



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 19.12.2019

CORAM :

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

W.P(MD)No.14472 of 2014

K.Nazeema Banu

... Petitioner

Vs.

1.The State of Tamil Nadu,
represented by its Secretary to Government,
School Education Department,
Secretariate,
Chennai -9.

2.The Director of Elementary Education,
Chennai -6.

3.The District Elementary Educational Officer,
Tirunelveli District,
Tirunelveli.

4.The Assistant Elementary Educational Officer,
Kadayanallur,
Tirunelveli District.

5.The Secretary,
Jamalia Primary School,
Pottalpudur - 627 423,
Ambasamuthram Taluk,
Tirunelveli District.

... Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus, to call for the records pertaining to the order passed by the 3rd respondent in his proceedings in O.Mu.No.3277/A3/2008, dated 28.02.2012 and quash the same and direct the respondents to approve the appointment of the petitioner from 09.02.1998 and confer all the consequential and monetary benefits.

For petitioner

: Mr.V.Panneer Selvam,
for M/s.C.S. Associates

For respondents 1 to 4

: Mr.N.Shanmugaselvam,
Addl. Government Pleader

For 5th respondent

: No appearance



ORDER

This writ petition has been filed by the petitioner challenging the order dated 28.02.2012 passed by the third respondent and for a direction to the respondents to approve the appointment of the petitioner from 09.02.1988 and confer all the consequential benefits.

2. The learned counsel for the petitioner submitted that the petitioner was appointed as Headmistress in the sanctioned post of the 5th respondent aided school on 09.02.1998. The appointment of the petitioner was not approved by the official respondents stating that the petitioner has not possessed five years of teaching experience as Secondary Grade Teacher. The Government has issued orders stating that a person appointed as Headmaster/Headmistress, without the requisite five years teaching experience, would be paid salary equal to be that of Secondary Grade Teacher for the first five years and on completion of five years and Child Psychology Course for one month, he/she will get salary of the Headmaster of the Primary School and their services will be regularized. He would further submit that in this case, though the 2nd respondent issued order on 02.05.2003 directing all the District Level Subordinate Officers to sponsor the candidates for Child Psychology Course for one month with effect from 02.05.2003, the name of the petitioner was not sponsored by the 3rd respondent. On 27.05.2005 only the 3rd respondent sponsored the petitioner's name for the said course and after completion of the course, the 3rd respondent regularized the appointment of the petitioner with effect from 25.06.2005. As the appointment of the petitioner was not regularised from the date of her appointment as Headmistress, the petitioner has approached this Court and this Court has directed the respondents to dispose of the representation of the petitioner submitted by the petitioner in that regard. In the meanwhile, the Government has issued G.O.(3D). No.117, School Education Department, dated 11.09.2012, approving the similar claim made by similarly placed person based on the orders of this Court. But, the third respondent, without considering the same, has passed the impugned order rejecting the claim of the petitioner and stating that the five years period of Secondary Grade Teacher Salary will be commenced only on completion of the Child Psychology Course and thereafter only, she will be given Headmistress salary. Challenging the said order, the petitioner has filed this writ petition.

3. The learned counsel appearing for the petitioner would further submit that when the similarly placed persons have been given benefits, the rejection of the claim in respect of the petitioner amounts to discrimination. Due to the delay on the part of the respondents in sending the petitioner for Child Psychology Course, the petitioner should not be made to suffer. Thus, he prayed to allow this writ petition.



4. The learned Additional Government Pleader appearing for the respondents submitted that when the similar issue arises for consideration, a Division Bench of this Court in the case of Director of Elementary Education Vs. Sundaravel Raj, decided on 21.03.2018 in W.A.(MD).Nos.74 of 2015 and 957 of 2016 held that the Graduate Teachers, who were appointed as Secondary Grade Teachers will be entitled to regularization only from the date they had completed Child Psychology Training. Therefore, the claim of the petitioner was rightly rejected by the 3rd respondent and the same need not be interfered with. Thus, he prayed to dismiss this writ petition.

5. Heard the learned counsel appearing for the parties and perused the records carefully.

6. The issue involved in this Writ Petition is no more *res integra*, in view of the decision of a learned Single Judge of this Court in the case of J.Vijayasundar Vs. State of Tamil Nadu and others, decided on 03.01.2019 in W.P.(MD).No.1053 of 2018. In the said decision, this Court has also considered the decision of Sundaravel Raj (cited surpa), relied on by the learned Additional Government Pleader. The relevant portions are extracted hereunder:

"4. Mr.B.Prasanna Vinoth would submit that the issue relating to the requirement of Child Psychology training for Primary School Headmasters is covered by the decision of the Hon'ble Division Bench of this Court in State of Tamilnadu vs. Hindu Middle School in W.A(MD).No. 1404 of 2014 dated 29.04.2015. In the said judgment the Hon'ble Division Bench has categorically concluded that the requirement of Child Psychology training will not apply to the post of Headmaster of a Primary School. Relying upon the said decision, Mr.B.Prasanna Vinoth could contend that the petitioner's services should be regularised from the date of his initial appointment without considering the fact as to whether he has completed Child Psychology training or not.

