

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 27.11.2020

Pronounced on : 18.12.2020

CORAM :

THE HONOURABLE MR.JUSTICE V.PARTHIBAN

W.P.Nos.9555, 9559 & 8916 of 2019

1.C.Jothi ... Petitioner in W.P.No.9555 of 2019
2.N.Rajeswari ... Petitioner in W.P.No.9559 of 2019
3.R.Chitradevi ... Petitioner in W.P.No.8916 of 2019

-Vs-

1.The State of Tamil Nadu,
Rep by its Secretary to Government,
Education Department,
Secretariat, Chennai-9.
2.The Director of Elementary Education,
College Road, Chennai-06.
3.The District Elementary Educational Officer,
Nagapattinam District.
4.The Secretary,
Sivan Aided Elementary School,
Mamakudi,
Semabarnarkoil Union,
Nagai District. ... Respondents 1 to 4 in
Wps.9555/19,9559/19
R1&R2 in WP.8916/19

1.The District Elementary Education Officer,
Ariyalur District.
2.The Secretary,
Gandhi Kalanilayam Aided Middle School,
Veerakkan,Senthurai Union,
Ariyalur District.

.. Respondents in WP.8916/19
R3&R4

Prayer in W.P.No.9555 of 2019: Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus, directing the respondents 1 to 3 to extend the benefit of G.O.Ms.No.34, School Education (Ni.Va.2(1) Department dated 15.02.2017, to the petitioner in compliance

of the order passed in W.P.No.30137 of 2010 dated 29.12.2010 with regard to count the service of the petitioner as Secondary Grade Teacher from 07.12.1998 to 08.11.2007, in the fourth respondent school for pensionary and other service benefits, in the light of the G.O.Ms.No.413, dated 04.11.2010. Prayer in W.P.No.9559 of 2019: Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus, directing the respondents 1 to 3 to extend the benefit of G.O.Ms.No.34, School Education (Ni.Va.2(1) Department dated 15.02.2017, to the petitioner in compliance of the order passed in W.P.No.30143 of 2010 dated 29.12.2010 with regard to count the service of the petitioner as Secondary Grade Teacher from 05.03.2001 to 08.11.2007, in the fourth respondent school for pensionary and other service benefits, in the light of the G.O.Ms.No.413, dated 04.11.2010. Prayer in W.P.No.8916 of 2019: Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus, directing the respondents 1 to 3 to extend the benefit of G.O.Ms.No.34, School Education (Ni.Va.2(1) Department dated 15.02.2017, to the petitioner with regard to count the service of the petitioner as Secondary Grade Teacher from 25.11.1998 to 08.11.2007, in the fourth respondent school for pensionary and other service benefits, in the light of the G.O.Ms.No.413, dated 04.11.2010.

In all W.Ps

For Petitioners : Mr.S.N.Ravichandran

For Respondents : Mr.C.Munusamy, SGP

C O M M O N O R D E R

The issue raised in all the three writ petitions is common and identical and therefore, the writ petitions are disposed of by a common order as under.

2. These writ petitions are filed to direct the respondents 1 to 3 to extend the benefit of G.O.Ms.No.34, School Education (Ni.Va.2(1) Department dated 15.02.2017, to the petitioners in compliance of the order passed in W.P.Nos. 30137 & 30143 of 2010 dated 29.12.2010, in respect of the first and second petitioners, with regard to count the service of the petitioners as Secondary Grade Teachers from 07.12.1998, 05.03.2001, 25.11.1998 to 08.11.2007, in the fourth respondent school for pensionary and other service benefits, in the light of the G.O.Ms.No.413, dated 04.11.2010.

3. The service details of the respective writ petitioners are stated hereunder:

(i) The petitioner in W.P.No.9555 of 2019 was appointed as Secondary Grade Teacher on 07.12.1998 in the fourth respondent School which is an aided elementary school governed by the Tamil Nadu Private School Regulations Act. He was appointed against a sanctioned vacancy arose on account of

resignation of the earlier incumbent on 31.07.1997. Immediately, after the appointment of the petitioner on 07.12.1998, the School forwarded a proposal for approval to the third respondent. However, the proposal was returned rejecting to approve his appointment on the ground that his appointment was in violation of G.O.Ms.No.559 dated 11.07.1995, stating that the higher qualified persons like the petitioner, cannot be appointed in the secondary grade post in terms of the said Government Order. The petitioner was a qualified teacher with B.Ed qualification and was fully eligible to be considered for appointment to the post of Secondary Grade Teacher.

