



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 29.07.2021

C O R A M

WEB COPY

THE HONOURABLE MR.JUSTICE P.D.AUDIKESSAVALU

W.P. (MD) No. 11689 of 2017

and

W.M.P. (MD) Nos. 9010 and 9011 of 2017

Fr. Geevarghese Mathew,
Post Graduate Assistant (Zoology),
Ponniah Higher Secondary School,
Palakkarai - 620 001,
Tiruchirapalli District.

... Petitioner

-VS-

1. The State of Tamil Nadu,
Rep. by its Secretary,
Department of School Education,
Fort St. George,
Chennai - 600 009.
2. The Director of School Education,
College Road,
Chennai - 600 009.
3. The Chief Educational Officer,
Tiruchirapalli District,
Tiruchirapalli.
4. The District Educational Officer,
Tiruchirapalli District,
Tiruchirapalli.
5. Ponniah Higher Secondary School,
Rep. by its Corporate Manager,
Palakkarai - 620 001,
Tiruchirapalli District.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, to issue a writ of Certiorarified Mandamus, calling for the records relating to the impugned proceedings issued by the Fourth Respondent/District Educational officer in Na. Ka. No. 4382/A4/2013 dated 25.07.2013, quash the same and further direct the Fourth Respondent/DEO to continue to disburse the grant-in-aid towards the salary for the Petitioner in the post of PG Assistant (Zoology) in



the Fifth Respondent School, viz., Ponniah Higher Secondary School, Palakarai, Trichy since July 2017 with arrears of salary and allowances and all other attendant benefits.

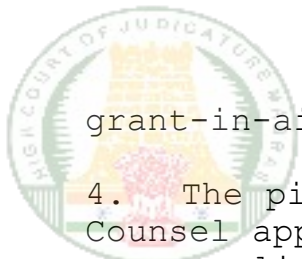
For Petitioner : Mr. Issac Mohanlal
for M/s. Issac Chambers
For R1 to R4 : Mr. D.Gandhiraj,
Counsel appearing for the Government
For R5 : Mr. H.Thayumanasamy

O R D E R
(through video conference)

Heard Mr. Issac Mohanlal, Learned Senior Counsel appearing for the Petitioner, Mr. D.Gandhiraj, Learned Counsel representing the First to Fourth Respondents and Mr. H.Thayumanasamy, Learned Counsel for the Fifth Respondent and perused the materials placed on record, apart from the pleadings of the parties.

2. The Fifth Respondent, which is a minority educational institution, is a recognized private school receiving grant-in-aid from the Government of Tamil Nadu for payment of salaries to its teachers. The Petitioner was appointed as Post Graduate Assistant in Zoology in a sanctioned vacancy in the school of the Fifth Respondent on 15.06.2011 which was approved by the Fourth Respondent by proceedings in R.C. No. 4312/A4/2011 dated 29.07.2011 and the Petitioner has been drawing salary for that post from then. However, when the salary bill of the school of the Fifth Respondent for the month of July 2013 was sent, it was returned by the Fourth Respondent by proceedings in Na. Ka. No. 4382/ A4/2013 dated 25.07.2013 stating that the disbursement of salary for the Petitioner could be considered as per norms in vogue only after he passed the Tamil Language Test conducted by the Tamil Nadu Public Service Commissioner or the Teachers Recruitment Board, and the Fifth Respondent was required to re-submit the salary bill of other staff after removing the claim in respect of the Petitioner. Aggrieved thereby, the Petitioner has filed this Writ Petition challenging the said order declining payment of salary to the Petitioner from July 2013 onwards and for consequential directions to the Fourth Respondent to make payment of the salary due to him.

3. The contention of the First to Fourth Respondent in the Counter-Affidavit dated 29.07.2017 and additional Counter-Affidavit dated 19.07.2021 is that as per requirement of Rule 12-A of the Tamil Nadu State and Subordinate Services Rules (hereinafter referred to as 'Rule 12-A' for brevity), the Petitioner should have passed the Tamil Language Test conducted by the Tamil Nadu Public Service Commission or the Teachers Recruitment Board within two years from the date of appointment and as he had not satisfied the said requirement, he is not entitled to claim salary by way of



grant-in-aid from the Government of Tamil Nadu.

