



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 23.12.2021

CORAM:

THE HONOURABLE DR.JUSTICE ANITA SUMANTH

W.P. (MD)No.24299 of 2018

and

W.M.P. (MD) .No.21995 of 2018

WEB COPY

- 1.Algammal Irene
- 2.M.Rajammal
- 3.G.Manimekalai

... Petitioners

Vs.

- 1.The Government of India,
Represented by its Secretary to Government,
Ministry of Human Resource Development,
No.302-C, Shastri Bhawan, New Delhi.
- 2.The State of Tamil Nadu,
Represented by its Principal Secretary,
Department of School Education,
Fort St.George, Chennai - 09.
- 3.The Director of School Education,
Directorate of School Education,
Chennai - 06.
- 4.The Joint Director of School Education (Personnel),
Directorate of School Education,
Chennai - 06.
- 5.The Additional Project Director II (Samagra Shiksha),
Rashtriya Madhamik Shiksha Abhiyan (RMSA),
DPI Compound, College Road,
Chennai - 06.

... Respondents

PRAYER:- Writ Petition - filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Mandamus, directing the Respondents No.2 and 3 to consider the petitioners for regularization in the post of B.T.Assistant (Inclusive Education for the Disabled at Secondary Stage) for RMSA (Rashtriya Madhyamik Shiksha Abhiyan) under the administrative structure of Samagra Shiksha in the posts sanctioned as per G.O.(Ms).No.28, School Education Department, dated 30.01.2015 within the time stipulated by this Court.

For Petitioners : Mr.S.Louis

For R1

: Mr.Pon Senthil Kumaran.

Central Government Standing Counsel



For R2 to R5 : Mr.A.K.Manikkam
Special Government Pleader

O R D E R

The State of Tamil Nadu had put in place a Scheme for *Inclusive Education of Disabled Children* (in short 'IEDC') in the year 2000. The aforesaid scheme was substituted with a new scheme entitled *Inclusive Education of the Disabled at Secondary Stage* (in short 'IEDSS, 2009') from the year 2009.

2. The Scheme is a laudable initiative, inspired by the National policy on Education (NPE), 1986 and the Programme of Action (1992), which sets out a basic policy framework for education, specifically in regard to the integration of children with special needs with main stream educational opportunities.

3. The Sarva Shiksha Abhiyan (SSA) is a centrally sponsored scheme that targets the achievement of Universal Elementary Education by the year 2010 and it in pursuance of this domestic target, as well as similar international initiatives, that IEDSS, 2009 was conceived and put in action.

4. In furtherance of this objective, the State has issued a Government Order in G.O.Ms.No.28, School Education (Paga 5(2)) Department, dated 30.01.2015, which identified 202 posts of educators in the State for the aforesaid purpose, being B.T.Assistant (Inclusive Education for the Disabled at Secondary Stage) for RMSA (Rashtriya Madhyamik Shiksha Abhiyan).

5. The petitioners claim to have been trained in rendering inclusive education for disabled children and were appointed in the year 2011 as a special instructor in various Schools and are presently being paid on consolidated basis.

6. They have thereafter represented both individually and through the relevant associations, for regularization of their appointment in an available vacant post as sanctioned under G.O.Ms.No.28, School Education (Paga 5(2)) Department, dated 30.01.2015.

7. Though a counter has been filed by the respondents, it is silent as to the number of appointments made under the aforesaid Government order and consequently, the vacancies available in the stated posts.

8. Representation dated 29.10.2018 filed by the petitioners are unclear as on date, as to whether any vacancy exists in the posts and if so, the exact number thereof.



9. More importantly, the specific stand taken by the respondents seeking to defeat the petitioners' claim for a mandamus for regularization of their services, is that the 202 posts created under the GO are only temporary posts and it is only on framing of the relevant Rules containing the terms and conditions, that such appointments could be made. Admittedly, and as on date, no Rules have been framed.

10. The position on the ground is thus that despite several appointments having been made to the post of Instructors/Educators for children with special needs, over the years, the petitioners being one such, their appointments are not being considered for regularization, citing the absence of Rules.

11. I am unable to accept this argument of the respondents. The post of a Special Instructor/Educator for children with special needs is a necessity and G.O.Ms.No.28, dated 30.01.2015 has been passed rightly recognizing such need and creating the required posts. Having done so, there is no justification whatsoever for the State to delay the framing of the Rules to formalize/regularise the appointments already made.

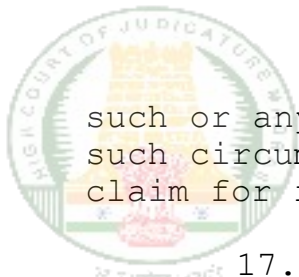
12. The appointments of the petitioners in the post of educator/instructor for children with special needs as early as in 2011 are not in dispute. That said, learned Government Pleader does not dispute the appointments of several persons in such positions over the years who fill in, and render much-needed services.

13. Having recognised the need for their services and extracted such services from them, denying them official and formal recognition is, in my considered view, simply unfathomable and unacceptable.

14. While the grant of sanction or otherwise to an employee, is entirely within the domain of the employer-State who will take note of whether the candidate has the requisite credentials and has been rendering service as appropriate and as required, it is the unwillingness to take prompt and affirmative action to frame the Rules and initiate the process of regularisation of the services of the employees already rendering services, that rankles with the Court.

15. It is the petitioners' say that proceedings for certificate verification were undertaken by the Director of School Education in 2012, in which the petitioners had also participated. However, the process is not evidenced by any specific certificate that has been issued to the petitioners in this regard.

16. Be that as it may, the petitioners, who were appointed in the year 2011, continue to be in service till date and there is no discrepancy as to any discrepancy in the appointment as



such or any deficiency in the services rendered by them thus far. In such circumstances, I am of the categorical view that the petitioners' claim for regularization of services must be accepted.

17. The petitioners have sought the same relief by way of representations, which are pending before the respondents, from as early as on 29.10.2018. Inter alia, the petitioners have relied upon a decision of the learned Single Judge of the Kerala High Court who has considered a similar case and held in favour of the appointee.

18. In fine, a direction is issued to the State to frame Rules as envisaged in the above Government Order within a period of twelve weeks from today. The Rules must contain proper protection, and provisions for identification and absorption of those candidates who have the necessary credentials and have been appointed in government positions of Educator/Special Educator/Instructor for children with special needs, by whatever name or nomenclature called, even prior to the issuance of the aforesaid Government Order.

19. Simultaneous therewith, the petitioners' representation dated 29.10.2018 be considered, the petitioners heard and their appointments be regularized subject to verification of their educational qualifications and all other relevant considerations, within a period of twelve (12) weeks from today.

20. This Writ Petition is disposed as above. No costs. Consequently, connected 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.The Secretary to Government,
Government of India,
Ministry of Human Resource Development,
No.302-C, Shastri Bhawan, New Delhi.



2.The Principal Secretary,
State of Tamil Nadu,
Department of School Education,
Fort St.George, Chennai - 09.

3.The Director of School Education,
Directorate of School Education,
Chennai - 06.

4.The Joint Director of School Education (Personnel),
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5.The Additional Project Director II (Samagra Shiksha),
Rashtriya Madhamik Shiksha Abhiyan (RMSA),
DPI Compound, College Road,
Chennai - 06.

+1 CC to M/s.SPL GP (SR-40485[F] dated 27/12/2021)

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23.12.2021

RD(15.02.2022) 5P 7C