(ii) The petitioner in W.P.No.9559 of 2019 was appointed as Secondary Grade Teacher on 05.03.2001 in the fourth respondent School which is an aided elementary school governed by the Tamil Nadu Private School Regulations Act. She was appointed against a sanctioned vacancy arose on account of resignation of the earlier incumbent on 05.04.1998. Immediately, after the appointment of the petitioner on 05.03.2001, the School forwarded a proposal for approval to the third respondent. However, the proposal was returned rejecting to approve her appointment on the ground that her appointment was in violation of G.O.Ms.No.559 dated 11.07.1995, stating that the higher qualified persons like the petitioner, cannot be appointed in the secondary grade post in terms of the said Government Order. The petitioner was a qualified teacher with B.Ed qualification and was fully eligible to be considered for appointment to the post of Secondary Grade Teacher.

(iii) The petitioner in W.P.No.8916 of 2019 was appointed as Secondary Grade Teacher on 25.11.1998 in the fourth respondent School which is an aided elementary school governed by the Tamil Nadu Private School Regulations Act. She was appointed against a sanctioned vacancy arose on account of resignation of the earlier incumbent on 03.10.1996. Immediately, after the appointment of the petitioner on 25.11.1998, the School forwarded a proposal for approval to the third respondent. However, the proposal was returned rejecting to approve her appointment on the ground that her appointment was in violation of G.O.Ms.No.559 dated 11.07.1995, stating that the higher qualified persons like the petitioner, cannot be appointed in the secondary grade post in terms of the said Government Order. The petitioner was a qualified teacher with B.Ed qualification and was fully eligible to be considered for appointment to the post of Secondary Grade Teacher.

4. The grievance of the petitioners herein is that several teachers like them who were similarly aggrieved by the prohibition contained in G.O.Ms.No.559, dated 11.07.1995, approached in a batch of writ petitions before this Court and this Court by order dated 19.05.1998 dismissed the writ petitions holding that there was nothing wrong with the prohibition contained in the said Government Order. As against

that, W.A.Nos.991 to 998 of 1998, were filed and the learned Division Bench of this Court by order dated 29.06.2001, upheld the Government Order as valid and however, given a direction to approve the appointments made from 11.07.1995 to 19.05.1998 on a condition that those appointees need to undergo one month child psychology training.

5. Pursuant to the order of the learned Division Bench, the Government issued G.O.Ms.No.155, School Education (D2) Department, dated 03.10.2002 and directed to approve the B.Ed qualified teachers appointed against regular sanctioned posts of secondary grade up to 19.05.1998, on completion of one month child psychology training. Based on the said Government Order, the teachers who were covered during the said period were sent for one month training and on completion of the training, their appointments subsequently came to be approved in 2003, in the regular time scale.

6. According to the petitioners herein, though they were similarly placed like the other teachers who are covered under G.O.Ms.No.155 dated 03.10.2002, the petitioners and 21 others were not considered for extension of the benefit of the said Government Order only on the ground that their appointment was after the cut off date i.e., 19.05.1998. At this, an Association representing the interest of the teachers, submitted a memorandum to the Government seeking extension of the benefit of G.O.Ms.No.155 dated 03.10.2002, in respect of the teachers appointed upto the order of the learned Division Bench dated 29.06.2001. In response to the memorandum, the Government subsequently issued G.O.Ms.No.150 dated 02.07.2007, extending the benefit contemplated in G.O.Ms.No.155 dated 03.10.2002 to the 22 teachers for approval of their appointment. The petitioners are among the 22 teachers covered under the subsequent G.O.Ms.No.150 dated 02.07.2007, as their appointment was much before 29.06.2001, the date of the order in W.A.Nos.991 to 998 of 1998.

