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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.04.2022

CORAM:

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN
AND
THE HONOURABLE MRS.JUSTICE N.MALA

W.A.Nos.1185, 1188, 1187 and 1192 of 2022 and
WMP.Nos.7491, 7507,7506 and 7526 of 2022

W.A.No.1185 of 2022

The Chief Executive Officer,
Cantonment Board,
(Under the control of the
Ministry of Defence,
Government of India)
St. Thomas Mount cum Pallavaram,
Chennai-600 016.

... Appellant/Petitioner

-vs-

1. G.Margaret Malini

2. Dr.M.G.R. Cantonment Board High School,
Rep. by its Head Master,
St.Thomas Mount cum Pallavaram,
Chennai- 600 016.

... Respondents / Respondents

Prayer: Writ Appeal filed under Clause 15 of Letter Patent Act,
to set aside the common Judgment/Order in W.P.No.17380 of 2021
batch dated 14.03.2022 in so far as the directions contained in
para 30 and observations made in the said order dated 14.03.2022.

W.A.No.1188 of 2022

The Chief Executive Officer,
Cantonment Board,
(Under the control of the
Ministry of Defence,
Government of India)
St. Thomas Mount cum Pallavaram,
Chennai-600 016.

... Appellant /Petitioner

-vs-



1. Mrs.V.Latha

2. Cantonment Board High School,
Now Known as
Arignar Anna Cantonment Board High School,
Rep. by its Head Master,
Pallavaram,
Chennai- 600 043.

... Respondents/Respondents

Prayer: Writ Appeal filed under Clause 15 of Letter Patent Act, to set aside the common Judgment/Order in W.P.No.17384 of 2021 batch dated 14.03.2022 in so far as the directions contained in para 30 and observations made in the said order dated 14.03.2022.

W.A.No.1192 of 2022

The Chief Executive Officer,
Cantonment Board,
(Under the control of the
Ministry of Defence,
Government of India)
St. Thomas Mount cum Pallavaram,
Chennai-600 016.

... Appellant /Petitioner

-vs-

1. Mrs.E.Grace alias M.Kalaiyarasi

2. Cantonment Board High School,
Now Known as
Arignar Anna Cantonment Board High School,
Rep. by its Head Master,
Pallavaram, Chennai- 600 043.

... Respondents/Respondents

Prayer: Writ Appeal filed under Clause 15 of Letter Patent Act, to set aside the common Judgment/Order in W.P.No.17388 of 2021 batch dated 14.03.2022 in so far as the directions contained in para 30 and observations made in the said order dated 14.03.2022.

W.A.No.1187 of 2022

The Chief Executive Officer,
Cantonment Board,
(Under the control of the
Ministry of Defence,
Government of India)



St. Thomas Mount cum Pallavaram,
Chennai-600 016.

... Appellant

-vs-

1. G.Sabitha

2. Cantonment Board High School,
Now Known as
Arignar Anna Cantonment Board High School,
Rep. by its Head Master,
Pallavaram,
Chennai- 600 043.

... Respondents

Prayer: Writ Appeal filed under Clause 15 of Letter Patent Act, to set aside the common Judgment/Order in W.P.No.17391 of 2021 batch dated 14.03.2022 in so far as the directions contained in para 30 and observations made in the said order dated 14.03.2022.

Common Prayer: in WP.Nos 17380,17384,17388&17391 of 2021.

Writ Petitions is filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorari, to call for the records of the recruitment notification issued by the 1st respondent and published in Adv.No. STM/ ADM/ 1520 dated 09.08.2021 in all daily newspapers including in THE HINDU chennai Edition dated 11.8.2021 and to quash the same as being illegal and unsustainable in law.

For Appellant : Mr.C.Mohan
(in all W.A.'s) for M/s.King and Patridge

For Respondents : M/s N.Kavitha Rameshwar
(in all W.A.'s)

C O M M O N J U D G M E N T

S.VAIDYANATHAN., J
and
N.MALA., J

Since the issue involved in all these Writ Appeals are one and the same, they are taken up together and disposed of by a common order.

