



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.09.2021

CORAM

THE HONOURABLE MRS. JUSTICE PUSHPA SATHYANARAYANA
AND
THE HONOURABLE MR. JUSTICE KRISHNAN RAMASAMY

W.A.No.1463 of 2021

D.Selvaraj

...Appellant/Petitioner

Vs.

1. The State of Tamilnadu
rep. by its Secretary,
Education Department,
Secretariat, Chennai-600 009.
2. The Director of Elementary Education,
College Road, Chennai-6.
3. The District Elementary Educational Officer,
Thanjavur District.
4. The Assistant Elementary Educational Officer,
Thirupananthal, Thanjavur District.
5. Alhilal Aided Middle School
Rep. by the Secretary,
Thathuvancheir, Thirupananthal,
Thanjavur District.

...Respondents/Respondents

Prayer : Writ Appeal filed under Clause 15 of Letters Patent against the order dated 07.12.2020 passed in W.P.No.18090 of 2014.

Prayer in W.P.No.18090 of 2014:-

Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus calling for the entire documents connected with impugned order passed by the second respondent vide Na.Ka.No.8815/H2/2012, dated 03.2013 and quash the same and direct the respondents to approve the appointment of the petitioner as Graduate Assistant w.e.f. 01.06.2002, by upgrading the post of Secondary Grade as per G.O.Ms.No.79, School Education U2 Department, dated 14.06.2002, with all monetary and consequential benefits and compute the service of the petitioner from 17.01.2001 to 31.05.2006, for pensionary benefits.



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For Appellant : Mr.S.N.Ravichandran

For Respondents : Mr.R.Neelakandan
State Government Counsel
for RR1 to 4
Mr.K.Sathishkumar for R5

J U D G E M E N T

PUSHPA SATHYANARAYANA, J.

The unsuccessful writ petitioner has preferred the instant writ appeal seeking to set aside the impugned order of the learned Single Judge refusing to issue a direction to the respondents to approve his appointment as Graduate Assistant with effect from 01.06.2002 by upgrading the post of Secondary Grade Teacher as per G.O.Ms.No.79, School Education (U2) Department, dated 14.06.2002 with all monetary and consequential benefits and compute the services of the writ petitioner from 17.01.2001 to 31.05.2006 for pensionary benefits.

2. The fifth respondent is a minority aided school. The writ petitioner was appointed in the vacancy, which arose due to the resignation of one Ms.Srividya. The said order of appointment was issued on 11.01.2001 by the Correspondent of the School in his proceedings Na.Ka.No.471/2001, in the existing permanent vacancy. A proposal was also sent for approval on 08.03.2001 to the third respondent. As per G.O.Ms.No.559, dated 11.07.1995, there was a ban on appointing higher qualified teachers as Secondary Grade Teachers. Thus, the proposal sent by the School was returned. In the meanwhile, G.O.Ms.No.125, 12.11.2003 was issued for designating the post of Secondary Grade Teacher as Junior B.T. Assistant post, of which, the writ petitioner's appointment was approved with effect from 01.02.2004, instead of the approval with effect from 01.06.2002. The writ petitioner, therefore, sent a representation to the third respondent through the School on 30.10.2010 requesting to upgrade the post of Secondary Grade Teacher as B.T. Assistant with effect from 01.06.2002 with all monetary benefits. As there was no response, the petitioner filed in W.P.(MD)No.902 of 2012 before the Madurai Bench of this Court and obtained a direction to the second respondent to consider his representation. Pursuant to the same, the impugned order dated 22.03.2013 was passed by the second respondent, which was put to challenge in W.P.No.18090 of 2014, wherein, the writ Court refused to set aside the order of the second respondent, though permitted the writ petitioner to make a fresh representation to the competent authority and issued a direction to the authorities to consider the representation and pass appropriate orders, according to the eligibility of the writ petitioner.



3. Before the writ Court, the writ petitioner had placed reliance on G.O.Ms.No.99, School Education Department, dated 27.06.2006, G.O.Ms.No.100, dated 27.06.2006 and G.O.Ms.No.125, School Education (X2) Department, dated 12.11.2003. The said Government Orders deal with the recruitment of teachers during the ban on recruitment was in vogue in the State.