5. Per contra, the learned Special Government Pleader would contend that the judgment of the Hon'ble Division Bench in State of Tamilnadu vs. Hindu Middle School referred to supra per incuriam as does not take into account the earlier judgment of the Division Bench in Secretary and Correspondent Uswathun Hasana Oriental (Arabic) Girls Higher Secondary School vs. State of Tamilnadu reported in 2002 WLR 173. The question



and Correspondent Uswathun Hasana Oriental (Arabic) Girls Higher Secondary School vs. State of Tamilnadu was regarding the validity of G.O.Ms.No. 559 dated 11.07.1994 that banned the appointment of Graduate teachers <http://www.judis.nic.in> as Secondary Grade teachers. While upholding the G.O., the Hon'ble Division Bench had accepted the concession made by the learned Additional Advocate General appearing for the State to the effect that the persons, who had already been appointed as Secondary Grade Teachers will have to undergo Child Psychology training and their services should be regularised only after their completion of child psychology training. The Division Bench was not concerned with the question as to whether Child Psychology training is required for the post of Headmaster of Primary Schools. On the other hand the Division Bench in State of Tamilnadu vs. Hindu Middle School has held that Child Psychology training is not essential qualification for the post of Headmasters of Primary School.

6. Mrs.S.Srimathy, learned Special Government Pleader would also draw my attention to the judgment of the Division Bench in Director of Elementary Education vs. Sundaravel Raj, made in W.A. (MD).No.74 of 2015 and 957 of 2016 dated 21.03.2018, wherein the Division Bench had held that the Graduate Teachers, who were appointed as Secondary Grade Teachers will be entitled to regularisation only from <http://www.judis.nic.in> the date they had completed Child Psychology training. Even this Division Bench had not considered as to whether Child Psychology training is required for the post of Headmaster in a Primary School.

7. In my considered opinion the judgment of the Division Bench in State of Tamilnadu vs. Hindu Middle School cannot be held to be per incuriam as the other two judgments have not touched upon the question as to whether Child Psychology training is required for the post of Headmaster/Headmistress in a Primary School. Contention of the learned Special Government Pleader (Education) that the judgment of the Division Bench in State of Tamilnadu vs. Hindu Middle School is per incuriam is therefore unacceptable.

8. In view of the categorical pronouncement of the Hon'ble Division Bench in Hindu Middle School to supra, I am of the considered opinion



that the impugned order rejecting the claim of the petitioner for regularisation with effect from the date of his initial appointment, namely, 23.07.1997 is liable to be quashed and the same is accordingly quashed.

9. In fine, the writ petition is allowed. The order impugned in the writ petition is quashed. The respondents are directed to regularise the services of the writ petitioner with effect from the date of his initial appointment, i.e., on 23.07.1997 and pay him all mandatory benefits that he would be entitled to as a result of such regularisation. The said exercises will be completed within a period of twelve weeks from the date of receipt of a copy of this order."

7. The above decision is squarely applicable to the facts and circumstances of this case as in this case also though the petitioner was appointed in the post of Headmistress as early as on 09.02.1998 and she has completed five years of experience, she was belatedly sent for Child Psychology Training on 27.05.2005 and her appointment was approved with effect from 25.06.2005.

8. Following the order passed by this Court in J.Vijayasundar case (cited supra), the impugned order is set aside and the respondents are directed to regularize the service of the petitioner with effect from the date of his initial appointment ie., on 09.02.1998 and pay her all the service and monetary benefits that she would be entitled to as a result of such regularisation. The said exercise shall be completed within a period of twelve weeks from the date of receipt of a copy of this order.

9. This writ petition stands disposed of accordingly. No costs.

Sd/-

Assistant Registrar (crl side)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

gcb

To

1.The Secretary to Government of T.N.,
School Education Department,
Secretariate,

<https://hcservices.ecourts.gov.in/hcservices/>



2.The Director of Elementary Education,
Chennai -6.

3.The District Elementary Educational Officer,
Tirunelveli District,
Tirunelveli.

4.The Assistant Elementary Educational Officer,
Kadayanallur,
Tirunelveli District.

+1 CC to Mr.V.PANNEER SELVAM, Advocate (SR-105954[F] dated
19/12/2019)

+1 CC to SPL.GP (SR-106459[F] dated 26/12/2019)

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