



Rev.Aplw.No.90 of 2022

WEB COPY IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.11.2022

CORAM

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

Rev.Aplw.No.90 of 2022

1. The Government of Tamil Nadu
Rep by its Secretary
School Education Department
Fort St. George, Chennai - 9.
 2. The Director of Elementary Education
College Road, Chennai - 6.
 3. The District Elementary Educational Officer
Villupuram, Villupuram District.
 4. The Additional Assistant Elementary
Educational Officer
Vanur at Thiruchitrambalam
Villupuram District.
- .. Petitioners

Vs.

Gandhi Aided Primary / Middle School
Thiruchitrambalam, Vanur Range
Villupuram District
Rep. by its Secretary
R.Babu Sathyamoorthy.

.. Respondent



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Prayer: Review Application filed under Order 47 Rule 1 r/w 114 of CPC to review the judgment dated 14.12.2017 passed in W.P.No.25770 of 2003 on the file of this Hon'ble Court.

For Petitioners : Mr.S.Silambanan
Additional Advocate General
Assisted by Mr.N.Nanmaran
Special Government Pleader
and Mr.M.Babu Barveez
Government Advocate

For Respondent : Mr.Balan Haridas

JUDGMENT

This review application has been filed to review the order passed by this Court in W.P.No.25770 of 2003 dated 14.12.2017.

2. The said writ petition was filed by the respondent in this review application, who is an Aided Private Middle School. In the said School, there were four vacancies viz., one Physical Education Teacher post, one Secondary Grade Teacher post and two B.T. Assistant Teacher posts, one is for Mathematics and another one is for Science.



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3. In order to fill up these posts, four persons were selected and they were appointed in the following dates viz., 05.11.2003, 05.11.2003, 29.12.2003 and 04.02.2004 respectively. Though they were appointed and had been working continuously in the said School, their appointment since were not approved by the Officials concerned, the School moved the writ petition.

4. In the meanwhile, it is to be noted that the Director of Elementary Education has issued a proceedings dated 26.05.2003, wherein, the Director had stated that since the Government was thinking of bringing all the Secondary Grade Teachers and B.Ed Teachers as Junior Teachers for some period, due to the financial constrain faced by the State Government, the Teacher post vacancies arising in any Schools, especially Aided Schools, shall not be filled up until further orders in this regard.

5. Since the said communication dated 26.05.2003 put an embargo against various Private Aided Schools located in the State of



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Tamil Nadu, some of the Schools had come to this Court and filed writ petitions challenging the said communication dated 26.05.2003 of the Director. The said communication was set aside by the order of this Court dated 09.10.2003. Therefore, Private Schools were free to fill up the sanctioned posts which became vacant.

6. Only at that juncture, since the four vacancies arose in the said School were filled up and those appointments were not approved by the Authorities concerned, the School approached this Court by filing W.P.No.25770 of 2003, seeking to quash the very same communication of the Director dated 26.05.2003. That writ petition came to be decided by this Court by order dated 14.12.2017, where, since the said impugned communication of the Director dated 26.05.2003 already have been set aside by this Court by order dated 09.10.2003, following the said order, the writ petition was allowed. Therefore, as a sequel, the respondent therein i.e, the Official Respondents have to necessarily approve the appointment made in the vacant posts of the Secondary Grade Teacher, Physical Education Teacher, B.T. Assistant / Teachers, etc in the school



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concerned. That was the import of the orders passed by this Court dated 14.12.2017, allowing the said W.P.No.25770 of 2003. The said order is now sought to be reviewed by the present review application filed by the Government.

