



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 25.11.2021

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THE HON'BLE DR.JUSTICE ANITA SUMANTH

W.P. (MD) No. 13194 of 2018

and

W.M.P. (MD) No. 12039 of 2018

S.I. Mohideen Meeral

...Petitioners

Vs.

1. The State of Tamil Nadu,
Represented by Secretary to Government,
Educational Department,
Fort St. George,
Chennai.

2. The Director of Elementary Education,
College Road,
Chennai.

3. The District Elementary Educational Officer,
Tirunelveli,
Tirunelveli District.

4. The Assistant Elementary Educational Officer,
Tenkasi,
Tirunelveli District.

5. The Manager,
Muslim Primary School,
Vadakarai,
Tenkasi Taluk, Tirunelveli District.

.. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, for the issuance of a writ of mandamus, directing the second respondent to approve the appointment of the petitioner from 13.07.1995 and continue in service made by the fifth respondent in sanction post and pay the salary from 13.07.1995 and grant all service benefits including back wages, continuative of services along with the pension benefits and pass orders.

For Petitioners : Mr. P. Thirumahilmaran
For Respondents : Mr. D. Sadiq Raja, AGP



ORDER

Heard Mr. P. Thirumahilmaran, learned counsel for the petitioner and Mr. D. Sadiq Raja, learned Assistant Government Pleader for all respondents barring R4. Notice does not appear to have gone to R5. However, in view of the order that I propose to pass in this matter, their presence may not be necessary.

2. The brief facts are as follows:

a) the petitioner was appointed as a Secondary Grade Teacher holding a qualification of B.Sc., B.Ed., on 13.07.1995. Though the petitioner contends that her qualifications would suffice and in fact she was over qualified, learned Assistant Government Pleader points out that the qualification of a B.Ed would not be relevant for Secondary Grade classes and would only be relevant as far as higher secondary grades are concerned. Thus, it would maintain that the petitioner did not possess the necessary qualifications for the post to which she was assigned.

b) Two days prior to her appointment, on 11.07.1995, G.O.(Ms) No. 559 had come to be issued imposing a ban on the approval of appointments to the posts of B.T./Tamil Pandits in all Secondary Grade vacancies.

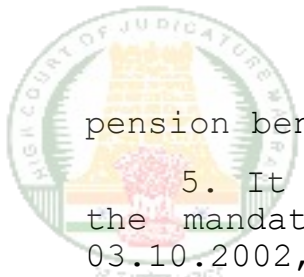
c) Admittedly, the petitioner's appointment has not been approved though it appears that the appointment of some teachers have been approved despite the ban and based upon interim protection granted by the Court in writ petitions filed by those candidates.

d) While the approval of the petitioner was pending, G.O.(Ms) No. 559 itself came to be challenged in a batch of writ petitions that came to be dismissed on various dates.

e) As against the order of the learned Single Judge, a writ appeal came to be filed challenging the G.O. in entirety and the writ appeal came to be disposed in *The State of Tamilnadu and Others vs Pallivasal Primary School* [2004 (2) weekly 591]. The G.O. was upheld and the order of the learned Single Judge confirmed. The Division Bench set aside recovery of benefits paid to the teachers whose appointments had been made pending the ban. Certain other directions were also issued which I will advert to as appropriate in the paragraphs to follow.

3. Pursuant to order in writ appeal, the petitioner has undergone the mandatory period of one month of Child Psychology Course and his services have been approved with effect from the date on which he completed the course, being 07.08.2003.

4. It is in light of the aforesaid facts that this Court has to consider the prayer of the petitioner for a writ of mandamus directing the respondents to approve his appointment from 13.07.1995 and sanction and pay over salary from 13.07.1995 onwards with all service benefits including backwages, continuity of service and



pension benefit.

5. It is the petitioner's case that seeing as he has completed the mandate under the subsequent G.O, that is, G.O. 155 dated 03.10.2002, his services must be approved from the date of initial appointment with all concomitant benefits.

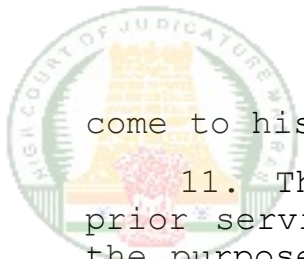
6. The facts as aforesaid are admitted by both learned counsel. The issue to be resolved is the entitlement of the petitioner for benefits from initial date of approval of the appointment of the petitioner from 11.07.1995 with all attendant benefits. For this purpose, it is necessary to refer to the terms of G.O.(Ms) No.155, that is been issued pursuant to the directions issued by the Division Bench in the decision passed in 2004.

7. The sum and substance of the aforesaid G.O. is to the effect that the candidates holding a post of B.T. Assistant or Tamil Pandits for Secondary School Classes must undergo a Child Psychology Course for a period of one month, upon which, their services shall be confirmed/approved with effect from the date on which they complete the course. The second relevant direction is with regard to the recovery that was directed from those candidates who had been paid over service benefits on the strength of interim protection obtained by them from the courts.

8. This G.O. was the subject matter of challenge and the Division Bench confirmed the direction contained therein to the effect that the approval shall be granted only with effect from the date when the candidate completed the Child Psychology Course. To this effect, the G.O. stood upheld. Recovery as directed in Clause 7 of Paragraph 3 was set aside. Incidentally the Bench noted that it was highly improbable that the candidate have been continuing in service without the benefit of any pay whatsoever and the management of the institution in question must have paid over some benefits to them in the course of their service.

9. Though learned counsel for the petitioner would maintain that this petitioner has not received any benefits from the management, there is no such averment to this effect in the writ petition. Be that as it may, if he has not in fact received any benefits and has continued to work gratis, he is at liberty to seek redressal on this account from the management by way of a representation.

10. The petitioner relies on two decisions of this Court in W.P (MD)No.1085 of 2014 and batch dated 12.07.2017 and W.P. No.19821 of 2003 and batch dated 22.01.2013. These decisions do not advance his case for the reason that in those cases, the services of those petitioners/candidates had been approved pending ban itself. It was thus that the Court held that whatever had been done would not be disturbed and those petitioners were held to be entitled to the benefit of approval granted earlier. In this case, seeing as the petitioner's services have not been approved, the cases cited do not



come to his aid.

11. The Division Bench is categoric to the effect that any prior service put in by unapproved candidates would count only for the purposes of pension and not otherwise. In conclusion they have categorically held that the approval shall relate only from the period of completion of the Child Psychology Course. In light of the decision reported in [2004 (2) LW 591], the mandamus as sought for by the petitioner is liable to be rejected and I do so. This writ petition is disposed in the following terms.

12. The petitioner shall be entitled to the service benefits as confirmed by the Division Bench in the aforesaid decision, being pension alone, taking into account his services from 13.07.1995. No costs. Consequently. Miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS-II)

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Sub Assistant Registrar(CS)

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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

1. Secretary to Government,
The State of Tamil Nadu,
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Fort St. George, Chennai.
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Tirunelveli District.

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+1 CC to M/s.SPL GP (SR-36073[F] dated 26/11/2021)

+1 CC to M/s.P. THIRUMAHILMARAN, Advocate (SR-35998[F] dated
26/11/2021)

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sk(CO)

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