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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.11.2019

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THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.No.30918 of 2019

1.S.Sankar
2.S.Selvi
3.N.Anbu
4.G.Sheela

... Petitioners

Vs.

1.Government of Tamilnadu
Represented by Secretary to Government
School Education Department,
Fort St.George,
Chennai - 600 009.

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

3.The Director of Elementary Education,
DPI Campus,
College Road,
Chennai - 600 006.

4.Kumara Raja Muthiah Higher Secondary School,
Represented by its Secretary,
Adyar,
Chennai - 600 020.

... Respondents

Prayer:

Petition filed under Article 226 of the Constitution of India to issue a Writ of Mandamus directing the respondents to regularize the services of the petitioners from their initial date of appointment for purpose of seniority, selection grade, special grade and annual increment without reference to the conditions imposed in the order of appointment by taking into consideration the fact that the respondent held an unequal bargaining power qua the petitioners by considering the judgment of this Hon'ble Court in W.P.No.4991 of 2015 dated 30.07.2019 and G.O.Ms.No.336 dated 30.12.2009.



For Petitioners : Ms.Dakshayani Reddy
For Respondents : Ms.P.Kavitha
Government Advocate

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O R D E R

The petitioners have filed this writ petition seeking issuance of Writ of Mandamus directing the respondents to regularize the services of the petitioners from their initial date of appointment for the purpose of seniority, selection grade, special grade and annual increment without reference to the conditions imposed in the order of appointment by taking into consideration the fact that the respondent held an unequal bargaining power qua the petitioners by considering the judgment of this Hon'ble Court in W.P.No.4991 of 2015 dated 30.07.2019 and G.O.Ms.No.336, dated 30.12.2009.

2.Heard the arguments advanced on either side.

3.The case of the petitioners is that the petitioners were all appointed on various dates as B.T.Assistants during the years 2004 to 2005 on consolidated pay in the fourth respondent School in line with G.O.Ms.No.100, dated 27.06.2003 and G.O.Ms.No.125, dated 12.11.2003. Subsequently, the Government issued G.O.Ms.No.99, School Education (Income and Expenditure 2) Department, dated 27.06.2006, by which, the Government reconsidered the issue and decided to regularize the services of all the Teachers who were appointed on consolidated pay by G.O.Ms.No.100, School Education (Budget) Department, dated 27.06.2003. Accordingly, the petitioners services were regularized with effect from 01.06.2006.

4.The grievance of the petitioners is that the petitioners services have to be regularized with effect from the initial date of their appointment instead, their services were regularized only with effect from 01.06.2006. Hence, this writ petition.

5.The learned counsel appearing for the petitioners would submit that the issue is squarely covered by the decision of this Court made in W.P.No.4991 of 2015 (1.T.Kunju Krishnan and others Vs. 1.Government of Tamil Nadu, rep. by its Secretary and others) dated 30.07.2019.

6.The learned Government Advocate appearing for the respondents would submit that as against the order passed by the learned Single Judge, the respondents therein preferred writ appeal and the same is pending.

7.Per contra, the learned counsel appearing for the



petitioners would submit that already the petitioner therein filed caveat and no notice was issued as on date and would further submit that no interim order has been passed in the said writ appeal and the order passed by the learned Single Judge also has not been set aside.

8.It is useful to extract hereunder the relevant portions of the order dated 30.07.2019 made in W.P.No.4991 of 2015 (1.T.Kunju Krishnan and others Vs. 1.Government of Tamil Nadu, rep. by its Secretary and others):

"4. It is not in dispute that the petitioners joined the services prior to issuance of G.O.Ms.100 dated 27.06.2006, however, their services have been regularized in terms of the said Government Order only with effect from 01.06.2006, a perusal of which, would go to show that though the regularization will take place from 01.06.2006, the seniority and roster would be maintained as per the date of appointment. This Government Order has been accepted and has not been questioned, thereby it was left to attain finality and it was the contention of the Government Advocate that having accepted the regularization, claiming retrospective benefits is not permissible, when the Government Order is not challenged.

5.Though the contention of the Respondents appears to be sound at the first blush, when seen in depth, there is no justification on the part of the Respondents in placing senior persons to juniors, thereby depriving their rights of seniority. It is no doubt true that the regularization can take place with effect 01.06.2006, but at the same time, the date of entry of petitioners will have to be taken into account for the purpose of drawing seniority list, which is already fixed by the Teachers Recruitment Board in this case, as it is impermissible to combine all the persons recruited on various periods together and draw a consolidated list for drawing seniority, which will definitely create confusion and affect the seniority of senior most persons.

