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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 24.01.2022

DELIVERED ON: 03.02.2022

CORAM:

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

W.P.No.25499 of 2009

M.Kannammal

... Petitioner

Vs.

1. The Government of Tamilnadu,
Rep. by its Secretary to the Government
School Education Department,
Fort St. George, Chennai 600 009.
2. The Director of School Education,
Chennai 600 006.
3. The Joint Director of School Education,
College Road, Chennai-6.
4. The Chief Educational Officer, Trichy District,
Trichy.
5. The Chief Educational Officer,
Karur District, Karur.
6. The District Educational Officer,
Ariyalur, Perambalur District.

... Respondents

Prayer: Writ petition filed under Article 226 of the Constitution of India seeking to issue a Writ of Certiorari Mandamus to call for the records in relation to the order issued in Na.Ka.No.73569/C5/E1/97 dated 23.12.2008 by the third respondent and quash the same and issue a consequential direction to the respondents to grant annual increments from 27.03.1981 when the petitioner was originally appointed and when the petitioner's service was regularised and to grant the arrears of increments and to grant arrears of pay from 27.03.1991 and 27.03.2001 in selection and special grade scales of pay in the post of Tamil Pandit and other consequential



benefits and to revise the pensionary benefits and pay arrears of pensionary benefits with interest at 18% p.a.

For Petitioner : Mr.Saseetharan

For Respondents: Mr.V.Nanmaran,
Addl.Govt.Pleader for R1 to R6.

ORDER

This writ petition has been filed to quash order issued in Na.Ka.No.73569/C5/E1/97 dated 23.12.2008 by the third respondent and consequential direction to the respondents to grant annual increments from 27.03.1981 and arrears of increments to the petitioner and also to revise the pensionary benefits and pay arrears of pensionary benefits with interest at 18% p.a.

2. The case of the petitioner in brief are as follows:-

2.1. Initially, the petitioner was appointed and worked for 4 years in Youth Corps from 5.3.1974 to 31.12.1977 in Trichy District and then, she was retrenched from service, as the said Scheme was abolished. Hence, the petitioner was kept in the list of retrenched employees maintained by the District Collector, Trichy. Then, vide order dated 21.02.1980 passed by the District Collector, Trichy, the petitioner was appointed as Junior Assistant. Thereafter, she was appointed as Grade-I Tamil Pandit, under Rule 10(a)(1) of the Tamil Nadu State and Subordinate Service Rules [hereinafter referred to as "TNSSS Rules"], at Government High Schools, Ladapuram, Perambalur District vide proceedings dated 25.03.1981 by the Chief Educational Officer, Trichy District.

2.2. By the proceedings dated 01.08.1984 of the Director of School Education, the persons, who are appointed under the above said Rules are entitled for annual increment. But the respondents had not regularised the service of the petitioner and also not granted annual increment, despite several representations made by her.

2.3. On 24.06.2004, the Head Master, Government Girls Higher Secondary School, Kulithalai, Karur District had recommended the petitioner for regularisation in the post of Tamil Pandit Grade-I, but, no order has been passed. The petitioner retired from service on attaining superannuation on 31.07.2005, and thereby she rendered service as Tamil Pandit for more than a period of 23 years from 25.03.1981 to 31.07.2005 and she is entitled for pension and other terminal benefits. In spite of several



representations to the Government, the petitioner's service was not regularised and hence, she filed W.P.No.31693 of 2005 seeking direction to regularise her service from 27.03.1981 to 31.07.2005. This Court, by an order dated 03.02.2007, directed the first respondent to consider the representation of the petitioner dated 17.08.2002, in accordance with law and pass orders. Thereafter, the Government of Tamil Nadu has passed the G.O.Ms.No.183 dated 22.08.2008 and relaxed Rule 2A sub clause 5(c) of the Tamil Nadu School Educational Subordinate Service Rules and rules of reservation in favour of the petitioner and issued a direction to regularise her service from 27.03.1981.

