



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 02.09.2021

CORAM:

THE HONOURABLE MR.JUSTICE S.S. SUNDAR

W.P. (MD).No.10573 of 2013

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P.Mariammal

.. Petitioner

Vs.

1.The Director of School Education
D.P.I Campus,
College Road, Chennai.

2.The Chief Educational Officer,
Ramanathapuram,
Ramanathapuram District.

3.The secretary
Devangar Hr.Sec School
Neeravi, Kamudhi Taluk
Ramanthapuram District.

..Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, for the issuance of Writ of Certiorarified Mandamus, to call for Entire records relating to the impugned proceedings of the 1st respondent in his proceedings in Na.Ka.No. 20251/V1/E3, dated . 06.2013 and quash the same as illegal and consequentially to directing herein to regularize the services of the petitioners as full time vocational instructor on par with her juniors, by upgrading the petitioner scale pay from consolidated pay to that of vocational instructors Grade-II i.e. Secondary grade teacher scale of pay and then to that of full time scale of pay ie., to vocational instructors Grade-I i.e. B.T. Assistant scale of pay.

For Petitioner : Mr.V.R.Shunmugathan
For R1 & R2 : Mr. M.Linga Durai
Government Advocate
For R3 : M/S.S.Xavier Rajini

ORDER

This writ petition is filed for issuance of a Writ of Certiorarified Mandamus to quash the impugned order passed by the first respondent dated 5.6.2013 and consequently to direct the respondents to regularize the services of the petitioner as full time Vocational Instructor on par with her juniors, by upgrading the petitioner pay scale from consolidated pay to that of vocational instructors Grade-II ie., secondary grade teacher scale of pay and then to that of Vocational instructor Grade-I ie., B.T Assistant.



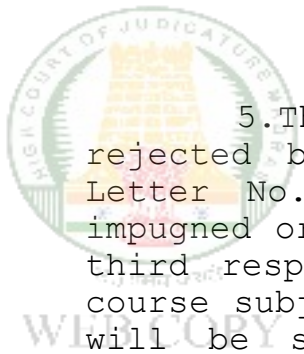
2.The brief facts that are necessary for disposal of the writ petition are as follows.

(i)The petitioner was appointed as Vocational instructor in Accountancy and Auditing in the third respondent school, on 25.09.1997. The appointment was with effect from 26.09.1997 on consolidated pay of Rs.500/-. The petitioner's appointment was approved by the second respondent, by proceedings dated 4.6.2002 with effect from 26.9.1997. It is stated that the order of the second respondent was, on the basis of the Government Order vide G.O.Ms.No.991 Education Department, dated 16.07.1990 and another order vide G.O.Ms.No. 680, dated 20.09.1996, regularizing the services of seven teachers.

(ii)The Government, vide G.O.Ms.No.217 dated 13.05.1997 decided to release and grant with effect from 01.06.1995 to certain approved private schools enlisted therein. The third respondent school is found in Serial No.9. It is seen that five posts of P.G Assistants and one part time Vocational instructor post was sanctioned to the third respondent school by this G.O. It is the case of the petitioner that the part time Vocational instructors, who were engaged on consolidate pay basis, were regularized with time scale and that more than 361 persons were regularised as full time Vocational instructors. It is also the specific case of the petitioner that the petitioner's junior by name V.Arthi was benefited by G.O.Ms.No.74 dated 10.06.2002 to get regularization and time scale. It is contended by the petitioner that the said V.Arthi was appointed on 31.05.2000 at Hairathal Jalalia Hr. school, Keelakarai, Ramanathapuram District. Following G.O.Ms.No.74 dated 10.06.2002, the said teacher was given scale of pay equal to selection grade teacher/Vocational Instructor Grade II.

3.The learned Counsel appearing for the petitioner also pointed out that seven persons, who were on consolidated pay in the post of Vocational instructors, were regularized by granting regular time scale with retrospective effect based on Government orders. The petitioner earlier filed a writ petition in W.P.(MD)No.14910 of 2011 for issuance of a writ of Mandamus directing the respondent to regularize the services of the petitioner as full time Vocational instructor on par with her juniors, by upgrading the petitioner's scale of pay from consolidated pay to that of regular time scale for Vocational instructor Grade-II.

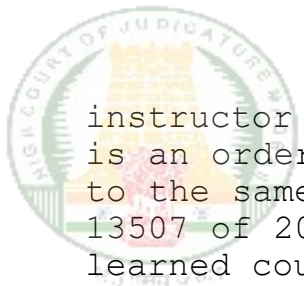
4.This court, by ordered dated 4.2.2013, directed the petitioner to submit a fresh representation to the first respondent, namely the Chief Educational Officer Ramanathapuram and to direct the first respondent to consider the representation taking note of the facts and circumstances stated by the petitioner and to forward the proposal on merits and in accordance with law to the second respondent for further orders. A direction was also issued to the first respondent to do the exercise within a period of eight weeks.



5.The petitioner's further representation was unfortunately rejected by the impugned order. By relying upon the Government Letter No.245 School Education Department, dated 08.12.2008 the impugned order dated 5.6.2013 came to be passed by stating that the third respondent school was given permission to start Vocational course subject to specific condition that no Government aid or post will be sanctioned to the institution and that therefore the petitioner's request cannot be considered. Challenging the said order, the above writ petition is filed.

