

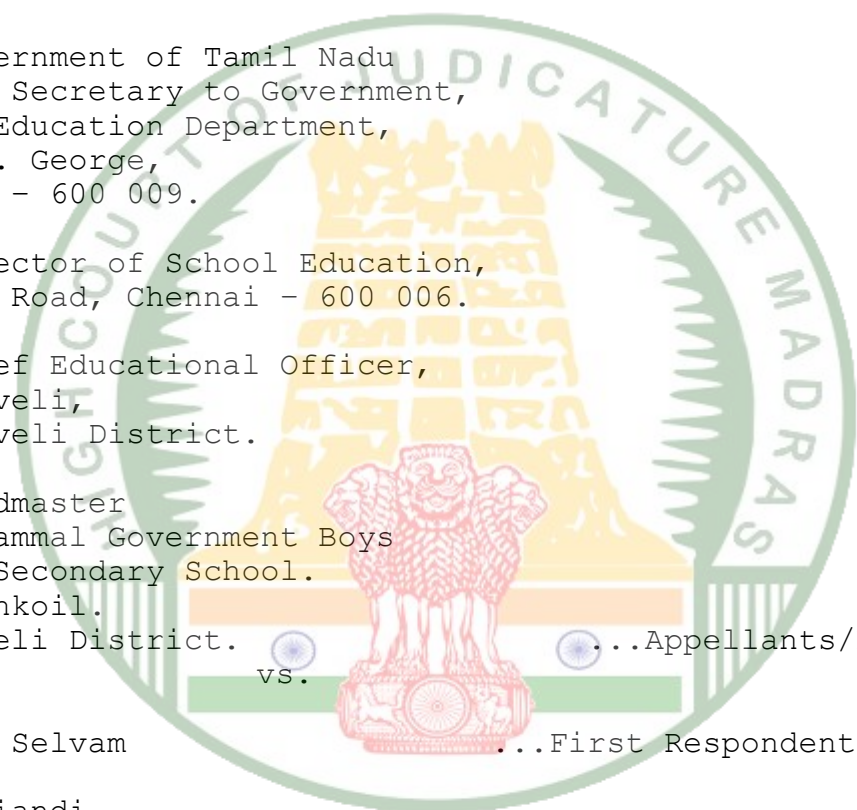
IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.12.2020

C O R A M

THE HON'BLE MR. A.P.SAHI, THE CHIEF JUSTICE  
AND  
THE HON'BLE MR. JUSTICE SENTHILKUMAR RAMAMOORTHY

W.A.NO.995 OF 2020

- 
- 1.The Government of Tamil Nadu  
Rep. by Secretary to Government,  
School Education Department,  
Fort St. George,  
Chennai - 600 009.
- 2.The Director of School Education,  
College Road, Chennai - 600 006.
- 3.The Chief Educational Officer,  
Tirunelveli,  
Tirunelveli District.
- 4.The Headmaster  
Gomathiammal Government Boys  
Higher Secondary School.  
Sankarankoil.  
Tirunelveli District.
- vs. ...Appellants/Respondents
- 1.S.Aruna Selvam ...First Respondent/Petitioner
- 2.A.Palaniandi.  
President,  
Parent Teacher Association,  
Government Boys Higher Secondary School,  
Sankarankoil, Tirunelveli District.
- 3.A.Ganesan  
Vocational Instructor,  
Government Boys Higher Secondary School,  
Sankarankoil, Tirunelveli District.

...Respondents 2 & 3/Respondents  
4 & 6

This Writ Appeal is filed under Clause 15 of the Letters of Patent to set aside the order dated 08.10.2018 made in W.P.No.16882 of 2007 and to allow the writ appeal.

W.P.No.16882 of 2007 PRAYER:

Writ Petition filed for issuance of a Writ of Certiorari Mandamus to call for the records of the first and second respondents issued in Letter.No.31464/VE/07-5, dated 07/05/2008 and in Na.Ka.NO.088309/VI/E/E1/07, dated 20/03/2008 respectively and to quash the same and to issue a consequential direction to the respondents to appoint the petitioner as Grade II vocational Instructor in the existing vacancies as per the G.O.M.S.No.35 dated 09/02/2007 by taking into Petitioner's service as a Past time vocational Instructor for a period from 15/07/98 to 15/02/2004 as per the Seniority in the Government Higher Secondary School with Service and monetary benefit.

