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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.01.2022

Coram

The Hon'ble Mr. Justice V.PARTHIBAN

W.P.No.1823 of 2021

and

W.M.P.Nos.2048, 2049 & 2052 of 2021

Mr.D.Isravel

...Petitioner

Vs.

1. Secretary to the Government of Tamil Nadu
Department of Higher Education,
Fort St.George, Chennai - 09.
2. The Director,
State Council of Education Research and Training,
Chennai - 06.
3. Principal, DIET,
Kaliyampoondi,
Kanchipuram District.
4. The Correspondent,
Gnanodhaya Teacher Training Institute
1/60, Polwels Road,
St.Thomas Mount, Chennai - 600 016.

...Respondents

PRAYER : Writ Petition filed under Article 226 of Constitution of India, for issuance of writ of Certiorarified Mandamus, calling for the records pertaining to the impugned order dated 20.11.2015, in Na.Ka.No.455A/A7/2015, on the file of the third respondent and quash the same, directing the respondents to accord approval from the date of appointment of the petitioner, Mr.Isravel, working as an Office Assistant in Gnanodhaya Teacher Training Institute, 1/60, Polwels Road, St.Thomas Mount, Chennai - 600 016, w.e.f 09.07.2008, with all monetary and other service benefits.

For Petitioner : Mr.Xavier Arul Raj, Senior Counsel
for M/s.Father Xavier Associates

For Respondents: Mr.Abishek Moorthy,
Government Advocate for R1

: No appearance for R2 to R4



ORDER

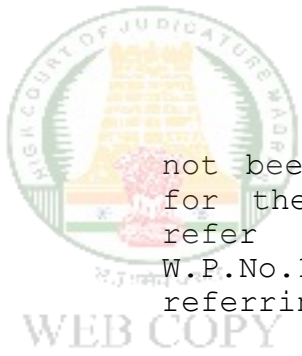
This writ petition has been filed to call for the records pertaining to the impugned order dated 20.11.2015, in Na.Ka.No.455A/A7/2015, on the file of the third respondent and quash the same, directing the respondents to accord approval from the date of appointment of the petitioner, Mr.Isravel, working as an Office Assistant in Gnanodhaya Teacher Training Institute, 1/60, Polwels Road, St.Thomas Mount, Chennai - 600 016, w.e.f 09.07.2008, with all monetary and other service benefits.

2. The case of the petitioner is that he was appointed as Office Assistant in the fourth respondent Training Institute in a sanctioned and regular upgraded post. The fourth respondent Institute is an aided Institution. He was appointed against the vacancy which arose due to the retirement of one E.Selvaraj on 29.02.2008. According to him, he has been regularly working from the date of his initial appointment and affixing his signature in the Masters' Attendance Register from 09.07.2008 i.e., from the date of his original appointment.

3. After the appointment of the petitioner, the fourth respondent being a minority aided Institution, submitted a proposal for approval of the appointment of the petitioner to the educational authority on 05.11.2008. However, on 29.09.2009, the same was returned by the authority without approval stating that the petitioner cannot be appointed without obtaining proper approval from them.

4. At this, the fourth respondent Institute sent a representation to the third respondent who is the competent authority, seeking accord of approval based on G.O.(Ms).No.40, dated 14.03.2013 and the subsequent proceedings of the second respondent dated 22.04.2013. The third respondent however vide impugned proceedings dated 20.11.2015, accorded approval to the appointment of the petitioner, but, the grant of service benefits were confined only from 14.03.2013 and not from the date of his initial appointment dated 09.07.2008. The action of the respondents 1 to 3, in not according approval from 09.07.2008 is the subject matter of challenge in the present writ petition.

5. When the writ petition is taken up for hearing today, the learned senior counsel for the petitioner would submit that the issue raised in this writ petition is no more res integra as number of decisions have been rendered by this Court favouring the claim of similar persons as that of the petitioner herein. The submissions made on behalf of the learned senior counsel has



not been disputed by the learned Government Advocate appearing for the first respondent. The learned senior counsel would refer to one such decision of this Court rendered in W.P.No.11017 of 2020 dated 28.10.2020. This Court after referring to a few decisions, has held as follows:

"16. From the appended judgments and cited judicial principles, there cannot be any two opinions about the legal position that the issues raised in this Writ Petition are no more open for adjudication. In order to appreciate the said aspect, relevant portion as found in paragraphs 4 to 6 from the decision reported in (2008) 5 CTC 648 (cited supra) rendered by a learned Judge of this Court as he then was, is extracted hereunder:

"4. Similar issue as to whether after lifting of the ban, approval of appointment of a person appointed in a nonteaching post in an aided school can be kept pending and whether the said person is entitled to get salary at least from the date on which the ban order was lifted, was considered by me in W.P. (MD) No. 484 of 2007 by order dated 30.10.2007 and I have allowed the writ petition and in paragraphs 19 and 20, held as follows:

