

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.09.2019

CORAM:

THE HON'BLE MR.JUSTICE S.MANIKUMAR
AND
THE HON'BLE MR.JUSTICE D.KRISHNAKUMAR

W.A.No.3517 of 2019
[W.A.SR.No.114017/2019]

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

2.The Director of School Education,
DPI Complex, College Road,
Chennai - 600 006.

3.The Inspector of Anglo Indian Schools,
DPI Complex, College Road,
Chennai - 600 006.

... Appellants

Vs.

1.S.Veeran

2.St.Joseph's Girls Anglo Indian Hr.Sec.School
Trichy-620 007

... Respondents

Prayer: Writ Appeal is filed under Clause 15 of Letters Patent, against the order made in W.P.No.34111 of 2012, dated 16.08.2018. Prayer in WP.No.34111 of 2012, dated 16.08.2018 : Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus to call for the records from the file of the first respondent dated 28.10.2011 made in letter No.3498/V.2/2007-19 and quash the same and consequently direct the respondents to regularise the service of the petitioners in terms of G.O.(Ms.) No.577 dated 1.4.81 and G.O.(Ms) No.1065 Education Dept. dated 19.11.93 with effect from the petitioners completion of five years of service as a contingent staff with all attendant service benefits payable to the petitioner.

For Appellants

: Mr.K.Karthikeyan
Government Advocate.

JUDGMENT

(Judgment of the Court was made by S.MANIKUMAR, J)

Instant writ appeal is filed against the order made in W.P.No.34111 of 2012, dated 16.08.2018, by which the Writ Court set aside the impugned proceedings in Letter.No.3498/v.2/2007-19, dated 28.10.2011 of the Secretary to the Government, Department of School Education, Chennai, the first respondent therein, and consequentially issued a direction to the first respondent therein, to regularize the services of the writ petitioner on par with similarly placed persons and extend all the monetary benefits by passing suitable orders in the light of G.O.Ms.No.577, Education Department, dated 01.04.1981 and G.O.Ms.No.1065, Education Department, dated 19.11.1993, and such orders shall be passed by the first respondent therein, within a period of eight weeks from the date of receipt of a copy of the order.

2. Shorts facts leading to the appeal are that writ petitioner/first respondent herein, was appointed as a consolidated employee by the Compion Anglo Indian Boys Higher Secondary School, Tiruchy, the 2nd respondent herein, to the post of Gardener, with permissible dearness allowance. The 2nd respondent school is an aided institution functioning under the control of the Director of School Education, Chennai/the second appellant herein, though the Inspector of Anglo Indian Schools, Chennai/the third appellant herein, is in-charge of all the Anglo Indian Schools, functioning within the State of Tamil Nadu. It is stated that the provisions of the Tamil Nadu Private School Regulations Act, 1973, are implemented for administration of the school.

3. Vide G.O.Ms.No.577, Education Department, dated 01.04.1981, the first appellant herein approved the proposal submitted by the Director of School Education, Chennai/the second appellant herein, for bringing the contingent staff in aided schools, who were in service for more than five years, and assessed for grant to be brought into the time scale of pay. The benefit of the said government order is stated to have been extended to Anglo-Indian Schools which were given deficit grant by the proceedings of the Inspector of Anglo Indian Schools, Chennai/third appellant herein, dated 31.10.1983 in D.Dis.No.1485/A, dated 01.04.1981.

4. It is contended by the writ petitioner that, vide G.O.Ms.No.1065, Education Department, dated 19.11.1993, the first appellant has referred to an earlier government order and the proceedings of the third appellant herein, extended the time

scale of pay to persons who were in service for the period, between 01.04.1980 and 01.04.1987 in all the Anglo-Indian Schools upon completion of five years of service.

5. On the basis of the abovesaid government order, it is contended that writ petitioner, who had been appointed by the 2nd respondent School, Trichy/Management, were required to be brought into time scale of pay and suitable proposal of the management was submitted for approval of the third respondent.

