



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated :: 24.02.2022

CORAM:

THE HONOURABLE MR.JUSTICE V.PARTHIBAN

W.P. No.30628 of 2015

M.Thaiyal Nayagi

...Petitioner

Vs

1.The State of Tamil Nadu

Rep. by its Secretary

School Education Department

Fort St. George Chennai-9.

(R1 Cause title amended vide order dt 04.01.2022
made in WMP No.27558/2017 in WP No.30628/2015)

2.The Commissioner

Kottur Panchayat Union

Kottur

3.The District Collector

Thiruvarur District

4.The Director of School Education

College Road, Chennai-6

...Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for a Writ of Certiorarified Mandamus calling for records relating to the order of 1st respondent in G.O.(1D) No.234 School Education (Tho 3(1) Department dated 14.7.2015 and the consequential proceedings of the 2nd respondent made in Na.Ka.No.1615/2009/A1 dated 6.8.2015 to quash the same and consequently direct the respondents to regularize the services of the petitioner from the date of her initial appointment i.e. from 23.10.1982 and to extend all consequential benefits both service and monetary including disbursement of regular pension and pensionary benefits accrued thereto.

For Petitioner

... Mr.L.Chandrakumar

For Respondents

... Mr.Abhishek Moorthy,
Government Advocate,
for respondents 1 and 4

Mr.L.S.M.Hasan Fizal,
Additional Government Pleader
for respondents 2 and 3



O R D E R

The case of the petitioner is that she was appointed as Junior Assistant on 23.10.1982 on compassionate grounds on the demise of her husband on 26.10.1981. The deceased was employed in the Rural Development Department and he died in harness. The petitioner, after serving for about 27 years, retired from service on reaching the age of superannuation, on 30.04.2009.

2. While in service the petitioner's service was not regularized by the respondents on the ground that her educational qualification was under verification and scrutiny. Several representations appear to have been submitted by the petitioner, but there was no action forthcoming.

3. In the above circumstances, the petitioner was constrained to approach the then State Administrative Tribunal in O.A.No.4245 of 2000 seeking the relief of regularization. The application was disposed of by the Tribunal, directing the respondents to consider the representation of the petitioner and pass orders. During the period of service, she has also passed the required departmental test, and thereby she was qualified to be regularized in her post.

4. As there was no positive action forthcoming, the petitioner continued to make representations. In the meanwhile, the petitioner also reached the age of superannuation and retired from service on 30.04.2009, after having served for 27 years. In view of the non-regularization of her services, the petitioner could not receive any benefits that were available to other regular employees and she had also been denied pensionary benefits.

5. In the above circumstances, the petitioner was once again forced to seek legal remedy and she approached this Court in W.P.No.8087 of 2009, seeking a direction for regularization. This Court has disposed of the writ petition directing the respondents to consider the case and pass orders, by order dated 22.06.2002. However, the direction was not implemented and therefore, a contempt petition in C.P.No.3033 of 2014 was filed and when notice was ordered in the contempt petition, in order to avoid being held for contempt, an order was passed by the respondents on 14.07.2015 regularizing the service of the petitioner with effect from the date of her retirement i.e. On 30.04.2009.

6. The order of regularization was communicated to the petitioner along with a communication dated 06.08.2015. Aggrieved by the same, the petitioner is before this Court.

7. Mr.L.Chandrakumar, learned counsel for the petitioner, would submit that the action of the respondents in regularizing



the petitioner with effect from the date of her retirement is meaningless, as such regularization provides no benefit at all to the petitioner. By such unjust and irrational action, the entire 27 years of service put in by the petitioner had been wiped out. According to the learned counsel, once the respondents have taken decision to regularize the services of the petitioner, it should relate back to the date of her appointment and cannot be on the date of passing of the order or with effect from the date of retirement of the petitioner.

8. The learned counsel would also submit that initially, there was action initiated against the respondents in subjecting her educational qualification for verification, as she acquired her qualification from an institution in Karnataka. However, in 1982 itself, it was clarified that the qualification acquired by her was valid. For some reasons, the matter was hanging fire for nearly 27 years, resulting in denial of all the benefits that would have otherwise been granted to the petitioner, in the normal course.

