

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 25.09.2020

PRONOUNCED ON : 28.10.2020

CORAM

THE HONOURABLE THIRU JUSTICE V. PARTHIBAN

W.P.No.11017 of 2020

&

W.M.P.No.13400 & 13402 of 2020

G.L.Gracy

... Petitioner

.Vs.

1. The Director,
State Council of Educational and Research Training,
Tamil Nadu, (TNSERT),
DPI Compound, College Road,
Chennai-600 006
2. The Joint Director,
State Council of Educational and Research Training,
Tamil Nadu, (TNSERT),
DPI Compound, College Road,
Chennai-600 006
3. The Principal,
District Institute of Education and Training,
(DIET), Kaliyampoondi,
Kanchipuram District-603 402
4. The Correspondent,
Gnanodhya Teacher Training Institute,
No.1/60, Polwells Road, St Thomas Mount,
Chennai-600 016

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus to call for the records relating to the order of the third respondent made in Na.Ka.No.254/A7/2000 dated 20.05.2020 to quash the same and to consequently direct the respondents 1 to 4 to forthwith approve the appointment of the petitioner as Junior Assistant w.e.f. 04.01.1999 and to extend all benefits including arrears of wages, revision of

respective pay scales, retiral benefits, pension and other pensionary benefits.

For Petitioner : Mr.L.Chandra Kumar

For Respondents 1 to 3 : Mr.P.Raja, GA

For R4 : Mr.Father Xavier Arul Raj, SC
Assisted by M/s.A.Arul Mary

ORDER

The matter is taken up through web hearing.

2.The writ petition is filed by the petitioner, seeking the following prayer:

"to issue a Writ of Certiorarified Mandamus to call for the records relating to the order of the third respondent made in Na.Ka.No.254/A7/2000 dated 20.05.2020 to quash the same and to consequently direct the respondents 1 to 4 to forthwith approve the appointment of the petitioner as Junior Assistant w.e.f., 04.01.1999 and to extend all benefits including arrears of wages, revision of respective pay scales, retiral benefits, pension and other pensionary benefits"

3.The facts which gave rise to the filing of the present Writ Petition are stated hereunder:

3.1. The petitioner was initially appointed as Clerk/Librarian in-charge by the 4th respondent school on 10.03.1998. According to the 4th respondent school, she was appointed in the sanctioned regular retirement vacancy subsequently as Junior Assistant w.e.f. 04.01.1999 and on the very date, according to the petitioner, 4th respondent school submitted a proposal to the 2nd respondent for grant of approval. However, for some reason or the other, the approval sought by the 4th respondent school had been kept pending before the Education Authority. While so, after the serving school as Junior Assistant for 14 years, the petitioner reached the age of superannuation on 30.04.2013 and stood retired.

3.2. After retirement of the petitioner on 30.04.2013, finally, approval was granted vide impugned order dated 20.05.2020 with effect from 14.03.2013 to the appointment of the petitioner as Junior Assistant. As a consequence of the approval, the regular time scale was made applicable to the petitioner for a period of 48 days only and the same was directed to be granted and extended. Challenging the approval granted to the petitioner's appointment only with effect from

14.03.2013 till 30.04.2013, and not from the date of her initial appointment, i.e. from 04.01.1999, present Writ Petition is filed.

4. Mr.L.Chandra Kumar, learned counsel for the petitioner would submit that when the approval was granted by the Education authority in 2020, the benefit of the said approval must relate back to the date of initial appointment of the petitioner. The petitioner herein is concerned, was regularly appointed with effect from 04.01.1999 against sanctioned and retirement vacancy available in the 4th respondent school. He would submit that there were several litigations in relation to the management and control of the 4th respondent school at the instance various parties seeking control over the management and the running dispute was pending before various Courts for years. In view of the long pendency of the dispute as to who has to control and manage the school, the petitioner's approval was not pursued by the school promptly. However, when the approval fructified finally in 2013, it so happened the petitioner reached the age of superannuation and retired from service on 30.04.2013.

5. The impugned order which was passed on 20.05.2020 has restricted the benefit of the approval only for a period of 48 days, regarding the appointment of the petitioner from 14.03.2013 and till her retirement on 30.04.2020. The petitioner was therefore left in the lurch and no other benefit was made available wiping out the entire service of 14 years of the petitioner. The learned counsel would submit that the reasons set forth in the impugned order that her working attendance in the school as Junior Assistant was shown only from 01.06.2006 and there was no material to show that she had worked as Junior Assistant from 04.01.1999 till 31.05.2006. Moreover, it was stated that there was a ban in recruitment from 2001 and therefore her appointment even otherwise was not in order. After lifting of the ban, the proposal was considered and finally, approval was granted and put into effect from 14.03.2013.

