



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 01.11.2019

CORAM:

THE HONOURABLE MR.JUSTICE S.S. SUNDAR

W.P. (MD) .No.15018 of 2014

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D.Kannan

.. Petitioner

Vs.

1.The Secretary to Government,
Education Department,
Fort St. George, Chennai - 600 009.

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

3.The Joint Director of School Education (Higher Secondary),
DPI Compound,
College Road, Chennai - 600 006.

4.The Chief Educational Officer,
Dindigul District, Dindigul.

.. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, for the issuance of Writ of Mandamus, directing the respondents herein to regularize the services of the petitioner as Full Time Vocational Instructor in the light of the G.O.Ms.No.35, dated 09.02.2007 in the Government Higher Secondary School, Nilakottai, Dindigul District by fixing the time scale of pay as applicable to the Full Time Vocational Instructors by considering the representation given by the petitioner, dated 16.09.2013, 19.03.2014 and 05.08.2014, within the time stipulated by this Court.

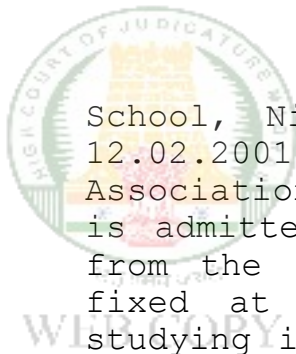
For Petitioner : Mr.J.Lawrance

For Respondents : Mr.N.Shanmuga Selvam
Additional Government Pleader

ORDER

This writ petition is filed for issuance of Writ of Mandamus directing the respondent to regularize the petitioner's service as full time Vocational Instructor, in the light of G.O.Ms.No.35, dated 09.02.2007, in the Government Higher Secondary School, Nilakottai, Dindigul District.

2.The petitioner was appointed as part time Vocational Instructor (General Machinist) in the Government Higher Secondary



School, Nilakottai, on temporary basis in a regular vacancy on 12.02.2001, pursuant to the resolution of the Parent Teacher's Association of Government Higher Secondary School, Nilakottai. It is admitted that the salary of the petitioner was originally paid from the Parent Teacher's Association fund and now the same was fixed at Rs.4,000/-, even though more than 100 students were studying in each of +1 and +2 classes in the School, in which the petitioner was appointed. Though the petitioner is working in the School from 2001, it is stated by the petitioner that his service was not regularized, despite the fact that 202 persons who were appointed as Vocational Instructor on temporary basis were regularized by the respondent on completion of ten years, by virtue of G.O.Ms.No.35, dated 09.02.2007.

3.The learned counsel for the petitioner further submitted that though the respondent regularized Several (202) Vocational Instructors vide G.O.Ms.No.35, who were appointed originally on temporary basis, failed to extend the benefit to the petitioner without any reason. The learned counsel for the petitioner relied upon several precedents. It is not necessary to refer to all those judgments except a few.

4.A batch of writ petitions were disposed of by a learned Single Judge of this Court in the case of **T.Devaraj Samuvel Vs. The Government of Tamil Nadu and others** in W.P.Nos.31021 to 31027 2015. When similarly placed persons challenging the order rejecting the representation of the petitioners therein for regularization of their service, the learned Single Judge of this court after referring to G.O.Ms.No.35, dated 09.02.2007, has held as follows:

"18.Once the Government thought fit to regularize all similarly placed Vocational Teachers under G.O.Ms.No.35, dated 09.02.2007 and the names of the petitioners found place in the list annexed to the said G.O., this Court does not see any iota of justification as to how these petitioners can alone be singled out from the benefit of regularization. The plea of the Government as conveyed through the learned Addl. Advocate General that after introduction of Section 14(A) of the Tamil Nadu Private Schools (Regulation) Act, the question of regularization of these petitioners does not arise, is nothing but a flimsy and specious argument and has to be rejected outright. Even assuming the argument can be advanced for the sake of resisting the claim of the petitioners, such argument deserves to be brushed aside, since that would only result in flagrant violation of Articles 14 and 16 of the Constitution of India as there cannot be any differential treatment in respect of same set of employees. In this case, it is more than demonstrated that the petitioners have been



similarly placed as that of other Vocational Teachers covered under G.O.Ms.No.35, dated 09.02.2007. Therefore, this Court does not see any semblance of legal basis for denying them the benefit of regularization.