6.While dealing with the similar issue with respect to G.O.Ms.No.99 School Education Department dated 27.07.2006, the Madurai Bench of Madras High Court in the case of P.Karthikeyan and another vs. the Commissioner, Most Backward and Denotified Communities Welfare Department, Chennai and another [W.P. (MD) No.21316 of 2015 and 21317 of 2015]



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decided on 12.06.2017, had held upon relying on a judgment of the Hon'ble Supreme Court, as follows:

"4.The learned Additional Government Pleader appearing for the respondents referred to G.O.Ms.No.99 dated 27.06.2006 and submitted that the petitioners' appointment were regularized only after the issue of the said Government Order. It is pertinent to note that the decision in the year 2006 was to make permanent appointments on regular time scale of pay with effect from 2006. As per the said Government Order, it is made clear that earlier the petitioners were appointed on consolidated pay. The intention of the Government was to treat the petitioners as regular appointees for all purposes, except for granting the regular time scale of pay to them.

5.It is in the said circumstances, the contention of the second respondent that initially the petitioners who were regularized only on 01.06.2006, cannot be treated as regular appointees, from the date of their appointment, so as to promote them for the post of Headmasters/Headmistresses of the Higher Secondary Schools can not be accepted.

6.The learned counsel for the petitioners also relied upon the Judgment of the Honourable Supreme Court in the case of Direct Recruit Class II Engineering Officers' Association vs. State of Maharashtra and others, reported in (1990) 2 Supreme Court Cases 715. The Honourable Supreme Court differentiated the status of persons, who were appointed to a post according to the Rule and the status of the persons, who were appointed on adhoc basis and not according to the Rules where the appointment was purely a stop-gap arrangement. It has been categorically held that the persons who were appointed to the post according to Rule, should be given the benefit of seniority and their period of service shall be counted from the date of their appointment and not from the date of their regularization or confirmation.



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7.This Court is also of the view that the petitioners are entitled to claim the seniority of teaching experience from the date of their appointments i.e., with effect from 02.08.2004 and 27.01.2005 respectively, for the purpose of calculating their period of rendering service as a teacher, for the purpose of promotion to the post of Headmasters/ Headmistresses of the Higher Secondary Schools. Hence, this Court is inclined to allow these Writ Petitions.

8.Accordingly, these Writ Petitions are allowed and the impugned orders passed by the second respondent dated 17.04.2015 and the consequential proceedings of the first respondent dated 20.05.2015 are quashed. The respondents 1 and 2 are directed to treat the petitioners as eligible for promotion to the post of Headmasters/ Headmistresses of the Higher Secondary Schools, as per Rule. This order shall not disturb the rights of any other third party whose rights have already been crystalised. However, for the purpose of calculating seniority and for granting any other monetary benefits, the respondents are directed to treat the services of the petitioners from the date of their original appointment. Consequently, connected Miscellaneous Petitions are closed. No costs."

7. In view of the above, this Court finds force in the contention raised by the petitioners and they are entitled for relief / direction sought for in this writ petition. Accordingly, the Writ Petition is disposed of, with a direction to the 1st respondent herein to regularize the services of the petitioners from the date of entry into service for the purpose of seniority and extend all the monetary benefits flowing thereof, if any, within a period of two months from the date of receipt of a copy of this order. No costs."

9.The writ petition is disposed on the same lines of the decision cited supra. The first respondent is directed to regularize the services of the petitioners from the date of entry into service for the purpose of seniority and extend all the monetary benefits flowing thereof, if any, within a period



of two months from the date of receipt of a copy of this order.
No costs.

Sd/-

Assistant Registrar (CS-V)

//True Copy//

Sub Assistant Registrar

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To

- 1.The Secretary to Government
School Education Department,
Fort St.George,
Chennai - 600 009.
- 2.The Director of School Education,
DPI Campus,
College Road,
Chennai - 600 006.
- 3.The Director of Elementary Education,
DPI Campus,
College Road,
Chennai - 600 006.

+lcc to Ms.Dakshayani Reddy, Advocate, S.R.No. 99798

W.P.No.30918 of 2019

MP(CO)
GN(21/01/2020)