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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.07.2019

CORUM

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN
and

THE HONOURABLE MS.JUSTICE P.T.ASHA

W.A.Nos.1207, 1208, 198 and 199 of 2017
and

C.M.P.Nos.17045 to 17048 & 3168 to 3170 of 2017

1. Member Secretary,
Teacher Recruitment Board,
4th Floor, E.V.K.Sampath Building,
College Road,
Chennai - 600 006.
2. The Director of School Education,
DPI Campus,
College Road,
Chennai - 6.
3. Joint Director of School Education (Personnel)
DPI Campus,
College Road,
Chennai - 600 006. ... Appellants in
all the Appeals/Respondents

Vs.

M.Komala ... Respondent in W.A.Nos.1207
& 198/2017/Petitioner

A.Palani ... Respondent in W.A.Nos.1208 & 199/2017

Writ Appeal Nos.1207 & 1208/2017 are filed under Clause 15 of the Letters Patent against the common order passed in W.P.No.20075 & 20076 of 2007 dated 16.02.2015.

Writ Appeal Nos.198 & 199/2017 are filed under Clause 15 of the Letters Patent against the common order passed in Review Application Nos. 173 & 174 of 2016 in W.P.No.20075 & 20076 of 2007 dated 20.12.2016.



Prayer in W.P.No.20075 & 20076 of 2007:Common Prayer:filed Under Article 226 of the Constitution of India to issue an order of Writ of Certiorarified Mandamus calling for the records relating to the order passed by the second respondent dated 15-12-2006 in Na.Ka.No. 32385/C6/C 22/2004 and quash the same in so far as the petitioners are concerned and consequently direct the respondents 2 & 3 to issue appointment order to the petitioners as physical education teachers in the cadre of BT Assistant in the scale of Rs. 5500/- as per the order of the first respondent dated 20-04-2005 and pass further orders Rev.Appln.173 & 174 of 2016.

Common Prayer:Filed Under Order 47 Rule 1 of CPC r/w 114 of CPC to review the Common order passed in W.P.No.20075 and 20076 of 2007 dated 16/02/2015.

For Appellants

in all the Appeals : Mrs.Narmatha Sampath
Additional Advocate General
assisted by Mr.C.Munusamy,
Special Government Pleader

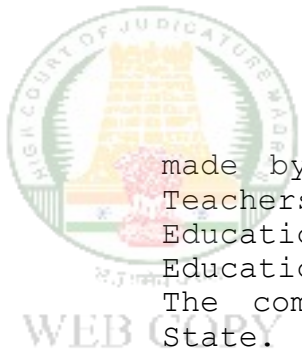
For Respondents

in all the Appeals : Mr. P.Ganesan
for Ms. C.S.Associates.

C O M M O N J U D G M E N T

(Judgment of the Court was made by K.K.SASIDHARAN, J.,)

The respondent in the respective appeals (hereinafter called the respondents) were initially appointed in the District Institute of Teacher Education, Research and Training Institutes. They were appointed on contract basis. Subsequently, a decision was taken for their appointment in the Education Department. The Teachers Recruitment Board, after conducting a formal interview, selected them to the post of Physical Education Teachers in the cadre of Junior Grade B.T.Assistant in the High School under the School Education Department. The appointment was made on a consolidated pay. Thereafter, the Director of School Education, Tamilnadu, pursuant to the letter dated 15.12.2006, called upon the respondents to submit their willingness for appointment as Physical Education Teacher in the time scale of pay of Rs.4500-125-7000. The said proceedings was challenged by the respondents before the writ Court in W.P.No.20075 and 20076 of 2007. The learned single Judge allowed the writ petitions on the ground that in view of the appointment



made by the Teachers Recruitment Board as Physical Education Teachers in the B.T. Assistant cadre, it was not open to the Education Department thereafter to appoint them as Physical Education Teachers in the cadre of Secondary Grade Assistant. The common order is under challenge at the instance of the State.

