



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 07.07.2021

CORAM:

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

AND

THE HONOURABLE MRS.JUSTICE S.ANANTHI

W.A. [MD]No.1327 of 2021

and

C.M.P (MD)No.5533 of 2021

1.The Secretary,
Government of Tamil Nadu,
School Education Department,
Fort St. George, Chennai-600 009.

2.The Director of School Education,
D.P.I Campus, College Road,
Chennai-600 006

3.The Director of Elementary Education,
School Education, D.P.I Campus,
College Road, Chennai-600 006.

: Appellants/Respondents 1 to 3

Vs.

Mr.S.Rajamohan : Respondent/Writ Petitioner

PRAYER: Writ Appeal filed under Clause 15 of the Letters Patent, praying to set aside the order passed in W.P(MD)No.5846 of 2020, dated 20.03.2020 on the file of this Hon'ble Court and allow this Writ Appeal.

Prayer in WP(MD)No. 5846/ 2020 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court Directing the 1st respondent herein to regularize the petitioners service from his initial date of appointment till 01.06.2006 with all consequential monetary and service benefits of Teachers in the light of the judgement of this Honourable Court in WP.No. 4991 of 2015, dated 30.07.2019.

For Appellants	:	Mr.A.K.Manickam Standing Counsel for Government
For Respondent	:	Mr.G.Anto Prince



JUDGMENT

[Judgment of the Court was delivered by **T.S.SIVAGNANAM, J.**]

We have heard Mr.A.K.Manickam, learned Standing Counsel for Government appearing for the appellants and Mr.G.Anto Prince, learned Counsel appearing for the respondent.

2.This Writ Appeal is directed against the order dated 20.03.2020, in W.P(MD)No.5846 of 2020.

3.Identical issue has been considered by this Court in W.A.[MD] No.299 of 2020 etc., batch dated 01.06.2021. The operative portion of the judgment reads as follows:

"54.Firstly, respondents 1 to 18 should have locus standi to raise such an issue. Only if they satisfy such condition, they can question the panel, which was impugned in the writ petition.

55.In the preceding paragraphs, we have held that respondents 1 to 18 cannot compare themselves with that of the appellants and this comparison itself is on account of their plea that they are entitled to be regularised in service with effect from the date of original appointment as Junior Grade Teacher on consolidated wage. We have categorically held that such a plea is untenable and not sustainable. Consequently, respondents 1 to 18 have no locus standi to question the penal, which was impugned in the writ petition.

56.It is further submitted by the learned counsel for respondents 1 to 18 that in respect of the Graduate Assistant Teachers and P.G. Assistant Teachers, the Department regularised their services by G.O.Ms.No.336 dated 30.12.2009 and those teachers were appointed under various Government Orders during the year 1990 on fixed consolidated pay for two years. The teachers filed W.P.No.221 of 1991 in which an order was passed that all appointments made pursuant to the Government Orders shall be treated as regular appointment with effect from the date of initial appointment and the writ appeals filed by the Government in W.A.Nos.14002 to 14041 of 2001 and 307 of 2006 were dismissed and the Government implemented the judgment by issuing G.O.Ms.No.336 dated 30.12.2009 and sanctioned time scale of pay from the date of their respective appointments. The said decision would apply to the case of respondents 1 to 18 also.



57. In our considered view, the said decision regularising the teachers, who were appointed in the year 1990 can be of no assistance to respondents 1 to 18 herein. The reason being the terms and conditions of their appointment and how they were treated at the first instance. Above all, respondents 1 to 18, having accepted the appointments, joined the post, worked on consolidated wages and having enjoyed the benefit of regularisation granted in 2006, which itself was a big concession granted to them, are wholly estopped from contending that the services rendered by them as Junior Grade Teachers on consolidated pay should also be reckoned for all purposes including monetary benefits. The plea is thoroughly misconceived. Equally the decision in W.P.Nos.21316 and 21317 of 2015 can in no manner advance the case of respondents 1 to 18.

58. The learned counsel has placed reliance on the decision in the case of **Direct Recruit Class II Engineering Officers Association vs. State of Maharashtra & Ors.**, [(1990) 2 SCC 715]. This decision can be made applicable to determine the status of a person, who was appointed to a post according to the rule and status of a person, who was appointed on ad hoc basis and not according to rules. In the first category of cases, it has been held that they should be given the benefit of seniority and their period of service shall be counted from the date of their appointment and not from the date of their regularisation or confirmation. This decision cannot be applied to the case of respondents 1 to 18, as they were appointed to a post, which was a post created by downgrading an existing post, given a different nomenclature, viz. Junior Grader Teacher with salary paid on consolidated basis. The terms and conditions of recruitment were made known to all the candidates including respondents 1 to 18. Therefore, they can never raise a plea that their recruitment having been done by TRB, is in accordance with the Rule and therefore, their seniority should be counted from the date of appointment. It may be true that the recruitment was done by the TRB, but it was a special recruitment for a specific purpose to a special category of post with wages on consolidated basis. Therefore, the decision of the Hon'ble Supreme Court cannot be applied to the case of respondents 1 to 18.



59. That apart, the belated attempt made by the respondents / writ petitioners is liable to be rejected for several reasons. Firstly, they are estopped from contending contrary to the Government Orders, contrary to the terms and conditions of the Government Orders and contrary to the conditions contained in the agreement to which they have agreed. Secondly, the challenge to the policy decision to downgrade the post to that of the Junior Grade Teacher was rejected and the decision of the Government has been upheld. The request made by some of the teachers to reckon the period of service prior to 01.06.2006 was directed to be considered by the Director of School Education pursuant to an order passed in a writ petition. The representation was considered and rejected and the same has not been challenged and after lapse of nearly fourteen years, suddenly the respondents / writ petitions have come up with this fanciful claim, which is absolutely untenable and unsustainable in law.

60. The present attempt of the respondents / writ petitioners is to march over the regularly promoted PG Assistants, who are only 62 number, whereas the Junior Grade Teachers, like the respondents / writ petitioners are more than 3000. Thus, the relief sought for by the respondents / writ petitioners is misconceived and liable to be rejected and accordingly, rejected.

61. In the result, the writ appeals are allowed and the orders and directions issued in the writ petitions are set aside and consequently, the writ petitions are dismissed. No costs. Consequently, connected miscellaneous petitions are closed."

4.Following the same, this Writ Appeal is also allowed. However, there shall be no order as to costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

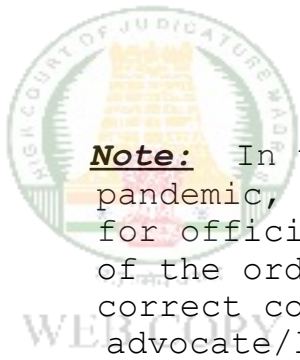
Assistant Registrar (AS)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

MR



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 presented is the correct copy, shall be the responsibility of advocate/litigant concerned.

To

- 1.The Secretary,
Government of Tamil Nadu,
School Education Department,
Fort St. George, Chennai-600 009.
- 2.The Director of School Education,
D.P.I Campus, College Road,
Chennai-600 006
- 3.The Director of Elementary Education,
School Education, D.P.I Campus,
College Road, Chennai-600 006.

W.A. [MD]No.1327 of 2021
07.07.2021

NS (CO)

LR (23.07.2021) 5P 4C