



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 30.06.2021

CORAM

THE HON'BLE MR. JUSTICE P.D.AUDIKESSAVALU

W.P. (MD) No. 16872 of 2013

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S.Seenivasan (Died)

1.S.Geetha

2.S.Bavithra

3.S.Dineshkumar

... Petitioners

(Petitioners 1 to 3 are substituted vide Court Order dated 29.06.2021 in W.M.P.(MD)No.18346 of 2019 in W.P. (MD) No.16872 of 2013)

-vs-

1.The Principal Secretary to Government,
School Education Department,
St. George Fort, Chennai - 9.

2.The Director of School Education,
D.P.I. Compound,
College Road, Chennai - 6.

3.The District Educational Officer,
Virudhunagar Educational District,
Virudhunagar.

4.The Correspondent,
Hajee P. Syed Mohamed Higher Secondary School,
Virudhunagar.

... Respondents

Prayer:- Writ Petition filed under Article 226 of Constitution of India, seeking for a Writ of Mandamus, to direct the Respondents to regularise the Petitioner's service from the date of his original appointment made by the Fourth Respondent School i.e., 08.10.1997 and consequently to provide the service and monetary benefits to the Petitioner by considering the Petitioner's representation dated 19.08.2013.

For Petitioner

For R1 to R3

For R4

: Mrs. P. Yasmin Begum

: Mr. D. Ghandhiraj,

Counsel for the Government

: No appearance



O R D E R
(through video conference)

The Writ Petition has been filed on 09.10.2013 by one S.Seenivasan and after his demise on 06.08.2017, his wife and children have been substituted as the Petitioners in this case by order dated 29.06.2021 in W.M.P. (MD) No.18346 of 2019 in W.P. (MD) No.16872 of 2013 passed by this Court.

2. Heard Mrs. P. Yasin Begum, Learned Counsel for the Petitioners and Mr. D.Gandhiraj, Learned Counsel representing the First to Third Respondents, and perused the materials placed on record, apart from the pleadings of the parties.

3. The Fourth Respondent is a Private School receiving grant-in-aid from the Government of Tamil Nadu for payment of salary for its Teachers. The said S.Seenivasan was selected and appointed as a Secondary Grade Teacher in the sanctioned vacancy in the school of the Fourth Respondent by order dated 06.10.1997 and joined service on 08.10.1997. The proposal submitted by the Fourth Respondent for approving the appointment of the said S.Seenivasan was returned by the Third Respondent on the ground that he did not have the required qualification for the post of Secondary Grade Teacher in terms of G.O.Ms.No.559, Education, Science and Technology Department, dated 11.07.1995 issued by the Government of Tamil Nadu. A batch of Writ Petitions in **Secretary & Correspondent Uswathun Hasana Oriental (Arabic) Girls Higher Secondary School -vs- State of Tamil Nadu** (2002 WLR 173) challenging the said G.O. Ms. No. 559, Education, Science and Technology Department, dated 11.07.1995 was heard by the Division Bench of this Court and upheld with certain observations. In furtherance to the aforesaid decision of this Court, the Government of Tamil Nadu had issued G.O. Ms. No. 155, School Education (D2) Department, dated 03.10.2002 in which permission was granted for approval of qualified graduates appointed in the already sanctioned vacancies for the period from 11.07.1995 to 19.05.1998 in the post of permanent Secondary Grade Teachers in high school if they had completed short term training course on Child Psychology in the respective District Teachers Education and Training Institute (DIET). The said S.Seenivasan was given such training in Child Psychology from 02.05.2003 to 31.05.2003 and thereafter his appointment as Secondary Grade Teacher in the school of the Fourth Respondent has been approved by the Third Respondent by order in Na.Ka.No.8348/A1/2002 dated 26.06.2003 with effect from 02.06.2003 onwards. The claim of S.Seenivasan in this Writ Petition is that inasmuch as he has successfully completed the training in Child Psychology the approval of his appointment has to be with effect from 08.10.1997, i.e., the date on which he had joined duty, and not confined from 02.06.2003 onwards as granted by the Third Respondent. As stated earlier, on the demise



of the said S.Seenivasan, the Petitioners have been substituted and are prosecuting this Writ Petition for the monetary benefits payable to the said S.Seenivasan for the period from 08.10.1997 to 01.06.2003.