6. Mr.L.Chandra Kumar, learned counsel would submit that the reasons as set forth above cannot be countenanced for the simple reason that the appointment of the petitioner was earlier to the ban which was imposed from 2001. Moreover, the attendance issue sought to be raised against the petitioner is also contrary to the school records.

7. Notice was ordered in the Writ Petition and Mr.P.Raja, learned Government Advocate entered appearance for the official respondents and a counter affidavit has been filed. On behalf of the 4th respondent's school Mr.Father Xavier Arul Raj, learned

Senior Counsel appeared. The school has also filed a detailed affidavit along with documents.

8. In the counter affidavit filed on behalf of the school, it has been categorically stated that the petitioner was appointed as Junior Assistant with effect from 04.01.1999 against the sanctioned and regular retirement vacancy and on the same day, a proposal was submitted to the education authority and thereafter, the Management re-submitted the proposals on several occasions, viz., 14.02.2000, 21.02.2000, 07.06.2020, 24.11.2000, 17.02.2001, 09.04.2001, 11.06.2001, 09.04.2003, 14.12.2007, 08.08.2008, 26.09.2010 and 03.06.2013. According to the averments of the management, there was no communication from the education authorities in response to the repeated proposals submitted on the above dates.

9. It is further averred in the counter affidavit filed on behalf of the management that due to civil disputes among the members of the management, the records could not be accessed for a considerable period of time, but however, the fact of the matter is that the petitioner had worked continuously in the sanctioned vacancy from 04.01.1999 and till her retirement in April 2013.

10. Mr. Father Xavier Arul Raj, learned Senior counsel appearing for the fourth respondent school submitted that the issue of regularization from the date of initial appointment of the aided school staffs is no more res integra, as this Court in more than 100 cases, has held that once the approval is granted, it should relate back to the date of initial appointment. The learned counsel would submit that he could cite several orders which cannot be disputed by the official respondents. In fact, the learned Senior counsel would particularly refer to a decision reported in "2008 (5) CTC 648 (Thiruvalluvar Higher Secondary School, rep. by the Secretary versus the Government of Tamil Nadu, rep. by its Secretary, Department of School Education)" rendered by a learned Single Judge of this Court as he then was. In the said judgment, the learned Judge has referred to several orders of Division Benches and also the orders of learned Single Judges and held that the approval by the education authority would enure to the benefit of the employee concerned from the date of his/her initial appointment. The learned Senior counsel apart from the legal contention would also rely on the attendance Register maintained by the school to substantiate the claim of the petitioner herein and also the stand of the school that the petitioner has been regular in attendance as Junior Assistant from 04.01.1999 till the date of her retirement.

11. On behalf of the official respondents, a counter

affidavit filed and Mr.P.Raja, learned Government Advocate appeared for them. As far as the officials respondents are concerned, it is stated that permission was granted only by G.O.Ms.No.40 School Education (U2) Department, dated 14.3.2013 to fill up vacancies of non-teaching staff in the aided institutions and in terms of the said Government Order, an approval was granted and the approval will take effect only from the date of the Government Order and not from the date of initial appointment which was made without proper permission from the authority. According to him, the appointment of the petitioner was against the orders of the Government and therefore, that appointment cannot be regularized at all. Therefore, the benefit of regularization was only restricted from 14.03.2013 and till the date of retirement of the petitioner i.e., on 30.04.2013. In the circumstances, he would submit that the relief as claimed by the petitioner is therefore, devoid of merits.

12. At this, the learned Senior Counsel for the school would submit that the issue of seeking permission for filling up of the non-teaching post is also no more res integra as no permission is required under the statutory regularization for filling up of the non-teaching staff in the minority institutions. Therefore, the contention in this regard is liable to be rejected outright. The learned Senior counsel appearing for the schools would further submit that there are number of decisions rendered by this Court discountenancing such contentions repeatedly that no permission is required at all for filling up the posts of non-teaching in the minority institutions under the school regulations. In fact, the learned Senior counsel for the petitioner would refer to an order of this Court passed on 16.08.2019 in WP.No.17511 & 17518 of 2019, wherein, similar objections were raised and the same were discountenanced by this Court. He would refer to the relevant observations as found in paragraphs 10 to 12, which are extracted as under:

"10.This Court is unable to appreciate as to how despite the settled legal principle in respect of the Minority institutions, the Educational authorities can insist upon certain requirements as provided for in the Tamil Nadu Private Colleges (Regulation) Act 1976 and Rules. When the Minority Institution enjoys a complete protection under Article 30 of the Constitution of India, such protection cannot be trifled with by the Educational authorities by insisting on application of certain requirements provided under the Act and Rules, which provisions cannot be applied to the Minority Institutions. In fact, in respect of appointment of non-teaching staff, requirement of advertisement was

not envisaged in the Rules and such requirement cannot be supplemented by any executive action of the respondents. Unless the Rules are supplanted providing for such requirement, the Educational authorities cannot insist on the same, which is not found specifically in the Rules. Even otherwise, such requirement, even if introduced in the Rules, cannot be pressed into service in respect of minority institutions.

11.As rightly contended by the learned Senior counsel for the petitioner Rule 11(4)(ii) was in relation to the appointment of teaching staff by the College Committee. But as far as the Minority Institutions are concerned, the College Committee is not required to be constituted under Section 11 of the Act unlike in respect of the institutions not being Minority institutions. In the absence of such regulation, this Court is unable to countenance the action of the respondents 2 and 3 in refusing to grant approval of the appointments of the seven non-teaching staff in the petitioner institution. The refusal to grant approval for the subject appointments, would therefore, cannot stand the test of judicial scrutiny and the same is liable to be interfered with. The insistence on requirement of advertisement for appointment of non-teaching staff in the Minority Institution is without the authority of law and the same cannot be enforced as against the petitioner institution. The petitioner institution comes under the protective cover, being the minority institution, under Article 30 of the Constitution of India, such protective cover cannot be sought to be uncovered by the insistence on a statutory requirement, which first of all cannot be made applicable for the non-teaching staff and secondly such requirement cannot be enforced in the teeth of the Constitutional protection guaranteed to the minority institutions. In fact, the claim of the petitioner is fully covered by the decisions of the Hon'ble Supreme Court of India, cited above.

12.For the above said reasons, this Court has no hesitation in allowing the writ petitions. Accordingly, the writ petitions are allowed and the impugned orders of the third respondent in A.Thi.Mu.No.2684/Aa3/2018, dated 20.08.2018 and A.Thi.Mu.No.274/Aa3/2018, dated 20.08.2018, respectively, are hereby set aside and the third respondent is directed to grant approval forthwith

for the appointments of the seven non-teaching staff as well as the appointment of Sr.A.Sippriyan Mary as Lab Assistant in the petitioner's College and also disburse staff grant towards their salary and allowances with respect to their respective date of appointments. The third respondent is directed to pass appropriate orders in this regard within a period of four weeks from the date of receipt of a copy of this order. No costs. Consequently connected miscellaneous petitions are closed."

13. Recently, the first Bench of this Court in W.A.No.4011 of 2019 dated 11.02.2020 upheld the similar decision of a learned Judge of this Court and the observations of the Division Bench from paragraph nos.6 & 7 are extracted hereunder:

"6. We have considered the submissions raised and we find that the provisions of Rule 15(4) of the 1974 Rules, does not specify the applicability of the Rule of prior permission in relation to the appointment of a non-teaching staff of an Aided High or Higher Secondary School. In the instant case, the issue is about the appointment of a Lab Assistant, which is admittedly a non-teaching post. We, therefore, find that in the absence of any such specific intention in the Rule, to apply the same for seeking a prior permission to appoint a non-teaching staff would be contrary to the ratio of the judgment in the case of R.Kuttiswamy (supra) as relied on by the respondent that is squarely applicable. We see no reason to differ from the view taken therein in relation to appointments against non-teaching posts that have been made prior to the issuance of G.O.Ms.No.101 dated 18.05.2018. The judgment in the case of The Director of Elementary Education and others Vs. P.Manikandan and another (supra) was in relation to the appointment of a teacher and not a non-teaching staff. The ratio thereof is, therefore, distinguishable and not applicable in the present case. Accordingly, no prior permission was required in the present case for appointing the respondent/writ petitioner as a Lab Assistant.