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19. For the aforesaid reasons, this Court is of the considered view that these petitioners have made out a clear case for grant of relief as sought for. Accordingly, the Writ Petitions are allowed and the respective orders passed by the authorities, impugned in the Writ petitions, are hereby set aside. The respondents/competent authorities are directed to pass orders regularizing the service of the petitioners as Vocational Teachers as provided for under G.O.Ms.No.35, dated 09.02.2007 and grant all attendant benefits, viz., seniority and other monetary benefits. The direction of this Court shall be complied with, within a period of eight weeks from the date of receipt of copy of this order. No costs. Consequently, all connected MPs, are closed."

The position is reiterated by the Division Bench of this Court in few other cases.

5. The learned Special Government Pleader, however, would rely upon the counter affidavit filed by the respondent, wherein it is stated as follows:

"5. I submit that of G.O.Ms.No.35 reads that 44 single part time and double part time Vocational Instructors were appointed prior to 20.09.1996 and possessed requisite qualification to appoint as full time Vocational Instructor in a sanctioned post they were considered for regular service. It is pertinent to note that since the petitioner was appointed only on 12.02.2001, certainly the petitioner could not be rely upon G.O.Ms.No.35 for the reason that it relates to persons who were appointed prior to 20.09.1998 and further the petitioner had been appointed in a unsanctioned post. In addition to that I deny the averment of the petitioner in paragraph No.5 of the affidavit i.e., as per G.O.Ms.No.35 that his name is found in the remaining candidate list is totally an imaginary one and it is up to the petitioner to prove the same with the documentary evidence. I further deny the averment of the petitioner in paragraph No.6 that the said G.O.Ms.No.35 speaks about Vocational Instructors who were appointed from 01.06.2002 to 09.02.2007 are eligible for regularization is totally a misconceived one for the reason that the said G.O.



never speaks about the person appointed after 20.09.1996."

6.It is not in dispute that the petitioner's name was included in the Government Order. Though G.O.Ms.No.35 refers to the list of 622 persons, the regularization was not given to all those who are found eligible as per Government Order. Though the petitioner's name was also included, the benefit of regularization was given only to 213 persons. The contention of the respondent in para 5 of the counter affidavit that the Government Order is applicable only to those who are appointed prior to 20.09.1996 can not be accepted.

7.The learned Special Government Pleader then submitted that the post in which the petitioner was appointed in the year 2001 was not sanctioned and therefore, the petitioner is not entitled to the benefit of G.O.Ms.No.35, dated 09.02.2007. This contention appears to be factually incorrect. The petitioner produced records before this Court to show that the post of Vocational Instructor is a sanctioned post and that the petitioner was also appointed only against the vacancy which arose because of the retirement of the then incumbent. From the records, it is also revealed that two posts were kept vacant after the retirement of the then incumbents with effect from 01.06.1994 and 01.06.1998 respectively.

8.In view of the judgment of this Court in a similar case, this Court has no hesitation to hold that the petitioner is also entitled to the benefit in terms of the previous judgments of this Court in similar writ petitions filed by persons who are similarly placed.

9.Therefore, this writ petition is allowed and the respondents are directed to regularize the service of petitioner as full time Vocational Instructor in the light of G.O.Ms.No.35, dated 09.02.2007 and to grant all attendant and monetary benefits within a period of eight weeks from the date of receipt of the copy of this order. No costs.

Sd/-

Assistant Registrar(CS-III)

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Sub Assistant Registrar(CS)

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To

- 1.The Secretary to Government,
Education Department, Fort St. George,
Chennai - 600 009.
- 2.The Director of School Education,
DPI Compound, College Road,
Chennai - 600 006.
- 3.The Joint Director of School Education (Higher Secondary),
DPI Compound, College Road, Chennai - 600 006.
- 4.The Chief Educational Officer, Dindigul District, Dindigul.

+1CC TO MR.J.LAWRANCE, Advocate Sr. No. 95700
+1CC TO THE SPECIAL GOVERNMENT PLEADER SR.No. 96110

W.P. (MD) .No.15018 of 2014
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PK(CO)
TR(09.12.2019) 5P 7C