



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.09.2021

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.Nos.21038, 21040 & 21041 of 2021

(Through Video Conferencing)

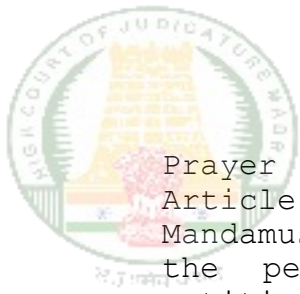
- |              |                                       |
|--------------|---------------------------------------|
| 1.A.Ganesan  | ...Petitioner in W.P.No.21038 of 2021 |
| 2.A.Arumugam | ...Petitioner in W.P.No.21040 of 2021 |
| 3.M.Bakkiyam | ...Petitioner in W.P.No.21041 of 2021 |

Vs

- |                                                                                                                                      |                            |
|--------------------------------------------------------------------------------------------------------------------------------------|----------------------------|
| 1. The State of Tamil Nadu,<br>Represented by the Secretary to Government,<br>Education Department,<br>Fort St. George, Chennai - 9. |                            |
| 2. The Director of School Education,<br>College Road, Chennai - 09.                                                                  |                            |
| 3. The Chief Educational Officer,<br>Virudhunagar District.                                                                          |                            |
| 4. The District Educational Officer,<br>Virudhunagar District.                                                                       | ...Respondents in all W.Ps |

Prayer in W.P.No.21038 of 2021: Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Mandamus directing the respondents to grant monetary benefits to the petitioner with effect from 07.08.2001, the date of petitioner's regularization of service as per G.O.Ms.No.68, School Education (R1) Department dated 18.04.2013 and to pay consequential arrears of pay within a stipulated period of time.

Prayer in W.P.No.21040 of 2021: Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Mandamus directing the respondents to grant monetary benefits to the petitioner with effect from 16.09.2011, the date of petitioner's regularization of service as per G.O.Ms.No.68, School Education (R1) Department dated 18.04.2013 and to pay consequential arrears of pay within a stipulated period of time.



Prayer in W.P.No.21041 of 2021: Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Mandamus directing the respondents to grant monetary benefits to the petitioner with effect from 19.11.2010, the date of petitioner's regularization of service as per G.O.Ms.No.68, School Education (R1) Department dated 18.04.2013 and to pay consequential arrears of pay within a stipulated period of time.

For Petitioners : Ms.Dakshayani Reddy  
(In all W.Ps) for Ms.S.Esairani Narasimman

For Respondents : Mr.L.S.M.Hasan Fizal  
(In all W.Ps) Government Advocate

#### COMMON ORDER

Mr.L.S.M.Hasan Fizal, learned Government Advocate takes notice on behalf of the respondents.

2. Appearing on behalf of the petitioners, the learned counsel submits that the services of petitioners were to be regularized in terms of the Government Order in G.O.Ms.No.68, School Education (R1) Department dated 18.04.2013.

3. The learned counsel for the petitioners further submits that the petitioners herein are at Sl.Nos.86, 87 & 88 in Annexure in the above Government Order. However, the respondents have not been implemented the aforesaid Government Order in the case of the petitioners.

4. The learned counsel for the petitioners has also enclosed a copy of the order dated 12.06.2013 in Na.Ka.No.1103/A1/2013 in the case of one Gunalan who was at Sl.No.70 in Annexure of the aforesaid Government Order. The said Gunalan is also a similarly placed person like the petitioners. It is submitted that though the Government has also issued the aforesaid Government Order it has not been implemented in the case of the petitioners and therefore the present writ petition has been filed by the petitioners. The learned counsel for the petitioners submits that the petitioners have also given their representations to the respondents in the year 2015, 2017, 2019 and 2021 which has not evoked any positive response from the respondents.

5. Appearing on behalf of the respondents, the learned Government Advocate submits that there was an embargo on the respondents for implementing the content of G.O.Ms.No.68, School Education (R1) Department dated 18.04.2013 in the light of the



decision of the Hon'ble Supreme Court in Secretary to Government, School Education Department, Chennai Vs Thiru R.Govindswamy and others, (2014) 4 SCC 769. The learned Government Advocate for the respondents has drawn attention to Paragraphs 7 & 8 of the aforesaid order which reads as under:-

" 7. This Court in State of Rajasthan & Ors. v. Daya Lal & Ors., AIR 2011 SC 1193, has considered the scope of regularisation of irregular or part-time appointments in all possible eventualities and laid down well-settled principles relating to regularisation and parity in pay relevant in the context of the issues involved therein. The same are as under:

"8(i) The High Courts, in exercising power under Article 226 of the Constitution will not issue directions for regularisation, absorption or permanent continuance, unless the employees claiming regularisation 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 direction for regularisation of services of an employee which would be violative of the 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 regularised, back door entries, appointments contrary to the constitutional scheme and/or appointment of ineligible candidates cannot be regularised.

(ii) Mere continuation of service by a 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 regularisation, if he is not working against a sanctioned post. Sympathy and sentiment cannot be grounds for passing





any disturbance. He submits that since the services of petitioners were not regularized earlier, the petitioners cannot claim benefit of G.O.Ms.No.68, School Education (R1) Department dated 18.04.2013.

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7. Heard the learned counsel for the petitioner and the learned Government Advocate for the respondents. I have perused the relevant Government Order.

8. If the petitioners have been working as Sanitary Workers/Sweepers from 1991 to 2001 and their names were included in G.O.Ms.No.68, School Education (R1) Department dated 18.04.2013, their claims have been considered by the respondents.

9. The above Government Order makes it clear that the decision was taken by the Government to absorb the petitioners into service in the regular time scale of pay.

10. Considering the above, this Writ Petition is disposed by directing the respondents to implement G.O.Ms.No.68, School Education (R1) Department dated 18.04.2013 within a period of twelve weeks from the date of receipt of a copy of this order. Before passing such orders, the respondents may however verify whether the petitioners were indeed covered by the aforesaid Government Order.

11. In case the petitioners are entitled to be absorbed, the respondents are also directed to pay the arrears of salary, if any, to the petitioners they have been paid, had they been absorbed then and there in terms of G.O.Ms.No.68, School Education (R1) Department dated 18.04.2013.

12. These Writ Petition are disposed of with the above observations. No costs.

Sd/-

Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

arb  
To

1. The Secretary,  
Government of Tamil Nadu,  
Education Department,  
Fort St. George, Chennai - 9.



2. The Director of School Education,  
College Road, Chennai - 09.

3. The Chief Educational Officer,  
Virudhunagar District.

4. The District Educational Officer,  
Virudhunagar District.

+3ccs to M/s.S.Esairani Narasimman, Advocate, S.R.No.50994  
+1cc to the Government Pleader, S.R.No.51587

W.P.Nos.21038, 21040 & 21041 of 2021

NRL[co]  
NSK 15/11/2021