2.4. Consequent to the above Government Order dated 22.08.2008, the Joint Director of School Education has issued an order on 23.12.2008, regularising the services of the petitioner from 27.03.1981 and however, denied increments, arrears of pay and granted only paper increments. Accordingly, pension and other terminal benefits have been sanctioned, but they have not given arrears of increments and arrears of pay. Challenging the order of the Joint Director of School Education dated 23.12.2008 as contrary to the G.O.Ms.No.183 dated 22.08.2008, the petitioner has filed the present writ petition.

3. The contentions raised in the counter affidavit in brief are as follows:

3.1. The petitioner was appointed as Junior Assistant on 25.01.1980, but her service in the post of Junior Assistant was not regularised. However, her name was wrongly included in the list of names for appointment to the post of Tamil Pandit Grade-I by over sight and she was appointed as Tamil Pandit Grade-I and she joined on 27.03.1981. The said promotion should have not been offered to the petitioner in the light of the statutory rules framed under Rule 2(a) of the TNSSS Rules. Even at the time of promotion, the petitioner could have come forward and explained her service details and thereby, she could have avoided this illegal and improper promotion. The above said promotion cannot be treated as direct recruitment, which is having its own methodology.

3.2. The petitioner's appointment both in the post of Junior Assistant and Tamil Pandit were not made in the proper stream. Naturally, the appointments of both the posts are to be made through the Tamil Nadu Public Service Commission. Therefore, the appointment on temporary basis from the retrenched list of employees, made by the authorities inadvertently, may be ousted from service, without assigning any reason thereof, or without prior notice. However, necessary proposals have been submitted



to the Government to regularise the service of the petitioner from 27.03.1981 in the post of Tamil Pandit Grade-I. Further, in pursuant to the order of this court in W.P.No.31693 of 2005 dated 03.02.2007, filed by the petitioner, the Government has passed the orders vide G.O.Ms.No.183, School Education (M2) Department dated 22.08.2008, by relaxing the Rules, Rule 2A, sub Clause 5(c) of the Tamil Nadu Educational Subordinate Service Rules and Rules of Reservation and directed to regularise the service of the petitioner from 27.03.1981. In pursuant to the above said Government Order, the Joint Director of School Education had passed order on 23.12.2008, by granting paper increments and arrears of increment. Further, selection grade and special grade was also awarded with paper increments. It is specifically stated in Rule 23(a)(ii) of the TNSSS Rules regarding sanction of increments, as follows:

" A person who commence probation under clause (i) shall also be eligible to draw increments in the same scale of pay applicable to him from the date of commencement of her probation. Where commencement of probation is ordered from a date earlier than the date of the order and if this had not been enabled by relaxation of rule, her shall draw increments, including arrears, in the time scale of pay applicable to him from such earlier date. The appointing authority shall include a provision to this effect, while issuing orders in all such cases."

Therefore, the petitioner is not eligible for arrears of pay due to the sanction of paper increments, since the rules have been relaxed to regularise the service of the petitioner. Therefore, the writ petition is not maintainable and is liable to be dismissed.

4. Mr.R.Saseetharan, learned counsel for the petitioner would contend that the impugned order of the Joint Director of School Education dated 23.12.2008 is illegal and contrary to statutory provisions and the Joint Director of School Education had failed to note that the petitioner was appointed as a Tamil Pandit under Rule 10(a)(i) of the TNSSS Rules and she is fully qualified to hold the said post and therefore, annual increments should have been granted and since it has not been granted during the period of service, it should have been granted after the retrospective regularization granted by the Government. The learned counsel for the petitioner would further contend that since the petitioner's service had been continuously utilised from 1981 to 2005 in the post of Tamil Pandit, she is having statutory right to draw annual increments by virtue of Rules



10(bb) and 39(gg) of the TNSSS Rules and prays for appropriate orders. The learned counsel for the petitioner, in support of her submissions, has placed reliance on the decision of a learned Single Judge of this Court dated 17.09.2021 made in W.P.No.8368 of 2009 [S.Sevugan v. State of Tamil Nadu and Others].

