



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment Reserved on : 01-04-2021

Judgment Delivered on : 27-04-2021

Coram :

The Honourable Mr. Justice R. Subbiah
and

The Honourable Mr. Justice Sathi Kumar Sukumara Kurup

Writ Appeal Nos. 730, 731, 732, 738, 1338, 1713, 3555 and 3575
of 2019

Writ Appeal No. 909 of 2020

Writ Appeal No. 410, 926, 927, 1091 to 1094 of 2021

CMP.5898, 5902, 5903, 5942, 9190, 12273, 22939, 22940, 22855,
11201/19 5445, 5456, 5458, 6914 to 6918/2021

1.THE GOVERNMENT OF TAMIL NADU,
REP. BY ITS SECRETARY,
SCHOOL EDUCATION DEPARTMENT,
FORT ST.GEORGE, CHENNAI.

2.THE DIRECTOR OF SCHOOL EDUCATION,
DPI COMPOUND,
NUNGAMBAKKAM,
COLLEGE ROAD, CHENNAI.

3.THE JOINT DIRECTOR OF SCHOOL EDUCATION (VOCATIONAL),
DPI COMPOUND,
NUNGAMBAKKAM,
COLLEGE ROAD, CHENNAI.

.. APPELLANTS/PETITIONERS 1 TO 3 IN ALL W.A.S

THE CHIEF EDUCATIONAL OFFICER,
THOOTHUKUDI DISTRICT, THOOTHUKUDI.

.. 4TH APPELLANT/4TH RESPONDENT IN W.A.NOS.730 TO 732,
738 OF 2019

THE CHIEF EDUCATIONAL OFFICER,
CHENNAI.

.. 4TH APPELLANT/4TH RESPONDENT IN W.A.NOS.1338/2019, 909/2020
AND 927/2021

THE DISTRICT EDUCATIONAL OFFICER,
THALLAKULAM, MADURAI-02

.. 4TH APPELLANT/4TH RESPONDENT IN W.A.NO 1713/2019



THE CHIEF EDUCATIONAL OFFICER,
COIMBATORE DISTRICT, COIMBATORE.

.. 4TH APPELLANT/4TH RESPONDENT IN W.A.NOS.3555 & 3575/2019

THE CHIEF EDUCATIONAL OFFICER,
VIRUDHUNAGAR DISTRICT.

.. 4TH APPELLANT/4TH RESPONDENT IN W.A.NOS.410 AND 1092 TO
1094/2021

THE CHIEF EDUCATIONAL OFFICER,
DINDIGUL.

.. 4TH APPELLANT/4TH RESPONDENT IN W.A.NO.926/2021

Vs

1.S.VIJAYA SANTHAKUMARI
VOCATIONL INSTRUCTOR (COMPUTER SCIENCE)
ST.MARYS HIGHER SECONDARY SCHOOL SAWYERPURAM
THOOTHUKUDI DISTRICT.

2.THE CORRESPONDENT
ST.MARYS HIGHER SECONDARY SCHOOL
SAWYERPURAM THOOTHUKUDI DT.

... RESPONDENTS in WA No.730 of 2019

1.K.PAUL MUTHU
VOCATIONL INSTRUCTOR (ELECTRICAL MACHINES
AND APPLIANCES TUCKER HIGHER SECONDARY
SCHOOL PANNAIVILAI THOOTHUKUDI DISTRICT.

2.THE CORRESPONDENT
TUCKER HIGHER SECONDARY SCHOOL PANNAIVILAI
THOOTHUKUDI DT.

... RESPONDENTS in WA No.731 of 2019

1.T.DEVARAJ SAMUEL
VOCATIONAL INSTRUCTOR (COMPUTER SCIENCE)
POPE MEMORIAL HIGHER SECONDARY SCHOOL
SAWYERPURAM THOOTHUKUDI DISTRICT

2.THE HEAD MASTER
POPE MEMORIAL HIGHER SECONDARY SCHOOL
SAWYERPURAM THOOTHUKUDI DISTRICT

... RESPONDENTS in WA No.732 of 2019

1.V.THIRAVIA RAJESH
VOCATIONAL INSTRUCTOR (ELECTRICAL MACHINES AND APPLIANCES)
TUCKER HIGHER SECONDARY SCHOOL
PANNAIVILAI THOOTHUKUDI DIST-628751



2.THE CORRESPONDENT
TUCKER HIGHER SECONDARY SCHOOL PANNAIVILAI
THOOTHUKUDI DISTRICT.