4. Heard the learned counsel on either side and perused the papers.

5. The facts are not disputed. The grievance of the writ petitioner is that he was appointed as Secondary Grade Teacher and he sought to be upgraded as B.T. Assistant from 01.06.2001 and the respondents ought to have approved his appointment, as Graduate Assistant with effect from 01.06.2002 by upgrading the post of Secondary Grade Teacher as per G.O.Ms.No.79, School Education Department dated 14.06.2002 with all the attendant monetary benefits. G.O.Ms.No.79 was issued for appointment of Middle Grade Graduate Teachers with B.Ed. Qualification in lieu of Secondary Grade Teachers in classes 6, 7 and 8 standards. The Government, in order to improve the standard of education, issued the said G.O. with certain conditions. A reading of the said G.O. makes it very clear that the same would come into effect only from 01.06.2002, but the petitioner, who has been appointed in the year 2001 and whose appointment was approved in the year 2004, bases his claim on the above Government Order to seek benefit from 01.06.2002.

6. In this regard, it is relevant to point out that though the petitioner was appointed in the approved vacancy in a permanent sanctioned post on 11.01.2001, his appointment was approved on 19.04.2004 on consolidated pay in proceedings in R.C.No.2179/B3/2004. Unfortunately, the petitioner had not challenged the said order of approval on consolidated pay taking effect from 01.02.2004. Subsequently, in the order dated 21.05.2007 passed by the District Elementary Educational Officer, in proceedings Mu.Mu.No.7101/A4/2006, based on G.O.Ms.No.99 and G.O.Ms.No.120, the consolidated pay appointment was brought to an end and from 01.06.2006, he was brought to the time scale of pay. The said proceedings was also not challenged by the appellant and only in the year 2010, by representation dated 30.10.2010, he had made a request to appoint him as Middle Grade Graduate Assistant with salary as has been fixed under G.O.Ms.No.79, dated 14.06.2002. According to him, there is no justification to approve his appointment with effect from 01.02.2004 that too on the consolidated pay, as the said salary is payable to those who were approved from 01.06.2003, as per G.O.Ms.No.125, dated 12.11.2003. It was further argued that the writ petitioner was appointed on 11.01.2001 and his approval was kept pending till the same was approved on 19.04.2004, which



cannot be a ground to deny the approval of the petitioner's appointment / upgradation from 01.06.2002.

7. The other ground raised by the writ petitioner / appellant is that since the fifth respondent school is a minority institution, the prior permission for conversion and upgradation of the post of Secondary Grade Teacher as Graduate Teacher is not necessary.

8. It is to be stated that the conduct of the writ petitioner/ appellant would go to show that he had accepted and acted upon the approval order on 01.04.2004 and regularization from 01.02.2004. The above writ petition itself had been filed speculatively to reap any benefit that may come on his way. If at all, the writ petitioner / appellant was aggrieved, he should have made his representation immediately after the orders of approval was passed on consolidated pay on 19.04.2004. He had been brought to the time scale of pay on 21.05.2007 with effect from 01.06.2006. Even at that time, he did not raise any objection nor sought regularization from the date of his original appointment. Having failed to do so, he should be held guilty of delay and laches. Considering these aspects, the writ Court had given him an opportunity to make a detailed representation to the competent authority to consider his claim once again, if he is otherwise eligible.

9. In view of the above discussion, this Court of the view that there is no necessity for considering the representation once again by the authorities and the direction to make a fresh representation to the authorities is not warranted. Therefore, the writ appeal fails and the same is dismissed with the above observations. No costs.

Sd/-
Assistant Registrar(CS VII)

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Sub Assistant Registrar

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To

1. The Secretary,
Education Department,
Government of Tamilnadu,
Secretariat,
Chennai-600 009.



2. The Director of Elementary Education,
College Road,
Chennai-6.

3. The District Elementary Educational Officer,
Thanjavur District.

4. The Assistant Elementary Educational Officer,
Thirupananthal,
Thanjavur District.

+1cc to Mr.S.N.Ravichandran, Advocate, S.R.No.44026

+1cc to the Government Pleader, S.R.No.44610

W.A.No.1463 of 2021

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