4. The pivotal attack on the impugned action by the Learned Senior Counsel appearing for the Petitioner is that Rule 12-A does not have any application to the teachers appointed in private schools receiving grant-in-aid from the Government of Tamil Nadu inasmuch as they do not hold any post in the services of that Government to whom alone the Tamil Nadu State and Subordinate Service Rules applies.

5. There is substantial force in the aforesaid submission made on behalf of the Petitioner. At the outset, it must be pointed out here that the circumstance that the State Government grants aid for payment of salary to the Petitioner employed in the school of the Fifth Respondent would not *ipso facto* mean that he is holding a post under the State Government to whose employees the Tamil Nadu State and Subordinate Service Rules containing Rule 12-A applies. It is common ground that the school of the Fifth Respondent is governed by the Tamil Nadu Recognised Private Schools (Regulation) Act, 1973 and the Rules framed thereunder and the grant-in-aid is made under the Tamil Nadu Minority Schools (Recognition and Payment of Grant) Rules, 1977. The First to Fourth Respondents have not shown that the requirement to pass the Tamil Language Test conducted by the Tamil Nadu Public Service Commission or the Teachers Recruitment Board is a qualification prescribed in the Tamil Nadu Recognised Private Schools (Regulation) Act, 1973, or the Rules framed thereunder or the Tamil Nadu Minority Schools (Recognition and Payment of Grant) Rules, 1977, and it is also not their case that Rule 12-A would apply by way of any legislation by incorporation or reference for receiving grant-in-aid for the school of the Fifth Respondent. In this context, it would be useful to refer to the decision of the Hon'ble Supreme Court of India in **A.B.Krishna -vs- State of Karnataka** [(1998) 3 SCC 495] where the legal position in this regard has been explicated with regard to a post under the fire services established by the State Government under the Fire Force Act, 1964, which reads as follows:-

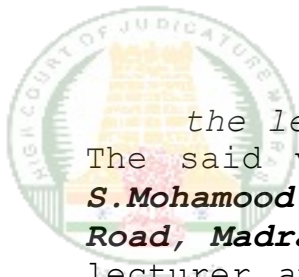
"6. It is primarily the legislature, namely, Parliament or the State Legislative Assembly, in whom power to make law regulating the recruitment and conditions of service of persons appointed to public services and posts, in connection with the affairs of the Union or the State, is vested. The legislative field indicated in this article is the same as is indicated in Entry 71 of List I of the Seventh Schedule or Entry 41 of List II of that Schedule. The proviso, however, gives power to the President or the Governor to make Service Rules but this is only a transitional provision as the power under the proviso can be exercised only so long as the legislature does not make an Act whereby recruitment to public posts as also other conditions of service relating to that post are laid down.



7. The rule-making function under the proviso to Article 309 is a legislative function. Since Article 309 has to operate subject to other provisions of the Constitution, it is obvious that whether it is an Act made by Parliament or the State Legislature which lays down the conditions of service or it is a rule made by the President or the Governor under the proviso to that article, it has to be in conformity with the other provisions of the Constitution specially Articles 14, 16, 310 and 311.

8. The Fire Services under the State Government were created and established under the Fire Force Act, 1964 made by the State Legislature. It was in exercise of the power conferred under Section 39 of the Act that the State Government made Service Rules regulating the conditions of the Fire Services. Since the Fire Services had been specially established under an Act of the legislature and the Government, in pursuance of the power conferred upon it under that Act, has already made Service Rules, any amendment in the Karnataka Civil Services (General Recruitment) Rules, 1977 would not affect the special provisions validly made for the Fire Services. As a matter of fact, under the scheme of Article 309 of the Constitution, once a legislature intervenes to enact a law regulating the conditions of service, the power of the Executive, including the President or the Governor, as the case may be, is totally displaced on the principle of "doctrine of occupied field". If, however, any matter is not touched by that enactment, it will be competent for the Executive to either issue executive instructions or to make a rule under Article 309 in respect of that matter.