|                 |   |                                                          |
|-----------------|---|----------------------------------------------------------|
| For Appellants  | : | Mr.C.Munusamy<br>Special Govt. Pleader                   |
| For Respondents | : | Mr.R.Saseetharan for R1<br>Mr.C.Prabakaran for R2 and R3 |

J U D G M E N T

SENTHILKUMAR RAMAMOORTHY J.,

This intra-court appeal is filed by the Government of Tamil Nadu to challenge the Order dated 08.10.2018 in W.P. No.16882 of 2008. The said writ petition was filed by the first Respondent herein to challenge the letters dated 20.03.2008 and 07.05.2008 of the first and second Appellants rejecting the request of the first Respondent for appointment and for a consequential direction to appoint the first Respondent/Petitioner as a Grade-II Vocational Instructor in the existing vacancies as per G.O. (Ms.)No.35, School Education (V.E.) Department dated 09.02.2007 (G.O. Ms. No.35).

2. The first Respondent/Petitioner holds a diploma in mechanical engineering. On 15.07.1998, he was appointed as a part time Vocational Instructor in general mechanics by the Parent Teachers' Association of Gomathiammal Government Boys Higher Secondary School at Sankarankoil, Tirunelveli District (the School). He worked as a part time Vocational Instructor from 15.07.1998 to 15.02.2004. According to the Petitioner, he was not provided employment as a part time Vocational Instructor from 16.02.2004 on the ground that the section relating to

general mechanics in the School had been wound up. Meanwhile, the School appointed the third Respondent herein as a Vocational Instructor in the available vacancy. On 09.02.2007, G.O. Ms. No.35 was issued. This G.O. provided for the appointment of 201 temporary part time teachers who were appointed by the parent teachers associations of various schools and were working continuously. Accordingly, the Director of School Education was permitted to appoint the said 201 fully qualified part time Vocational Teachers in the 201 vocational Grade-II vacant posts in a specified time scale as per the seniority specified in the Annexure of the Director of School Education letter dated 13.12.2006.

3. After G.O. Ms. No. 35 was issued, the first Respondent/Petitioner filed W.P. No. 29987 of 2007 and requested that he should be appointed as a Vocational Instructor in terms thereof. The said writ petition was disposed of by order dated 14.09.2007, whereby it was directed that the first Respondent should submit an application to the Government and that the said application should be disposed of within a period of four weeks from the date of receipt thereof. Pursuant to the said order, the first Respondent/Petitioner submitted an application and the said application was rejected by order dated 20.03.2008 on the basis that he worked as a Vocational Instructor from 15.07.1998 to 14.03.2004 and was not in service from 15.03.2004. Consequently, he was not serving continuously as on the date of issuance of G.O. Ms. No. 35. Therefore, there is no provision to grant appointment to the first Respondent/Petitioner in terms of G.O. Ms. No. 35. One more communication dated 07.05.2008, in this regard, was issued by the Secretary to the Government of Tamil Nadu to the first Respondent/Petitioner herein on 07.05.2008. Once again, the first Respondent/Petitioner was informed that the benefit of G.O. Ms. No. 35 is only available to persons serving continuously whereas the first Respondent/Petitioner did not serve after 14.03.2004. These two communications were impugned in the writ petition which resulted in the present appeal. The learned single Judge held that the first Respondent/Petitioner had a legitimate right to be considered to be absorbed as a teacher as per G.O. Ms. No. 35 and that the purpose of the said G.O. is to appoint Vocational Instructors who were employed by various parent teachers' associations. It was further held that the benefit of the Government Order could not be denied to the first Respondent/Petitioner merely because his services were discontinued. In addition, the learned single Judge relied upon the fact that similarly placed persons were given employment pursuant to the order dated 29.08.2008 in W.P. Nos. 20641, 21112, 21150 and 21159 of 2008. On that basis, the writ petition was allowed and the Appellants were directed to provide employment to the first Respondent/Petitioner by also protecting his seniority. The said order is impugned herein.

4. We heard Mr.C.Munusamy, the learned Special Government Pleader; Mr.R.Saseetharan for the first Respondent; and Mr.C.Prabakaran for the second and third Respondents.