2. These Writ Appeals have been filed against the order of the learned Single Judge dated 14.03.2022 made in W.P.Nos.17380 of 2021 etc. batch.



2. The sum and substance of the case is that four teachers have approached this Court by way of aforesaid Writ Petitions, challenging the recruitment Notification issued by the Appellant on 09.08.2021 in all daily newspapers including The Hindu, Chennai Edition dated 11.08.2021, on the ground that the Writ Petitioners who were appointed as Secondary Grade teachers in the 2nd Respondent school much prior to the advertisement and have been working for decades were not regularised.

3. The case of the Writ Petitions in brief:-

(i) Initially the First Respondent/Writ Petitioners approached this Court seeking regularization of services in W.P.Nos. 16147, 16148, 16149 and 16150 of 2017 which were withdrawn by them and subsequently they filed four Writ Petitions in W.P.Nos.17471, 17472, 17473 and 17474 of 2017, seeking approval of the Chief Educational Officer to appoint the Writ Petitioners in the sanctioned post of B.T.Assistant. Pending disposal of the same, interim direction was granted by this Court directing the Appellant to engage the service of the Writ Petitioners as B.T.Assistant by paying her monthly salary on par with basic pay of regular B.T Assistant and an interim injunction forbearing the Appellant from terminating the services of the Writ Petitioners and restraining them from filling up the sanctioned post of B.T. Assistant was also granted. In the meantime, four other Writ Petitions were filed by the Writ Petitioners in W.P.Nos.35160, 35163, 35164 and 35165 of 2019 seeking to pay monthly salary on par with other permanent employees, which was ordered by the learned Single Judge on 27.01.2020 and that the said order has been complied with.

(ii) The Writ Petitioners have filed four other Writ Petitions in W.P.Nos. 14930, 14932, 14934 and 14935 of 2020 challenging the relieving order dated 15.04.2020 and for a direction to the Appellant to continue and engage the Writ Petitioners as B.T.Assistant in the Respondents School. During the pendency of the Writ Petition, the subject matter in issue viz., Advertisement dated 09.08.2021 published in all daily newspapers including the Hindu edition dated 11.08.2021. Aggrieved by that, four Writ Petitions have been filed in W.P.Nos.17380, 17384, 17388, 17391 of 2021 and the learned Single Judge on 14.03.2022, by referring to the Judgment of the Hon'ble Apex Court in Karnataka State Private College Stop-Gap Lecturers Association Versus State of Karnataka and others reported in 1992 2 SCC 29 held as follows:

"27. The above observations aptly applies to the facts of the present cases. The Hon'ble Supreme Court has frowned upon the attitude of the



Government to break service and condemned the practice of the Management of not making regular selection utmost within six months of the occurrence of vacancy.

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28. Even if the vacancies are filled up by the respondents pursuant to the impugned Recruitment Notification, the rights of the petitioners to continue in service has to be protected pending other writ proceedings. The rights of the Petitioners to continue in service is to be decided in the other pending writ petitions. Therefore, the petitioners cannot be ousted from services.

29. While the attempt to the respondents to call for the fresh recruitment to fill up the vacancies cannot be interfered with, the services of the petitioners also cannot be terminated pending disposal of the other writ petitions. Therefore, while disposing these Writ Petitions challenging the impugned Recruitment Notifications, I am inclined to protect the interest of the Petitioners in the light of the pendency of the other Writ Petitions. As and when those writ petitioners mature for hearing, it is open to cite the above decision of the Hon'ble Supreme Court.

30. Therefore, the respondents are directed to allow the petitioners to continue in service subject to the out come of the other Writ petitions pending before this Court. The respondents may consider paying the petitioner higher salaries on par with other teachers pending disposal of the connected Writ Petitions.

31. These Writ Petitions are disposed with the above observations. No costs. Consequently, connected Miscellaneous Petitions are closed."