2. We have heard the learned Additional Advocate General appearing on behalf of the appellants. We have also heard the learned counsel appearing for the respondents.

3. There is no dispute that the respondents initially joined the post as Junior Lecturer in the District Institute of Education and Training and they were made to take classes for the students of the de-recognition Institutions. After the refresher courses were over, the respondents were relieved from service by order dated 25.02.2014. The order was made effective from 29.02.2014. The respondents and similarly situated employees submitted representations to the Government requesting to accommodate them in the Education Department. It was only based on the said request, a decision was taken to appoint them as Physical Education Teachers. It is true that the Teachers Recruitment Board selected the respondents to work in the post of Physical Education Teacher in the cadre of Junior Grade B.T.Assistant in the School Education Department. The appointment orders were issued on 20.04.2005. The appointment order further indicates that the appointment was on a consolidated pay basis.

4. The proceedings dated 15.12.2006, calling upon the respondents to submit their option for posting them as Physical Education Teachers in the Government Higher Secondary Schools, made the respondents to file the writ petitions. The proceedings dated 15.12.2006 was only a consequential proceedings taken by the Education Department pursuant to the order in G.O.Ms.No.253 School Education Department dated 05.12.2006.

5. We have perused the Government Order in G.O.Ms.No.253 School Education Department dated 05.12.2006. The said G.O. contains a clear indication that in case, the employees like the respondents were appointed in the post of Physical Education Teacher it would unsettle the seniority in the said department. The Government was therefore, of the view that the respondents should be appointed in the post of Physical Education Teacher at the first instance in the pay scale of Rs.4500-125-7000 in the Higher Secondary Schools. The Government called upon the Director of School Education to take willingness from the Teachers including the respondents. It was only at that point of time, the respondents filed writ petitions before the writ Court.



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6. The core question is as to whether the learned single Judge was justified in allowing the writ petitions on the basis of a consequential communication, without there being any challenge to the Government Order in G.O.Ms.No.253 School Education Department dated 05.12.2006.

7. The learned counsel for the respondents submitted that the respondents were not aware of the order in G.O.Ms.No.253 School Education Department dated 05.12.2006 on the basis of which the impugned proceedings were issued by the Director of School Education. There is absolutely no merits in the contentions raised by the learned counsel for the respondents for the simple reason that G.O.Ms.No.253 School Education Department dated 05.12.2006 was specifically mentioned in the proceedings dated 15.12.2006.

8. The reason for appointment of the respondents as Physical Education Teacher in the pay scale of Rs.4500-125-7000 was very clearly mentioned in the Government order, based on which, option was taken from the respondents. The respondents were ousted from service. It was only to accommodate them in the Education Department, posts were created and the same resulted in issuing appointment orders by the Teachers Recruitment Board. The order issued by the Teachers Recruitment Board would not stand in the way of the Government considering the matter in the interest of employees as a whole and to take a decision to appoint them as Physical Education Teacher in the Higher Secondary School. In fact, the appointment order issued by the Teacher Recruitment Board indicates that the appointment was on consolidated basis, it was only based on the order in G.O.Ms.No.253 School Education Department dated 05.12.2006 the pay scale was sanctioned to the respondents. Such being the factual position, the learned single Judge was not justified in allowing the writ petitions filed by the respondents. The order dated 16.02.2015 passed by the learned single judge in W.P.Nos. 20075 and 20076 of 2007 and the order dated 20.12.2016 in Review Application Nos. 173 & 174 of 2016 are set aside. The writ petitions in W.P.Nos.20075 and 20076 of 2007 are dismissed.

9. In the upshot, we allow the intra court appeals. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar



To

1. Member Secretary,
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DPI Campus,
College Road,
Chennai - 600 006.

+1cc to the Government Pleader Sr.59194, 59193
+2cc to M/s.C.S.Associates, Advocate Sr.58912, 58913

W.A.Nos.1207, 1208,
198 and 199 of 2017

pvs[col]
srg 12/09/2019