... RESPONDENTS in WA No.738 of 2019

WEB COPY 1.G.DAISY

THE CHIEF EDUCATION OFFICER

2.THE HEADMISTRESS AND CORRESPONDENT
APOSTOLIC CARMEL
CHRIST KING GIRLS HIGHER SECONDARY SCHOOL
TAMBARAM EAST CHENNAI - 600 059

... RESPONDENTS in WA No.1338 of 2019

1.I.ANTHONY RUBAN XAVIER DONAID
S/O A.IRUTHAYAM NAGAR NO. 70 1ST FLOOR
INDIRANI NAGAR II STREET MADAKKU SALAI
MADURAI - 625016

2.THE CORRESPONDENT
MADURAI NADAR URAVINMURAI JEYARAJ NADAR HR. SEC.SCHOOL
NAGAMALAI PUDUKOTTAI
MADURAI - 625019

... RESPONDENTS in WA No.1713 of 2019

1.D.RAJAMOHAN
VOCATIONAL TEACHER CSI HIGHER SECONDARY SCHOOL
COIMBATORE

2.THE CORRESPONDENT
CSI HIGHER SECONDARY SCHOOL COIMBATORE

... RESPONDENTS in WA No.3555 of 2019

1.V.SANTHI
VOCATIONAL INSTRUCTOR (COMPUTER SCIENCE)
SRI K.RANGASAMY NAIDU HR SEC SCHOOL
PERIYANAICKEN PALAYAM COIMBATORE DIST.

2.THE SECRETARY
SRI.K.RANGASAMY NAIDU HR SEC SCHOOL
PERIYANAICKEN PALAYAM COIMBATORE DIST.

... RESPONDENTS in WA No.3575 of 2019

1.D.THILAKAM
TYPEWRITING INSTRUCTOR (OSS)
N.K.T.NATIONAL GIRLS HIGHER SECONDARY SCHOOL
TRIPLICANE CHENNAI-600005



2.THE SECRETARY

N.K.T. NATIONAL GIRLS HIGHER SECONDARY SCHOOL,
TRIPPLICANE CHENNAI-600005

... RESPONDENTS in WA No.909 of 2020

WEB COPY

1.D.RAJA SELVI

VOCATIONAL TEACHER (E.M.A.)
C.S.I.V.V. HIGHER SECONDARY SCHOOL
IRANIARPURAM
KANYAKUMARI DISTRICT

2.THE SECRETARY

CSI VV HIGHER SECONDARY SCHOOL
IRANIARPURAM
KANYAKUMARI DISTRICT

... RESPONDENTS in WA No.410 of 2021

1.S.SUTHAN

VOCATIONAL INSTRUCTOR AUTO MOBILE ENGINEERING
N.SV.V. BOYS HIGHER SECONDARY SCHOOL
PATTIVEERANPATTI DINDIGUL DIST

2.THE CORRESPONDENT

N.S.VV BOYS HIGHER SECONDARY SCHOOL
PATTIVEERANPATTI DINDIGUL DIST

.. RESPONDENTS in WA No.926 of 2021

1.M.LALITHA

TYPEWRITING INSTRUCTOR
ST. ANTONYS GIRLS HIGHER SECONDARY SCHOOL
CHENNAI

2.THE CORRESPONDENT

ST.ANTONYS GIRLS HIGHER SECONDARY SCHOOL
CHENNAI.

... RESPONDENTS in WA No.927 of 2021

1.TAMIL NADU HIGHER SECONDARY SCHOOL

VOCATIONAL INSTRUCTORS ASSOCIATION
REP BY ITS STATE GENERAL SECRETARY V.SAKTHIVEL PANDIAN
NEW NO.5 OLD NO.3 DHANDAPANI STREET
T.NAGAR CHENNAI

... RESPONDENT in WA No.1091 of 2021

1.P.PARAMESHWARI

VOCATIONAL INSTRUCTOR (ACCOUNTANCY AND AUDITING)
S.B.K. GIRLS HIGHER SECONDARY SCHOOL
ARUPPUKOTTAI 626 101 VIRUDHUNAGAR DT.