5. Per contra, Mr.V.Nanmaran, learned Additional Government Pleader (Education) for the respondents would submit the posts of Junior Assistant and Tamil Pandit comes under the purview of Tamil Nadu Public Service Commission and governed by separate service rules and as per Rule 2(a) of the TNSSS Rules, the service of a person should have been regularized and she should have completed the period of probation for considering her name for promotion, but unfortunately, the then Subordinate Officers have by oversight, in violation of the specific statutory rule, inadvertently included the petitioner's name in the promotion panel of Tamil Pandit and in the absence of her regularisation in the post of Junior Assistant, the petitioner's name was improperly included in the panel and she was promoted to the post of Tamil Pandit and when the promotion of the petitioner to the post of Tamil Pandit is found to be illegal, the Joint Director of School Education has rightly granted only paper increments to the petitioner, vide impugned order and prays for dismissal of this writ petition.

6. This Court has considered the submissions made by both the parties and also perused the entire materials placed before it.

7. The point of consideration is whether the petitioner is entitled to draw annual increments from the date of her appointment in the post of Tamil Pandit from 1981 till 2005, by virtue of Rules 10(bb) and 39(gg) of the Tamil Nadu State and Subordinate Service Rules?

8. It is useful to quote Rules 10(bb) and 39(gg) of the Tamil Nadu State and Subordinate Service Rules:

Rule 10 - Temporary Appointments.

(bb) " A person fully qualified under the rules to hold a post borne on the cadre of a service, class or category, who has rendered continuous temporary service shall be eligible to draw annual increments in the scale of pay for the post, subject to the condition that the rules do not prescribe any special qualification to be acquired or test to be passed as a condition precedent to the drawal of such increments of the increment is not



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denied as a measure of specific punishment. In the case of the unqualified persons, the temporary service rendered by them shall be allowed to count for increment from the date on which they become fully qualified to hold that post."

[Omitted Vide G.O.Ms.No.21, P & AR (S) Dept., dt.23-1-1996 w.e.f.23-1-1996]

Rule 39 - Temporary Promotion -

(gg) " A person, promoted under the rules to hold a post borne on the cadre of a service, class or category, who has rendered continuous temporary service shall be eligible to draw annual increments in the scale of pay for the post, subject to the conditions that the rules do not prescribe any special qualification to be acquired or test to be passed as a condition precedent to the drawal of such increments or increment is not denied as a measure of specific punishments."

[Substituted Vide G.O.Ms.No.21, P & AR (S) Dept., dt.23-1-1996 w.e.f.23-1-1996]

9. Though the learned counsel for the petitioner has now placed heavy reliance on Rule 10(bb) of TNSSS Rules, the fact remains that at the time of filing of the writ petition on 09.12.2009, Rule 10(bb) came to be omitted vide G.O.Ms.No.21, P & AR (S) Dept., dated 23-1-1996 with effect from 23.01.1996 and therefore, the said rule cannot be taken into consideration for deciding the claim of the petitioner.

10. As regards the claim of the petitioner by placing reliance upon Rule 39(gg) of TNSSS Rules is concerned, it is the stand of the fifth respondent in the counter affidavit that the appointment of the petitioner in the post of Tamil Pandit Grade I during 1981 came to be done inadvertently by the then subordinate officer by bringing her in the promotion panel of Tamil Pandit, without her services being regularized in the initial post of Junior Assistant and she was allowed to serve for about 25 years between 1981 to 2005. The above lacuna came to be ratified only in pursuant to the order of this Court dated 03.02.2007 in W.P.No.31693 of 2005 filed for consideration of the petitioner's representation dated 17.08.2002, by passing G.O.(Ms) No.183, School Education (M2) Department dated 22.08.2008, by relaxing the Rules in Rule 2A sub Clause 5(c) of the Tamil Nadu Educational Subordinate Service Rules and Rules of Reservation and directed to regularise the services of the petitioner from 27.03.1981. However, the Joint Director of School Education by relying upon Rule 23(a)(ii) of the TNSSS



Rules, which states that "A person who commence probation under clause (i) shall also be eligible to draw increments in the same scale of pay applicable to him from the date of commencement of her probation; where commencement of probation is ordered from a date earlier than the date of the order and if this had not been enabled by relaxation of rule, her shall draw increments, including arrears, in the time scale of pay applicable to him from such earlier date. The appointing authority shall include a provision to this effect, while issuing orders in all such cases" had passed the impugned order dated 23.12.2008, in light of relaxation of rules in G.O.Ms.No.183 dated 22.08.2008 and rightly denied the claim of the petitioner.

