

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.06.2022

CORAM

THE HON'BLE MR. JUSTICE P.D. AUDIKESAVALU

**W.P. No. 31818 of 2017
and
W.M.P. No. 34963 of 2017**

D.Paulraj

... Petitioner

-VS-

1. State of Tamil Nadu,
Represented by its Secretary to Government,
School Education Department,
Secretariat, Chennai – 600 009.
2. The Director of School Education,
College Road,
Chennai – 600 006.
3. The Joint Director of Higher
School Education (Higher Education),
Directorate of School Education Campus,
College Road,
Chennai – 600 006.
4. The Chief Educational Office,
Thirunelveli District,
Thirunelveli.
5. The Correspondent,
St. Annes Higher Secondary School,
St. Annes Primary School,
Koodankulam Post,
Thirunelveli District – 627 106.

... Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India, 1950, praying to issue a Writ of Mandamus, directing the First to Fourth Respondents to approve the appointment of the Petitioner as Grade II Vocational Instructor as per the Government Order dated 09.02.2007 vide G.O. (Ms). No. 35, School Education (VE) Department and consequently regularize the Petitioner's service with effect from 01.08.1997 and pay the arrears of salary from the date of appointment.

For Petitioner : Mr. K.Sannjay

For Respondents : Mr. P.Balathandayutham
Special Government Pleader
(for R1 to R4)

Ms. S.Vasumathi (for R5)

ORDER

Heard Mr. K.Sannjay, Learned Counsel for the Petitioner, Mr. P.Balathandayutham, Learned Special Government Pleader appearing for the First to Fourth Respondents and Ms. S.Vasumathi, Learned Counsel for the Fifth Respondent and perused the materials placed on record, apart from the pleadings of the parties.

2. The grievance ventilated by the Petitioner in this Writ Petition is that she had been working from 01.08.1997 and grant-in-aid for payment of her salary has not been sanctioned by the Government of Tamil Nadu till date.

3. Learned Special Government Pleader has brought to notice of that while granting permission by proceedings in O. Mu. No. 149885/W13/92 dated 22.09.1992 for the course for which the Petitioner has been appointed, there is specific condition as per Section 14-A of the Tamil Nadu Recognized Private Schools (Regulation) Act, 1973, that no grant-in-aid would be paid for any additional post of teacher any class or course of instructions after the commencement of the academic year 1991-1992 in a private school. It is not in dispute that the course for which the Petitioner has been appointed as teacher as commenced only from the academic year 1992-1993 for which no grant-in-aid for payment of salary to the Petitioner could be made. In such circumstances, the Respondents cannot be faulted for refusing to grant the relief sought by the Petitioner in this case.

4. At the same time, it is made clear that as held by the Hon'ble Supreme Court of India in ***Government of Andhra Pradesh -vs- K.Brahmanandam*** [(2008) 5 SCC 241] in similar situation, the Petitioner is not precluded from

invoking his right under Section 70 of the Indian Contract Act, 1872, to pursue for recovery of monetary dues from the Management of the Fifth Respondent who had extracted work from him during the relevant period in appropriate legal proceedings.

In fine, the Writ Petition is dismissed with the aforesaid observations. Consequently, the connected Miscellaneous Petition is closed. No costs.

28.06.2022

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Index: Yes/No

Note: Issue order copy by 18.07.2022.

To

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P.D. AUDIKESAVALU, J.

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