"19. Similar ban order issued by the Department on the ground that new norms are contemplated and pending the same no appointment in aided schools are to be made was set aside by this Court in W.P. No. 10237 of 1994 by order dated 16.8.1999. Since the petitioner was appointed from 5.6.2002 and he is continuously working in the sanctioned post, the respondents may be justified in not approving the appointment of the petitioner from 5.6.2002 to 6.2.2006. The petitioner has got a right to get his appointment approved, once the ban order is lifted. Admittedly, the ban order imposed, not to fill up the posts, was lifted on 7.2.2006. He the petitioner has got every right to get his post approved with salary and other benefits with effect from 7.2.2006. Once the ban order is lifted the provisions contained in Rule 15(1) and (3) of the Tamil Nadu Recognized Private Schools (Regulation) Act, 1973, comes into



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operation and the petitioner is deemed to be appointed on regular basis, as he was appointed within the sanctioned post in the fourth respondent-school.

20. For all the reasons stated above, the impugned orders are set aside with a direction to the respondents to approve the appointment of the petitioner as Lab Assistant with effect from 7.2.2006. The third respondent is directed to pass orders approving the appointment of the petitioner with effect from 7.2.2006 and pay arrears of salary from 7.2.2006 within a period of four weeks from the date of receipt of a copy of this order.

5. The learned Counsel for the petitioner submits that the above order was challenged by the respondent Education Department in W.A. (MD) No. 308 of 2008 and the said writ appeal was dismissed by a Division Bench of Madurai Bench on 4.8.2008. The Division Bench dismissed the writ appeal by observing as follows:

4. After considering the rival submissions made on either side, following the judgment of the Supreme Court and order of this Court, the learned. Single Judge set aside the orders of the appellants with a direction to approve the appointment of the respondent/petitioner as Lab Assistant with effect from 7.2.2006 and the third appellant was directed to pass orders approving the appointment of the first respondent with effect from 7.2.2006 within a period of four weeks from the date of receipt of copy of the order.

5. We find no infirmity or illegality in the order of the learned Judge dated 30.10.2007 passed in W.P. (MD) No. 484 of 2007. Therefore, the writ appeal fails and the same is dismissed.

The learned Counsel for the petitioner further submitted that the first respondent in W.A. (MD) No. 308 of 2008 filed separate appeal in W.A. (MD) No. 456 of 2008 and challenged the order not giving direction to approve the appointment from the date of appointment till the date of lifting of the



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ban and the said writ appeal was also allowed by the Madurai Bench of this Court on 4.8.2008 by observing as follows:

2 . Heard the learned Counsel for the Appellant and the learned Special Government Pleader appearing for the respondents 1 to 3.

3 . The learned Counsel for the appellant submits that the appointment of the appellant from the date of appointment should have been approved by the learned Single Judge instead of restricting the prayer.

4 . It has been brought to our notice that in similar circumstances the Government has issued orders in respect of similar employees approving their services from the date of their initial appointment. When once the ban is revoked, the Government should have considered and approved the appointment of the petitioner from the date of his initial appointment. Therefore, the orders of the learned Single Judge need to be modified to this extent. Accordingly, the writ appeal is allowed modifying the order of the learned Single Judge dated 30.10.2007 made in W.P.(MD) No. 484 of 2007 and directing the respondents to approve the appointment of the petitioner from the date of initial appointment.

6. In the light of the above referred judgments of the Division Bench, the impugned order dated 6.3.2003 is set aside with a direction to the fourth respondent to approve the appointment of S.K. Rajasekar working in the petitioner School as Junior Assistant, with effect from 1.7.2002 with all monetary benefits. Necessary orders to that effect is directed to be passed by the fourth respondent within a period of two weeks from the date of receipt of copy of this order and the arrears of salary payable to the said S.K.Rajasekar is directed to be paid within four weeks therefrom.

With the above directions, the writ



17. The above decision would unequivocally establish the claim of the petitioner herein that once the approval is granted, it must relate back to the date of initial appointment and as far as the petitioner herein is concerned, the date of her initial appointment was on 04.01.1999. For the sake of brevity, this Court is not inclined to refer to more number of judgments on this aspect as it is understood by the parties that the issue is covered in all fours. As regards the objection regarding ban was in place from 2001 onwards, in any event, factually this petitioner was appointed prior to the ban, i.e. on 04.01.1999. Moreover, the decisions rendered by this Court had taken into account of the ban which was in force for a considerable length of time. Therefore, the said objection need to be discarded as being without merits. Even otherwise, when the ban was lifted eventually and the approval was granted, the judgment passed in the above said Writ Appeal which formed part of the learned Single Judge's judgment which is extracted above, would cover the issue in favour of the petitioner herein.

18. One another objection regarding permission was not obtained by the school before appointing the petitioner in 1999 is also liable to be rejected, since this issue has also been settled in favour of the private aided schools, particularly, minority institutions, where the statutory regulations did not provide for such requirement /stipulation and any condition brought in by executive order was held to be illegal on the accepted legal premise, that executive order cannot override statutory provisions.