4. In support of the aforesaid claim made, Learned Counsel for the Petitioners contends that in respect of one R. Manjula Devi who was appointed as Headmistress of the school of the Fourth Respondent with effect from 26.12.1997 and who had been denied the benefit of approval in the appointment to the said post till she completed the training in Child Psychology on 24.06.2005, this Court by order dated 03.11.2008 in W.P. No. 16383 of 2000 filed by the Fourth Respondent granted her the monetary benefits by regularising her service for the period prior to her completing the training course in Child Psychology, which was implemented in G.O. Ms. No. 117, School Education (B1) Department, dated 11.09.2012, and the failure to extend the same to the said S.Seenivasan amounts to discrimination which requires interference by this Court.

5. The question that arises for consideration in this Writ Petition is whether the said S.Seenivasan is entitled for salary by way of grant-in-aid from the First to Third Respondents for the period from 08.10.1997 to 01.06.2003 in the post of Secondary Grade Teacher in the school of the Fourth Respondent?

6. As already noticed earlier, the Division Bench of this Court in **Secretary & Correspondent Uswathun Hasana Oriental (Arabic) Girls Higher Secondary School -vs- The State of Tamil Nadu** (2002 Writ L.R. 173), after duly considering the statutory provisions, has held that the requirement of Trained Secondary School Leaving Certificate (hereinafter referred to as 'T.S.L.C.' for short) of Secondary Grade is mandatory for a teacher appointed in a primary school as he is required to know the behaviour of the children and kindergarten methods to bring up children and that it would be improper to equate those teachers possessing T.S.L.C. with others obtaining B.T. or B.Ed., Degree, which is meant for teaching students in High School and Higher Secondary level.

7. The Hon'ble Supreme Court of India has also taken the same view as evident from the decisions in **P.M. Latha -vs- State of Kerala** [(2003) 3 SCC 541], **Yogesh Kumar -vs- Govt. of NCT, New Delhi** [(2003) 3 SCC 548] and **Dilip Kumar Ghosh -vs- Chairman** [(2005) 7 SCC 567] while dealing with similar provisions in the corresponding statutes of other States in the country. It would be useful here to refer to the decision of the Hon'ble Supreme Court of India in **Dilip Kumar Ghosh -vs- Chairman** [(2005) 7 SCC 567] in which it has been held as follows:-

<https://hcservices.ecourts.gov.in/hcservices/>

10. The Rules, as noticed above, were framed primarily

appo
the

qualifications. The Hon'ble Supreme Court of India in ***State of Orissa -vs- Mamata Mohanty*** [(2011) 3 SCC 436] has held that a

complaints and/or enhanced.



33. it is evident that education is necessary to develop the personality of a person as a whole and in totality as it provides the process of training and acquiring the knowledge, skills, developing mind and character by formal schooling. Therefore, it is necessary to maintain a high academic standard and academic discipline along with academic rigour for the progress of a nation. Democracy depends for its own survival on a high standard of vocational and professional education. Paucity of funds cannot be a ground for the State not to provide quality education to its future citizens. It is for this reason that in order to maintain the standard of education the State Government provides grant-in-aid to private schools to ensure the smooth running of the institution so that the standard of teaching may not suffer for want of funds.

34. Article 21-A has been added by amending our Constitution with a view to facilitate the children to get proper and good quality education. However, the quality of education would depend on various factors but the most relevant of them is excellence of teaching staff. In view thereof, quality of teaching staff cannot be compromised. The selection of the most suitable persons is essential in order to maintain excellence and the standard of teaching in the institution. It is not permissible for the State while controlling the education it may impinge the standard of education....