7. In the wake of the aforesaid conclusion having been arrived at, it is not necessary for us to enter into the other questions raised on behalf of the State, inasmuch as the finding recorded by the learned Single Judge on facts with regard to the appointment of the respondent having been made on 26.02.2018, remains undisputed. We further find that the said appointment had been put into

process that was returned for completion of certain formalities on 13.04.2018 by the concerned official and this transaction was obviously prior to the issuance of G.O.Ms.No.101 dated 18.05.2018. The same was resubmitted on 03.07.2018 and therefore, it was not a transaction that could be said to be covered by the Government Order dated 18.05.2018. Consequently, the order dated 24.07.2018 passed by the District Educational Officer, in our opinion, has been rightly quashed. The respondent was, therefore, entitled to all the benefits as have been extended by the learned Single Judge. There is no merit in the appeal, which is accordingly rejected. No costs. Connected civil miscellaneous petition is closed."

14. Therefore, the objections raised on behalf of the official respondents have no legal legs to stand on.

15. This Court has considered the rival submissions of the learned counsels and perused the materials available on record.

16. From the appended judgments and cited judicial principles, there cannot be any two opinions about the legal position that the issues raised in this Writ Petition are no more open for adjudication. In order to appreciate the said aspect, relevant portion as found in paragraphs 4 to 6 from the decision reported in (2008) 5 CTC 648 (cited supra) rendered by a learned Judge of this Court as he then was, is extracted hereunder:

"4. Similar issue as to whether after lifting of the ban, approval of appointment of a person appointed in a non-teaching post in an aided school can be kept pending and whether the said person is entitled to get salary at least from the date on which the ban order was lifted, was considered by me in W.P. (MD) No. 484 of 2007 by order dated 30.10.2007 and I have allowed the writ petition and in paragraphs 19 and 20, held as follows:

"19. Similar ban order issued by the Department on the ground that new norms are contemplated and pending the same no appointment in aided schools are to be made was set aside by this Court in W.P. No. 10237 of 1994 by order dated 16.8.1999. Since the petitioner was appointed from 5.6.2002 and he is continuously working in the sanctioned post, the respondents may be

justified in not approving the appointment of the petitioner from 5.6.2002 to 6.2.2006. The petitioner has got a right to get his appointment approved, once the ban order is lifted. Admittedly, the ban order imposed, not to fill up the posts, was lifted on 7.2.2006. He the petitioner has got every right to get his post approved with salary and other benefits with effect from 7.2.2006. Once the ban order is lifted the provisions contained in Rule 15(1) and (3) of the Tamil Nadu Recognized Private Schools (Regulation) Act, 1973, comes into operation and the petitioner is deemed to be appointed on regular basis, as he was appointed within the sanctioned post in the fourth respondent-school.

20. For all the reasons stated above, the impugned orders are set aside with a direction to the respondents to approve the appointment of the petitioner as Lab Assistant with effect from 7.2.2006. The third respondent is directed to pass orders approving the appointment of the petitioner with effect from 7.2.2006 and pay arrears of salary from 7.2.2006 within a period of four weeks from the date of receipt of a copy of this order.

5. The learned Counsel for the petitioner submits that the above order was challenged by the respondent Education Department in W.A. (MD) No. 308 of 2008 and the said writ appeal was dismissed by a Division Bench of Madurai Bench on 4.8.2008. The Division Bench dismissed the writ appeal by observing as follows:

4. After considering the rival submissions made on either side, following the judgment of the Supreme Court and order of this Court, the learned. Single Judge set aside the orders of the appellants with a direction to approve the appointment of the respondent/petitioner as Lab Assistant with effect from 7.2.2006 and the third appellant was directed to pass orders approving the appointment of the first respondent with effect from 7.2.2006 within a period of four weeks from the date of receipt of copy of the order.

5. We find no infirmity or illegality in the order of the learned Judge dated

30.10.2007 passed in W.P. (MD) No. 484 of 2007. Therefore, the writ appeal fails and the same is dismissed.

The learned Counsel for the petitioner further submitted that the first respondent in W.A. (MD) No. 308 of 2008 filed separate appeal in W.A. (MD) No. 456 of 2008 and challenged the order not giving direction to approve the appointment from the date of appointment till the date of lifting of the ban and the said writ appeal was also allowed by the Madurai Bench of this Court on 4.8.2008 by observing as follows:

2 . Heard the learned Counsel for the Appellant and the learned Special Government Pleader appearing for the respondents 1 to 3.

3 . The learned Counsel for the appellant submits that the appointment of the appellant from the date of appointment should have been approved by the learned Single Judge instead of restricting the prayer.