6.A counter affidavit has been filed by the second respondent by stating that the petitioner was appointed in the year 1997-1998 as a part time teacher purely on consolidated basis and that the remuneration payable to the petitioner, cannot be more than was assured to them, by virtue of G.O.Ms.No.217 School Education Department, dated 13.5.1997. The second respondent stated further that as per Government Letter No.245 School Education Department, dated 08.12.2008, the teachers appointed after the crucial date viz., 01.04.1992 are not entitled to such appointment in regular post. Sum and substance it was highlighted as per section 14(A) of the Tamil Nadu Recognized Private School (Regulation Act) Act, 1988 (hereinafter referred to as the "Act" for short), no grant is payable to the new private Schools, new class and course of instruction. It is contended that no private School established subsequent to the date of commencement of the academic year 1991-1992, is eligible to get additional posts with Government aid.

7.The third respondent filed counter affidavit supporting the stand taken by the petitioner stated in the affidavit filed in support of the writ petition. The learned Counsel appearing for the petitioner submitted that the appointment of the petitioner was approved and that therefore, it cannot be contended that the petitioner was not appointed as against the sanctioned post. The learned counsel appearing for the petitioner relied upon the judgement of this court in the case of the ***V.Arthi -vs- Chief Educational Officer, Ramanathapuram District and 3 others***, dated 05.09.2001 and submitted that the direction of this court was complied with by approving the appointment of the teachers and by extending the grant-in-aid and other consequential service benefits. The learned Counsel also relied upon the judgment of this court in the case ***Susila -vs- the Director of School Education Department and two others***, dated 15.3.2013 in ***W.P. (MD)No.13507 of 2013***. It is stated by the learned Counsel appearing for the petitioner that the petitioner in W.P.(MD)No.13507 of 2013 was also appointed as Vocational instructor in Dhiraviyam Girls Higher Secondary School, Kamalapuram, Mettur Gate Via, Dindugal District. It is pointed out further that the said Dhiraviyam Girls Higher Secondary School was also one of the Schools which is found in the list of annexure, to G.O.Ms.No.217 dated 13.5.1997. Since the third respondent school is also one of the Schools in respect of which the post of Vocational



instructor was sanctioned, the learned Counsel submitted that there is an order in similar circumstances that the petitioner is entitled to the same relief that was granted to the petitioner in W.P. (MD) No. 13507 of 2013. This Court is unable to reject the contentions of the learned counsel for the petitioner.

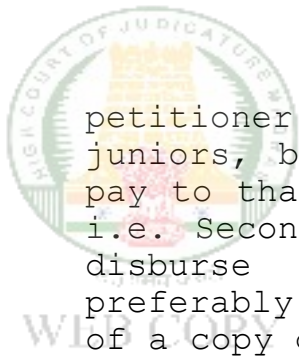
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8. In the present case, the request of the petitioner for regularization was rejected only by referring to the Section 14-A of the Act, which states that no grant is payable to new private schools or new class or course of instructions, which are commenced on or after the academic year 1991-1992. It is demonstrated before this court that the Government has clarified the position that the petitioner who was appointed as Vocational teacher is also entitled to Government grant and Section 14-A of Act does not stand in the way of extending the benefit to the petitioner who was holding the post that was sanctioned. In view of the clarifications, vide Letter No.245 dated 18/12/2008, the petitioner should be taken as appointed in the sanctioned post. It is also to be noted that the petitioner was appointed in a post that was an existing post and hence, it is not possible to appreciate the contention of the learned Government Advocate that the the petitioner is not entitled to regularization by virtue of Section 14-A of the Act.

9. The learned Counsel appearing for the petitioner pointed out that the Government has accepted the position in several cases as pointed out by the learned Counsel appearing for the petitioner. The respondent by order dated 26.11.2002 approved the appointment of one V.Arthi, despite the fact that the said Arthi was appointed only on consolidated basis. It is also stated that the order passed in the writ petition in W.P.(MD) No. 13507 of 2013, the services of the petitioner in the said writ petition was regularised on par with other Vocational instructors.

10. The learned Counsel for the third respondent referred to the proceedings of the Joint Director, dated 31.5.2007. By this proceeding, the teacher by name V.Arthi was upgraded as Vocational instructor Grade-I. It is stated by the said communication that the said teacher is entitled to get monetary benefits with effect from 08.07.2004. The learned counsel appearing for the petitioner also stated that the petitioner is also entitled to upgradation as Vocational instructor Grade-I and entitled to monetary benefits with effect from 08.07.2004.

11. Having accepted the position in tune with the judgment of this Court in respect of other individuals, this Court is unable to appreciate the stand taken by the second respondent in the counter affidavit filed in the present writ petition. This Court is of the view that the petitioner is entitled to the relief and hence, the writ petition is allowed. The impugned order passed by the first respondent in Na.Ka.No. 20251/V1/E3, dated Nil.06.2013 is quashed. The respondent is directed to regularize the service of the



petitioner as full time Vocational instructor on par with her juniors, by upgrading the petitioner's pay scale from consolidated pay to that of pay applicable to the vocational instructor Grade-II i.e. Secondary grade teacher. The respondents are also directed to disburse the monetary benefits as expeditiously as possible preferably within a period of twelve weeks from the date of receipt of a copy of this order. The petitioner is also entitled to the next level of pay as applicable to the Vocational instructor Grade-I as it was given to others who are similarly placed. No costs.

Sd/-

Assistant Registrar (AE)

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Sub Assistant Registrar(CS)

Sn/Ns

Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate / litigant concerned.

To

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College Road, Chennai

2.The Chief Educational Officer,
Ramanathapuram,
Ramanathapuram District.

3.The secretary
Devangar Hr.Sec School
Neeravi, Kamudhi Taluk
Ramanthapuram District.

+1 CC to M/s.K.RAGATHEESH KUMAR, Advocate (SR-28108[F] dated 03/09/2021)

+1 CC to M/s.SPL GP (SR-28198[F] dated 06/09/2021)

W.P. (MD) .No.10573 of 2013
02.09.2021

NSN(CO)

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