6. It is the case of the writ petitioner that the only condition contemplated in the said government orders, is that he should have completed five years of service between 01.04.1980 and 01.04.1987 and the writ petitioner satisfies the said condition and therefore entitled to absorption in the post he was working in the regular establishment on time scale of pay applicable to the post.

7. Vide proceedings No.3498/V2/2007-19, dated 28.10.2011, the Secretary, School Education Department, Chennai/the first appellant herein, has stated that the respective management should bear the costs for such regularization and further, that the management should not include the expenditure on that account in the deficit grant and refrain from making a claim to the Department to compensate the differential grant amount.

8. As against the said proceedings, dated 28.10.2011 of the first appellant herein, W.P.No.34111 of 2012, is filed.

9. Before the Writ Court, learned Senior Counsel appearing on behalf of the writ petitioner submitted that inasmuch as the writ petitioner had put in more years of service than five years of service as contemplated in G.O.Ms.No.577, dated 01.04.1981 and G.O.Ms.No.1065, dated 19.11.1993, the first appellant herein ought to have extended the benefit of regularization and granted the time scale of pay with necessary grant.

10. Learned Senior Counsel has further submitted that when there are specific government orders requiring the services of the writ petitioner to be regularized by taking into account the need of service of such contingent staff to be brought under regular establishment, denial of such benefits to the writ petitioner, is violative of Articles 14, 19(1)(g) and 21 of the Constitution of India.

11. Per contra, before the Writ Court, the learned Additional Advocate General appearing on behalf of appellants 1 and 2, reiterated the stand taken by the appellants authorities

while passing the impugned order and prayed for dismissal of the writ petition.

12. After hearing the learned counsel for the parties, vide order dated 16.08.2019 in W.P.Nos.34107 to 34112 of 2012, writ court ordered as hereunder:-

"12. I heard M/s.G.Thilakavathy, learned senior counsel for Mr.R.Gopinath, Mr.K.Venkatramani, learned Additional Advocate General assisted by Mr.R.Govindasamy, learned Special Government Pleader for the respondents 1 and 2 and M/s.A.Arul Mary, learned counsel for the 4th respondent in all the writ petitions and perused the documents available on record. No representation on behalf of the 3rd respondent.

13. In the case on hand, the initial appointment of the petitioners or their continuation in employment till date as consolidated employees is not disputed by the respondent authorities. In fact, the plea of the petitioners of continuation in service is fortified by the learned counsel appearing for the fourth respondent school.

14. Moreover, it is not in dispute that the fourth respondent school is an aided school and it is governed by the provisions of the Tamil Nadu Private School Regulations Act.

15. Under identical circumstances, in respect of one P.Gnana Pragasam, who was appointed as Sweeper-cum-Gardner on 3.1.1966 and retired from service after working for more than forty years, this Court by order dated 3.12.2012 passed in W.P.(MD) No.10915 of 2007, held as under:

"6. The Petitioner was appointed as Sweeper cum-Gardner on 3.1.1966 and retired from service after working for more than forty years. Though beneficial Government Orders came to be passed in the year 1977 and 1981 in G.O.Ms.No.52 and G.O.Ms.No.577 respectively, granting regularization of service with time scale of pay to the persons similarly situated like that of the petitioner, there was no reason as to why the petitioner was not granted such benefit.

7. On the other hand, the contention of the respondents that G.O.Ms.No.577 was not applicable to the aided Teacher Training Institute, cannot be sustained in view of the fact that when G.O.Ms.No.577, dated 01.04.1981 was passed by the Education Department, there was no such discrimination made in the said Government order. A perusal of G.O.Ms.No.577

would show that the contingent staff in aided schools who had put in not less than five years of service as on 1.4.1979 shall be given the time scale of pay w.e.f. 1.4.1979. While passing the said Government Order, there was no distinction made between the aided schools and the aided Teacher Training Institutes. It is also not in dispute that the Teacher Training Institutes are also coming under the purview and control of the school Education Department. That being the position, there cannot be any discrimination between the contingent staff of aided schools and the aided Teacher Training Institutes. Even assuming so, the very conduct of the first respondent in granting regularization of service to similarly situated persons in G.O.Ms.No.156, dated 23.6.1981 and G.O.Ms.No.46, dated 8.2.2000 shows that they applied the very same G.O.Ms.No.52 to those persons who were also working as contingent staff in Teacher Training Institutes. Thus the petitioner is entitled to the relief and the conduct of the first respondent in rejecting his claim undoubtedly is an act of discrimination which violates Article 14 of Constitution of India.