9. The learned counsel in this regard would submit that in similar circumstances, this Court has passed an order in the case of G.L.Gracy vs. Director, State Council of Educational and Research Training and ors. (W.P.No.11017 of 2020 dated 28.10.2020). In that case also, the petitioner therein was appointed as clerk/librarian in a school wherein approval was granted by the educational authorities with effect from the date of her retirement. In that context, this Court has held that she was entitled to the benefit of approval from the date of her initial appointment, after interpreting the provisions of the Private Schools Regulation Act and the legal principles laid down on the subject-matter, harmoniously.

10. Mr.Abishek Moorthy, learned Government Advocate appearing for respondents 1 and 4 would not dispute the above facts. According to the learned Government Advocate, since the decision was taken to regularize her service after retirement, the Government thought it fit to regularize her services from the date of her retirement and the decision cannot be faulted.

11. This Court is unable to countenance the submissions made on behalf of the respondents. The petitioner's long service from 1982 till 2009 has not been disputed at all. Once the competent authorities have taken a decision to regularize her services, which meant that there was no legal impediment for doing so, such benefit must relate back to the date of her initial appointment. It can certainly not be given effect from the date when the petitioner attained the age of superannuation. It would be a mockery and travesty of justice if the effect of regularization is to be confined only from the date of retirement of the petitioner.



12. This Court is unable to appreciate as to what benefit will enure to the petitioner if her services were to be regularized from the the date of her retirement. The authorities, having extracted work from her for 27 years, cannot confer the benefit of regularization on the petitioner restricting it from the date of her retirement. As rightly contended by the learned counsel for the petitioner, such regularization means nothing to the petitioner. Any benefit of regularization must have practical and legal meaning to the beneficiary. Mere paper order regularizing her services is of no use to the beneficiary and it amounted to caricaturing of the benefit of regularization in favour of an employee, sans any benefit at all.

13. The learned counsel has cited the decision aforementioned, and though the decision was in relation to the applicability of the provisions of the Private Schools Regulations Act and the Rules made therein, the facts therein are also identical as that of the present one. This Court is inclined to refer to the operative portions of the order in the said writ petition from paragraphs 15 to 17. The relevant paragraphs are extracted hereunder:

"15. This Court has considered the rival submissions of the learned counsels and perused the materials available on record.

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.



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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 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



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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 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 petition 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



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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 petition is ordered. No costs. Connected miscellaneous petitions are closed."

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."

14. The learned counsel for the petitioner also brought to the knowledge of this Court that a writ appeal was filed against the order passed in W.P.No.11017 of 2020 in W.A.No.966 of 2021 and the same has been dismissed by Division Bench of this Court vide judgment dated 22.09.2021. In any event, for granting the relief to the petitioner, in the circumstances of the case, no precedent is required, for the simple reason that a blatant injustice has been meted out to the petitioner which required to be rectified in law. In the said circumstances, this Court is of the considered view that the petitioner made out a case for the grant of relief as sought.

15. In the result, the order of the first respondent in G.O.(1D) No.234 School Education Tho 3(1) Department, dated 14.7.2015, and the consequential proceedings of the 2nd respondent in Na.Ka.No.1615/2009/A1 dated 6.8.2015 are quashed insofar as it restricted the benefit of regularization granted to the petitioner only with effect from the date of her retirement.



16. The respondents are consequently directed to regularize the services of the petitioner with effect from the date of her initial appointment on 23.10.1982 and extend all attendant benefits like pay fixation, arrears of pay and others, calculation of pensionary benefits, if admissible, by treating the engagement of the petitioner as regular from the date of her initial appointment.

17. The respondents are directed to pass appropriate and suitable orders in this regard within a period of six weeks from the date of receipt of a copy of this order. The writ petition is allowed. There will be no order as to costs. Consequently, M.P.No.2 of 2015 is closed.

Sd/-

Assistant Registrar (CS-VIII)

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Sub Assistant Registrar

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To

- 1.The Secretary,
State of Tamil Nadu,
School Education Department,
Fort St. George, Chennai-9.
- 2.The Commissioner
Kottur Panchayat Union, Kottur.
- 3.The District Collector, Thiruvarur District.
- 4.The Director of School Education
College Road, Chennai-6.

+1cc to Mr.L.Chandrakumar, Advocate SR. No.12591
+1cc to Special Government Pleader SR. No.13166

W.P. No.30628 of 2015

SKM (CO)
PR (04/04/2022)