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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.10.2021

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THE HON'BLE MR.JUSTICE C.SARAVANAN

W.P.NO.22959 OF 2021

(Through Video Conferencing)

N.Nagarathinam

... Petitioner

Vs.

1. The State of Tamil Nadu,
Represented by its Secretary to Government,
School Education Department,
Secretariat, Chennai - 600 009.
2. The Director of Government Examinations,
Directorate of Government Examinations,
College Road, Chennai - 600 006.
3. The Assistant Director of Government Examinations,
Coimbatore, Coimbatore District.

... Respondents

Prayer: Writ Petition filed under Article 226 of Constitution of India, for issuance of a Writ of Mandamus directing the respondents to extend the benefits of G.O.(1D).No.286, School Education (GE.1) Department dated 19.07.2016 and G.O.(1D).No.238, School Education (Nee.Va.4(2)) Department dated 07.04.2017, and G.O.(Pa).No.72, School Education (G.E.) Department dated 28.02.2019 to the petitioner also for regularization in the post of Record Clerk from the date of proposal (i.e.,) 03.11.1998 onwards on par with junior for the purpose of pension based on the Writ Appeal Order dated 05.12.2017 in W.A.No.1292 of 2017 and grant pension to the petitioner from the date of retirement with effect from 31.10.2017.



For Petitioner : Mr.G.Elanchezhiyan

For Respondents : Mr.L.S.M.Hasan Fizal
Government Advocate

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ORDER

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

2. It is noticed that the petitioner's representation dated 06.06.2020 has not received attention from the respondents. It is the case of the petitioner that the petitioner is entitled for regularization of services with effect from the date of her original appointment as has been implemented in the case of few others in terms of G.O.(1D).No.286, School Education (GE.1) Department dated 19.07.2016, G.O.(1D).No.238, School Education (Nee.Va.4(2)) Department dated 07.04.2017 and G.O.Pa.No.72, School Education (Aa.The) Department dated 28.02.2019 in terms of an order passed in W.A.No.1292 of 2017 dated 05.12.2017 and in W.A.No.774 of 2020 dated 21.09.2020.

3. Appearing on behalf of the respondents, the learned Government Advocate submits that the writ petition at this distant point of time for retrospective regularization from 1998 cannot be countenanced after the petitioner's services were regularized from 2006.

4. Heard the learned counsel for the petitioner and the learned Government Advocate for the respondents. I have perused the above mentioned Government Orders and the orders passed by the Hon'ble Division Bench of this Court in W.A.No.1292 of 2017 and in W.A.No.774 of 2020. While dealing with an identical situation in W.A.No.1292 of 2017, the Hon'ble Division Bench of this Court held as under:-

"6. After hearing the rival contentions and after going through the material records placed before us and considering the fact that the writ petitioner has already retired from service and the fact that the similarly placed juniors to the writ petitioner were regularized,



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we are of the view that ends of justice will be met by giving notional regularization on par with his juniors with monetary benefits only and not with other service benefits. The order passed by the learned single Judge wherein a direction is given to grant notional benefit including monetary benefits and other service benefits shall stand modified to the above extent and on regularizing him on par with his juniors, he would be paid the arrears of pay, if any, after adjusting the amount already drawn by him during his service. The above exercise shall be completed within a period of 12 weeks from the date of receipt of a copy of this judgment."

5. A similar order was thereafter passed on 21.09.2020 by the Hon'ble Division Bench of this Court in W.A.No.774 of 2020, wherein, it was noted that similarly placed persons who were appointed on daily wages basis and thereafter sanctioned posts were created and the respondents therein were appointed on regular time scale of pay in terms of G.O.Ms.No.212, School Education (VI) Department dated 25.10.2006. There, the Court also noticed that while the writ petitions were pending, the Education Department granted regularization with retrospective effect to various individuals in terms of Government Orders mentioned therein. The Hon'ble Division Bench of this Court observed that on a perusal of the Government Orders, it is evident that they were issued in response to the orders in writ petitions filed by the concerned parties. The aforesaid writ appeal was disposed by the Hon'ble Division Bench with the following observations:-

"12. On perusal of the impugned order of the learned single Judge, we note that it is recorded in paragraph 3 of the order that the Petitioner had prayed for a larger relief but had agreed to restrict the prayer to the extent that the pension benefits extended to other similarly placed persons by various Government Orders may also be extended to the Writ Petitioner. By taking note of this limited prayer, the impugned order came to be passed.



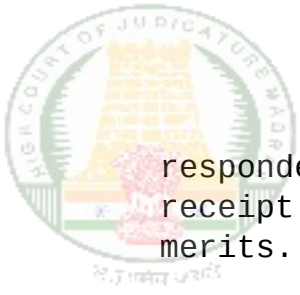
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13. The main ground on which Mr. Munuswamy challenges the impugned order is the inapplicability of the said 3 G.O.-s on the basis that the said orders were passed as a special case pursuant to the orders of this Court in proceedings initiated by the persons concerned. For the principle that those G.O.-s do not create a right in favour of the Respondent/Petitioner, he relied on the judgment in Col. B.J. Akkara.

14. Upon consideration of the rival contentions, we do not find any infirmity in the impugned order except to the limited extent of clarifying that it shall be open to the Appellants to consider the representation of the Respondent/Petitioner for the limited purpose of pension benefits, on merits, by considering the 3 G.O.-s referred to supra, and deciding on the applicability of such benefit to the Respondent/Petitioner. If a representation has already been submitted by the Respondent/Petitioner, such representation may be examined on merits in the manner indicated above and disposed of within a period of four weeks from the date of receipt of a copy of this order. Otherwise, the Respondent/Petitioner is permitted to submit such representation within two weeks from the date of receipt of a copy of this order and the consideration and disposal thereof shall be, as indicated above, but within four weeks thereafter.

15. In the result, the Writ Appeal is disposed of on the above terms. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed."

6. Considering the same, the respondents are directed to pass appropriate orders on the representation dated 06.06.2020 of the petitioner after duly considering the orders passed by the Hon'ble Division Bench of this Court in W.A.No.1292 of 2017 vide order dated 05.12.2017 and in W.A.No.774 of 2020 vide order dated 21.09.2020. This exercise shall be carried out by the



respondents within a period of sixteen weeks from the date of receipt of a copy of this order in accordance with law and on merits.

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7. This Writ Petition stands disposed of with the above observations. No costs.

Sd/-

Assistant Registrar(CS-V)

// True Copy //

Sub Assistant Registrar

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To

1. The Secretary to Government,
Government of Tamil Nadu,
School Education Department,
Secretariat, Chennai - 600 009.
2. The Director of Government Examinations,
Directorate of Government Examinations,
College Road, Chennai - 600 006.
3. The Assistant Director of Government Examinations,
Coimbatore, Coimbatore District.

+1cc to Mr.G.Elanchezhiyan, Advocate, S.R.No.55651

W.P.No.22959 of 2021

KG(CO)
RLP(26/11/2021)