5. Mr.Munusamy contended that the primary issue that arises for consideration is with regard to the scope and applicability of G.O.Ms.No.35. He invited the attention of the Court to paragraph 4 of the said G.O. and pointed out that it applies only to Vocational Teachers who were appointed by parent teachers associations' and were working in that capacity continuously as on the date of G.O. Ms. No.35. As regards the first Respondent/Petitioner herein, the admitted position is that he worked as a part time Vocational Instructor in general mechanics from 15.07.1998 to 15.02.2004. As such, on the date of issuance of G.O.Ms.No.35, there is no dispute that the first Respondent/Petitioner was not employed as a Vocational Instructor in the School. His second contention was that the first Respondent/Petitioner did not raise a grievance with regard to the discontinuation of his employment until G.O.Ms.No.35 was issued on 09.02.2007. Consequently, the rejection of the application of the first Respondent/Petitioner by communications dated 20.03.2008 and 07.05.2008 are valid and should not have been interfered with by the learned single Judge.

6. In response, the learned counsel for the first Respondent contended that the first Respondent/Petitioner admittedly worked as a part time Vocational Instructor between 15.07.1998 and 14.03.2004. He was ready and willing to continue work even thereafter but the Appellants herein refused to continue his employment on the ground that the post of Vocational Instructor in general mechanics was no longer required. As such, the first Respondent/Petitioner cannot be denied the benefit of G.O. Ms. No.35 by citing discontinuation of employment. He further submitted that the Headmaster of the School appointed the third Respondent herein as a Vocational Instructor in the post held previously by the first Respondent/Petitioner. Therefore, the first Respondent/Petitioner was constrained to file the writ petition. Mr.Saseetharan further contended that the learned Single Judge considered various judgments that were cited including judgments with regard to the interpretation of government orders. In particular, he pointed out that the learned single Judge took into consideration the judgment of the Hon'ble Supreme Court in The Commissioner of Income Tax v. Sri.J.H.Gotla (1985) SCC 343 to the effect that a strict and literal construction should not be adopted if it leads to absurdity. Instead, the G.O. should be interpreted in such manner as to do justice. Therefore, he submitted that the

impugned order of the learned single Judge is a well reasoned order, which is liable to be affirmed.

7. We considered the submissions of the learned counsel for the respective parties and examined the materials on record.

8. The dispute revolves around the interpretation of G.O.Ms.No.35. Therefore, it is necessary to set out the said Government Order, which is as under:

School Education (V.E.) Department

G.O.Ms.No.35

Dated 09.02.2007

Read:

1.G.O.(2D) No.46, School Education (V.E.) Department dated 12.09.2006

2.Director of School Education letter R.C.No.10568W26/4 dated 08.09.2006 and 13.12.2006.

Order:

It was announced during the school education department demand for grants for the year 2006-2007 that The Honourable Chief Minister of Tamil Nadu ordered that those fully qualified 230 part time vocational teachers who were appointed in Government and Government Aided Schools on purely temporary basis by the School Parent Teachers Association/School Management shall be appointed in the Government sanctioned vacant posts as per the seniority in the regular time scale of pay.

2. The Director of school education submitted the following proposal in connection with the above subject.

(I) In G.O.M.S.No.46 School Education dated 12.09.2006 it is ordered that 12 part time unqualified vocational teachers were inducted as Grade II vocational Teachers after giving short term training (i.e. date of passing the qualified exam) with effect from 08.12.99.

(II) At present 117 Grade I posts and 84 Grade II posts are vacant in Government and Government Aided Schools. When 117 teachers working as Grade II posts promoted and

appointed as Grade I teachers, then 201 Grade II posts shall be vacant.

(III) There are 622 Vocational teachers are working and are paid from the parent teachers association fund in the government unapproved posts. All these vocational Teachers are fully qualified. Among these 622 vocational teachers, 44 part time vocational Teachers who are appointed before 20.09.1996 but fully qualified after 20.09.1996 and double part time vocational teachers working in various schools are included.

3. The Director of School Education forwarded the proposal to appoint fully qualified part time teachers as Grade II vocational teachers in the time scale of pay of 4500-125-7000 in the 201 vacant posts as mentioned in above Para 2 (II).

