



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **29.11.2021**

CORAM:

THE HONOURABLE MR.JUSTICE **B.PUGALENDHI**

W.P.[MD].No.1190 of 2020
W.M.P.[MD].No.936 of 2020

K.Balasubramanian

... Petitioner

Vs.

1.The State of Tamil Nadu
Rep.by its Secretary to Government,
Education Department,
Fort St.George, Chennai-600 009.

2.The Director of School Education,
College Road,
Chennai-600 006.

3.The Chief Educational Officer,
Chief Educational Office,
Kokkirakulam,
Tirunelveli-627 009.

4.The District Educational Officer,
District Educational Office,
Tirunelveli-627 001.

5.The Correspondent,
The Madura Diraviyam Thayumanavar Hindu College,
Higher Secondary School,
Tirunelveli-627 001.

...Respondents

PRAYER : Writ Petition is filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, calling for the records relating to the impugned order passed by the fourth respondent dated 25.11.2019 in Na.Ka.No.5590/A2/2019 and quash the same and to direct the respondent Nos.1 to 4 to pay the salary for the period from 08.12.1997 to 01.06.2003 to the petitioner and to pay the other benefits namely selection grade etc.

For Petitioner : Mr.K.Vadivelu

For Respondents : Mr.P.Thiraviam

Government Advocate



O R D E R

This Writ Petition has been filed as against the order passed by the fourth respondent on 25.11.2019.

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2. According to the petitioner, he was appointed as Secondary Grade Teacher on 16.02.1997 in the fifth respondent school, on compassionate ground and the appointment was also approved by the fourth respondent in the year 2014. However, the salary for the period from 08.12.1997 was not paid to the petitioner and the salary was paid to him only from 02.06.2003. Therefore, the petitioner has made a representation through the fifth respondent school and the same was forwarded to the fourth respondent. However, the fourth respondent rejected the representation by the impugned order dated 25.11.2019. Aggrieved over the same, the present writ petition has been filed.

3. The learned Government Advocate submits that this petitioner was originally appointed on compassionate ground, without ascertaining the basic requirement for appointing him as Secondary Grade Teacher. Thereafter, the petitioner has completed child Psychology training only in the year 2003 and he was provided salary with effect from 2003 ie., on which date, he acquired qualification. He relies on G.O.Ms.No.155 dated 03.10.2002 and the order of the Division Bench of this Court in W.A.No.74 of 2015.

4. As per the norms in G.O.Ms.No.155 dated 03.10.2002, one month child psychology training is provided for all those teachers, who possess B.Ed qualification and appointed in Secondary Grade vacancies. If the teachers does not possess the requisite qualification, the Government, while granting concession, imposes a condition that those appointments would be treated as illegal and they are not entitled for salary in the secondary grade teacher from the period of appointment till the completion of child Psychology training. The above said Government Order was upheld by the Hon'ble Division Bench of this Court in W.A.(MD).Nos.74 of 2015 and 957 of 2016 and the relevant portion in paragraph Nos.9 to 12 is extracted hereunder:

9. The management of various Schools, which had appointed Teachers like the respondents had challenged the validity of G.O.Ms.No.155 dated 03.10.2002 and the matter travelled upto the Division Bench and the Division Bench in the case of **The State of Tamil Nadu and others v. Pallivasal Primary School** reported in **2004-2-L.W. 591** upheld G.O.Ms.No.155 dated 03.10.2002. The only relief granted to the Teachers, who were appointed in Secondary Grade vacancies, is the grant of salaries, were by



restraining the department from effecting any recovery. Therefore, paragraph No.3(7) of G.O.Ms.No.155 alone was set aside and rest of the Government Order was upheld in the said decision. It was subsequently ordered that approval/confirmation of the appointment can be only after the date of completion of the child psychology training. Further the Division Bench observed that the past service I.e prior service child psychology training shall count. After the decision rendered in the case of Pallivasal has attained finality, the respondent/writ petitioners seek for salary for the earlier period as well as for other monitory benefits such as increment, selection grade and special grade, etc. We have given our careful consideration. We find in paragraph No.7 of its judgment, the Hon'ble Division Bench has noted the various condition in G.O.Ms.No.155 and held that the respondent therein would be entitled to relief as granted to similarly placed teachers. If that is so, the ultimate conclusion would have been to grant benefit from the date of completion of the child psychology training. However in the penultimate portion of the order her salary has also been included. In our considered view, the direction to pay salary does not corroborate with the observation made by the Division Bench. In, the decision in the case Suganthi Victoria. The Government had admitted that at best it can be taken as a decision pertaining to the said case on its factual matrix and that cannot be taken as a precedent. In the case of **Government of Tamil Nadu v. Sri Rao Bahadur AKD Dharmaraja Girls Higher Secondary School** in W.A.(MD)No.3442 of 2002 dated 08.09.2006, the Division Bench, relying on the decision of the case reported in 2002 Writ l.r. 173, held that the salary can be paid only after completion of the child psychology training and accordingly, allowed the Government appeal.

10.The learned counsel for the respondents/writ petitioners relied on certain other orders passed by various single Benches including one of us (TSSJ) and on perusal of the same, we find that in none of those decisions, the full affect of G.O.Ms.No.155 and the conditions therein have been thoroughly examined. Apart from that, the decision in the case of Pallivasal Primary School has not been specifically noted. Therefore, we are of the considered view, that those decisions cannot be referred to advance the case of the respondents/writ petitioners, though some of them have attained finality. Needless to state that if there has been a wrong decision, it cannot be treated as precedent.

11.In the light of the above reasoning, we are of the



considered view that the order passed by the Writ Court directing disbursement of salary from the date of original appointment, cannot be sustained, in the light of explicit condition imposed in G.O.Ms.No.155, which was upheld by the Division Bench in a Public Interest Litigation. Thus, for the above reasons, the writ appeals filed by the department has to be allowed.

12.The learned counsel for the respondents submitted that though there were about 3000 Teachers who were appointed in such improper manner as of now 300 Teachers would be entitled to monitory benefits and as remaining persons were already paid and they were protected by the Division Bench order from the effect of recovery. The learned counsel submitted that the respondent should be permitted to approach the Government by way of representation.

5. In the light of the said Government Order and the decisions of the Hon'ble Division Bench of this Court as referred supra, this Court is not inclined to entertain this writ petition. Accordingly, this Writ Petition stands dismissed. No costs. Consequently, connected miscellaneous petition is also closed.

Sd/-

Assistant Registrar (CS II)

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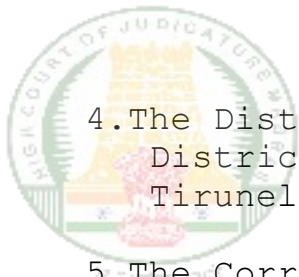
/ /2021

Sub Assistant Registrar(CS)

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To

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Rep.by its Secretary to Government,
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+1 CC to M/s.K. VADIVELU, Advocate (SR-36465[F] dated 30/11/2021)
+1 CC to M/s.SPL GP (SR-36523[F] dated 30/11/2021)

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SS (CO)
SB(15.12.2021) 5P 8C