37. It is a settled legal proposition that if an order is bad in its inception, it does not get sanctified at a later stage. A subsequent action/development cannot validate an action which was not lawful at its inception, for the reason that the illegality strikes at the root of the order. It would be beyond the competence of any authority to validate such an order. It would be ironic to permit a person to rely upon a law, in violation of which he has obtained the benefits. If an order at the initial stage is bad in law, then all further proceedings consequent thereto will be non est and have to be necessarily set aside. A right in law exists only and only when it has a lawful origin.

40. lacking eligibility as per the rules/advertisement cannot be cured at any stage and making appointment of such a person tantamounts to an illegality and not an irregularity, thus cannot be cured. A person lacking the eligibility cannot approach



the court for the reason that he does not have a right which can be enforced through Court.

50. In absence of an enabling provision for grant of relaxation, no relaxation can be made. Even if such a power is provided under the Statute, it cannot be exercised arbitrarily. Such a power cannot be exercised treating it to be an implied, incidental or necessary power for execution of the statutory provisions. Even an implied power is to be exercised with care and caution with reasonable means to remove the obstructions or overcome the resistance in enforcing the statutory provisions or executing its command. Incidental and ancillary powers cannot be used in utter disregard of the object of the Statute. Such power can be exercised only to make such legislation effective so that the ultimate power will not become illusory, which otherwise would be contrary to the intent of the legislature.

51. More so, relaxation in this manner is tantamount to changing the selection criteria after initiation of selection process, which is not permissible at all. Rules of the game cannot be changed after the game is over.

56. It is a settled legal proposition that Article 14 is not meant to perpetuate illegality and it does not envisage negative equality. Thus, even if some other similarly situated persons have been granted some benefit inadvertently or by mistake, such order does not confer any legal right on the petitioner to get the same relief.

57. This principle also applies to judicial pronouncements. Once the court comes to the conclusion that a wrong order has been passed, it becomes the solemn duty of the court to rectify the mistake rather than perpetuate the same....

58. We are fully alive of the object and purpose of according recognition and affiliation to educational institutions. It is the educational authorities of the State which grant recognition to a Committee of Management for opening or running an educational institution. Affiliation is granted by the particular University or Board for undertaking the examination of the students of that college for awarding degrees and certificates. Therefore, while granting the recognition and affiliation even for non-governmental and non-aided private colleges, it is mandatory to adhere to the



conditions imposed by them, which also include the minimum eligibility for appointment of teaching staff. The authority at the time of granting approval has to apply its mind to find out whether a person possessing the minimum eligibility has been appointed...."

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9. The Division Bench of this Court in **State of Tamil Nadu -vs- Pallivasal Primary School** (2004-2-LW. 591) had earlier examined the cases of the persons similarly placed to the said S. Seenivasan claiming the benefit of grant-in-aid from the Government towards their salary for working in private schools for the period prior to completing the training course in Child Psychology and held as follows:-

"7. So far as the approvals/confirmation is concerned, Government was not under any duty to approve or confirm the appointment of appellants/petitioners who did not possess the qualifications prescribed when, they were improperly appointed to the posts. Their position cannot be equated to that of those who possess the qualification and had been duly appointed. Their remaining in their post was only by reason of a sympathetic view taken by the Division Bench which had upheld the Government Order which had directed that persons with B.Ed. Qualification are not to be appointed in Secondary Grade vacancies.

8. Their right to be regarded as persons eligible for confirmation / approval can be said to arise only after they acquired, after their training, a minimum prescribed qualification. The Government here has shown great concession to them by allowing them to retain their position even without obtaining the requisite diploma or certificate in child psychology by giving to them training in child psychology. We see nothing wrong in the Government directing that their approval / confirmation can only be on and after the date they complete the training. Their past service however shall count for pension.