8. In fact this Court in a decision reported in 2009 Writ LR 43 cited supra had observed that the petitioner therein having satisfied the minimum required continuous service of five years is entitled for regularization of his service as per G.O.Ms.No.52, Finance(FRII) Department, dated 14.1.1977. The institution in the said Writ Petition, wherein the contingent staff worked also was a Teacher Training Institute. By considering all the above facts and circumstances, the learned Judge held that the petitioner therein was entitled to regularization of his service.

9. Applying the said decision, to the facts and circumstances of the present case as well as by considering the very conduct of the first respondent in regularization of service of the similarly situated persons through G.O.Ms.No.156, dated 23.12.1997 and G.O.Ms.No.46, dated 8.2.00 I find every justification in allowing this Writ Petition. Accordingly, the Writ Petition is allowed and the impugned order is set aside. The respondents are directed to regularize the service of the petitioner w.e.f. 01.04.1979 on par with that of the similarly placed persons and extend all the monetary benefits by passing suitable orders

within a period of eight weeks from the date of receipt of a copy of this order."

16. The learned Additional Advocate General appearing on behalf of the respondent authorities is not in a position to dispute the applicability of the above said order. The Additional Advocate General also not produced any appeal proceedings against the said order.

17. A perusal of the typed set of documents filed by the petitioners shows that similar orders passed by this Court had been implemented by the Government.

18. Under such circumstances, this Court finds no just and reasonable cause to take a different stand than the one taken in the above said decision.

19. For the foregoing reasons, these writ petitions are allowed and the impugned proceedings of the first respondent are quashed with a direction to the first respondent to regularize the services of the petitioners on a par with similarly placed persons and extend all the monetary benefits by passing suitable orders in the light of G.O.Ms.No.577, dated 01.04.1981 and G.O.Ms.No.1065, dated 19.11.1993. Such orders shall be passed by the first respondent within a period of eight weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petitions are closed."

13. Being aggrieved by the same, instant writ appeal is filed on the following grounds:-

"(i) Writ Court ought to have seen that the benefit of the Government Orders as stated by the writ petitioners i.e., G.O.(Ms).No.577, Education, dated 01.04.1981, G.O.(Ms).No.1065, Education Department, dated 19.11.1993 and G.O.(Ms).No.85, School Education Department, dated 23.08.2005, are available to the posts in the fully aided institutions only if they are filled up after obtaining due prior-approval from the Government. In the instance of the writ petitioners they were appointed without the prior approval of the Government.

(ii) Writ Court ought to have seen that the Hon'ble Apex Court, reiterated the power of the Government in sanctioning posts to aided institutions in its judgment in SLP (C) No.5855 of 2009 (Government of Tamil Nadu and Others vs. Amala Annai Higher Secondary School). The Hon'ble

Apex Court in the paras (15) and (16) has ordered as follows:-

"15. Last but not the least, the High Court erred in directing the present Appellant No. 1 to sanction one post of Junior Assistant to the Respondent No. 1 - AAHS School from June 1, 1994 overlooking and ignoring that creation and sanction of posts is the prerogative of the executive and the courts cannot arrogate to themselves a purely executive power.

16. The appeal must, accordingly, succeed and is allowed with no order as to costs."

Hence, it is well settled that sanctioning of posts to the aided institutions are within the prerogative of the executive and the courts cannot arrogate to themselves a purely executive power.