7. In pursuance of the subsequent Government Order, the petitioner and others had been sent for the child psychology training and eventually their appointments have been approved by the third respondent vide proceedings dated 04.12.2007 with effect from 09.11.2007. In so far G.O.Ms.No.155 dated 03.10.2002 is concerned, apart from the issue of approval, it contemplated certain recoveries from the Teachers and aggrieved over the same, several writ appeals were filed in W.A.Nos.249, 282 and 448-452 of 2002 etc. The Division Bench of this Court by order dated 02.04.2004, while upholding the action of the Government, has however held that the past service of the teachers for pensionary benefits to be counted. The petitioners herein being appointed as a secondary grade teachers with effect from 07.12.1998, 05.03.2001, 25.11.1998 respectively, they became entitled to count their services from the said date in terms of the ruling of the learned Division Bench of this Court for their pensionary benefits.

8. In the meanwhile, the Government has also issued G.O.Ms.No.430, dated 06.08.2004, granting the benefit of counting of service for the teachers for the purpose of pension who are covered under G.O.Ms.No.155 dated 03.10.2002.

9. At this, The petitioners submitted their representations seeking extension of the same benefit to them also. Since the representations were not considered, the first and the second petitioners filed W.P.Nos.30137 and 30143 of 2010. This Court by order dated 29.12.2010, directed the competent authority to consider the representations submitted by the first and second petitioners, in terms of the learned Division Bench ruling, holding that the past service shall count for pension and also in terms of G.O.Ms.No.430 dated 06.08.2004, within a period of eight weeks from the date of receipt of a copy of that order. However, despite the direction issued by this Court way back in 2010, till date, the same has not been complied with.

10. In the meanwhile, one Mr.Sampasivam and Mr.Jayapal who were also covered like the petitioners under G.O.Ms.No.150 dated 02.07.2007 and whose appointments were also approved and not being granted the benefit of counting of past service for pensionary purpose, they approached this Court in W.P.Nos.29163 & 29164 of 2010 and the said writ petitions were disposed of on 22.10.2010, directing the authority to pass orders in terms of the learned Division Bench ruling and also G.O.Ms.No.430 dated 06.08.2004. As against that, the Government filed writ appeal with an extraordinary delay and the learned Division Bench of this Court vide order dated 12.02.2015, rejected the writ appeal in W.A.SR.No.111277 of 2013. After the dismissal of the unnumbered writ appeal, the Government ultimately passed G.O.Ms.No.34 dated 15.02.2017, extending the benefit of old pension scheme to Mr.Sampasivam and Mr.Jayapal, by including the period of service from the initial date. However, though the petitioners were also identically placed like them, they were not extended the benefits.

11. According to the petitioners, number of representations have been submitted in this regard, but the authorities have not chosen to respond to the representations positively and they have also not chosen to implement the direction of this Court passed in the writ petitions in W.P.Nos.30137 and 30143 of 2010 dated 29.12.2010. Therefore, the petitioners are before this Court once again.

12. The above factual narrative is not in dispute as it could be seen in the counter affidavit filed on behalf of the third respondent. The details of appointment, approval and all the connected facts and the issuance of various Government Orders referred to above are all being matters of record are beyond the pale of any dispute or doubt. However, what

ultimately is to be considered in these writ petitions is whether the direction as prayed in the writ petitions could be issued by considering the past development in favour of the petitioners herein or is there any legitimate and valid objections from the official respondents in denying parity of treatment to these petitioners in the circumstances of the case.

13. The detailed individual counter affidavits have been filed in the writ petitions. In the counter affidavits, some decisions have been extracted for resisting the claim of the petitioners herein. After perusal of the gist of the orders passed by the various Courts as disclosed in the counter affidavits, it could be seen that those decisions have no application to the present claim of these petitioners. This is for the simple reason that the claim of the writ petitioners herein is squarely covered by the decision of the learned Division Bench of this Court in W.A.Nos.249, 282 etc of 2002 batch dated 02.04.2004. In consideration of G.O.Ms.No.155 dated 03.10.2002, in paragraph No.8, the following observations were made by the learned Division Bench of this Court, which is extracted hereunder:

"8. Their right to be regarded as persons eligible for confirmation/approval can be said to arise only after they acquired, after their training, a minimum prescribed qualification. The Government here has shown great concession to them by allowing them to retain their position even without obtaining the requisite diploma or certificate in child psychology by giving to them training in child psychology. We see nothing wrong in the Government directing that their approval/confirmation can only be on and after the date they complete the training. Their past service however shall count for pension."

