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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 23.11.2021

CORAM:

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

W.P.NO.4319 OF 2008

1. P.Ilangovan (deceased)
2. V.Parameswari
3. Sanmugasundari
4. Nirajana

(P2 to P4 substituted as legal heirs of the deceased sole first petitioner vide order dated 19.03.2021 made in WMP.5404/2021 in WP.4319/2008)

... Petitioners

Vs.

1. State of Tamilnadu,
rep. by its Secretary to Government,
School Education Department,
Fort. St. George,
Chennai 600 009.
2. The Director, School Education (Hr. Sec.)
College Road, Chennai 600 006.
3. The Chief Educational Officer, Madurai.
4. The Chief Educational Officer, Theni.
5. The Head Master, Govt. Hr. Secondary School,
Thevaram, Theni District.

... Respondents

Prayer:

Writ petition filed under Section 226 of the Constitution of India seeking to issue a Writ of Mandamus , directing the respondents to regularise the service of the first petitioner on par with other similarly placed vocational teachers, from 01.04.1990, on which date, first petitioner was originally brought on time scale of pay by virtue of G.O.712 dated 28.05.1990 and pass orders.



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For petitioners
For respondents

:Mr.R.Saravanakumar
:Mr.T.Arunkumar, Addl.Govt. Pleader
for R1 to R5

ORDER

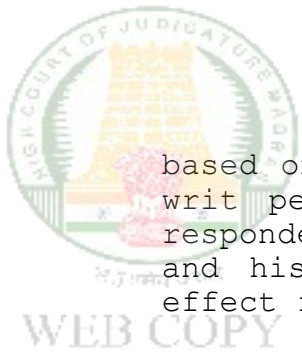
Originally, this writ petition was filed by the first petitioner (sole petitioner) seeking direction to the respondents to regularise his service on par with other similarly placed vocational teachers, from 01.04.1990, on which date, he was originally brought on time scale of pay by virtue of G.O.712 dated 28.05.1990 and pass orders.

2. Pending writ petition, the first petitioner died and hence, his legal heirs were impleaded as petitioners 2 to 4.

3. The case of the first petitioner in brief:

The first petitioner was appointed as double part time Vocational Instructor for the Higher Secondary Course in S.U.M.Higher Secondary School, Royappanpatti, with effect from 01.09.1984. Based on the representations, the Government regularised 800 part time Vocational Instructors by G.O.712 dated 28.05.1990 and another 587 Vocational Instructors by G.O.967 dated 16.10.1992.

3.1. By virtue of G.O.712 dated 28.05.1990, the first petitioner was brought on time scale of pay and vide order 25.06.1991 and he was appointed as full time Vocational Instructor in SUM Higher Secondary School. However, based on the orders of the Tamil Nadu Administrative Tribunal dated 18.06.1993 and 17.12.1993, in two original applications, the first respondent cancelled the above two G.O.712 and G.O.967 and brought all the 1387 Vocational Instructors under the time scale vide G.O.Ms.No.834 dated 23.09.1994. Based on G.O.834, the first respondent sought to re-fix the scale of pay. Hence, he filed W.P.No.20149/1994 and this court vide order dated 07.12.1994, granted stay of operation of G.O.Ms.834 dated 23.09.1994. Subsequently, the third respondent, vide proceedings dated 10.01.1995, issued instruction to the management of SUM Higher Secondary School to bring the first petitioner under time scale of pay with effect from 23.09.1994. Accordingly, the fifth respondent issued order dated 10.01.1995 itself, by placing the first petitioner on temporary basis from 23.09.1994 to 30.06.1995. However, vide order dated 30.05.1995, the School management terminated the first petitioner from service. Hence, the first petitioner filed W.P.No.10487/1996 and



based on the orders of this court dated 18.12.1997 in the above writ petition, the first petitioner was appointed in the 5th respondent school on 19.04.1998 and since then, he was working and his service was regularised by the third respondent with effect from 22.04.1998.

