

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.12.2020

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.No.18090 of 2014

And

M.P.No.1 of 2015

D.Selvaraj

... Petitioner

Vs.

1.The State of Tamilnadu,
Rep. by its Secretary,
Education Department,
Secretariat, Chennai - 9.

2.The Director of Elementary Education,
College Road,
Chennai - 6.

3.The District Elementary Educational Officer,
Thanjavur District.

4.The Assistant Elementary Educational Officer,
Thirupananthal, Thanjavur District.

5.Alhilal Aided Middle School,
Rep. by the Secretary.

... Respondents

Prayer:Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus calling for the entire documents connected with impugned order passed by the second respondent vide Na.Ka.No.8815/H2/2012, dated 03.2013 and quash the same and direct the respondents to approve the appointment of the petitioner as Graduate Assistant w.e.f. 01.06.2002, by upgrading the post of Secondary Grade as per G.O.Ms.No.79, School Education U2 Department, dated 14.06.2002, with all monetary and consequential benefits and compute the service of the petitioner from 17.01.2001 to 31.05.2006, for pensionary benefits.

For Petitioner : Mr.S.N.Ravichandran

For Respondents: Mr.S.Sureshkumar for R1 to R4

Government Advocate

Mr.K.Sathishkumar for R5

O R D E R

The petitioner has filed this writ petition seeking issuance of Writ of Certiorarified Mandamus calling for the entire documents connected with impugned order passed by the second respondent vide Na.Ka.No.8815/H2/2012, dated 03.2013 and to quash the same and to direct the respondents to approve the appointment of the petitioner as Graduate Assistant w.e.f. 01.06.2002, by upgrading the post of Secondary Grade as per G.O.Ms.No.79, School Education U2 Department, dated 14.06.2002, with all monetary and consequential benefits and to compute the service of the petitioner from 17.01.2001 to 31.05.2006, for pensionary benefits.

2.The case of the petitioner is that the petitioner was appointed by the fifth respondent School as Secondary Grade Teacher by an order dated 11.01.2001 and he joined duty on 17.01.2001. The School submitted proposal for approval of the petitioner's appointment to the third respondent. The third respondent did not approve the petitioner's appointment. Thereafter, after issuance of G.O.Ms.No.125 dated 12.11.2003, the third respondent upgraded the post of Secondary Grade Teacher as Junior B.T., and approved the petitioner's appointment with effect from 01.02.2004 instead of upgrading the post with effect from 01.06.2002.

3.It is the further case of the petitioner that the petitioner made representation dated 30.10.2010 to the second respondent through the School, requesting to upgrade the post of Secondary Grade as B.T.Assistant with effect from 01.06.2002 with all monetary benefits, however, the same was not considered. Thereafter, the petitioner filed W.P.(MD) No.902 of 2012 and the Madurai Bench of this Court disposed of the said writ petition by directing the second respondent therein to consider the petitioner's representation. Thereafter, the impugned order came to be passed. Hence, this writ petition.

4.The learned counsel appearing for the petitioner would submit that initially the petitioner was appointed by the fifth respondent School as Secondary Grade Teacher vide order dated 11.01.2001 and he joined duty on 17.01.2001. The School submitted proposal for approval of the petitioner's appointment to the third respondent, however, the third respondent did not approve the petitioner's appointment. Thereafter, after issuance of G.O.Ms.No.125 dated 12.11.2003, the third respondent upgraded the post of Secondary Grade Teacher as Junior B.T., and approved the petitioner's appointment with effect from 01.02.2004. He would further submit that the petitioner's services ought to have been approved with effect from 01.06.2002.

5. In support of his contentions, the learned counsel appearing for the petitioner relied upon the decision of this Court dated 27.11.2019 made in W.P.No.30913 of 2019, the relevant portion of which reads as follows:

"3. The case of the petitioners is that the petitioners were all appointed on various dates as Secondary Grade Teachers on consolidated pay in line with G.O.Ms.No.100, dated 27.06.2003. Subsequently, the Government issued G.O.Ms.No.99, School Education (Income and Expenditure 2) Department, dated 27.06.2006, by which, the Government reconsidered the issue and decided to regularize the services of all the Teachers who were appointed on consolidated pay by G.O.Ms.No.100, School Education (Budget) Department, dated 27.06.2003. Accordingly, the petitioners services were regularized with effect from 01.06.2006.

4. The grievance of the petitioners is that the petitioners services have to be regularized with effect from the initial date of their appointment instead, their services were regularized only with effect from 01.06.2006. Hence, this writ petition.

5. The learned counsel appearing for the petitioners would submit that the issue is squarely covered by the decision of this Court made in W.P.No.4991 of 2015 (1.T.Kunju Krishnan and others Vs. 1.Government of Tamil Nadu, rep. by its Secretary and others) dated 30.07.2019.

8. It is useful to extract hereunder the relevant portions of the order dated 30.07.2019 made in W.P.No.4991 of 2015 (1.T.Kunju Krishnan and others Vs. 1.Government of Tamil Nadu, rep. by its Secretary and others):

"4. It is not in dispute that the petitioners joined the services prior to issuance of G.O.Ms.100 dated 27.06.2006, however, their services have been regularized in terms of the said Government Order only with effect from 01.06.2006, a perusal of which, would go to show that though the regularization will take place from 01.06.2006, the seniority and roster would be maintained as per the date of appointment. This Government Order has been accepted and has not been questioned, thereby it was left to attain finality and it was the contention of the Government Advocate that having accepted the regularization, claiming retrospective benefits is not permissible, when the Government Order is not challenged.