7. Mr.S.Silambanan, learned Additional Advocate General, appearing for the review petitioners have brought to the notice of this Court that, no doubt, the Director's proceedings dated 26.05.2003 was already set aside and therefore, to that extent, the order passed by this Court dated 14.12.2017, allowing the writ petition filed by the School may be justified. However, he would submit that, on 12.11.2003 the School Education Department had issued a Government Order in G.O.M.S.No.125. Under the Government Order, in view of the difficult financial position in the State, the vacancies arising from the Academic Year 2003-04 in the various categories of Teacher posts in all kinds of Schools shall be deemed to have become as Junior Grade Teacher posts and allowed only consolidated pay. The said consolidated pay for Secondary Grade Teacher is Rs.3000/- and for B.Ed. Teacher, Rs.4000/-.



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The said G.O.M.S.No.125 has never been put under challenge according to the learned Additional Advocate General. Therefore, it was in full force for the whole period, till the normalcy was restored subsequently after some years i.e., from 01.06.2006.

8. In view of the said G.O.M.S.No.125, if at all any appointment is made from the Academic Year 2003-04, at various levels viz., Secondary Grade Teacher, B.T. Assistants as well as the Physical Education Teacher, they would only be treated as Junior Grade Teacher and accordingly, the consolidated pay fixed under G.O.M.S.No.125 alone would be permissible to be paid.

9. Only in that context, the orders of this Court dated 14.12.2017 has been implemented, under which, all the four Teachers, who were appointed on 05.11.2003, 05.11.2003, 29.12.2003 and 04.02.2004 respectively at the said School, their appointment had been approved or regularized with effect from 01.06.2006. The reason, according to the learned Additional Advocate General is, up to



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31.05.2006 these people could have only be treated as a Junior Teacher with consolidated pay and thereafter only, they would be eligible to get time scale of pay for each category of the Teachers.

10. Only in this context, since the orders of this Court dated 14.12.2017 according to the writ petitioner has not been fully complied with by regularizing the services of these Teachers with effect from the date of their original appointments, a contempt petition has been moved. Therefore, the learned Additional Advocate General would contend that, in view of the import of G.O.M.S.No.125 referred to above, the orders passed by the respondents regularizing the services of the Teachers with effect from 01.06.2006 is to be accepted and accordingly, the review to that effect be allowed.

11. However, Mr.Balan Haridas, learned counsel appearing for the writ petitioner, who is the respondent in this review application submitted that, when the Director's proceedings dated 26.05.2003 was put under challenge, it was never brought to the notice of this Court that



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there has been a subsequent Government Order dated 12.11.2003 which occupies the filed. Secondly he would submit that, there has been a Government Order issued on 12.11.2003, since it only states that the vacancy arising from the Academic Year 2003-04 in various categories of Teachers shall be deemed to have become Junior Grade Teacher posts, which means, only those vacancies arising from the Academic Year 2003-04 alone shall be down graded as Junior Grade Teachers and those vacancies prior to that Academic year could not be tinkered and those four peoples were appointed in the respondent School only in the vacancies which arose prior to 2003-04. Therefore, their appointment can be approved and regularized with effect from the date of their initial appointment. Hence, the learned counsel appearing for the respondent School would contend that the review has to be rejected and consequently the contempt proceedings can be further pursued against the respondents.

12. I have considered the said rival submissions made by the learned counsel appearing for the parties and perused the materials placed before this Court.



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13. No doubt, the proceedings issued by the Director dated 26.05.2003 was put under challenge and ultimately it was set aside by the orders of this Court dated 09.10.2003. Therefore, everybody was in the impression that the Director's proceedings dated 26.05.2003 alone was an embargo against the Private Aided Schools from making appointment in the clear sanctioned vacancies.

14. However, in the Director's proceedings itself, since it was stated that the Government was thinking of bringing a Government Order to down grade various levels of Teacher posts in Aided and other Schools towards the consolidated pay for a particular period due to the financial crisis, accordingly, the Government immediately had come forward to issue a Government Order on 12.11.2003. The period between the proceedings of the Director and the G.O.M.S.No.125 was less than six months. However, the import of G.O.M.S.No.125 was never been put under challenge, probably no much notice had been taken by any stake holders about the import of G.O.M.S.No.125.