2.THE SECRETARY

S.B.K. GIRLS HIGHER SECONDARY SCHOOL
ARUPPUKOTTAI 626 101 VIRUDHUNAGAR DT.

... RESPONDENTS in WA No.1092 of 2021

WEB COPY

1.M.JANAKI

VOCATIONAL INSTRUCTOR (ACCOUNTANCY AND AUDITING)
S.S. HINDU NADAR HIGHER SECONDARY SCHOOL
MUHAVUR 626 111 VIRUTHUNAGAR DISTRICT

2.THE SECRETARY

S.S.HINDU NADAR HIGHER SECONDARY SCHOOL
MUHAVUR 626 111 VIRUTHUNAGAR DISTRICT

... RESPONDENTS in WA No.1093 of 2021

1.S.ANAND

VOCATIONAL INSTRUCTOR (COMMERCE)
V.N.U.P. KALESHWARI HIGHTER SECONDARY SCHOOL
VANNIAMPATTI 626154 VIRUDHUNAGAR DISTRICT

2.THE SECRETARY

V.N.U.P KALESHWARI HIGHER SECONDARY SCHOOL
VANNIAMPATTI 626 154 VIRUDHUNAGAR DISTRICT

... RESPONDENTS in WA No.1094 of 2021

Writ Appeal No.730, 731, 732, 738, 1338, 1713, 3555 & 3575 of 2019 909/2020, 410, 926, 927, 1091, 1092, 1093, 1094/2021 respectively filed under Clause 15 of the Letters Patent against the order dated 17.04.2018 made in W.P.Nos.31025, 31022, 31021, 31024, 31215, 29788, 31212, 31216, 31213, 31217, 31218 & 31023/2015, 16272/12, 31214, 31026 and 31027 of 2015 respectively.

Prayer in W.P's 31021 to 31027/15, 31212 to 31218/15:

To issue a Certiorified Mandamus calling for the all relevant records pertaining to the order passed by the 2nd respondent herein vide his proceedings in Na. Ka. No. 99236/VI/E1/2013 dt 9.7.2015 and quash the same as illegal arbitrary unreasonable being violative of principles of natural Justice and thereby direct the respondents to regularize the services of the petitioner as Vocational Instructor under the 5th respondent School in terms of G.O.Ms.No.35 Education Department dt 09.02.2007 with due seniority and all the monetary and service benefits.

Prayer in W.P.No.29788/2015

To issue a Writ of Certiorified Mandamus calling all the records culminated in proceeding Na. Ka. No.99236/VI/E1/2013 dt 09.07.2015 of the 2nd respondent pursuant to the letter of the 1st respondent and quash the same and direct the respondents 1



to 5 to regularize the appointments of the petitioner in terms of G.O.Ms.No.35 Education Department dated 09.02.2007 with due seniority and all attendant benefits.

Prayer in W.P.No.16272/2012:

To issue a Writ of Certiorified Mandamus calling all the records culminated in letter No. 5190/VE/2009-7 dt 08.06.2012 of the 1st respondent and quash the same and to direct the respondents 1 to 3 to regularize the appointments of the members of the petitioner Association in terms of G.O.Ms.No. 35 Education Department dt 09.02.2007 with due seniority and all attendant benefits.

For Appellants : Mr. S.T.S. Murthy
Additional Advocate General
assisted by Mr. C. Munusamy
Special Government Pleader (Education)
in all the appeals

For Respondents : Mr. A.R. Suresh
in WA Nos. 730, 731, 732, 738, 1338,
3555 and 3575 2019
W.A. No. 909 of 2020
W.A. Nos. 926, 927, 410, 1092, 1093 and
1094 of of 2021

Fr. Xavier Arulraj, Senior Advocate
for M/s. Father Xavier Associates
for second respondent in
WA No. 1338/2019

Mr. C. Johnson for R-1
in W.A. No. 1713 & 1019 of 2021

COMMON JUDGMENT

R. SUBBIAH, J

These appeals have been filed as against the common order dated 17.04.2018 passed by the learned Single Judge in Writ Petition Nos. 31021 to 31027 of 2015 etc., batch, whereby and whereunder, the learned Single Judge allowed all the writ petitions by setting aside the orders impugned therein with a direction to the appellants herein to pass orders regularising the service of the first respondent in all the appeals as Vocational Instructors, as provided under G.O.Ms.No.35, School Education (Vocational) Department, dated 09.02.2007 and grant all attendant benefits including seniority and other monetary benefits.