11. It is to be pointed out at this juncture that both the posts of Junior Assistant and Tamil Pandit comes under the purview of TNPSC having separate service rules and initially the authorities inadvertently appointed the petitioner on temporary basis to the post of Junior Assistant from the retrenched list of employees and without even regularising the services of the petitioner in the said post, the petitioner's name has been included in the promotion panel for Tamil Pandit, without following the statutory rules and without verifying the educational qualification and eligibility criteria for the said post and she was allowed to continue as Tamil Pandit for nearly twenty five years from 1981 till her retirement on 2005. The petitioner also not even raised the dispute claiming regularisation initially and for the first time, only during the year 1997, she filed the Original Application in O.A.No. 9737 of 1997 before the Tamil Nadu Administrative Tribunal and subsequently, the said original application was dismissed as withdrawn on 12.01.2000.

12. The Hon'ble Apex Court in a catena of decisions has considered the scope of regularisation of irregular or part-time appointments in all possible eventualities and laid down the proposition that illegal or irregular or temporary appointees are not entitled for regularisation.

13. At this juncture it is useful to refer to the decision in Secretary to Government, School Education Department, Chennai v. Govindaswamy and Others [(2014) 4 SCC 769], wherein Hon'ble Apex Court has held as follows:

"6. In State of Karnataka & Ors. v. Umadevi & Ors., AIR 2006 SC 1806, this Court held as under:

"48. There is no fundamental right in those who have been employed on daily wages or temporarily or on



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contractual basis, to claim that they have a right to be absorbed in service. As has been held by this Court, they cannot be said to be holders of a post, since, a regular appointment could be made only by making appointments consistent with the requirements of Articles 14 and 16 of the Constitution. The right to be treated equally with the other employees employed on daily wages, cannot be extended to a claim for equal treatment with those who were regularly employed. That would be treating unequals as equals. It cannot also be relied on to claim a right to be absorbed in service even though they have never been selected in terms of the relevant recruitment rules."

7. In Union of India & Ors. v. A.S. Pillai & Ors., (2010) 13 SCC 448, this Court dealt with the issue of regularisation of part-time employees and the court refused the relief on the ground that part-timers are free to get themselves engaged elsewhere and they are not restrained from working elsewhere when they are not working for the authority/employer. Being the part-time employees, they are not subject to service rules or other regulations which govern and control the regularly appointed staff of the department. Therefore, the question of giving them equal pay for equal work or considering their case for regularisation would not arise.

8. This Court in State of Rajasthan & Ors. v. Daya Lal & Ors., AIR 2011 SC 1193, has considered the scope of regularisation of irregular or part-time appointments in all possible eventualities and laid down well-settled principles relating to regularisation and parity in pay relevant in the context of the issues involved therein. The same are as under:

"8(i) The High Courts, in exercising power under Article 226 of the Constitution will not issue directions for regularisation, absorption or permanent continuance, unless the employees claiming regularisation had been appointed in pursuance of a regular recruitment in accordance with relevant rules in an open competitive process, against sanctioned vacant posts. The equality clause contained in Articles 14 and 16 should be scrupulously followed and Courts should not issue a direction for regularisation of services of an employee which would be violative of



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the constitutional scheme. While something that is irregular for want of compliance with one of the elements in the process of selection which does not go to the root of the process, can be regularised, back door entries, appointments contrary to the constitutional scheme and/or appointment of ineligible candidates cannot be regularised.

