



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 29.08.2019

CORAM:

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THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.(MD)Nos.13582 to 13584 and 13588 of 2014
and
M.P.(MD).Nos.2,2,2 and 2 of 2014

1.Mrs.M.K.Jameela Beevi	... Petitioner in W.P.(MD).No.13582/14
2.Mrs.A.M.Saleem	... Petitioner in W.P.(MD).No.13583/14
3.Mr.S.M.Mohamed Hayath	... Petitioner in W.P.(MD).No.13584/14
4.Mr.K.A.M.Ahamed Hussain	... Petitioner in W.P.(MD).No.13588/14

-Vs-

- 1.The State of Tamil Nadu,
Represented by its Secretary to Government,
Education Department,
Fort St. George, Chennai-600 009.
- 2.The Director of School Education,
College Road, Chennai-600 006.
- 3.The District Educational Officer,
Tirunelveli Educational District,
Tirunelveli.
- 4.The Correspondent,
The Muslim Higher Secondary School,
Melapalayam,
Tirunelveli District-627 005. ...Respondents in all W.Ps

Common Prayer: Writ Petitions is filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorarified Mandamus, to call for the records relating to the order passed by the 3rd respondent dated 08.08.2012 in this OO.MU.No.2803/A5/2012 and quash the same and to direct the respondents 1 to 3 to pay the salary for the period from 30.03.1998 to 01.06.2003 to the petitioners and to pay the other benefits namely selection Grade etc.



For R1 to R3 in
all W.Ps : Mrs.S.Srimathy,
Special Government Pleader
For R4 in all W.Ps :No appearance

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COMMON ORDER

All these Writ Petitions are filed to quash the proceedings dated 08.08.2012 issued by the third respondent and consequently, to direct the respondents 1 to 3 to pay the salary for the period from 30.03.1998 to 01.06.2003 to the petitioners and to pay the other benefits namely selection Grade etc. In all these writ petitioner the period for which they claim salary as well as the grounds for the relief raised in all these Writ Petitions are one and the same.

2.The claim of these writ petitioners raised based on the Government Order issued in G.O.Ms.No.155, School Education Department, dated 03.10.2002.

3.The issues were already adjudicated elaborately, by the Hon'ble Division Bench of this Court in W.A.(MD)Nos.74 of 2015 and 957 of 2016 and an order was passed on 21.03.2018. The Hon'ble Division Bench of this Court has considered the Government Order issued in G.O.Ms.No.155, School Education Department, dated 03.10.2002 with reference to the claim set out by all these writ petitioners in their representations and passed orders distinguishing the earlier orders of the Single Judge as well as the earlier orders of the Hon'ble Division Bench's.

4.Citing the judgment of the Hon'ble Division Bench dated 21.03.2018, this Court also passed an order in W.P.No.17084 of 2018, dated 06.09.2018 and the relevant paragraphs are extracted hereunder:-

" 3. The grievance of the writ petitioner is that the approval was granted by the authority competent on 26.6.2003. However, the arrears of salary due to the writ petitioner from the date of her appointment has not been paid. The representation submitted by the writ petitioner in this regard was rejected by the Director of School Education in proceedings dated 21.4.2016 stating that the order passed by this Court in WP No.28647 of 2015 dated 11.9.2015 is not applicable to the writ petitioner. However, the matter went by way of an appeal before the Hon'ble Division Bench, in respect of other similar writ petitions, and the Hon'ble Division Bench passed an order in W.A.(MD) Nos.74 of 2015 and 957 of 2016 on 21.3.2018. The relevant portion of the judgment is extracted hereunder:-

"10. The learned counsel for the respondents/writ petitioners relied on certain other orders passed by various single Benches including one of us (TSSJ) and on perusal of the same, we find that



in none of those decisions, the full effect of G.O.Ms.No.155 and the conditions therein have been thoroughly examined. Apart from that, the decision in the case of Pallivasal Primary School has not been specifically noted. Therefore, we are of the considered view, that those decisions cannot be referred to advance the case of the respondents/writ petitioners, though some of them have attained finality. Needless to state that if there has been a wrong decision, it cannot be treated as precedent.

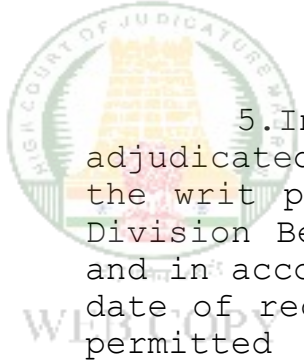
11. In the light of the above reasoning, we are of the considered view that the order passed by the Writ Court directing disbursement of salary from the date of original appointment, cannot be sustained, in the light of explicit condition imposed in G.O.Ms.No.155, which was upheld by the Division Bench in a Public Interest Litigation. Thus, for the above reasons, the writ appeals filed by the department has to be allowed.

12. The learned counsel for the respondents submitted that though there were about 3000 Teachers who were appointed in such improper manner as of now 300 Teachers would be entitled to monetary benefits and as remaining persons were already paid and they were protected by the Division Bench order from the effect of recovery, the learned counsel submitted that the respondent should be permitted to approach the Government by way of representation.

13. We make no positive observation on this request. But it is always open to the respondents/writ petitioners to approach the Government, if they so desire. For the above reasons, the writ appeals are allowed and the impugned orders are set aside and consequently, the writ petitions are dismissed. No Costs. Consequently M.P.(MD) Nos.1 and 2 of 2015 and C.M.P.(MD)No.5749 of 2016 are closed."

4. In view of the judgment of the Hon'ble Division Bench, cited supra, the case of the writ petitioner is to be reconsidered with reference to the facts and circumstances. Accordingly, the second respondent is directed to reconsider the case of the writ petitioner in the light of the judgment, cited supra, and pass orders on merits and in accordance with law, within a period of twelve weeks from the date of receipt of a copy of this order. The writ petitioner is permitted to submit a fresh representation and all other relevant documents along with the order passed in this writ petition.

5. Accordingly, the writ petition stands disposed of. However, there shall be no order as to costs."



5. In view of the fact that already the issues were adjudicated, the respondents are directed to reconsider the cases of the writ petitioners, in the light of the judgment of the Hon'ble Division Bench of this Court cited supra and pass orders on merits and in accordance with law, within a period of twelve weeks from the date of receipt of a copy of this order. The writ petitioners are permitted to submit fresh representation and all other relevant documents along with the order passed in these Writ Petitions.

6. With these directions, these Writ Petitions stand disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CO)

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Sub Assistant Registrar

To

1. The State of Tamil Nadu,
Represented by its Secretary to Government,
Education Department,
Fort St. George, Chennai-600 009.
2. The Director of School Education,
College Road, Chennai-600 006.
3. The District Educational Officer,
Tirunelveli Educational District,
Tirunelveli.
4. The Correspondent,
The Muslim Higher Secondary School,
Melapalayam,
Tirunelveli District-627 005.

+4 CC to M/s.A.S.MUJIBUR RAHMAN, Advocate (SR-84513[F] dated 30/08/2019)

W.P. (MD) Nos. 13582 to 13584 and 13588 of 2014
and
M.P. (MD) .Nos. 2, 2, 2 and 2 of 2014
29.08.2019

NS

MS/13.09.2019/4P.9C