(iii) Writ Court ought to have seen that in SLP (C) No.407 of 2012 filed against the orders of this Court in W.A.No.2120 of 2011, dated 16.11.2011, the Hon'ble Apex Court has held as follows:-

In our view, the direction given by the Division Bench of the High Court in G.Sahadevan Nair, Kanyakumari District vs. Government of Tamil Nadu, represented by its Secretary, Education Department, Chennai and others 2008 (4) MLJ 289 for consideration of the application of the institutions and/staff employed by such institutions does not mean that even though the particular institution may not be eligible or entitled to grant-in-aid, the Government is obliged to accept the application. The direction given by the High Court clearly implies that the Government is required to consider the application of the institutions and/staff employed by such institutions strictly in accordance with law and take appropriate decision.

With the above observation, the special leave petition is disposed of.

(iv) Writ Court ought to have been considered the fact that in W.P.No.19526 of 2009, the High Court in its judgment dated 13.06.2012, has inter alia held by citing various Hon'ble Apex Court orders that the Government is under no obligation

to accord sanction to the posts as and when so requested by aided institutions, but it can only verify the need of such institutions and award sanction according to the financial viability of the State. In view of the above the respondents are not at all under any obligation, to accord sanction to the unapproved posts of the petitioners.

(v) Writ Court ought to have seen that the Government have ordered that the category of contingent staff be abolished forth with and that there should be no further recruitment to this category. Even, if need arises for a particular post, it may be sanctioned by the Government either for a temporary post or a permanent post vide G.O.(Ms) No.52, Finance (F.R.II) Department, dated 14.01.1977. Hence, the category of contingency staff was abolished by the Government as per the above said G.O. But, the 1st respondent was appointed on 12.08.1988 as Ayah under the contingency category in the Dathie Nursery School, Nagarcoil. Hence, the 1st respondent service could not be regularized.

(vi) Writ Court ought to have seen that in a case filed by K.Mahimaidhas before this Court, in W.P.No.24851 of 2013, and passed an order to regularize the service of the petitioner. As against the order passed by this Court, W.A.No.746 of 2016, has been filed. A Hon'ble Division Bench of this Court, has passed the following order on 30.11.2016:-

At this juncture, the learned counsel appearing for the first Respondent herein relied upon a decision of the Supreme Court in Secretary to Government, School Education Department, Chennai vs. R.Govindaswamy (2004 (4) SCC 769), wherein the Supreme Court quoted the ratio laid down in State of Rajasthan & Ors. v. Daya Lal & Ors., AIR 2011 SC 1193, while considering the scope of regularisation of irregular or part-time appointments in all possible eventualities and laid down the well-settled principles relating to regularisation and parity in pay relevant in the context of the issues involved t. The same are as under:

(iii) Even where a scheme is formulated for regularisation with a cut-off date (that is a scheme providing that persons who had put in a specified number of years of service and continuing in employment as on the cut-off date), it is not possible to others who were appointed subsequent to the cut-off date, to claim or contend that the scheme should be applied to them by extending the cut-off date or seek a direction for framing of fresh schemes providing for successive cut-off dates.

(vii) Writ Court ought to have considered the fact that respondents 1 to 3 were appointed on 01.06.1985, 01.12.1989 and 02.12.1985 in the unsanctioned contingency Night Watchman, Sweeper and Gardener post i.e., after the issuance of G.O. (Ms)No.52, Finance (FR-II) Department, dated 14.01.1977. The appointment of contingency post was abolished as per the said government order. Hence, the services of the respondents 1 to 3, could not be regularized.

(viii) Writ Court ought to have considered that at the time of appointment order issued to the respondents, the management of the school and the contingent staff (un sanctioned post) entered into an agreement (terms and conditions) each other. The agreement is made only between the contingent staff (un sanctioned post) and the management. There is no role for the government in the agreement made between the contingent staff (un sanctioned post) and the management. Hence, the appellants 1 to 3, have no responsibility of the salary etc., to the respondents 1 to 3.

(ix) Writ Court could have considered the fact that if regularization is given to the respondents / petitioners it will adversely affect the interest of the State and unnecessarily reopen the already settled issues."