4 . It has been brought to our notice that in similar circumstances the Government has issued orders in respect of similar employees approving their services from the date of their initial appointment. When once the ban is revoked, the Government should have considered and approved the appointment of the petitioner from the date of his initial appointment. Therefore, the orders of the learned Single Judge need to be modified to this extent. Accordingly, the writ appeal is allowed modifying the order of the learned Single Judge dated 30.10.2007 made in W.P.(MD) No. 484 of 2007 and directing the respondents to approve the appointment of the petitioner from the date of initial appointment.

6. In the light of the above referred judgments of the Division Bench, the impugned order dated 6.3.2003 is set aside with a direction to the fourth respondent to approve the appointment of S.K. Rajasekar working in the petitioner School as Junior Assistant, with effect from 1.7.2002 with all monetary benefits. Necessary orders to that effect is directed to be passed by the fourth respondent within a

period of two weeks from the date of receipt of copy of this order and the arrears of salary payable to the said S.K.Rajasekar is directed to be paid within four weeks therefrom.

With the above directions, the writ petition is ordered. No costs. Connected miscellaneous petitions are closed."

17. The above decision would unequivocally establish the claim of the petitioner herein that once the approval is granted, it must relate back to the date of initial appointment and as far as the petitioner herein is concerned, the date of her initial appointment was on 04.01.1999. For the sake of brevity, this Court is not inclined to refer to more number of judgments on this aspect as it is understood by the parties that the issue is covered in all fours. As regards the objection regarding ban was in place from 2001 onwards, in any event, factually this petitioner was appointed prior to the ban, i.e. on 04.01.1999. Moreover, the decisions rendered by this Court had taken into account of the ban which was in force for a considerable length of time. Therefore, the said objection need to be discarded as being without merits. Even otherwise, when the ban was lifted eventually and the approval was granted, the judgment passed in the above said Writ Appeal which formed part of the learned Single Judge's judgment which is extracted above, would cover the issue in favour of the petitioner herein.

18. One another objection regarding permission was not obtained by the school before appointing the petitioner in 1999 is also liable to be rejected, since this issue has also been settled in favour of the private aided schools, particularly, minority institutions, where the statutory regulations did not provide for such requirement /stipulation and any condition brought in by executive order was held to be illegal on the accepted legal premise, that executive order cannot override statutory provisions.

19. Lastly, the school itself has come out in clear terms in their counter affidavit that the petitioner herein was appointed on 04.01.1999 against the regular and retirement vacancy sanctioned by the Government and the very fact that ultimately, the appointment had culminated into the regular appointment by grant of approval by the authorities on 14.03.2013 would fortify the claim of the petitioner that her appointment on 04.01.1999 was otherwise in order. To further strengthen the case of the petitioner, the management has stated in the counter affidavit that the petitioner has been in regular attendance with the supportive documents from the date of her initial appointment on 04.01.1999. The attendance sheets covering the entire period of the employment of the petitioner were appended to the typed set

of documents. In the face of such supportive material, the plea of the official respondents that no records were made available, was only made for the purpose of the issue. In fact, when repeated proposals were submitted on several occasions as indicated above, there was no communication from the official side in regard to such objections. Therefore, this Court finds that such objections do not merit any serious consideration in order to deny the benefit of regularization to the petitioner from the date of her initial appointment.

20. In view of the above circumstances, the Writ petition is allowed and the impugned order in Na.Ka.No.254/A7/2000 dated 20.05.2020 insofar as it restricts the benefit of approval only from the date i.e., 14.03.2013 till the date of retirement on 30.04.2013 is hereby quashed. The official respondents are directed to pass appropriate orders granting approval from the date of petitioner's initial appointment from 04.01.1999 and on such approval, grant her all consequential benefits, viz., pay and allowances and also admissible pensionary benefits to the petitioner. The official respondents are directed to pass orders as indicated above, within a period of eight weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

To

1. The Director,
State Council of Educational and Research Training,
Tamil Nadu, (TNSERT),
DPI Compound, College Road,
Chennai-600 006
2. The Joint Director,
State Council of Educational and Research Training,
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4. The Correspondent,
Gnanodhya Teacher Training Institute,
No.1/60, Polwells Road, St Thomas Mount,
Chennai-600 016

+1cc to Mr.L.Chandrakumar, Advocate, Sr.No.34925
+1cc to Mr.Father Xavier Associates, Sr.No.34941
+1cc to the Government Pleader, Sr.No.35036

W.P.No.11017 of 2020

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