



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 28.04.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

W.P. (MD) Nos.8354 of 2021

and

W.M.P (MD)No.6327 of 2021

and

W.P (MD)No.5306 of 2021

and

W.M.P (MD)No.4226 of 2021

W.P (MD)No.8354 of 2021

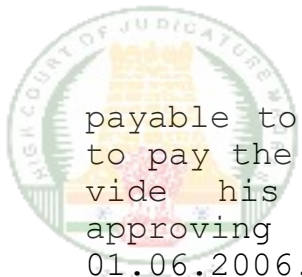
P.Samuel Sathish Kumar

... Petitioner
in both writ petitions

-Vs-

- 1.The Joint Director of School Education (Vocational)
O/o.the Joint Director of School Education,
DPI Compound,
College Road,
Chennai.
- 2.The Chief Educational Officer,
Office of the Chief Educational Office,
Madurai,
Madurai DistrictRespondent 1 and 2 in both Writ Petitions
- 3.The District Educational Officer,
O/o.the District Educational Office,
Madurai,
Madurai District3rd Respondentin WP (MD)No.8354/21
- 4.The District Educational Officer,
O/o The District Educational Officer,
Melur,
Madurai District3rd Respondentin WP (MD)No.5306/21
- 5.The Correspondent,
American College Higher Secondary School,
Tallakulam,
Madurai-625 002. ... 4th Respondents
in both writ petitions

PRAYER in W.P (MD)No.8354 of 2021: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Mandamus, to direct the respondents to sanction and disburse the salary



payable to the petitioner for the month of March-2021 and continue to pay the same in the light of the proceedings of the 3rd respondent vide his proceedings in e.f.vz;.12034/M2/06 dated 22.12.2006 approving the appointment of the petitioner with effect from 01.06.2006.

PRAYER in 5306 of 2021: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, calling for the records relating to the impugned order issued by the second respondent in his proceedings X.K.vz;.12303/<4/2020 dated 16.02.2021 and quash the same as illegal and consequently direct the respondents to sanction and disburse the monetary benefits including the yearly increments from the year 2016, Selection Grade and revision of scale of pay within the period that may be stipulated by this Court.

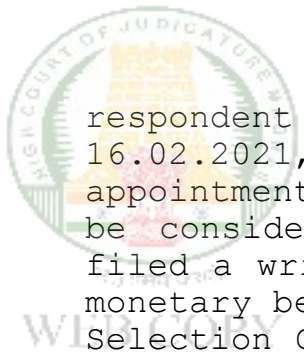
For Petitioner : Mr.H.Mohammed Imran
in both petitions for M/s.Ajmal Associates
For R1 to R3 : Mr.C.M.Mari Chelliah Prabhu
in both petitions Additional Government Pleader

COMMON ORDER

The issue involved in both the writ petitions is interlinked and therefore, both the writ petitions are taken up together for hearing and disposed of by this common order.

2. Mr.C.M.Mari Chelliah Prabhu, learned Additional Government Pleader takes notice on behalf of the respondents. By consent of both parties, this Writ Petition is taken up for final disposal at the stage of admission itself.

3. The petitioner was appointed as Vocational Instructor (Accounts and Auditing) on 01.03.2006 at the fourth respondent School in the regular sanctioned vacancy. The third respondent by the proceedings in R.C.No.12034/B2/2006, dated 22.12.2006, approved the appointment of the petitioner on consolidated pay and subsequently, the petitioner was brought under the regular time scale of pay with effect from 01.06.2006. While so, the petitioner's yearly increment was stopped from the year 2016, when he sought for Selection Grade on completion of 10 years of service. The learned counsel appearing for the petitioner submitted that once the appointment of the petitioner is approved, there is no question of declaration of probation or regularisation of his service. There is no order passed in this regard. The fourth respondent sent proposal on 20.02.2018 seeking for declaration of probation and regularisation of service of the petitioner. The respondents 1 to 3 have not passed any orders. Therefore, the fourth respondent has sent another proposal on 07.11.2019 and on receipt of the same, the third respondent by the proceedings, dated 22.11.2019, forwarded the same to the second respondent. On receipt of the same, the second



respondent by the impugned proceedings in ஓ.மு.எண்.12303.ஈ4.2020 dated 16.02.2021, has returned the request stating that the petitioner's appointment was made contrary to the Rules and therefore, it cannot be considered. Challenging the said proceedings, the petitioner filed a writ petition in W.P(MD)No.5306 of 2021 for disbursement of monetary benefits, including the yearly increment from the year 2016 Selection Grade and revision of scale of pay. While the said writ petition was pending, the fourth respondent issued show cause notice, dated 08.04.2021, seeking explanation alleging that the appointment of the petitioner was not properly made. The petitioner submitted the explanation. While so, in March 2021, the third respondent, while disbursing the salary of other employees of the fourth respondent, has not sanctioned the salary of the petitioner for the month of March 2021.