14. Heard the learned Government Advocate and perused the materials available on record.

15. G.O. (Ms).No.577, Education Department, dated 01.04.1981, is extracted hereunder:-

G.O.Ms.No.577 Education Dated: 1.4.1981

Read:

1. G.O.Ms.No.52 Finance (F.R.II) dt. 4.11.77
2. From the Director of School Education,
Lr.No.RC.224385/D1/78 dt.20.11.78

Order:

The Government approve the proposal of the Director of School Education and direct that the contingent staff in Aided Schools who have put in five years and more of continuous service as on 1.4.79 and who are assessed for grant, be given a time scale of pay applicable to similar categories in Government Service, from time to time with effect from 1.4.79. The Director of School Education should ensure that the managements of Aided Schools do not appoint any contingent staff in future without his approval. The instructions issued in G.O.Ms.No.52 Finance dated 12.1.77 should scrupulously be followed while bringing the contingent staff into regular establishment and the Director of School Education is requested to send proposals of bringing the contingent the contingent staff in to regular establishment who will be completing five years of service after 1.4.79 to Government for approval.

2. The expenditure in the extension of time scale of pay will be allowed for grant purposes under the existing pattern of aid.

This order issues with the concurrence of the Finance Department Vide its U.O.No.37476/E2/81-1 dt.31.3.1981.

(By order of the Governor)

(Sd.) C.RAMADAS

COMMISSIONER & SECRETARY TO GOVT.

16. G.O.(Ms).No.1065, Education Department, dated 19.11.1993, is extracted hereunder:-

GOVERNMENT OF TAMIL NADU

Abstract

EDUCATION - Anglo-Indian Education - Contingent Employees in Anglo-Indian Schools and Anglo-Indian Teacher Training Institute bring into regular establishment and extension of time scale of pay to those who have completed five years of service during 1.4.80 to 1.4.87 and etc. - Orders issued.

EDUCATION DEPARTMENT

G.O.Ms.No.1065

Dated: 19.11.93

Read:

1. G.O.Ms.No.577, Education dated 1.4.81.
2. From the Director of School Education
Lr.Rc.No.222334/E1/89, dated 1.4.92.

ORDER:

The Director of School Education has brought to notice that with reference to the orders issued in G.O.Ms.No.577, Education dated 1.4.81 the inspector of Anglo-Indian Schools has issued orders in his proceedings D.Dis.No.1485/A/82 dated 31.10.83 and 5.3.84 bringing 51 Contingent staff of Anglo-Indian High/Higher Secondary Schools who had completed 5 years of service as on 1.4.79 to regular establishment on regular time scale of pay. This was done even when the Director of School Education had addressed the Government on the applicability of the orders issued in the G.O. Read above to Anglo-Indian Schools and the question was under consideration of the Government. The Director of School Education has requested orders regarding applicability of the orders in G.O.Ms.No.577, Edn. Dated 1.4.81 to Anglo-Indian Schools and has requested the Government to ratify the action of the Inspector of Anglo-Indian Schools in having issued orders bringing 51 contingent menials in Anglo-Indian Schools who had completed 5 years of service as on 1.4.79 to regular establishment. The Director of School Education has also requested orders of the Government to bring 35 continuous staff working indifferent Anglo-Indian Schools and one Anglo-Indian Teacher Training Institute who have completed 5 years service during the period from 1.4.80 to 1.4.87 to regular Establishment.

2. The Government have carefully examined the proposal of the Director of School Education. The Government clarified that the orders issued in G.O.Ms.No.577, Edn. Dated 1.4.81 have to be followed in the case of Anglo-Indian Schools and the case of one recognised Anglo-Indian Teacher Training Institute also. The Government also ratify the action of the Inspector of Anglo-Indian Schools in having issued orders to bring in regular establishment 51 contingent staff of various Anglo-Indian Schools who had completed 5 years of service as on 1.4.1979.

3. The Government have also examined the proposal of the Director of School Education to bring regular establishment 35 members of the contingent staff of

different Anglo-Indian Schools and one Anglo-Indian Teacher Training Institute who have completed 5 years of service on the first of April each year from 1980 to 1987. the Government direct that the contingent staff who were appointed prior to 1.04.81 specified in the Annexure to this order (that is those against serial numbers 1 to 29 the rein) be brought into regular establishment with effect from the date of issue of this order. The contingent Staff who are brought to regular establishment shall be brought to the time scale of pay applicable to the posts with effect from the date on which they are brought to regular establishment.