(ii) Mere continuation of service by a temporary or adhoc or daily-wage employee, under cover of some interim orders of the court, would not confer upon him any right to be absorbed into service, as such service would be "litigious employment". Even temporary, ad hoc or daily-wage service for a long number of years, let alone service for one or two years, will not entitle such employee to claim regularisation, if he is not working against a sanctioned post. Sympathy and sentiment cannot be grounds for passing any order of regularisation in the absence of a legal right.

(emphasis supplied)

(iii) Even where a scheme is formulated for regularisation with a cut-off date (that is a scheme providing that persons who had put in a specified number of years of service and continuing in employment as on the cut-off date), it is not possible to others who were appointed subsequent to the cut-off date, to claim or contend that the scheme should be applied to them by extending the cut-off date or seek a direction for framing of fresh schemes providing for successive cut-off dates.

(iv) Part-time employees are not entitled to seek regularisation as they are not working against any sanctioned posts. There cannot be a direction for absorption, regularisation or permanent continuance of part-time temporary employees.

(v) Part-time temporary employees in government-run institutions cannot claim parity in salary with regular employees of the Government on the principle of equal pay for equal work. Nor can employees in private employment, even if serving full time, seek parity in salary with government employees. The right to claim a particular salary against the State must arise under a contract or under a statute."



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In the decision cited supra, it has been emphatically held that the mere continuation of service by a temporary or adhoc or daily wage employee would not confer upon him any right to be absorbed into service, as such service would be litigious employment.

14. Admittedly, in the case on hand, the petitioner had retired from service on attaining the superannuation during the year 2005 and she had received all the terminal benefits and her services came to be regularised retrospectively, vide G.O.Ms.No.183, School Education (M2) Department dated 22.08.2008 after her retirement, in compliance of the order passed by this Court in W.P.No.31693 of 2005 dated 03.02.2007. The approval for retrospective regularization of the illegal appointment of the petitioner, vide G.O.Ms.No.183, School Education (M2) Department dated 22.08.2008 was passed by way of relaxation of rules and in the light of Rule 23(a)(ii) of the TNSSS Rules, the petitioner was granted only paper increments and therefore, the impugned order of the third respondent dated 23.12.2008 does not warrant interference by this Court.

15. The decision relied on by the learned counsel for the petitioner in S.Sevugan v. State of Tamil Nadu [Order dated 17.09.2021 in W.P.No.8368 of 2009] pertains to age relaxation of the employee concerned therein and therefore, the said decision would not support the case of the petitioner. Even assuming for the sake of arguments, temporary appointees are entitled for annual increments, the petitioner did not seek the relief at the early stage itself and the present claim of the petitioner seeking annual increments nearly after 31 years from the date of inception into service, that too after retirement, is nothing but a clear abuse of process of law.

16. This Court is of the view that the very appointment and promotion of the petitioner as Tamil Pandit is illegal and the respondents have not taken any initiative or action for removal of the petitioner from holding the temporary post for 25 years and the act of the respondents is nothing but hand in glove to favour the petitioner and same is highly contemptuous and abuse of process of law. The respondents have also not offered any explanation for illegal continuation of the petitioner in the said post for 25 years, in utter violation of the statutory procedures contemplated under TNSSS Rules.

17. This Court is of the view that it is high time for the respondents department / Government to take serious note of the present case on hand and review the services of similarly placed



persons like that of the petitioner, who were appointed temporarily by way of illegal / irregular appointments and continuing in the said posts/services and if so, shall take appropriate action immediately in accordance with law.

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18. With the above observations, this writ petition stands dismissed. No costs.

SD/-
ASSISTANT REGISTRAR

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SUB ASSISTANT REGISTRAR

Jvm/mst
To

- 1.The Secretary to Government,
The Government of Tamilnadu,
School Education Department,
Fort St. George, Chennai 600 009.
- 2.The Director of School Education,
Chennai 600 006.
- 3.The Joint Director of School Education,
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- 4.The Chief Educational Officer,
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Karur District, Karur.
6. The District Educational Officer,
Ariyalur, Perambalur District.

+lcc to Mr.R.Saseetharan, Advocate Sr.6740
+lcc to the Government pleader Sr.7740

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