9. It was submitted by some of the counsel for the appellants / petitioners that there was delay in providing training. Complaint of this nature cannot be made by such of these persons. Even according to them over 1000 persons have been appointed contrary to the G.O. Ms. No: 559. The fact that Government took some time to formulate a scheme and provide training to them in batches, cannot be a matter for complaint especially



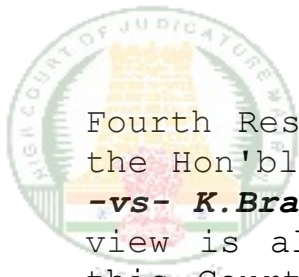
as the continued functioning of these persons as teachers was not disturbed on account of the time required by the Government for providing training.

10. A submission was also made for some of those among the appellants / petitioners that they have not been paid salary by the State. The State was not under any obligation to pay salary to persons who were not qualified and who have been appointed contrary to Government Order. Such persons must have been paid some amount by the management who employed them. Government cannot be directed to shoulder that liability for payment to such persons and in cases where payment had not been made. What has been said by us in relation to the persons who had received salary and recovery from whom has been held by us to be unwarranted, would apply to the Government as well as any direction to it to pay salary to a large number of such persons who did not, at the relevant time, possess the prescribed qualification, would result in a huge burden being imposed on the Government even when it had committed no wrong."

Similar view has been reiterated by the Division Bench of this Court in **Director of Elementary Education -vs- Sundaravel Raj** (Order dated 21.03.2019 in W.A. (MD) Nos. 74 of 2015 and 957 of 2016).

10. Insofar as the contention of the Petitioners that the relief sought in the Writ Petition has been granted to similarly placed persons by this Court is concerned, it could be noticed that those orders have been passed without reference to the binding decisions of the Division Bench of this Court in the **State of Tamil Nadu -vs- Pallivasal Primary School** [2004 (2) LW 591] holding the field. In any event, those orders which run counter to the legal principles in the authoritative pronouncement of the Hon'ble Supreme Court of India in **State of Orissa -vs- Mamata Mohanty** [(2011) 3 SCC 436] have been denuded of their status as precedent and cannot be relied upon to extend the same benefits to the said S.Seenivasan in this case.

11. Viewed from that perspective, it would be erroneous to extend the benefits of granting salary to the said S.Seenivasan by way of grant-in-aid by the Government from his initial appointment on 08.10.1997 till 01.06.2003 when he completed the training course in Child Psychology. This would not however preclude the right of the Petitioners, as legal heirs of the said S.Seenivasan, to invoke Section 70 of the Indian Contract Act, 1872, to pursue the legal remedies to get the benefits from the management of the



Fourth Respondent who had extracted the work from him, as held by the Hon'ble Supreme Court of India in **Government of Andhra Pradesh -vs- K.Brahmanandam** [(2008) 5 SCC 241] in similar situation. This view is also fortified by the decision of the Division Bench of this Court in **State of Tamil Nadu -vs- Pallivasal Primary School** [2004 (2) LW 591].

12. It is needless to add here that the benefit of payment of salary by way of grant-in-aid to the said S.Seenivasan as Secondary Grade Teacher for the period from 02.06.2003 onwards in terms of the order in Na.Ka.No.8348/A1/2002 dated 26.06.2003 passed by the Third Respondent remains undisturbed.

13. Learned Counsel for the Petitioners lastly made a fervent plea that the period of service from 08.10.1997 to 01.06.2003 of the said S.Seenivasan as Secondary Grade Teacher in the school of Fourth Respondent may be reckoned for the purpose of qualifying for pension citing the decision of this Court in **State of Tamil Nadu -vs- Pallivasal Primary School** (2004-2-L.W. 591). Since the entitlement to pension was not an aspect claimed at the time of filing the Writ Petition and the said question has arisen on the death of the said S.Seenivasan subsequently, it is made clear that the Petitioners are not precluded from working out their remedies in that regard before the proper forum in a manner recognised by law.

In the upshot, the Writ Petition is dismissed with the aforesaid clarifications. No costs.

Sd/-

Assistant Registrar (WRITS)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

SRM

Note: (i) Issue order copy by 15.09.2021.

(ii) 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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+1 CC to M/s.SPL GP (SR-20907[F] dated 01/07/2021)

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30.06.2021

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