4. The learned counsel appearing for the petitioner submitted that the petitioner's appointment was approved in the year 2006 itself and he was granted time scale of pay. In view of the same, the impugned order of the second respondent in W.P(MD)No.5306 of 2021, is invalid and illegal. The second respondent has not given any reason for returning the proposal sent by the fourth respondent, except stating that appointment of the petitioner is contrary to the Rules and prayed for setting aside the order of the second respondent, dated 16.02.2021 and for a direction to the respondents to disburse the salary payable to the petitioner from March 2021 and prayed for allowing the writ petitions.

5. The respondents filed counter in W.P(MD)No.5306 of 2021. The learned Additional Government Pleader appearing for the respondents 1 to 3 submitted that in view of the policy decision taken by the Government, the incumbents working in part time posts of vocational instructors, were given time scale of pay under regular stream with effect from 01.04.1990. As per G.O.Ms.No.991, Education Department, dated 16.07.1990, it was specifically instructed not to make any fresh appointments of part time instructors (Vocational), not to convert any single part time teacher into double part time teacher or vice versa without obtaining specific orders from the Director of School Education. A High Level Committee on Vocational Education was constituted as per G.O.Ms.No.128, School Education Department, dated 12.06.2007, to review the present status of the Vocational Education Courses offered in Higher Secondary Schools in the State and to revamp the Vocational Education in accordance with the present day requirement. It was specifically instructed not to appoint any teacher at that stage till the revised system of Vocational Education was fully finalized. Further, the learned Additional Government Pleader submitted that the probation of the petitioner was not declared and his appointment is contrary to the Rulea and in view of the same, the order of the second respondent is valid and legal and the petitioner has not made out any case for disbursement of salary and prayed for dismissal of the writ petitions.

<https://hcservices.ecourts.gov.in/hcservices/> the learned counsel appearing for the petitioner and



the learned Additional Government Pleader appearing for the respondents.

7. From the above rival contentions and from the typed set of the papers filed by the petitioner, it is seen that the petitioner's appointment was approved by the third respondent on 22.12.2006 with effect from 01.06.2006 and he was brought under the time scale of pay. At that time, there was no Government Order, declaring the probation for the employees, like that of the petitioner. The petitioner has worked from the year 2006 in a sanctioned vacancy and his appointment was approved by the competent authority and he was brought on time scale of pay after approving his appointment in the year 2006 itself. It is not open to the second respondent to return the proposal of the fourth respondent on the ground that the appointment of the petitioner was made contrary to the Rules. The second respondent has not stated as to how the appointment of the petitioner is contrary to the Rules after 15 years of approval of the petitioner in the year 2006 itself.

8. For the above reasons, the impugned order in W.P.(MD)No.5306 of 2021 passed by the second respondent, dated 16.02.2021, is set aside. The respondents are directed to sanction and disburse the salary payable to the petitioner for the month of March-2021 and continue to pay the same in the light of the proceedings of the third respondent, vide his proceedings in e.f.vz;.12034/M2/06 dated 22.12.2006, approving the appointment of the petitioner with effect from 01.06.2006.

9. In the result, both the writ petitions are allowed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CSI)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

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

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To



1.The Joint Director of School Education (Vocational)
DPI Compound,
College Road,
Chennai.

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

3.The District Educational Officer,
Madurai,
Madurai District.

4.The District Educational Officer,
Melur,
Madurai District.

+1 CC to M/s.SPL GP (SR-18070[F] dated 29/04/2021)

+1 CC to M/s.AJAMAL ASSOCIATES, Advocate (SR-18098[F] dated
30/04/2021)

W.P. (MD) No.8354 of 2021
and
W.P (MD)No.5306 of 2021

28.04.2021

GS (9.06.2021) 5P 7C