IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.01.2020

CORAM

THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

W.P No.35454 of 2019

D.Radhakrishnan Petitioner

vs.

1. The Government of Tamil Nadu
   Rep. by its Secretary,
   School Education Department,
   Fort St. George, Chennai - 600 009.

2. The Director of School Education,
   DPI Campus, College Road,
   Chennai - 600 006.

3. The Director of Elementary Education,
   School Education,
   DPI Campus, College Road,
   Chennai - 600 006. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Mandamus, directing the 1st respondent to regularize the petitioner's service from his date of appointment i.e., 02.07.2004 instead of 01.06.2006 with all consequential monetary and service benefits based upon the order made in W.P.No.4991 of 2015 dated 30.07.2019.

For Petitioner : Mr.S.Kumara Devan
For Respondents: Mrs.V.Annalakshmi
Government Advocate

O R D E R

This writ petition has been filed for issuance of writ of mandamus directing the 1st respondent to regularize the service of the petitioner from the date of his actual appointment with all consequential monetary and service benefits.

2.The case of the petitioner is that he was appointed as Junior Grade Secondary Grade Teacher in the Panchayat Union Elementary School during the year 2004 on consolidated pay. The petitioner was thereafter regularized in the year 2006.

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3.The grievance of the petitioner is that the petitioner was actually appointed in the year 2004 and therefore, his services ought to have been regularized from the year 2004 onwards and instead of the same, his service were regularized from the year 2006 by virtue of G.O.Ms.No.100, dated 27.06.2003.

4.The further case of the petitioner is that similarly placed persons had approached this Court and sought for a similar relief and this Court considered the entire issue in W.P.No.4991 of 2015 and by an order dated 30.07.2019, this Court had given a positive direction to the official respondents to regularize the services of the concerned petitioners from the date of entry into service for the purpose of seniority and also for other monetary benefits. The petitioner claims that he is also similarly placed and he is also entitled for the very same benefits.

5.Heard Mr.S.Kumara Devan, learned counsel appearing on behalf of the petitioner and Mrs.V.Annalakshmi, learned Government Advocate appearing on behalf of the respondents.

6.The issue that has been raised by the writ petitioner is squarely covered by the judgment of this Court in W.P.No.4991 of 2015, dated 30.07.2019. The relevant portions in the judgment is extracted hereunder:

> 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.
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> 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

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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 pertinant 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.
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> 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 cannot be accepted.

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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

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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.

7.The petitioner is also similarly placed and therefore, he is also entitled to be extended with the very same benefit.

8.In view of the above, this writ petition is disposed of with a direction to the 1st respondent to regularize the service of the petitioner from the date of his actual entry in to service with all consequential monetary and service benefits and orders shall be passed in this regard within a period of eight weeks from the date of receipt of copy of this order. No Costs.

s/d-
Assistant Registrar(J)

True Copy

Sub-Assistant Registrar

ssr
To

1.The Secretary,
Government of Tamil Nadu
School Education Department,
Fort St. George, Chennai - 600 009.

2. The Director of School Education,
DPI Campus, College Road,
Chennai - 600 006.

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3. The Director of Elementary Education,
   School Education,
   DPI Campus, College Road,
   Chennai - 600 006.

+1 CC to Govt. Pleader sr 1364.
+1 CC to Mr.S.Kumara Devan, Advocate sr 64.

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SP(03/02/2020)

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