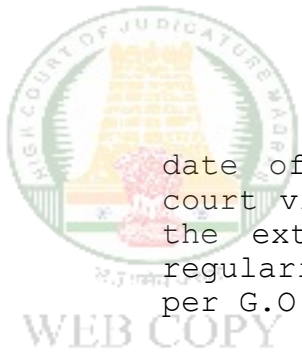
3.2. In the meantime, a batch of writ petitions were filed challenging the GO Ms.No.834 dated 23.09.1994 and vide order dated 24.06.2004, this court quashed the above said G.O 834 and directed the respondent to take into account the service of the petitioners from the date on which they were first brought into time scale of pay i.e. GO Ms.712 or GO Ms 587 as the case may be and they shall enjoy the status, they had acquired including increment etc. and their length of service would be treated as such from the deemed date of regularisation for all purposes, and the regularised vocational instructors are entitled to benefit of notional increment till the date of order etc.

3.3. The first petitioner also filed W.P.No.28804 of 2004, challenging the said G.O.834 and this court vide order dated 06.10.2004, granted same relief to the first petitioner. However, though he was working from 1984, his services were considered only from 1998, the year on which, this court passed order in the matter relating to his termination. Hence, his services were considered for all purposes only from the date on which he was reinstated in the service on 22.04.1998. The first petitioner made several representations to the respondents, but they have not considered the same. Hence this writ petition has been filed to regularise his service on par with the similarly placed persons, from 01.04.1990, on which date, the first petitioner was originally brought on time scale of pay by virtue of G.O.712 dated 28.05.1990.

4. The brief contentions of the counter affidavit filed by the fourth respondent:

The first petitioner was terminated from full time vocational teacher on 30.05.1995. Challenging the above said order, the first petitioner filed W.P.No.10487/1996. This court vide order dated 18.12.1997, quashed the termination order and directed the second respondent to reinstate the first petitioner, as a fresh appointment, without any monetary benefits. Therefore, the first petitioner has no right to claim monetary benefits from 01.04.1990, because he was terminated from service on 30.05.1995 and fresh appointment was given as per the order of this court dated 18.12.1997. The first petitioner joined duty as fresh appointee on 22.04.1998.

4.1. The first petitioner filed a W.P.No.28804 of 2004 to quash the G.O.Ms.No.834 and to regularise his service from the



date of initial appointment with all service benefits. This court vide order dated 23.09.1994, quashed the G.O.Ms.No.834, to the extent in so far as it takes away the vested right of regularization already made as double part time instructors, as per G.O.712 of 1990 and 967 of 1992.

4.2. But the first petitioner case is separate one. As per judgment made in W.P.No.10487 of 1996 dated 18.12.1997, he was reinstated as fresh appointee without back wages. Hence, the general order made in W.P.No.28804/2004 is not applicable to the petitioner's case as that of the case of the petitioners in batch cases in W.P.No.11389 to 11343 of 2003, because, he was appointed as fresh appointee. The first petitioner was re-appointed from 22.04.1998 and died on 23.08.2009 and pension gratuity and other monetary benefits were sanctioned and paid to his legal heirs. Therefore, this writ petition is liable to be dismissed.

5. Heard the rival submissions made by the counsel for both the parties and perused the materials on record.

6. The factum of facts, not disputed by both the parties are,

i) the first petitioner was appointed as Vocational Instructor in the year 1994 and subsequently, by virtue of G.O.712 dated, 28.05.1990, he was brought on time scale of pay and appointed as full time vocational teacher in SUM Higher Secondary School, with effect from 01.04.1990.

ii) Since the G.O. 712 and 967 were cancelled vide G.O.834 dated 23.9.1994, on petition filed by the first petitioner in WMP No.30699/1994 in W.P.No.20149/1994 and vide order of this court dated 07.12.1994, he was brought under time scale of pay with effect from 23.09.1994 to 30.06.1995 on temporary basis.

iii) However, since the petitioner was considered as excess, the school management vide order 30.05.1995, terminated him with effect from 30.05.1995, since the academic year closes on 30.05.1995.

iv) Thereafter, based on the order of this court in W.P.No.10487/1996 dated 18.12.1997, the petitioner was reinstated into service, as a fresh appointment, without any monetary benefit.

