



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 18.03.2020

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THE HONOURABLE MRS.JUSTICE J.NISHA BANU

W.P(MD) Nos.5616, 5619, 5620, 5622 and 5624 of 2020

W.P(MD).No.5616 of 2020

K.Ayyakkannu	... Petitioner in WP(MD).5616 of 2020
M. Muniasamy	... Petitioner in WP(MD).5619 of 2020
Grace Anita Richard Paul	... Petitioner in WP(MD).5620 of 2020
J. Vallavadass	... Petitioner in WP(MD).5622 of 2020
S. Thirumanivasagam	... Petitioner in WP(MD).5624 of 2020

vs.

1.State of Tamil Nadu
Represented by its Secretary
Department of School Education
Fort St.George
Chennai 600 009

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

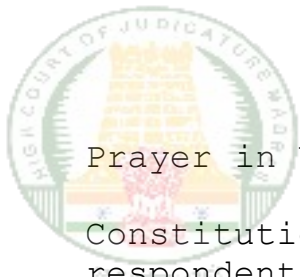
... Respondents in all WPs

Prayer in W.P(MD).No.5616 of 2020:

This Writ petition has been filed under Article 226 of the Constitution of India praying to issue a Writ of mandamus, directing the respondents to regularize the services of the petitioner from his initial date of appointment on 11.11.2005 with seniority and all consequential monetary and service benefits in the light of Judgment and order passed in W.P.No.4991 of 2015 dated 30.07.2019 and W.P.No.27923 of 2019 dated 27.11.2019.

Prayer in WP(MD). 5619 of 2020 :

Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus Direct the respondents to regularize the services of the petitioner from his initial date of appointment on 20.12.2003 with seniority and all consequential monetary and service benefits in the light of Judgment and order passed in W.P.No.4991 of 2015 dated 30.7.2019 and W.P.No.27923 of 2019 dated 27.11.2019



Prayer in WP(MD). 5620 of 2020 :

Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus Direct the respondents to regularize the services of the petitioner from her initial date of appointment on 10.01.2005 with seniority and all consequential monetary and service benefits in the light of Judgment and order passed in W.P.No.4991 of 2015 dated 30.7.2019 and W.P.No.27923 of 2019 dated 27.11.2019

Prayer in WP(MD). 5622 of 2020 :

Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus Direct the respondents to regularize the services of the petitioner from his initial date of appointment on 2.6.2003 with seniority and all consequential monetary and service benefits in the light of Judgment and order passed in W.P.No.4991 of 2015 dated 30.7.2019 and W.P.No.27923 of 2019 dated 27.11.2019

Prayer in WP(MD). 5624 of 2020 :

Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus Direct the respondents to regularize the services of the petitioner from his initial date of appointment on 11.10.2004 with seniority and all consequential monetary and service benefits in the light of Judgment and order passed in W.P.No.4991 of 2015 dated 30.7.2019 and W.P.No.27923 of 2019 dated 27.11.2019

(In all the Writ petitions)

For Petitioner : Mr.K.K.Kannan for all cases

For Respondents : Mr.A.Thiyagarajan
Government Advocate for all cases

COMMON ORDER

These writ petitions have been filed for a direction to the respondents to regularize the services of the petitioners from his initial date of appointment with seniority and all consequential monetary and service benefits in the light of Judgment and order passed in W.P.No.4991 of 2015 dated 30.07.2019 and W.P.No.27923 of 2019 dated 27.11.2019.

2.By consent, these writ petitions are taken up for final disposal at the stage of admission itself.

3.The case of the petitioners is that the petitioners were selected and appointed as B.T.Teachers under consolidated pay on



temporary basis. Though the initial appointment order issued to the petitioners that they were not entitled to regularization for five years, by G.O.Ms.No.99, School Education (Income and Expenditure 2) Department, dated 27.06.2006, 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 and accordingly, the petitioners service were regularized with effect from 01.06.2006.

4.The grievance of the petitioners is that the petitioners service has 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, these writ petitions.

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 and extract hereunder the relevant portions of the said order:

"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.



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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



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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. At this juncture, the learned Government Advocate appearing for the respondents would submit that as against the order passed by the learned Single Judge, the respondents therein preferred a writ appeal where this Court partly allowed the writ appeal.

7. It is useful to extract the relevant portion of the order passed by the Hon'ble Division Bench of this Court in **W.A.No.3904 of 2019, dated 13.01.2020 (1.Government of Tamil Nadu rep.by its secretary and others Vs. 1.T.Kunju Krishnan and others)**

"6. The learned Single Judge has allowed the writ petition, directing the appellants herein to regularise the services of the respondents/writ petitioners from the date of entry into service for the purpose of seniority and extend all monetary benefits following thereof. The learned counsel for the respondents/writ petitioners concedes that the portion of the order which directs payment of monetary benefits from the date of appointment may be deleted. The learned counsel agrees that the seniority of the writ petitioners be reckoned from the date of initial appointment and monetary benefits be given from the date of



regularisation ie. From 01.06.2006.

In view of the submission made, the Writ Appeal is allowed in part to the extent mentioned above. No costs. Consequently, C.M.P.No.24538 of 2019 is closed."

8. These writ petitions are disposed on the same lines of the decision cited supra. The first respondent is directed to regularize the services of the petitioners from the date of entry into service for the purpose of seniority and to give all the monetary benefits from the date of regularisation, within a period of two months from the date of receipt of a copy of this order. No costs.

Sd/-

Assistant Registrar

// True Copy //

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Sub Assistant Registrar(CS)

msa

To

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

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

+5 CC to M/s.K.K.KANNAN, Advocate (SR-12195 to 12199[F] dated 18/03/2020)

+1 CC to M/s.SPL.GP (SR-12453[F] dated 19/03/2020)

W.P(MD) Nos.5616, 5619, 5620, 5622 and 5624 of 2020
18.03.2020

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TR(26.05.2020)7P 9C