2. For the purpose of disposal of these appeals, certain facts leading to the filing of the writ petitions, are required to be examined.

3. The first respondent in all these appeals were appointed as Vocational Instructors on various dates after 01.04.1992 in the vocational stream. It is claimed that the first respondent in all these appeals, are duly qualified for appointment to the post of Vocational Instructors and they have been continuing as Vocational Instructors from the date of their appointment. In fact, the Government of Tamil Nadu issued GO.Ms.No.991, Education Department, dated 16.07.1990, in and by which, 2956 Vocational Teachers appointed prior to 16.07.1990 were brought into regular time scale of pay. By the very same Government Order, the Government prohibited the appointment of individuals as Vocational Teachers stating that the employees working in Government and Government aided establishments should alone be appointed as part time Vocational Instructors. Since none of the employees working in the Government and aided institutions came forward to work as part time Vocational Teacher, the individuals were being appointed, out of whom, 235 fully qualified Vocational Teachers were brought into regular time scale of pay as part time teachers and were regularised in service, vide G.O.Ms.No.680, Education Department, dated 20.09.1996, by relaxing the conditions stipulated in G.O.Ms.No.991, Education Department, dated 16.07.1990. Those 235 regular part time Vocational Instructors seem to have made representations to the Government, apart from other 126 part time teachers, who also seem to have made a representation to the Government to appoint them in the existing and excess teacher post and secondary grade post by creating Vocational Instructors Grade II post. The Government of Tamil Nadu issued G.O.Ms.No.74, Education Department, dated 13.06.2002, in and by which, the regular part time teachers and other part time teachers were brought into regular time scale of pay in the regular existing Teachers Grade II in the time scale of pay applicable to the post of Secondary Grade teacher.

4. Similarly, the Government of Tamil Nadu issued G.O.Ms. No.35, School Education (Vocational) Department, dated 09.02.2007, in and by which, 201 vocational teachers Grade II posts were directed to be filled up from among the list of Vocational Teachers based on seniority. The names of the first respondent in all these appeals, find place in the list of 201 vocational teachers, but except 34 vocational teachers, all others were appointed in the regular time scale of pay. The first respondent in these appeals, fall within 34 Vocational Teachers, whose service was not regularised. The reason assigned to deny the benefit of appointment in regular time scale of pay for those 34 teachers, is that, the posts in which they are



working, are created after 01.04.1992 and as such, as per Section 14-A of the Tamil Nadu Recognised Private Schools (Regulation) Act, those 34 vocational teachers cannot be regularised into service, since there is no grant for those posts. Hence, the writ petitions were filed before the learned Single Judge.

5. The writ petitions were opposed by the appellants by filing a counter affidavit.

6. The learned Single Judge allowed all the writ petitions filed by the respective first respondent herein. Para 18 of the order of the learned Single Judge reads as follows:-

"18. Once the Government thought fit to regularise all similarly placed vocational teachers under G.O. Ms. No.35, dated 09.02.2007 and the names of the petitioners found place in the list annexed to the said Government Order, this Court does not see any iota of justification as to how these petitioners can alone be singled out from the benefit of regularisation. The plea of the Government as conveyed through the learned Additional Advocate General that after introduction of Section 14 (A) of the Tamil Nadu Private Schools (Regulation) Act, the question of regularisation of these petitioners does not arise, is nothing but a filmsy and specious argument and has to be rejected outright. Even assuming the argument can be advanced for the sake of resisting the claim of the petitioners, such argument deserves to be brushed aside, since that would only result in flagrant violation of Articles 14 and 16 of the Constitution of India as there cannot be any differential treatment in respect of same set of employees. In this case, it is more than demonstrated that the petitioners have been similarly placed as that of other vocational Teachers covered under G.O. Ms. No.35 dated 09.03.2007. Therefore, this Court does not see any semblance of legal basis for denying them the benefit of regularisation."