14. The fact of the matter is that approval has been granted to the appointments of the teachers under G.O.Ms.No.155 dated 03.10.2002, between the period from 11.07.1995 to 19.05.1998 and by the subsequent G.O.Ms.No.150 dated 02.07.2007, the benefit of G.O.Ms.No.155 dated 03.10.2002 was extended to the left out teachers who had been appointed upto the date of the writ appeal judgment in W.A.Nos.991 to 998 of 1998 batch dated 29.06.2001. Earlier, the Government had issued G.O.Ms.No.430 dated 06.08.2004, granting the benefit of past service for the purpose of pensionary benefits in terms of the observations of the learned Division Bench in paragraph No.8, as extracted above, however, while extending the counting of past service, the Government has failed to include the left out 22 teachers including the petitioners herein, unfortunately.

15. But, in any event, subsequently, when two teachers approached this Court viz., Mr.Sampasivam and Mr.Jayapal in

W.P.Nos.29163 and 29164 of 2010, this Court has given a direction on 22.10.2010, to consider their claim for counting of their past service and against which, writ appeals were filed by the Government with the condonation of delay, however, the same was dismissed by the learned Division Bench of this Court, refusing to condone the delay pleaded by the Government. Thereafter, the Government was constrained to issue G.O.Ms.No.34 dated 15.02.2017, in respect of those two teachers by bringing them under the purview of old pension scheme, by extending the benefit of past service. While implementing the direction of this Court, in respect of the said two teachers, vide G.O.Ms.No.34 dated 15.02.2017, in all fairness, the Government could have included the claim of the petitioners herein as well. This is particularly so, when a specific direction has been issued by this Court in respect of the petitioners' claim in W.P.Nos.30137 & 30143 of 2010, by order dated 29.12.2010. The direction in paragraph Nos.3 and 4 are extracted hereunder:

"3. The issue involved in this case is covered in the earlier order dated 23.04.2008, passed by this Court in W.P.Nos.26933 and 26934 of 2007 (S.A.L.J.Pushpam and others Vs.The Government of Tamil Nadu, represented by its Secretary, Finance (Pension) Department and others). The relevant portion of the above order is extracted below:-

"7. The petitioners' appointment were approved as Secondary Grade Teachers from the date of completion of one month training and they are getting time scale of pay. The petitioners' services prior to their approval of appointment, is to be counted for pension purposes, as per the Division Bench Judgment reported in 2004 (2) Law Weekly 591, affirmed by the Supreme Court. For proper appreciation, the relevant portion of the judgment of the Division Bench is extracted hereunder:

"7. So far as the approvals/confirmation is concerned, Government was not under any duty to approve or confirm the appointment of appellants/petitioners who did not possess the qualifications prescribed when, they were improperly appointed to the posts. Their position cannot be equated to that of those who possess the qualification and had been duly appointed. Their remaining in their post was only by reason of a sympathetic view taken by the Division Bench which had upheld the Government Order which had directed that persons with B.Ed. Qualification are not to be appointed in Secondary Grade Vacancies.

8.Their right to be regarded as persons eligible for confirmation/approval

can be said to arise only after they acquired, after their training, a minimum prescribed qualification. The Government here has shown great concession to them by allowing them to retain their position even without obtaining the requisite diploma or certificate in child psychology by giving to them training in child psychology. We see nothing wrong in the Government directing that their approval/confirmation can only be on and after the date they complete the training. Their past service however shall count for pension"

8. In the light of the above undisputed facts and the order of Division Bench having become final due to the dismissal of Civil Appeals on 13.03.2008, the petitioners are entitled to get their pension and other benefits as per the then prevailing Tamil Nadu Pension Rules, 1978. There is no dispute that the petitioners were appointed in Secondary Grade Teacher vacancies in sanctioned posts in aided schools before 01.04.2003. The Government Order dated 06.08.2004, specifically states that persons appointed/recruited after 01.04.2003, are not governed under the Tamil Nadu Pension Rules, 1978 and will be governed under the new scheme. The petitioners having been appointed prior to 19.05.1998 all the petitioners are given 'Child Psychology Training' in terms of G.O.Ms.No.155, Education dated 03.10.2002. Hence, G.O.Ms.No.155, Education dated 03.10.2002. Hence G.O.Ms.No.430, Finance dated 06.08.2004, cannot be applied to the petitioners. The learned counsel for the petitioners submits that the petitioners will be satisfied if the petitioners are given the relief of Pension Scheme applicable prior to 01.04.2003 and the G.O.Ms.No.430, Finance (Pension) Department dated 06.08.2004, need not be quashed.