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15. However, the Government Order have been issued and the posts have been down graded and the Government Order was intact all along the import of the said Government Order could only be construed as had been not challenged from the date of issuance of the Government Order. Therefore, the down grading of posts as made by the G.O.M.S.No.125 dated 12.11.2003 would come into effect from that date and if at all anyone is appointed after 12.11.2003, those appointees who hold such posts, may be B.T. Assistants or Secondary Grade Teachers, they only be treated as Junior Grade Teachers with consolidated pay as contemplated under G.O.M.S.No.125.

16. With this legal background, if we look at the four appointments made in the respondent School, the first two appointments were made on 05.11.2003, one was appointed as Physical Education Teacher and another one was appointed as Secondary Grade Teacher. The remaining two appointments were made on 29.12.2003 and 04.02.2004 in B.T. Assistant Mathematics and B.T. Assistant Science



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posts.

17. Therefore, if we take the cut off date of G.O.M.S.No.125 i.e., 12.11.2003, two appointments made prior to the G.O.M.S.No.125 i.e., on 05.11.2003, can only be construed as appointments made in the clear vacancies arose prior to G.O.M.S.No.125. Therefore, on that date, those two people were appointed to the post were not down graded.

18. At the same time, after 12.11.2003, since the import of G.O.M.S.No.125 has come into effect, subsequent appointments made i.e., on 29.12.2003 and 04.02.2004 shall be treated only as appointments made in the down graded post. Therefore, those appointees were entitled to get only the consolidated pay.

19. Subsequently, from 01.06.2006, everybody was brought under the time scale of pay. Therefore, the Government came forward to regularize the services of all the four persons with effect from 01.06.2006. Therefore, there is no quarrel for the regularization from 01.06.2006 in



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respect of the two out of the four persons appointed i.e., on 29.12.2003 and 04.02.2004 in the posts of B.T. Assistant Mathematics and B.T. Assistant Science.

20. However, the two appointments made on 05.11.2003 to the posts of Physical Education Teacher and Secondary Grade Teacher posts, the said appointments since have been made prior to the G.O.M.S.No.125 dated 12.11.2003 and on that date i.e., on 05.11.2003, the posts were never down graded, thus, the appointments shall be treated only as regular appointments in the said posts, for which, they are entitled to get time scale of pay meant for the posts.

21. Therefore, insofar as these appointments are concerned, the order of regularization given by the respondent with effect from 01.06.2006 may not be justifiable. Therefore, insofar as these two appointments are concerned, the review petitioner should come forward to regularize their services with effect from the date of their appointments i.e., from 05.11.2003 in the regular time scale of pay accordingly and



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their service benefits be calculated and extended to them

22. In that view of the matter, this Court is inclined to pass the following orders in this review application:

(i) That the review petitioner is hereby directed to regularize the services of the two appointees made in the respondent School viz., N.Ramasamy and J.Gajalakshmy as Physical Education Teacher and Secondary Grade Teacher respectively on 05.11.2003 from the said date as regular appointments with time scale of pay and accordingly, their service as well as their pecuniary benefits shall be calculated and be extended to them within a period of eight weeks from the date of receipt of a copy of this order.

(ii) Insofar as the other two appointees viz., R.Indumathi and K.P.Balaji are concerned, since they have been appointed as B.T. Assistant Mathematics and B.T. Assistant Science respectively on 29.12.2003 and



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04.02.2004 at the respondent School, their appointment should be regularized from 01.06.2006, by implementing the import of G.O.M.S.No.125, which the respondent has already done, therefore, to that extent, the action taken by the respondent is to be approved, accordingly, is hereby approved.

23. Therefore, this review application is ordered partly to the extent indicated above. However, there will be no order as to costs. Consequently, the connected miscellaneous petitions W.M.P.Nos.14026 & 14027 of 2022 are also closed.

24.11.2022

Index: Yes/No
Internet: Yes/No
Speaking/Non-Speaking order
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R.SURESH KUMAR, J.
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