7. Aggrieved by the aforesaid order of the learned Single Judge, the Government has come forward with these Writ Appeals.

8. The learned Additional Advocate General appearing for the appellants/State, assisted by the learned Special Government Pleader, invited the attention of this Court to Section 14-A of the Tamil Nadu Recognised Private Schools (Regulation) Act and submitted that the Government had stipulated a condition that, no grant shall be paid to any private school established in any



class or course of instruction opened in such private schools on or after the date of commencement of the academic year 1991-1992. All the schools in which the first respondent herein, were working, were permitted to open the vocational subject in the year 1992-1993 with a specific condition that no additional post of teacher will be sanctioned, vide proceedings of the Director of School Education, dated 25.09.1992. The first respondent in these appeals were appointed as part-time Instructors in computer on various dates after 01.04.1992. Therefore, they cannot claim any right to appoint them in the regular post, as they have been working in a non-sanctioned post. Since the first respondent in these appeals, were appointed after the commencement of the academic year 1991-1992, the Government itself, at its own risk, directed the Management to look after the emoluments payable to those teachers. Now, the first respondent in these appeals are seeking benefits based on G.O.Ms.No.35, School Education Department, dated 09.02.2007, whereby 201 teachers were regularised, except 34 teachers, including the first respondent in these appeals. G.O.Ms.No.35, School Education Department, dated 09.02.2007 was passed only in respect of Government and Government aided schools. The said Government Order does not extend to private schools or additional classes or Government aided private schools, which have commenced without obtaining any aid from the Government. Therefore, the first respondent in these appeals, are not covered under the said Government Order. In this regard, the learned Additional Advocate General appearing for the appellants/State relied on a decision of the Supreme Court in the case of State of West Bengal Vs. Subhas Kumar Chatterjee, reported in 2010 (11) SCC 694 and submitted that no Court can issue a Mandamus directing the authorities to act in contravention of the Rules, as it would amount to compelling the authorities to violate law. Such directions may result in destruction of Rule of Law.

9. According to the learned Additional Advocate General, in fact, the names of the first respondent in all these appeals, were wrongly included in GO.Ms.No.35, School Education Department, dated 09.02.2007, along with those who are already appointed prior to 01.04.1992. Therefore, the Government had correctly refused to grant the benefit to the first respondent in these cases. In fact, the wrong was subsequently rectified by the Government in Letter No.245, School Education Department, dated 08.12.2008. In this regard, the learned Additional Advocate General relied on the decision of the Supreme Court in the case of State of Rajasthan vs. Daya Lal reported in 2011 (2) SCC 429, wherein, it has been held that the part-time employees are not entitled to seek regularisation, as they are not working in any sanctioned post. Thus, the learned Additional Advocate General submitted that the first respondent in these



10. Countering the above submissions, Mr.A.R.Suresh, learned Counsel appearing for the respective first respondent in these appeals, submitted that the Government of Tamil Nadu issued G.O. Ms. No.35, Education Department dated 09.02.2007, in and by which, 201 Vocational Instructors, Grade II posts were directed to be filled up from among the list of Vocational Instructors based on seniority. The names of the first respondent in these appeals, find place among the 201 Vocational Instructors. But except 34 Vocational Instructors, all others were regularised. The only reason assigned by the appellants to deny such benefit of appointment is that, the posts in which they are working, are created after 01.04.1992 and therefore, as per Section 14 A of Tamil Nadu Recognised Private Schools (Regulation) Act, the Vocational Teachers cannot be regularised in service, since there is no grant for those posts. In this regard, the learned counsel for the first respondent/writ petitioner contended that, unlike other academic subjects, Vocational subjects are distinct and different. The vocational scheme is sponsored by the Central Government solely with a view to augment vocational education. Therefore, Vocational Instructor posts are being given to the concerned teachers and not for the Schools or institutions. In the event of retirement or resignation or promotion of a Vocational Instructor, the respective post will be reverted back to the Department under re-cycling method. In such event, no new sanction is necessary to regularise the service of the first respondent/writ petitioner, since all the posts vested with the Department and is being carved out of excess posts derived out of Secondary Grade and B.T. Assistant posts. While so, the cut-off date, viz., 01.04.1992 relied on by the appellants, will not apply to Vocational Instructors at all. The cut-off date is relevant only to general stream of subjects, in which the post is vested with the School and not with individual teachers unlike the vocational subjects.