7. The learned counsel for the petitioners submitted that, though this court in W.P.No.28804 of 2004 dated 06.10.2004 granted same reliefs to the first petitioner, as that of the petitioners in a batch of writ petitions, who challenged



G.O.834, his service was considered only from 1998, on which this court passed order in the matter relating to his termination. Hence he prayed to regularise the service of the first petitioner on par with the similarly placed persons from 01.04.1990.

8. Per contra, the learned counsel appearing for the respondents contended that, as per the specific order of this court dated 18.12.1997 in W.P.No.10487/1996, the first petitioner was reinstated into service, as a fresh appointment, without any monetary benefits. Hence, as a matter of right, he cannot claim the monetary benefits from 01.04.1990, because, he was terminated from 30.05.1995 and joined duty as fresh appointee on 22.04.1998.

9. The main contention of the petitioners is that, the first petitioner was working from 1984 and he was brought into time scale of pay from 01.04.1990 as full time worker. Further, this court vide order dated 06.10.2004 in W.P.No. 28804 of 2004, has granted same reliefs as that of the petitioners, who challenged the G.O.834, to consider his service for regularisation from the date of initial appointment. But the respondents have not considered the same.

10. The first petitioner, the deceased, was working in the School Management from the year 1984 and he was brought into time scale of pay from 01.04.1990. This court vide order dated 18.12.1997 in W.P.No.10487 of 1996 has set aside the termination order dated 30.05.1995 passed by the school management and directed the official concerned to reinstate the petitioner into service, as a fresh appointment, without any monetary benefits. Therefore, this order will not embargo for the respondents to consider the revised pensionary benefits of the first petitioner, under the Pension Scheme and Rules. According to the respondents, in the similar matters in a batch of writ petitions in W.P.No.11389 to 11343 of 2003, the petitioners were not terminated like the first petitioner and therefore, the first petitioner is not entitled for regularisation of his service from 01.04.1990. The above contention of the respondents cannot be agreed, because, the termination order passed by the school management was set aside by this court vide order dated 18.12.1997 in W.P.No.10487/1996.

11. The learned counsel for the petitioners submitted that the petitioners are entitled for refund of pensionary benefits of the deceased first petitioner, in the light of pension Rules, by taking into service rendered by him from 01.04.1990 under the regular time scale of pay. To that extent, he seeks appropriate direction to the authorities to revise the pension and refund the pensionary benefits to the petitioners 2 to 4. There is a



force in the contention of the counsel for the petitioners. Though, there is no provision to grant the relief as prayed in the writ petition to regularise the service of the first petitioner from 01.04.1990, on par with the similarly placed persons, it is open to the petitioners 2 to 4 to approach the authorities concerned seeking revised pensionary benefits of the deceased first petitioner. If any representation is made by the petitioners 2 to 4, the authorities concerned are directed to consider the same in accordance with law and by taking note of the above said discussion.

12. With the above direction, this writ petition is dismissed. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

mst

To

1. State of Tamilnadu,
rep. by its Secretary to Government,
School Education Department,
Fort. St. George,
Chennai 600 009.
2. The Director, School Education (Hr. Sec.)
College Road, Chennai 600 006.
3. The Chief Educational Officer, Madurai.
4. The Chief Educational Officer, Theni.
5. The Head Master, Govt. Hr. Secondary School,
Thevaram, Theni District.

+1cc to Mr.E.Veda Bagath Singh, Advocate, S.R.No.60359
+1cc to the Government Pleader, S.R.No.60690

W.P.No.4319 of 2008

SVI (CO)
PM/09/12/2021