IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:06.03.2020

CORAM

THE HON'BLE MR.JUSTICE V.PARTHIBAN

W.P.NO.1162 OF 2020

G.Anbu Dhanasekari ...Petitioner

Vs.

1. The State of Tamil Nadu,
   Rep by the Secretary to Government,
   School Education Department,
   Secretariat, Chennai - 600 009.

2. The Director of School Education,
   Chennai - 600 006.

3. The Director of Elementary Education,
   Chennai - 600 006.

4. The Headmaster,
   Panchayat Union Elementary School,
   Chinna Negunam, Mailam Panchayat Union,
   Villupuram District.

...Respondents

Prayer:-

Petition filed under Article 226 of the Constitution of India praying to issue a writ of mandamus directing the respondents to regularize the service of the petitioner from the date of initial appointment, seniority and sanction the consequential monetory benefits by considering representation of petitioner dated 21.10.2019.

For Petitioner .. Mr.P.Ganesan

For Respondents.. Mr.S.Suresh Kumar
Government Advocate
(for R.1 to R.3)

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ORDER

The petitioner herein was appointed as B.T.Assistant. The 4th respondent/school in which the petitioner was employed, has sent a proposal to the Education Authority for grant of approval

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for his appointment in 2004. The Department in response to the request for approval forwarded by the 4th respondent/school, granted approval with effect from 16.04.2003 on a consolidated pay. Further proceedings were issued by the second respondent regularizing the time scale of pay with effect from 01.06.2006. Thereafter, the petitioner's services were regularized with effect from 01.06.2006 in the time scale of pay of Rs.5500-175-9000. The grievance of the petitioner herein is that she ought to have been regularized from the date of her entry to the service and for consequential benefits thereof.

2.Mr.P.Ganesan, learned counsel appearing on behalf of the petitioner would submit that the issue raised in this writ petition is squarely covered by the decision of the learned Single Judge of this Court in the case of T.Kunju Krishnan Vs. Government of Tamil Nadu & others in W.P.No.4991 of 2015 wherein the learned Single Judge has allowed the claim of similarly placed petitioners therein vide his order dated 30.07.2019. The learned counsel would draw the attention of this Court to the operative portion of the above order, which reads as follows;

> 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] 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

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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.

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

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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.

3.Another learned Single Judge of this Court has also allowed the similar claim in the case of S.Rajesh Kanna Vs.The State of Tamil Nadu vide order dated 27.11.2019. Therefore, he would request this Court to pass similar orders.

4.At this, Mr.S.Suresh Kumar, learned Government Advocate appearing on behalf of the respondents 1 to 3 would submit that as regards the first order of the learned Judge dated 30.07.2019 in W.P.No.4991 of 2020, the matter was taken on appeal and the Hon'ble First Bench of this Court vide its recent order dated 13.01.2020 has allowed the appeal filed by the Government in part. The Hon'ble First Bench of this Court has held that the petitioners were not entitled to monetary benefits from the date of their appointment and they are entitled only from the date of the order of regularization i.e., from 01.06.2006. Only to that extent, the order of the learned Single Judge was modified.

5.The learned counsel appearing on behalf of the petitioner would submit that in view of the modified order of the Hon'ble First Bench of this Court dated 13.01.2020 in W.A.No.3904 of 2019, he has approached this Court to pass orders in the present writ petition, in terms of the same.

6.Since, admittedly the issues raised in the present writ petition is fully covered by the decisions as stated supra and particularly the recent decision of the Hon'ble First Bench of this Court dated 13.01.2020 in W.A.No.3904 of 2019, the writ petition stands disposed of stating that the directions as

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issued by the learned single Judges of this Court as aforementioned will squarely apply to this petitioner as well, to the extent, the same is modified by the Hon'ble First Bench in its judgment in the above said Writ Appeal.

7.The respondents are directed to pass appropriate orders in terms of the above decisions within a period of eight weeks from the date of receipt of copy of this order.

8.Hence, the writ petition stands disposed of. No costs.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

mrm

To

1. The Secretary to Government,
   The State of Tamil Nadu,
   School Education Department,
   Secretariat, Chennai - 600 009.

2. The Director of School Education,
   Chennai - 600 006.

3. The Director of Elementary Education,
   Chennai - 600 006.

4. The Headmaster,
   Panchayat Union Elementary School,
   Chinna Negunam, Mailam Panchayat Union,
   Villupuram District.

+1cc to Mr.P.Ganesan, Advocate, S.R.No.20391

W.P.No.1162 of 2020

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