representation from the petitioner, if it is freshly made, in accordance with law and on its own merits and dispose of the same within a period of six weeks thereafter.

2.In this regard, I am directed to state the following:

(a) The copy of the G.O.(Ms) No.143/Education (VE) Department, submitted by the petitioner is no doubt a counterfeit document (copy enclosed).

(b) The copy of the original G.O.(Ms) No.143/Education Department is enclosed herewith.

© Is there any fresh representation made by the petitioner after issuance of the direction of Madras High Court.

(d) An enquiry should be made as to how the copy of the counterfeit G.O., has been attested by the District Educational Officer, Usilampatty, without seeing the G.O issued by the Department.

3.I am also directed to send a report on the action taken in this regard to Government immediately. This may be treated as "Most Immediate". Your reply may be sent to the Government on or before 23.4.2012 positively."

17.The actual Government Order in G.O.Ms.No.143, School Education Department, dated 30.01.1987 is also produced before this Court. I have perused the same and the same has nothing to do with the matter of pension. Therefore, the petitioner could not place his reliance on G.O.Ms.No.143.

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."

10. In view of the judgment, the same claim made out in the writ petition deserves no further consideration and the writ petition is to be dismissed both on the merits and on the ground of latches.

11. Accordingly, the writ petition stands dismissed. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(crl side)

/True Copy/

Sub Assistant Registrar

To

1. The Secretary to Government,
School Education Department,
Secretariat, Chennai-09.
2. The Director of School Education,
Directorate of School Education,
College Road, Chennai-06.
3. The District Educational Officer,
O/o.District Educational Officer,
Palani Post, Dindigul District.



4. The Principal Accountant General,
(Accounts & Entitlements),
No.361, Annasalai,
Chennai-600 018.

+1cc to Spl.Government Pleader Sr.No.52486
+2cc to Mr.P.Gunasekaran, Advocate Sr.No.52616,51760
+1cc to Mr.M.Saravanakumar, Advocate Sr.No.52157

AM

VB/SV/MMS/SAR4/12/03/2018/7P/9C

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28.02.2018