9. In view of the said submission, it is ordered that the petitioners are to be extended the pension scheme applicable to the Teachers appointed prior to 01.04.2003 and they are not governed under G.O.Ms.No.430, Finance (Pension) Department dated 06.08.2004. If the pensionary contributions if any, payable by the petitioners as per Tamil Nadu Pension Rules, 1978 are not paid till date by the petitioners, it is open to the respondents

to claim the same from the petitioners. The writ petitions are ordered in the above terms. Consequently, connected miscellaneous petitions are closed. No costs."

4. In view of the same, the respondents 1 to 3 are directed to consider the representation of the petitioner dated 24.12.2010 in the light of the above said paragraphs and pass appropriate order extending the Pension Scheme not as per G.O.Ms.No.430, Finance (Pension) Department dated 06.08.2004, but in terms of paragraph No.9 of the above said order and such order shall be passed within a period of eight weeks from the date of receipt of a copy of this order."

16. But, unfortunately, a direction issued in 2010 has still not been complied with, forcing these petitioners to come to this Court once again. The first petitioner, in the meanwhile has also reached the age of superannuation and retired from service in 2019. From the above, it could be seen that the petitioners' entitlement to be admitted in the old pension scheme on the basis of counting of their past service is no more res integra, as far as these writ petitioners are concerned. When the petitioners are identically placed as that of Mr.Sampasivam and Mr.Jayapal, without any iota of difference in their claim, the resistance put up by the respondents, has to necessarily be discountenanced both in law and on facts.

17. As stated above, in the counter affidavits, some decisions have been cited as if the issue in these writ petitions must receive fresh consideration and therefore, to be guided by the decisions extracted in the counter affidavits. This Court is unable to appreciate as to the basis of such contention by the respondents in the teeth of the claim of the petitioners herein being squarely covered by the earlier decision of the learned Division Bench of this Court and also the learned Single Judge, as referred to above. When these petitioners are armed with the orders in their favour and the Government itself thought fit to issue G.O.Ms.No.430, dated 06.08.2004 and also subsequent G.O.Ms.No.34 dated 15.02.2017, it does not lie in the mouth of the Government to oppose the claim of the petitioners in these writ petitions. In the opinion of this Court, it is unfortunate that the authorities concerned have been successfully dragging their feet for no valid reasons in not acceding to the claim of the petitioners till date.

18. In fact, with reference to the earlier Division Bench order and also the learned Single Judge order and the Government Orders referred to above, there cannot be two opinions that it is an open and shut case for the petitioners and in that circumstances, this Court has no hesitation in allowing all the writ petitions.

19. Therefore, the writ petitions are allowed and the respondents 1 to 3 are directed to extend the benefit of G.O.Ms.No.34, School Education Department, dated 15.02.2017, by counting the petitioners' past service for the purpose of pensionary benefits with all consequential benefits arising there of. The respondents are directed to pass appropriate orders in this regard, within a period of eight weeks from the date of receipt of a copy of this order. No costs.

20. It is also clarified that in case any amounts have been settled, by considering the petitioners under Contributory Provident Scheme (CPF), the authorities are at liberty to pass appropriate orders for adjustment of the amounts already settled and any book adjustments to be made in that connection, the same shall be resorted to in admitting the claim of these petitioners to the old pension scheme.

Sd/-

Assistant Registrar(insp cell)

//True Copy//

Sub Assistant Registrar

gsk
To

- 1.The State of Tamil Nadu,
Rep by its Secretary to Government,
Education Department,
Secretariat, Chennai-9.
- 2.The Director of Elementary Education,
College Road, Chennai-06.
- 3.The District Elementary
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Gandhi Kalanilayam Aided Middle School,
Veerakkan, Senthurai Union,
Ariyalur District.

+3ccs to Mr.S.N.Ravichandran , Advocate SR.No. 42066,42062

+1 cc to Government Pleader Sr.No. 42273

W.P.Nos.9555, 9559 & 8916 of 2019