

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 18.10.2019

CORAM :

THE HONOURABLE MR.JUSTICE SUBRAMONIUM PRASAD

W.P.No.11678 of 2014
and
M.P.No.1 of 2014

Mrs.D.Ambigapathi

... Petitioner

Vs

1. The Government of Tamilnadu,
Rep. by its Secretary,
School Education Department,
Fort St.George, Chennai - 600 009.
2. The Director of School Education,
DPI Buildings, College Road,
Chennai - 600 006.
3. The Chief Educational Officer,
Salem, Salem District.
4. The District Educational Officer,
Salem, Salem District.
5. The Head Master,
Neelambal Subramaiyam
Higher Secondary School,
Old Suramangalam, Salem - 636 005.

... Respondents

Prayer : Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, directing the respondents herein to regularize the services of the petitioner as Vocational Instructor with effect from the date of first appointment and fix the time scale of pay of the petitioner on par with the similarly placed persons regularized in G.O.Ms.35, School Education (VE) Department dated 09.02.2007 with effect from initial date of appointment besides pay and all attendant benefits within stipulated time period as may be fixed.

For Petitioner : Mr.L.Chandrakumar for
Mr.A.Saravanan

For Respondents : Mr.P.Raja, Government Advocate
for RR1 to 4

O R D E R

The instant writ petition is one for a writ of Mandamus directing the respondents to recognize the services of the petitioner as from the date of his appointment and fix the time scale of pay for the petitioner on par with the similarly placed persons regularized in G.O.Ms.35, School Education (VE) Department dated 09.02.2007 with effect from initial date of appointment.

2.The petitioner joined the services of Vocational Instructor in Neelambal Subramaiyam Higher Secondary School on 01.07.1994. He was initially appointed on a consolidated pay of Rs.600/-. He has served as an Vocational Instructor for 19 years and 9 months prior to the filing of the writ petition. His services were regularized. The Government passed G.O.Ms.No.35, School Education Department, dated 09.02.2007 and also G.O.Ms.No.358, School Education, dated 18.08.1997, wherein the Vocational Instructors were given special training through District Institute of Educational Training(DIET) for appointment in the Secondary Grade Post. Since the petitioner was not given the benefit of the said G.O's, the instant writ petition has been filed.

3.The learned counsel for the petitioner placed his reliance on the Judgment of a Division Bench in W.A.No.1463 of 2016 dated 30.10.2017, wherein the Division Bench while considering an identical case passed the following directions:

"8. We have heard the counsel for both sides and perused the materials placed on record. It is the vehement contention of the appellants that the writ petitioners do not possess the requisite qualification for being considered for regularisation of their service. It is noticed from the order passed by the Government in G.O. Ms. No.358, School Education Department dated 18.08.1997 that the Government has directed to impart a short term training for those who do not possess the requisite qualification or those who are not qualified and thereafter to regularise them. On the basis of the aforesaid order passed by the Government, large number of unqualified Vocational Instructors were sent for training and thereafter they were regularised in service. When an order was passed by the Government conferring certain concession to similarly placed persons, it has to be extended to all those who are entitled to such concession.

9. The learned Additional Advocate General would next contend that the writ petitioners were initially appointed on various dates from 1991 to 2004 and they have approached this Court belatedly and therefore on the ground of delay and laches, the learned single Judge ought to have dismissed the writ petition. We are not inclined to accept such submission of the learned Additional Advocate General appearing for the appellants. In fact, the very same submission was made on behalf of the appellants herein before the Division Bench of this Court and it was rejected by Judgment dated 26.04.2017 passed in WA (MD) No. 1233 of 2013 holding that even though there was delay in approaching this Court, such delay cannot be given much significance to deprive the valuable right of the respondents therein. The relevant portion of the Judgment is extracted below:-

"5. Heard Mr. S. Sampathkumar, learned Special Government Pleader (Education) for the petitioners and Mr. V. Bharathidasan, learned counsel taking notice on behalf of the respondents. In our opinion, of course, the Court should extend the benefit to the persons who are vigilant and approach the Court on time, for such reliefs. But the fact remains that a large number of Vocational Instructors were appointed and when the question of regularisation came up for consideration before the Government earlier, the Government, as a one time measure, regularised all those who possessed the minimum educational qualification. Later, realising the difficulties experienced by the other Vocational Instructors, who are not qualified, again, the Government, as a one time measure, extended the benefit of regularisation, but imposing a condition that those persons should undergo a short term training. This Government Order is applicable to all those who are working as Vocational Instructors without qualification. In all fairness, when a list was forwarded for training, the respondents' name should have also been sponsored. But, for some reason or the other, the names of the respondents have not been sponsored for training. But the delay cannot be given that much importance, thereby affecting the right

of the respondents. So long as the Government Order grants certain benefits to unqualified Vocational Instructors, we find no infirmity in the order passed by the learned single Judge applying the said Government Order after rejecting the stand of the Government that the respondents had not approached the Court on an earlier point of time. Hence, we find no merit to entertain these appeals. Accordingly, the writ appeals are dismissed. No costs. Connected Miscellaneous Petitions are closed.

6. The Special Leave Petitions filed by the Government as against the said Judgment in S.L.P. (Civil) Nos. 11338 and 11339 of 2014 has been dismissed on 01.08.2014. Subsequently, the Government Order has been passed in G.O. (2D) No. 50, School Education Department dated 27.08.2014, implementing the Judgment.

7. Thus, we find that the Division Bench of this Court in the earlier case, has dealt with the same issue and we are in entire agreement with the reasons assigned by the Division Bench of this Court in the said judgment and therefore, there are no merits in this appeal and following the earlier judgments, this Writ Appeal has to be necessarily dismissed. Accordingly, this writ appeal is dismissed. No costs. Consequently, connected miscellaneous petition is closed."

10. In the aforesaid Judgment passed by the Division Bench of this Court, reference was also made to S.L.P. (Civil) Nos. 11338 and 11339 of 2014 filed by the appellants herein as against similar order passed by this Court and it was dismissed on 01.08.2014. Subsequently, the Government also passed an order in G.O. (2D) No. 50, School Education Department dated 27.08.2014, implementing the Judgment of the Honourable Apex Court. While so, we see no reason to take a different view and to allow the instant Writ Appeal filed by the appellants.

11. In the light of the above, we confirm the Order dated 09.10.2015 passed in Review Application No. 276 of 2014 in WP No. 18183 of 2013. The Writ Appeal is dismissed. However, there shall be no order as to costs. Consequently, CMP No. 18261 of 2016 is closed."

4. The learned counsel for the respondent agrees that this matter is also squarely covered by the said Judgment.

5.The writ petition is allowed. The respondents are directed to send the petitioner for the special training through District Institute of Educational Training(DIET) within a period of eight weeks from the date of receipt of a copy of this order. No costs. Consequently, the connected miscellaneous petition is closed.

-s/d-

Assistant Registrar(CCC)

True Copy

Sub-Assistant Registrar

To

- 1.The Government of Tamilnadu,
Rep. by its Secretary,
School Education Department,
Fort St.George, Chennai - 600 009.
 - 2.The Director of School Education,
DPI Buildings, College Road,
Chennai - 600 006.
 - 3.The Chief Educational Officer,
Salem, Salem District.
 - 4.The District Educational Officer,
Salem, Salem District.
- +1 CC to M/s.A. Saravanan,Advocat sr 87231.
+1 CC to Govt. Pleader sr 87760(23/01/2020)

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W.P.No.11678 of 2014

and

M.P.No.1 of 2014

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RP(CO)
SP(25/10/2019)