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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 13.10.2020

CORAM:

THE HONOURABLE **MR.JUSTICE S.M.SUBRAMANIAM**

W.P. (MD)Nos.2594, 2595, 2596 and 2597 of 2013

and

M.P. (MD)Nos.1, 1, 1 and 1 of 2013

W.P. (MD)No.2594 of 2013:

1.M.S.Mohideen Pillai(deceased) ... Petitioner

2.Mumtaj

3.Nowsath Hakkim

4.Tharik Muzammil

5.Kamil Razath

(P2 to P5 legal heirs are impleaded vide

Court order dated 07.10.2020 in

WMP(MD)No.3781 of 2020 in

W.P. (MD)No.2594 of 2013)

Vs.

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

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

3.The District Educational Officer,
Tirunelveli.

4.The Manager and Correspondent,
Rahmania Higher Secondary School,
Melapalaiyam,
Tirunelveli District-627 005.

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus directing the respondents 1 to 3 to pay the salary for the period from 10.06.1997 to 01.06.2003 ie., 5 years 11 months and 27 days to the petitioner and to pay the other benefits namely selection grade etc.



W.P. (MD)No.2595 of 2013:

K.K.Kader Mohideen

... Petitioner

Vs.

- 1.The State of Tamil Nadu,
represented by its Secretary to Government,
Education Department,
Fort St.George, Chennai-600 009.
- 2.The Director of School Education,
College Road, Chennai-600 006.
- 3.The District Educational Officer,
Tirunelveli.
- 4.The Manager and Correspondent,
Rahmania Higher Secondary School,
Melapalaiyam,
Tirunelveli District-627 005.

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus directing the respondents 1 to 3 to pay the salary for the period from 08.07.1997 to 01.06.2003 ie., 5 years 10 months and 23 days to the petitioner and to pay the other benefits namely selection grade etc.

W.P. (MD)No.2596 of 2013:

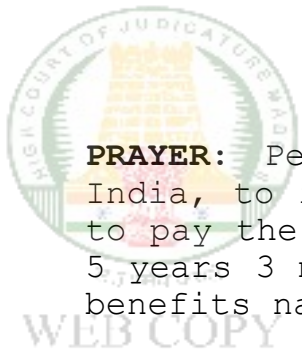
V.K.U.Wahith Ali

... Petitioner

Vs.

- 1.The State of Tamil Nadu,
represented by its Secretary to Government,
Education Department,
Fort St.George, Chennai-600 009.
- 2.The Director of School Education,
College Road, Chennai-600 006.
- 3.The District Educational Officer,
Tirunelveli.
- 4.The Manager and Correspondent,
Rahmania Higher Secondary School,
Melapalaiyam,
Tirunelveli District-627 005.

... Respondents



PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus directing the respondents 1 to 3 to pay the salary for the period from 16.02.1998 to 01.06.2003 ie., 5 years 3 months and 15 days to the petitioner and to pay the other benefits namely selection grade etc.

W.P. (MD)No.2597 of 2013:

S.Nagoor Mydeen ... Petitioner

Vs.

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

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

3.The District Educational Officer,
Tirunelveli.

4.The Manager and Correspondent,
Rahmania Higher Secondary School,
Melapalaiyam,
Tirunelveli District-627 005.

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus directing the respondents 1 to 3 to pay the salary for the period from 02.02.1998 to 01.06.2003 ie., 5 years 4 months to the petitioner and to pay the other benefits namely selection grade etc.

For Petitioner
in all cases : Mr.A.S.Mujibur Rahman

For Respondents
in all cases : Mr.S.Dhayalan
Government Advocate
for R.1 to R.3
: No Appearance for R.4

COMMON ORDER

The orders passed by the third respondent in respect of the rejection of the writ petitioners' claim in payment of salary with effect from the date of their appointment, are under challenge in these Writ Petitions.



2.The learned counsel appearing on behalf of the writ petitioners states that the writ petitioners were initially appointed as Secondary Grade Teacher.

3.The grievances of the writ petitioners are that the approval was granted by the authority competent. However, the arrears of salary due to the writ petitioners from the date of their appointment has not been paid. The representation submitted by the writ petitioners in this regard was rejected by the third respondent, stating that the order passed by the Principal Seat of this Court in W.P.No.28647 of 2015, dated 11.09.2015 is not applicable to the writ petitioners. However, the matter went by way of an appeal before the Hon'ble Division Bench passed an order in W.A.(MD)Nos.74 of 2015 and 957 of 2016 on 21.03.2018. The relevant portion of the Judgment is extracted hereunder:-

"10.The learned counsel for the respondents/writ petitioners relied on certain other orders passed by various Single Benches including one of us (TSSJ) and on perusal of the same, we find that in none of those decisions, the full effect of G.O.Ms.No.155 and the conditions therein have been thoroughly examined. Apart from that, the decision in the case of Pallivasal Primary School has not been specifically noted. Therefore, we are of the considered view, that those decisions cannot be referred to advance the case of the respondents/writ petitioners, though some of them have attained finality. Needless to state that if there has been a wrong decision, it cannot be treated as precedent.

11.In the light of the above reasoning, we are of the considered view that the order passed by the Writ Court directing disbursement of salary from the date of original appointment, cannot be sustained, in the light of explicit condition imposed in G.O.Ms.No.155, which was upheld by the Division Bench in a Public Interest Litigation. Thus, for the above reasons, the writ appeals filed by the department has to be allowed.

12.The learned counsel for the respondents submitted that though there were about 3000 Teachers who were appointed in such improper manner as of now 300 Teachers would be entitled to monetary benefits and as remaining persons were already paid and they were protected by the Division Bench order from the effect of recovery, the learned counsel submitted that the respondent should be permitted to approach the Government by way of representation.

13.We make no positive observation on this request. But it is always open to the



Government, if they so desire. For the above reasons the writ appeals are allowed and the impugned orders are set aside and consequently, the writ petitions are dismissed. No costs. Consequently, M.P.(MD)Nos.1 and 2 of 2015 and C.M.P.(MD)No.5749 of 2016 are closed."

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4.In view of the Judgment of the Hon'ble Division Bench, cited supra, the cases of the writ petitioners are to be reconsidered with reference to the facts and circumstances. Accordingly, the second respondent is directed to reconsider the cases of the writ petitioners in the light of the judgment, cited supra, and pass orders on merits and in accordance with law, within a period of twelve weeks from the date of receipt of a copy of this order. The writ petitioners are permitted to submit a fresh representation and all other relevant documents along with the order passed in these writ petitions.

5.Accordingly, all these writ petitions stand disposed of. No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS III)

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Sub Assistant Registrar(CS)

SSL

To

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

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

3.The District Educational Officer,
Tirunelveli.

+4 CC to M/s.A.S. MUJIBUR RAHMAN, Advocate (SR-19959[F] dated
13/10/2020)

W.P. (MD)Nos.2594, 2595, 2596 and 2597 of 2013

and

M.P. (MD)Nos.1, 1, 1 and 1 of 2013

13.10.2020

AC (CO)

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