4. The expenditure on the extension of time scale of pay will be allowed for grant purposes only under the existing pattern of aid in Anglo-Indian Schools and in the Anglo-Indian Teacher Training Institute.

5. This order issues with the concurrence of the Finance Department vide its U.O.No.90251/Edn/93-1 dated 07.10.93.

(BY ORDER OF THE GOVERNOR)

JAYANTHI
SECRETARY TO THE GOVERNMENT

17. In the averments made in the writ petition, petitioner has furnished the service details, as hereunder:-

Name	Age	Designation	School	Date of app.	Years of Service as on 30.09.2012
S.Veeran	53	Gardener	St.Josephs Anglo Indian Girls Hr.Sec.School, Trichy	01.06.93	19 Years, 4 months.

18. Though the 3rd appellant has filed a detailed counter affidavit before the writ court, denying regularisation of the services of respondent 1 herein, appellants have not disputed the service rendered by the writ petitioner, in the abovesaid 2nd respondent school, in particular, period of service rendered by them, namely, 19 years and 4 months.

19. Writ Court while allowing the writ petition, has considered an identical order made in W.P.(MD).No.10915 of 2007, dated 03.12.2012. It is not disputed before the Writ Court that the writ petitioners/respondents 1 to 3 herein, are also similarly placed persons. Before the Writ Court learned Additional Advocate General has also not disputed the applicability of the order made in W.P.(MD).No.10915 of 2007, dated 03.12.2012 to the facts of the case they cannot be treated differently. Reference can be made to few decisions:-

(i) In Prem Chand Somchand Shah v. Union of India reported in (1991) 2 SCC 48, the Hon'ble Supreme Court, at paragraph 8, held thus, "8. As regards the right to equality guaranteed under Article 14, the position is well settled that the said right ensures equality amongst equals and its aim is to protect persons similarly placed against discriminatory treatment. It means that all persons similarly circumstanced shall be treated alike both in privileges conferred and liabilities imposed. Conversely discrimination may result if persons dissimilarly situate are treated equally. Even amongst persons similarly situate differential treatment would be permissible between one class and the other. In that event it is necessary that the differential treatment should be founded on an intelligible differentia which distinguishes persons or things that are grouped together from others left out of the group and that differentia must have a rational relation to the object sought to be achieved by the statute in question."

(ii) In State of Karnataka v. N.Parameshwarappa reported in 2003 (12) SCC 192, in paragraph 8, the Hon'ble Apex Court held thus:

"8. we do not find any reasonable justification to confine the relief to only such of the teachers who approached the court and having regard to the fact that relief related to the revision of scales of pay, every one of that class of teachers who approached would be entitled to the benefit, notwithstanding that they have not approached the court."

(iii) In Hari Ram v. State of Hariyana reported in 2010 (2) CTC 336 (SC), the Supreme Court held that if the Courts are not correcting the wrong action of the Government it may leave citizen with the belief that citizen is right in contacting right persons in the Government as if judicial proceedings are not

efficacious. Thus similarly placed persons are bound to be treated equally without discrimination is a fundamental right guaranteed under Article 14 of the Constitution of India.

(iv) In State of U.P. v. Dayanand Chakrawarty reported in 2013 (8) Scale 74 : (2013) 7 SCC 595, the Hon'ble Supreme Court held that there cannot be any discrimination in treating equally placed persons on same footing, for all purposes."

20. In view of the above discussion and decisions, we do not find any error in the order of the learned Single Judge and the instant writ appeal is dismissed. No Costs. Consequently, the connected civil miscellaneous petition, is closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

- 1.The Secretary,
School Education Department,
Fort St. George, Chennai - 600 009.
- 2.The Director of School Education,
DPI Complex, College Road,
Chennai - 600 006.
- 3.The Inspector of Anglo Indian Schools,
DPI Complex, College Road,
Chennai - 600 006.

AKM/14.11.19/14P-4C /

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