9. It is no doubt true that the rule-making authority under Article 309 of the Constitution and Section 39 of the Act is the same, namely, the Government (to be precise, the Governor, under Article 309 and the Government under Section 39), but the two jurisdictions are different. As has been seen above, power under Article 309 cannot be exercised by the Governor, if the legislature has already made a law and the field is occupied. In that situation, rules can be made under the law so made by the legislature and not under Article 309. It has also to be noticed that rules made in exercise of the rule-making power given under an Act constitute delegated or subordinate legislation, but the rules under Article 309 cannot be treated to fall in that category and, therefore, on the principle of "occupied field", the rules under Article 309 cannot supersede the rules made by



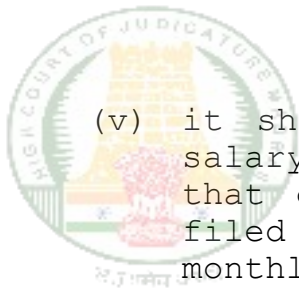
the legislature."

The said view is also fortified by the ruling of this Court in **S.Mohamood Basha -vs- Director of Collegiate Education, College Road, Madras** [(2002) 3 CTC 336] while dealing with grant-in-aid to a lecturer appointed in a private college governed by the Tamil Nadu Private Colleges (Regulation) Act, 1976. In the light of this legal position, it is not possible to sustain the impugned order, which has to be necessarily set aside.

6. It is hastened to recapitulate here that in the authoritative pronouncement of the Hon'ble Supreme Court of India in **T.M.A. Pai Foundation -vs- State of Karnataka** [(2002) 8 SCC 481], it has been enunciated that regulations can be framed governing service conditions for teaching and other staff for whom aid is provided by the State without interfering with overall administrative control of management over the staff. As its corollary, nothing said in this order shall be construed as an impediment on the power of the State to prospectively enforce any condition requiring the teaching and other staff of aided educational institutions across the State to possess working knowledge to read, write and speak in Tamil language and pass any test prescribed in that regard by appropriate legislation in conformity with the legal position highlighted supra.

7. The upshot of the foregoing discussion is that the Writ Petition is disposed on the following terms:-

- (i) the impugned Order in Na.Ka. No. 4382/A4/2013 dated 25.07.2013 passed by the Fourth Respondent is set aside and the matter is remitted for considering the matter afresh in accordance with law;
- (ii) the concerned authority shall immediately consider the claim of the Petitioner for payment of salary by way of grant-in-aid from the Government of Tamil Nadu in terms of the proceedings in R.C. No. 4312/A4/2011 dated 29.07.2011 issued by the Fourth Respondent;
- (iii) if it is found that the Petitioner has not produced any details or supporting documents satisfying the eligibility criteria for the benefits claimed, the deficiencies in that regard shall be informed in writing to him and the Fifth Respondent requiring the same to be furnished within a time frame of not less than 10 working days;
- (iv) in the event of the concerned authority not being satisfied with the compliance of the requirements even thereafter, an enquiry shall be conducted affording full opportunity of personal hearing to the Petitioner and the Fifth Respondent to explain their position in that regard and the concerned authority shall pass reasoned orders dealing with each of the contentions raised on merits and in accordance with law and communicate the decision taken to the concerned parties under written acknowledgment;



(v) it shall be ensured that the eligible amount of arrears of salary is paid within one month from the date of passing of that order and report of compliance in that regard shall be filed before the Registrar (Judicial) of this Court, apart from monthly salary for future months on the due dates; and

(vi) consequently, the connected Miscellaneous Petitions are closed; and

there shall be no order as to costs.

Sd/-

Assistant Registrar (Records)

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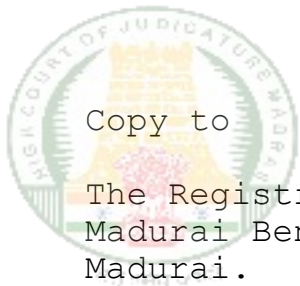
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Sub Assistant Registrar(CS)

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.

To

1. The Secretary to the Government of Tamil Nadu,
Department of School Education,
Fort St. George,
Chennai - 600 009.
2. The Director of School Education,
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3. The Chief Educational Officer,
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4. The District Educational Officer,
Tiruchirapalli District,
Tiruchirapalli.
5. The Corporate Manager,
Ponniah Higher Secondary School,
Palakkarai - 620 001,
Tiruchirapalli District.



Copy to

The Registrar (Judicial),
Madurai Bench of Madras High Court,
Madurai.

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+1 CC to M/s.SPL GP (SR-24709[F] dated 30/07/2021)

+1 CC to M/s.ISAAC CHAMBERS, Advocate (SR-24899[F] dated 02/08/2021)

W.P. (MD) No. 11689 of 2017
29.07.2021

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KB(21.09.2021) 7P 9C