5. Though the contention of the Respondents appears to be sound at the first blush, when seen in depth, there is no justification on the part of the Respondents in placing senior persons to juniors, thereby depriving their rights of seniority. It is no doubt true that the regularization can take place with effect 01.06.2006, but at the same time, the date of entry of petitioners will have to be taken into account for the purpose of drawing seniority list, which is already fixed by the Teachers Recruitment Board in this case, as it is impermissible to combine all the persons recruited on various periods together and draw a consolidated list for drawing seniority, which will definitely create confusion and affect the seniority of senior most persons.

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 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 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."

6.The learned Government Advocate appearing for the respondents 1 to 4 and the learned counsel appearing for the fifth respondent would submit that the prayer in the decision relied upon by the learned counsel appearing for the petitioner and the prayer sought for in this writ petition are different. However, this Court may permit the petitioner to make a detailed representation to the second respondent and if any such representation is made by the petitioner, the same would be considered in accordance with law and in terms of the decision of this Court dated 27.11.2019 made in W.P.No.30913 of 2019.

7.Heard the arguments advanced on either side and perused the materials available on record.

8.The facts in the present case is not disputed. It appears that the petitioner was appointed by the fifth respondent School as Secondary Grade Teacher during the year 2001. The grievance of the petitioner is that though the petitioner was appointed as Secondary Grade Teacher, subsequently, the Government issued G.O.Ms.No.79, School Education U2 Department, dated 14.06.2002, as per which he is entitled for upgradation as Graduate Assistant. On that premises, the petitioner has filed this writ petition in order to avail such benefit with effect from 01.06.2002.

9.Perusal of records disclose that initially the fifth respondent School submitted proposal for approval of the petitioner's appointment to the third respondent. However, the petitioner's appointment was not approved by the third respondent in terms of Section 18 of the Private School Regulation Act. Subsequently the School sent another proposal to the respondents 1 and 2 requesting to approve the post of Secondary Grade Teacher as Junior Grade B.T. and thereafter, the petitioner's appointment was approved with effect from 01.02.2004. Hence, the decision relied upon by the learned counsel appearing for the petitioner is not applicable to the present case on hand.

10.However, if at all the petitioner has any grievance, the petitioner is permitted to make a detailed representation to the competent Authority within a period of two weeks from the date of receipt of a copy of this order, if he is otherwise eligible. If any such representation is made by the petitioner, the concerned Authority shall consider the said representation, on merits and in accordance with law and shall pass appropriate orders, within a period of twelve weeks from the date of receipt of the representation.

11.The writ petition is accordingly disposed of. No costs. Consequently, the connected miscellaneous petition is closed.

-s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

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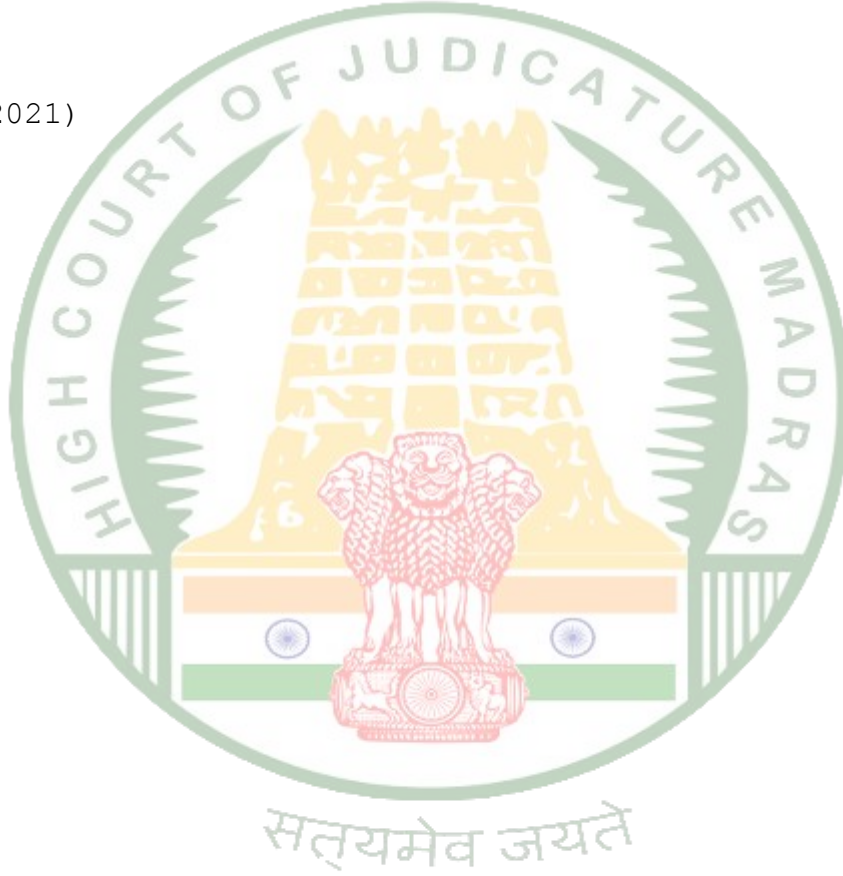
- 1.The Secretary,
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4.The Assistant Elementary Educational Officer,
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+1 CC to Mr.S.N.Ravichandran, Advocate sr 39458
+1 CC to The Government Pleader sr 39564.

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CP(CO)
SP(07/01/2021)



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