



WEB COPY



WP No.20776 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18-11-2022

CORAM

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

WP No.20776 of 2018

1.K.Thassakkumar
2.A.Thirugnana Sambandam
3.S.Murugaiyan
4.M.Palani
5.V.Durairaj
6.R.Amutha
7.M.Sangeetha
8.R.Santhi
9.G.Balaraman
10.V.Ranganathan
11.P.A.Jayakumar
12.R.Vijayaraghavan
13.M.Ponnan
14.S.Thangarajan

..

Petitioners

VS.

1.The State of Tamil Nadu,
Represented by Secretary to Government,
School Education Department,
Secretariat,
Chennai – 600 009.



WP No.20776 of 2018

2.The Director of School Education,
DPI Campus,
Nungambakkam,
Chennai – 600 006.

3.The Chief Educational Officer,
Tiruvannamalai District,
Tiruvannamalai. ..

Respondents

Writ Petition is filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Mandamus, directing the respondents to consider the claim of the petitioners and to issue orders, regularising the services of the petitioners as B.T. Assistants with retrospective effect from the respective dates of their initial appointment as B.T. Assistant in the year 2004-2005 in regular time scale of pay and to grant all consequential benefits to the petitioners.

For Petitioners : Mr.M.Ravi

For Respondents : Ms.S.Mythreye Chandru,
Special Government Pleader.

O R D E R

The relief sought for in the present writ petition is to direct the respondents to consider the claim of the petitioners and to issue orders, regularising the services of the petitioners as B.T. Assistants with



WP No.20776 of 2018

retrospective effect from the respective dates of their initial appointment as

B.T. Assistant in the year 2004-2005 in regular time scale of pay and to grant all consequential service benefits to the petitioners.

2. All the petitioners were appointed as B.T. Assistants on contract basis during the year 2004-2005.

3. It is not in dispute that the petitioners were temporarily appointed and on contract basis. The petitioners were subsequently absorbed as permanent employees.

4. The learned counsel for the petitioners states that now the petitioners are seeking regularisation with retrospective effect from the date on which they were initially appointed as temporary B.T. Assistants.

5. The learned counsel for the petitioners relied on the orders passed by this Court in WP No.221 of 1991 dated 30.07.1999, which was confirmed by the Division Bench in WA No.1585 of 2001.



WP No.20776 of 2018

6. The learned Special Government Pleader appearing on behalf

of the respondents objected the contentions raised on behalf of the petitioners by stating that the petitioners are not entitled for any regularisation at all. The petitioners were initially appointed as Junior B.T. Assistants on contract basis on consolidated pay salary as per G.O.Ms.No. 100, School Education Department, dated 27.06.2003. It is the temporary arrangement made in respect of the vacancies fallen due to retirement, resignation and death etc. The consolidated pay salary was paid to these temporary contract teachers based on the Government Order, cited supra and, therefore, their initial appointments were not made in accordance with the Rules in force. Thus the petitioners are not entitled for retrospective regularisation or otherwise.

7. Regularisation or permanent absorption cannot be granted in violation of the Rules. When the initial appointment of the writ petitioners were not in accordance with the Rules and it is irregular and they were engaged as temporary contract teachers based on the Government Order, the petitioners cannot claim retrospective regularisation.



WP No.20776 of 2018

WEB COPY

8. The learned Special Government Pleader appearing on behalf of the respondents made a submission that the petitioners are not even eligible for regularisation.

9. However, the learned counsel for the petitioners states that the petitioners were subsequently regularised. In either of the case, retrospective regularisation cannot be granted since initial appointment of the writ petitioners were irregular and not made in accordance with the Recruitment Rules in force.

10. The regularisation of services if granted to the writ petitioners that itself is a concession and thus they are not entitled for any further concession for grant of retrospective regularisation.

11. The Constitution Bench of the Hon'ble Supreme Court of India in the case of **Secretary, State of Karnataka and Others vs. Umadevi and Others [(2006) 4 SCC 1]**, wherein the settled principles and



WP No.20776 of 2018

the judgments passed by the Courts earlier or subsequent to the Constitution Bench judgment, if runs counter to the principles settled by the Constitution Bench judgement, then those judgments have denuded to lose its status as precedents and cannot be considered as binding orders in respect of all other Courts across the country.

12. Therefore, the orders relied on by the petitioners, which was passed in the year 1999 or subsequently, cannot be followed as a binding precedent and more-so, in paragraph-54 of the judgment of the Constitution Bench, cited supra, it is clarified that even any order passed subsequent to the Constitution Bench judgment, if runs counter, cannot be followed.

13. This being the pronouncement of the Supreme Court in an unequivocal manner, the orders passed in the year 1999 relied on by the petitioners cannot be followed by this Court for the purpose of grant of retrospective regularisation. Once the initial appointments are irregular or illegal, then such employees are not entitled for regularisation. Thus the petitioners in the present case are not entitled to seek any retrospective



WP No.20776 of 2018

regularisation. Therefore, the relief sought for in the present writ petition

deserves no merit consideration

14. Accordingly, the writ petition stands dismissed. However,

there shall be no order as to costs.

18-11-2022

Index : Yes/No.

Internet : Yes/No.

Speaking Order/Non-Speaking Order.

Svn

To

1.The Secretary to Government,
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Secretariat,
Chennai – 600 009.

2.The Director of School Education,
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Nungambakkam,
Chennai – 600 006.

3.The Chief Educational Officer,
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Tiruvannamalai.



WEB COPY



WP No.20776 of 2018

S.M.SUBRAMANIAM, J.

Svn

WP 20776 of 2018

18-11-2022