<https://hcservices.ecourts.gov.in/hcservices/>



recognition and they are working in regular time scale of pay. Further, the learned counsel for the first respondent/writ petitioners submitted that Vocational Instructor scheme is a centrally sponsored scheme. While so, Section 14-A of the Tamil Nadu Recognised Private Schools (Regulation) Act has no application to this case. Therefore, the reason assigned to deny the benefit to the first respondent to appoint them in regular time scale of pay. is not justifiable. The learned counsel for the first respondent/writ petitioner sought for dismissal of the writ appeals.

12. Mr.Johnson, learned counsel appearing for the first respondent (writ petitioner) in W.A.No.1713 of 2019 contended that the first respondent in this appeal was working as Vocational Instructor from 18.06.1997. He is fully qualified on the date of appointment. While so, the State seniority list of Vocational Instructors working in various aided Schools, were prepared by the respective CEO of the District and such lists were forwarded to the Director of School Education. Accordingly, the Directorate of School Education prepared a State-wise list, taking into account the seniority, educational qualification and other essential criteria. A final list was drawn by the Directorate, in which, the names of 201 Vocational Instructors were included and they were appointed before 20.09.1996. From the seniority list, the names of those who find place from Serial No. 48 till 201, were appointed as Vocational Teachers after 20.09.1996 and the last candidate in Serial No.201 was appointed on 01.06.2000. Further, from the candidate in Serial No.201, all the Vocational Teachers were regularised except 34 Vocational Teachers, so also, 20 part time vocational teachers whose institutions and courses commenced after 01.04.1993, were regularised by the appellants. However, the first respondent in these appeals, whose names find a place in Serial No.9, were left. Further, the learned counsel submitted that Section 14-A of the said Act, has no application to Vocational subjects, as the same is sponsored and financed by the Central Government with a view to augment employment. Accordingly, the learned counsel for the first respondent/writ petitioner sought for dismissal of the writ appeal.

13. We have heard the submissions of the learned counsel on either side and perused the materials placed on record.

14. It is to be stated that in the State of Tamil Nadu, from the year 1978, Vocational Instruction stream of education is imparted in Higher Secondary level. While so, the Government of Tamil Nadu issued GO Ms. No.991, Education Department in and by which 2956 Vocational Teachers, who were appointed prior to 16.07.1990, were brought into regular time scale of pay and regularised in service. By the very same Government Order, the



Government prohibited the appointment of the individuals as Vocational Teachers stating that the employees working in Government Aided School should alone be appointed as part time Vocational Teachers, since none of the employees working in the Government and aided institution had come forward to work as part-time Vocational Teachers, individuals were appointed. On 20.09.1996, the Government issued G.O.680, from Education Department, bringing 235 fully qualified Vocational Instructors into regular time scale of pay as part time teachers and they were regularised in service by relaxing the condition stipulated in GO Ms. No.991, Education Department, dated 16.07.1990. On 13.06.2002, the Government of Tamil Nadu issued GO Ms.No.74, Education (Vocational) Department bringing those 235 regular part time vocational teachers and other 126 part time teachers into regular time scale of pay and regularised in the existing vacancy as Vocational Teachers Grade II in time scale of pay applicable to the post of Secondary Grade Teachers. However, on 09.02.2007, the Government issued GO.Ms.No.35, School Education (Vocational) Department, in and by which, 201 vocational instructors, Grade-II were directed to be filled up among the vocational teachers based on seniority. The names of the first respondent (writ petitioners) in these appeals find place in the list of 201 vocational teachers, however, except 34 vocational teachers, all are appointed in the regular time scale of pay. The reason assigned to deny such benefit of regular time scale of pay for those 34 teachers, including the first respondent/writ petitioner in these appeals, is that the post was created after 01.04.1992 and as per Section 14-A of Tamil Nadu Recognised Private Schools (Regulation) Act, the 34 teachers cannot be regularised in service, since there is no grant for those posts.

