



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 10.11.2020

CORAM:

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P. (MD) .Nos.12927, 12928, 12929, 12930, 12931 and 12932 of 2014

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N.Dharma Raj, ... Petitioner in WP(MD)No.12927/2014
C. Jayakumar, ... Petitioner in WP(MD)No. 12928/ 2014
T. Christu Dhas,
S/o.Lazer ... Petitioner in WP(MD)No. 12929/ 2014
S. Rose Mary, ... Petitioner in WP(MD)No. 12930/ 2014
V. Denis Rosario, ... Petitioner in WP(MD)No. 12931/ 2014
T. Christu Dhas,
S/o.P.Thankayyan ... Petitioner in WP(MD)No. 12932/ 2014

-Vs-

1.Government of Tamil nadu,
rep., by its Secretary,
Department of School Education,
Fort St.George, Chennai.

2.Director of School Education,
Chennai 600 006.

3.The Chief Educational Officer,
Nagercoil, Kanyakumari District.

4.District Educational Officer,
Kuzhithurai,
Kanyakumari District.

...1 to 4 Respondents in all WPs

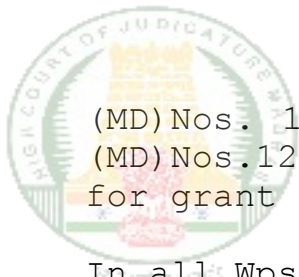
5.St.Francis Higher Secondary School,
Vencode, Kanyakumari District.

... 5th Respondent in WP(MD)
Nos.12927,12931 & 12932/2014

5. St.Joseph Higher Secondary School,
Vizhunthayampalam, Kanyakumari District

... 5th Respondent in WP(MD)
Nos.12928,12929 & 12930/2014

Common Prayer: Writ Petitions filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, to direct the respondents 1 to 4 to count the service put by the petitioner in the fifth respondent school from 22.06.1989 to 31.05.1994 in WP



(MD)Nos. 12927 to 12930/2014 and 05/07/1989 to 31/05/1994 in WP (MD)Nos.12931 & 12932/2014 to fix pay with consequential benefits for grant and pension purpose.

In all Wps:

For Petitioner : Mr.D.Anbarasu
For Respondents : Mr.J.Gunaseelan Muthiah
Additional Government Pleader
for R1 to R4
Mr.K.Ragatheeshkumar
for M/s.Isaac Chambers for R5

COMMON ORDER

The relief sought for in these present writ petitions is for a direction to direct the respondents 1 to 4 to count the service put by the petitioners in the fifth respondent School from 22.06.1989 to 31.05.1994, 22.06.1989 to 31.05.1994, 22.06.1989 to 31.05.1994, 22.06.1989 to 31.05.1994, 05.07.1989 to 31.05.1994 and 05.07.1989 to 31.05.1994 respectively to fix pay with consequential benefits for grant of pension purpose.

2.The grievances of the petitioners are that they were appointed as P.G.Assistant and subsequently, their services were approved. However, initial appointment and service rendered by these petitioners are in a non-sanctioned post. In view of the fact that they served in a non-sanctioned post, period of service cannot be counted. The petitioners have referred G.O.Ms.No.18, Education, Science and Technology(D2) Department, dated 09.01.1997 and seeking the benefit of the said Government Order for counting of the services rendered in a non-sanctioned post.

3.This Court elaborately considered the Government Order as well as the order of this Court in W.P(MD).No.20326 of 2013, dated 28.02.2018 and following paragraphs are relevant:

"8.This Court is witnessing several batches of writ petitions claiming monetary benefits by the retired teachers by citing one Government Order or other. Ultimately, the poor tax payers money are absolutely misused by this public officials by granting such arrears of pay to the teachers, contrary to the pay rules in force. The source and the origin of such Government Order and the legality of such Government Order are also be to examined by the competent officials including the Finance Department of the Government. Periodical inspections and the scrutinising these Government Order cited by various other Teachers are also certainly required. When it is brought to the notice of this Court that the Government Order in G.O.Ms.No.143 Education (V2)



Department, dated 30.01.1987 is a fake Government Order and the benefit granted to one Devakadaksham was subsequently cancelled in view of the order passed by the Hon'ble Division Bench of this Court in the case of **S.Devakadasham vs. District Educational officer, District Education Office, Villupuram District and others reported in (2006) 4 MLJ 1580** and the relevant paragraph of the Division Bench judgment is extracted hereunder:-

"39.Lastly it was contended that the order impugned in the writ petition, G.O.Ms.No.314 Education dated 12.11.1999 was based only upon G.O.Ms.No.439 dated 5.5.1993 and that therefore, the justification now sought to be provided by the respondents, by relying upon various Government Orders and statutory provisions, should not be accepted. In support of such a contention, the learned senior counsel relied upon a Constitution Bench judgment of the Supreme Court in Mohinder Singh Gill and another v. Chief Election Commissioner, New Delhi and others AIR 1978 SC 851; (1978) 1 SCC 405, wherein it was held that the validity of an order passed by a statutory functionary should be judged only by the reasons contained in the order and they cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. That was a case arising out of an order passed by the Election Commission. Here we are concerned with the orders passed by administrative authorities and not a "statutory functionary" and hence the said judgment does not apply to the case on hand."