3. Aggrieved over the same, the present Writ Appeals have been filed.

4. The learned counsel appearing for Appellant/Respondent would submit that when the Writ Petitions pertaining to question of termination dated 15.04.2020 and the Writ Petition filed for a direction to the Management to seek approval and to appoint the Petitioners in the sanctioned post of B.T. are pending, the learned Single Judge ought not to have given observation with regard to the other matters which was not listed before the learned Single Judge. He further submitted that Appellant



should follow the guidelines issued by the Government and the Cantonment Fund Servant Rules, 1937 for recruitment, and, that the Writ Petitioners also did not possess TET qualification and hence without prejudice to the rights of the parties in Writ Petitions in other cases, the learned Single Judge's observation touching upon the merits of those matters be eschewed so that both parties may put forth their respective submissions before the learned Single Judge.

5. Ms.Kavitha Rameshwar learned counsel appearing for the Respondents submitted that the Writ Petitioners were appointed on various dates and some of them have completed morethan 10 years and some of them have completed 20 years of service. She further submitted that as the prayer in W.P.Nos.16147 to 16150 of 2017 are inartistically worded, the same have been withdrawn with liberty to file fresh petitions for necessary relief. She further submitted that pursuant to the interim orders of the Court services of the Writ Petitioners have been continued and now as per the orders of the Court which is impugned in these Writ Appeals, with regard to continuation of services on par with other employees they are getting benefits. She further submitted that the observation of the learned Single Judge no way would prejudice the Appellant in the other batch of Writ Petitions pending before this Court and hence there is no need to eschew the observation made by the learned Single judge. She drew the attention of this Court to the Judgment of the Apex Court in Civil Appeal Nos.3084-3088 of 2022 dated 21.04.2022 wherein the Apex Court has categorically held that ADHOC employee cannot be replaced by ADHOC employee. She submitted that in this case the Writ Petitioners attained permanent status after rendering 15 to 20 years of service cannot be ousted and they cannot be replaced by another set of other employees. She further submitted that though in the recruitment process, they can replace other employees, but in the present case on hand, the Writ Petitioners are not temporary teachers and deemed to have have attained permanent status.

6. Heard both sides. Perused the material available on record.

7. It is admitted that the Writ Petitioners have been appointed as Teachers and working for more than ten years and it is no doubt true that pursuant to the interim orders, the Writ Petitioners are continuing in services and getting equal pay for equal work.

8. On the other hand Mr. Mohan, learned counsel appearing for the Appellant submitted that in view of the interim orders the teachers are not divested of their duties and continuing in service. He further submitted that observation made in the



order to the effect that without prejudice to the rights of the writ petitioners or the Appellants, they can be continued in service, cannot be put against the Appellant in the Writ Petitions which are pending before the learned Single Judge.

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9. Hence, we are of the view that the observation with regard to permanent status made by the learned Single Judge is not warranted in the present Writ Petition and hence these observation alone is deleted. It is for the parties to work out the grievance before the learned Judge when connected Writ Petitions are heard.

10 Registry is directed to list the pending Writ Petitions in W.P.Nos.14930, 14932, 14934 and 14935 of 2020 during the month of June 2022.

11. In the result, these Writ Appeals are disposed of. No costs. Consequently, connected M.P.'s are closed.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

arr

To

1. The Head Master,
Dr.M.G.R. Cantonment Board High School,
St.Thomas Mount cum Pallavaram,
Chennai- 600 016.
2. The Head Master, Cantonment Board High School,
Now Known as
Arignar Anna Cantonment Board High School,
Pallavaram,
Chennai- 600 043
3. The Chief Executive Officer,
Cantonment Board,
(Under the control of the Ministry of Defence,
Government of India)
St. Thomas Mount cum Pallavaram,
Chennai-600 016.



4. The Section Officer,
Writ Section,
High Court, Madras-104.

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+4cc to M/s.King and Patridge, Advocate, S.R.No.28944.

+3cc to M/s N.Kavitha Rameshwar, Advocate,
S.R.No.29121,29023,29024

+1cc to M/s.King and Patridge, Advocate, S.R.No.29022 (09/06/2022)

W.A.No. 1185 of 2022

NR(CO)
CT 01/06/2022