15. In view of the above submission, it is worthwhile to extract Section 14-A of the Tamil Nadu Recognised Private Schools (Regulation) Act, 1973 which reads as follows:-

"Section 14-A: Grant not payable to new private schools and new class and course of instructions:- Notwithstanding anything contained in this Act or in any other law for the time being in force or in any judgment, decree or order of any court or other authority, no grant shall be paid to:-

(a) any private school established and any class or course of instruction opened in such private school, on or after the date of commencement of the academic year 1991-1992

(b) any private school in existence on the date of commencement of the academic year 1991-1992 to which no grant has been paid by the Government immediately before the date of such commencement



WEB COPY

(c) any class or course of instruction in a private school in existence on the date of commencement of the academic year 1991-1992 to which no grant has been paid by the Government immediately before the date of such commencement; and

(d) any class or course of instruction opened on or after the date of commencement of the academic year 1991-1992 in a private school in existence on the date of such commencement

Explanation : - for the purpose of this section, private school includes a minority school."

16. As per Section 14-A of the Tamil Nadu Recognised Private Schools (Regulation) Act, no further grant can be allowed to any post for new course from the academic year 1991-1992. All the first respondent (writ petitioners) in these appeals were appointed subsequent to the year 1992. In fact, the validity of Section 14-A of the Tamil Nadu Recognised Private Schools (Regulation) Act, was challenged by the private schools Management before this Court in the case of Maria Grace Rural Middle School, Venkatarayapuram, Nanguneri Taluk, Tirunelveli, by its Correspondent Rev.Fr.A. Antony Raj vs. The Government of Tamil Nadu, rep. by its Secretary, Education, Science and Technology Department, Fort St. George, Chennai and others, reported in 2006 (5) CTC 193, where the Constitutional validity of Section 14-A was upheld. But it is the submission of the learned counsel appearing for the first respondent in these Writ Appeals/writ petitioners that, unlike other academic subjects, vocational subjects are distinct, since it is sponsored by the Central Government. Therefore, Section 14-A of the said Act is not applicable to the case on hand.

17. It is pertinent to note that, though it is claimed by the first respondent that, since the vocational subjects are sponsored by the Central Government, the aid was granted only by the State Government. When the aid was granted by the State Government, it cannot be said that Section 14-A of the said Act will not be applicable to the case on hand. Moreover, the appellants/State had not chosen to add the Central Government as a party-respondent in these appeals. Further, from a reading of the above said decision of the Division Bench of this Court, it is seen that the "grant" is not a "fundamental right". When that be so, this Court cannot issue a Mandamus when the first respondent in these appeals were appointed contrary to Section 14-A of the said Act. The Private Schools cannot appoint the first respondent in these appeals (writ petitioners) as against Section 14-A according to their whims and fancies and thereafter, ask the state Government to grant aid.



18. It is the submission of the learned counsel appearing for the respective first respondent/writ petitioners that the first respondent's name was included in G.O.Ms.No.35 along with 201 teachers and except the 34 teachers all others were appointed and their service was regularised. But it is the reply of the learned Additional Advocate General that the first respondent/writ petitioners' name was wrongly included in the Government Order along with those who have already been appointed prior to 01.04.1992, and therefore, the Government refused to grant the benefit. The wrong inclusion of the name of first respondent was subsequently rectified by Government issuing Government Letter No.245/School Education Department dated 08.12.2008.

19. On a perusal of the records, we find that the persons, whom the first respondent compared as having been regularised in service, were accommodated in the superannuated post in the Government School, whereas, the first respondent in these appeals were appointed by the private school without the approval of the competent authorities as per their whims and fancies and thereafter, the Private Schools are compelling the Government to grant aid. Therefore, the wrong inclusion of their name will not give any right to them to seek regularisation. In fact, by a Government letter dated 08.12.2008, the wrong inclusion of the name of the first respondent/writ petitioner(s) was rectified by the Government. Further, the first respondent (writ petitioner(s)) herein did not challenge the Government letter, dated 08.12.2008 excluding their names from the list of persons.