9.In yet another case of V.Mariappan vs. Secretary to Government, School Education Department in W.P. (MD)No.4494 of 2009, dated 16.08.2012, the Court observed as follows:-

"16.As far as G.O.Ms.No.143 that is relied on by the learned counsel for the petitioner is concerned, the same is a bogus one. The letter dated 10.04.2012 written by the Deputy Secretary to Government, School Education Department, Chennai, makes it very clear that the said Government Order was a fictitious one. When this Court passed an order dated 16.03.2011 in W.P.No.7818 of 2009 (KAMALABAI AMALADASS VS. THE SECRETARY TO GOVERNMENT AND OTHERS) to



consider the representation of the petitioner in the said writ petition seeking to count the service rendered by her in the non-sanctioned post in an aided school, for the purpose of pension, the said Government letter was issued. The contents of the said letter dated 10.04.2012 is extracted hereunder:

"Sir

Sub: School Education - Writs- WP No.7818/2009-filed in the Madras High Court by Tmt.Kamalabai Amaladass seeking retirement benefit-Judgment delivered-Action taken report called for-Regarding.

Ref: Copy of the order from Madras High Court in W.P.No.7818/2009, dated 16.03.2011.

I am directed to invite your attention to the reference cited wherein, the Madras High Court has given direction to the Government to consider the representation from the petitioner, if it is freshly made, in accordance with law and on its own merits and dispose of the same within a period of six weeks thereafter.

2.In this regard, I am directed to state the following:

(a) The copy of the G.O.(Ms) No.143/Education (VE) Department, submitted by the petitioner is no doubt a counterfeit document (copy enclosed).

(b) The copy of the original G.O.(Ms) No.143/Education Department is enclosed herewith.

© Is there any fresh representation made by the petitioner after issuance of the direction of Madras High Court.

(d) An enquiry should be made as to how the copy of the counterfeit G.O., has been attested by the District Educational Officer, Usilampatty, without seeing the G.O issued by the Department.

3.I am also directed to send a report on the action taken in this regard to Government immediately. This may be treated as "Most Immediate". Your reply may be sent to the Government on or before 23.4.2012 positively."

17.The actual Government Order in G.O.Ms.No.143, School Education Department, dated 30.01.1987 is also produced before this



Court. I have perused the same and the same has nothing to do with the matter of pension. Therefore, the petitioner could not place his reliance on G.O.Ms.No.143.

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20.As rightly contended by the learned Additional Government Pleader, the Division Bench, in its judgment in W.A.Nos.291 and 292 of 2008, took into account G.O.ms.No.143, which was a bogus one. Furthermore, the judgment of the Division Bench in S.DEVAKADAKSHAM's case (cited supra) was not brought to the notice of the Division bench which heard the writ appeals in W.A.Nos.291 and 292 of 2008. The judgment S.DEVAKADAKSHAM's case (cited supra) disposed a batch of writ appeals and the Division Bench considered extensively the provisions of Tamil Nadu Recognised Private Schools (Regulation) Act 1973 and has recorded a finding that the service rendered in a non-sanctioned post could not be counted for the purpose of pension and pay fixation. All the Teachers, who were granted benefit based on G.O.Ms.No.18, faced recovery proceedings, based on G.O.Ms.No.314, referred to above. The action based on G.O.Ms.No.314 was upheld by the Division Bench in its judgment in S.DEVAKADAKSHAM's case (cited supra). However, two cases escaped from the net and writ appeals preferred by those two Teachers in W.A.Nos.291 and 292 of 2008 alone were allowed on the sole ground that they were discriminated in the matter of counting the service rendered in the non-sanctioned post, based on the benefit given to a teacher in terms of G.O.Ms.No.18."

10.In view of the judgment, the same claim made out in the writ petition deserves no further consideration and the writ petition is to be dismissed both on the merits and on the ground of laches.

11. Accordingly, the writ petition stands dismissed. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is closed."

4.The order of this Court was subsequently followed in W.P (MD).No.2849 of 2015, dated 05.03.2018 also.

5.In view of the reason stated in the foregoing paragraphs, the relief as such sought for in these present writ petitions



cannot be granted. Accordingly, these Writ Petitions stand dismissed. No costs.

Sd/-

Assistant Registrar (CO)

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// True Copy //

/ /2020

Sub Assistant Registrar (CS)

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To

- 1.The Secretary,
Government of Tamil Nadu,
Department of School Education,
Fort St.George, Chennai.
- 2.Director of School Education,
Chennai 600 006.
- 3.The Chief Educational Officer,
Nagercoil, Kanyakumari District.
- 4.District Educational Officer,
Kuzhithurai, Kanyakumari District.

+1 CC to SGP (SR-21887,21886,21884,21883,21882 AND 21885[F] dated 11/11/2020)

+1 CC to Mr.T. CIBI CHAKRABORTHY, Advocate (SR-21827[F] dated 11/11/2020)

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PM(CO)

KM (23.11.2020) 6P 7C