19. Lastly, the school itself has come out in clear terms in their counter affidavit that the petitioner herein was appointed on 04.01.1999 against the regular and retirement vacancy sanctioned by the Government and the very fact that ultimately, the appointment had culminated into the regular appointment by grant of approval by the authorities on 14.03.2013 would fortify the claim of the petitioner that her appointment on 04.01.1999 was otherwise in order. To further strengthen the case of the petitioner, the management has stated in the counter affidavit that the petitioner has been in regular attendance with the supportive documents from the date of her initial appointment on 04.01.1999. The attendance sheets covering the entire period of



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the employment of the petitioner were appended to the typed set of documents. In the face of such supportive material, the plea of the official respondents that no records were made available, was only made for the purpose of the issue. In fact, when repeated proposals were submitted on several occasions as indicated above, there was no communication from the official side in regard to such objections. Therefore, this Court finds that such objections do not merit any serious consideration in order to deny the benefit of regularization to the petitioner from the date of her initial appointment.

20. In view of the above circumstances, the Writ petition is allowed and the impugned order in Na.Ka.No.254/A7/2000 dated 20.05.2020 insofar as it restricts the benefit of approval only from the date i.e., 14.03.2013 till the date of retirement on 30.04.2013 is hereby quashed. The official respondents are directed to pass appropriate orders granting approval from the date of petitioner's initial appointment from 04.01.1999 and on such approval, grant her all consequential benefits, viz., pay and allowances and also admissible pensionary benefits to the petitioner. The official respondents are directed to pass orders as indicated above, within a period of eight weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petitions are closed."

6. The learned senior counsel would further submit that the writ appeal was filed against the above decision of this Court in W.A.No.966 of 2021 dated 22.09.2021 and recently, the learned Division Bench has upheld the order passed by the learned Single Judge by dismissing the appeal. The learned Division Bench in fact has directed the official respondents to implement the order within a period of three months of the order passed by this Court. The operative portion of the learned Division Bench order from paragraph Nos.5 to 8 are extracted hereunder:

"5. Admittedly, the Writ Petitioner was appointed on 04.01.1999 as a Junior Assistant in the 2nd Respondent/School, which is a minority Institution. No Executive Order can deprive the benefits due to the staff employed in minority Institutions, where the Statutory Regulation does not provide for such requirement or stipulation. That apart, the Writ Petitioner was initially appointed on 04.01.1999 and



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it was not during the period of ban and that, the ban on recruitment has nothing to do with the approval that was granted to the Writ Petitioner. The Writ Petitioner was appointed in the regular vacancy and the learned Single Judge, after going through the supportive materials including the records that were furnished before him, came to the conclusion that, the Writ Petitioner's appointment need to be approved without any restriction, with effect from 04.01.1999.

6. Hence, we find that, the order of the learned Single Judge setting aside the impugned order dated 20.05.2020, insofar as it restricts the benefit of approval only from 14.03.2013 till the date of retirement on 30.04.2013, need not be interfered with.

7. Though, there is much force in the contention of the learned Government Advocate appearing for the Appellants that, there is delay on the part of the Writ Petitioner in approaching this Court, we make it clear that, for the terminal benefits that may be granted to the 1st Respondent/Writ Petitioner, interest need not be paid.

8. Time granted by the learned Single Judge to the official Respondents therein, is extended by three months from the date of receipt of a copy of this judgment.

In fine, this Writ Appeal is dismissed. No costs. Consequently, connected C.M.P.No.5987 of 2021 is closed."

7. In view of the admitted legal position as above, this Court has no hesitation in allowing this writ petition by passing the same direction as above.

8. Accordingly, this writ petition stands allowed and the impugned order dated 20.11.2015, in Na.Ka.No.455A/A7/2015, on the file of the third respondent, is hereby set aside.

9. The official respondents are directed to grant approval to the petitioner as Office Assistant in the fourth respondent Institute from the date of his initial appointment i.e., 09.07.2008 with all monetary and service benefits in terms of the ruling of this Court by the learned Single Judge as well as the learned Division Bench in the above mentioned writ appeal, confirming the decision of the learned Single Judge.

10. The official respondents are directed to pass appropriate orders within a period of six weeks from the date of receipt of a copy of this order. No costs. Consequently,



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connected miscellaneous petitions are also closed.

Sd/-
Assistant Registrar (CS-VI)

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Sub Assistant Registrar

gsk

To

1. The Secretary to the Government of Tamil Nadu
Department of Higher Education,
Fort St.George, Chennai - 09.
2. The Director,
State Council of Education Research and Training,
Chennai - 06.
3. The Principal, DIET,
Kaliyampoondi,
Kanchipuram District.
4. The Correspondent,
Gnanodhaya Teacher Training Institute
1/60, Polwels Road,
St.Thomas Mount, Chennai - 600 016.

+2ccs to M/s.Father Xavier Associates, Advocate, S.R.No.378

+1cc to the Government Pleader, S.R.No.625

W.P.No.1823 of 2021
and
W.M.P.Nos.2048, 2049 & 2052 of 2021

RLD (CO)
SU (16/02/2022)