20. The learned Additional Advocate General appearing for the appellants placed reliance on the decision of the Supreme Court in the case of State of Rajasthan and others vs. Daya Lal and others reported in (2011) 2 Supreme Court Cases 429, wherein it was held as follows:-

"12. We may at the outset refer to the following well settled principles relating to regularization and parity in pay, relevant in the context of these appeals:

(i) High Courts, in exercising power under [Article 226](#) of the Constitution will not issue directions for regularization, absorption or permanent continuance, unless the employees claiming regularization had been appointed in pursuance of a regular recruitment in accordance with relevant rules in an open competitive process, against sanctioned vacant posts. The equality clause contained in Articles 14 and 16 should be scrupulously followed and courts should not issue a



WEB COPY

direction for regularization of services of an employee which would be violative of constitutional scheme. While something that is irregular for want of compliance with one of the elements in the process of selection which does not go to the root of the process, can be regularized, back door entries, appointments contrary to the constitutional scheme and/or appointment of ineligible candidates cannot be regularized.

(ii) Mere continuation of service by an temporary or ad hoc or daily-wage employee, under cover of some interim orders of the court, would not confer upon him any right to be absorbed into service, as such service would be 'litigious employment'. Even temporary, ad hoc or daily- wage service for a long number of years, let alone service for one or two years, will not entitle such employee to claim regularization, if he is not working against a sanctioned post. Sympathy and sentiment cannot be grounds for passing any order of regularization in the absence of a legal right.

(iii) Even where a scheme is formulated for regularization with a cut off date (that is a scheme providing that persons who had put in a specified number of years of service and continuing in employment as on the cut off date), it is not possible to others who were appointed subsequent to the cut off date, to claim or contend that the scheme should be applied to them by extending the cut off date or seek a direction for framing of fresh schemes providing for successive cut off dates.

(iv) Part-time employees are not entitled to seek regularization as they are not working against any sanctioned posts. There cannot be a direction for absorption, regularization or permanent continuance of part time temporary employees.

(v) Part time temporary employees in government run institutions cannot claim parity in salary with regular employees of the government on the principle of equal pay for equal work. Nor can employees in private employment, even if serving full time, seek parity in salary with government employees. The right to claim a particular salary against the State must arise under a contract or under a statute."

21. Thus, it is evident that a Mandamus cannot be normally issued to regularise the service of an employee or to absorb an



employee or to continue the service of an employee. A refusal to issue such a relief of Mandamus will not offend the constitutional guarantee contained under Articles 14 and 16 of The Constitution of India. In the present case, the appellants herein have rightly refused to regularise the service of the first respondent in these appeals. While so, we are inclined to interfere with the order passed by the learned single Judge in the writ petitions filed by the first respondent in these writ appeals.

22. In the light of the above, the Order dated 17.04.2018 passed by the learned Single Judge in Writ Petition Nos. 31021 to 31027 of 2015 etc., is hereby set aside. The writ appeals are allowed. No costs. Connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

rsh

To

- 1.The Secretary,
School Education Department,
Fort St.George, Chennai-9.
- 2.The Director of School Education,
DPI Compound,
Nungambakkam,
College Road, Chennai.
- 3.The Joint Director of School Education (Vocational),
DPI Compound,Nungambakkam,
Chennai.
- 4.The Chief Educational Officer,
Thoothukudi.
- 5.The Chief Educational Officer,
Chennai.
- 6.The District Educational Officer,
Thallakulam, Madurai-02.
- 7.The Chief Educational Officer,
Coimbatore.



8.The Chief Educational Officer,
Virudhunagar.

9.The Chief Educational Officer,
Dindigul.

+14ccs to Mr.A.R.Suresh, Advocate Sr No.25741
+1cc to M/s.Fr.Xavier Associates, Advocates Sr No.26178
+1cc to Mr.J.Kingsly Solomon, Advocate Sr No.25742
+1cc to the Government Pleader Sr No.25988

W.A.No.730 of 2019

AJS (CO)
PR (30/09/2021)