4. The Government scrutinized thoroughly the proposal of the Director of School Education. The fully qualified 201 temporary part time teachers who are going to be appointed are not selected by Employment exchange and they were appointed by Parent teachers association and working continuously, hence community rotation cannot be followed in their cases. Even though they were fully qualified as prescribed in G.O.M.s.No.790 Personnel and Employment department dated 5.7.71 but appointed after 5.7.71 the Government relaxes the above G.O. and permits the Director of School Education to appoint those 201 fully qualified part time vocational teachers in the 201 vocational Grade II vacant posts in the time scale of pay 4500-125-7000 as per the seniority in the Annexure of the Director of School Education letter No.R.C.No.101568/w/26/04 date 13.12.2006. (emphasis added)

5. This order is issued with the concurrence of the finance department A.S.No.35/SS(Dr.KSG) /2007 dated 09.02.2007.

The portions of Paragraph 4 of G.O. Ms.35 in bold font specify that the Director of School Education was permitted by the said G.O. to appoint 201 fully qualified part time Vocational Teachers who had been appointed by the parent teachers' associations and were working continuously. Besides, it is also stated that the list of 201 part-time vocational instructions and their seniority is annexed to the letter dated 13.12.2006 of

the Director of School Education. In the case at hand, the undisputed fact is that the first Respondent/Petitioner worked between 15.07.1998 and 14.03.2004 and not thereafter. In the affidavit filed in support of the writ petition, he states that he was denied employment from 16.02.2004 onwards on the ground that the general mechanic section in the school had been wound up. In addition, he alleges that the third Respondent herein was appointed in his place by the Headmaster of the School. Consequently, he contends that he is not to blame for the discontinuation of his employment and, therefore, the benefit of G.O.Ms.No.35 should be extended to him.

9. As is evident from G.O.Ms. No.35, it permits the Director of School Education to appoint 201 part time Vocational Instructors who were working continuously as Vocational Instructors in the 201 Vocational Grade-II posts that were vacant at the relevant point of time on the specified time scale. In fact, the last sentence of paragraph 4 of G.O.Ms.No.35 also specifies that such appointment should be as per the seniority in the Annexure to the Director of School Education letter No.R.C.No.101568/W26/2004, dated 13.12.2006. From the aforesaid, it is abundantly clear that the benefit of G.O.Ms.No.35 was intended to be limited to 201 temporary part time teachers who were in service as on the date of the G.O.

10. Although the first Respondent/Petitioner has referred to the alleged representations dated 14.06.2004, 13.06.2005 and 12.06.2006 in the affidavit in support of the writ petition, these representations are not on record. Instead, the documents on record indicate that the first Respondent/Petitioner did not question the discontinuation of his employment in the year 2004 until G.O.Ms.No.35 was issued on 09.02.2007.

11. In addition, we find that the first Respondent/Petitioner was about 37 years old when the writ petition was filed in the year 2008. When the writ petition was decided in the year 2018, he was at least 47 years old. As on date, he would be about 50 years old. By the impugned order of the learned single Judge, the Appellants herein have been directed to appoint the first Respondent/Petitioner if vacancies existed at the time when the writ petition was filed in the year 2008 and also to protect his seniority based on his original appointment in the year 1988. In our view, this order is clearly unsustainable both in light of the fact that G.O.Ms.No.35 was intended for the benefit of part time Vocational Instructors who were in service continuously as on the date of the G.O.Ms.No.35, and also because it would be antithetical to the express language of G.O.Ms.No.35 with regard to the order of seniority as regards the 201 posts for which permission was granted to appoint teachers.

12. In arriving at the above conclusion, the learned single Judge has relied upon judgments to the effect that a strict and literal construction of government orders should not be resorted to if it leads to absurdity. Upon consideration of G.O.Ms.No.35, we find that the only plausible construction is that it applies to Vocational Instructors who were in service as on the date of the Government Order. Such interpretation does not result in absurdity and, on the contrary, is reasonable. For all these reasons, we conclude that the impugned order of the learned single Judge is not sustainable and is liable to be set aside.

13. In the result, the writ appeal is allowed and the impugned order dated 08.10.2018 of the learned single Judge is set aside.

Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

rrg

To

- 1.The Secretary to Government,  
The Government of Tamil Nadu  
School Education Department,  
Fort St. George,  
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- 2.The Director of School Education,  
College Road, Chennai - 600 006.
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Higher Secondary School.  
Sankarankoil.  
Tirunelveli District.

+1cc to Mr.C.Prabakaran, Advocate, S.R.No.38353  
+1cc to Mr.R.Saseetharan, Advocate, S.R.No.38470

W.A.No.995 of 2020

SSI(CO)  
KKV/22/12/2020