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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.06.2022

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

W.P. No.28922 of 2017

and

W.M.P. No.31139 of 2017

V.Vimala

...Petitioner

-vs-

1. The State of Tamil Nadu,
Rep. by its Secretary to Government,
Education Department, Fort St. George,
Chennai - 600 009.
2. The Director of Elementary School Education,
College Road,
Chennai - 600 006.
3. The District Elementary Educational Officer,
District Educational Office,
Thiruvallur,
Thiruvallur District.
4. The Assistant Elementary Educational Officer,
District Educational Office,
Puzhal Union,
Thiruvallur District.
5. The Correspondent,
Sri V.Ramakrishna Primary School,
No. 51-A, North Railway Station Road,
Thiruvottiyur,
Chennai - 600 019,
Thiruvallur District.

...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 pass order on the representation dated 25.09.2017 and treat the Petitioner as senior treating the period of service from 01.03.2001 to 21.12.2007 as service period and pay arrears of salary to the Petitioner and to pay the other benefits, viz. Selection grade, etc.



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For Petitioner : Mr. A.S.Mujibur Rahman

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

Mr. S.Anandakumar (for R5)

O R D E R

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

2.The Fifth Respondent is a private school receiving grant-in-aid from the Government of Tamil Nadu for payment of salaries for its teachers. The Petitioner, who has completed B.Sc., degree and B.Ed., degree, had been appointed as Secondary Grade Assistant in the School of the Fifth Respondent, which had been approved by the Third Respondent with effect from 01.03.2001 imposing certain conditions as she had not undergone the required training in Child Physiology for that post in terms of G.O. Ms. No. 559, Education, Science and Technology Department dated 11.07.1995 issued by the Government of Tamil Nadu, which was accepted by her without any protest.

3.The Government of Tamil Nadu had issued another G.O. Ms. No. 155, School Education department (D2) Department dated 03.10.2002, in which permission was granted for approval of qualified graduates appointed in already sanctioned vacancies for the post of permanent Secondary Grade Teachers in High School if they had completed short term training on Child Physiology in respective District Teachers Education and training institute (DIET). After the Petitioner completed the training in Child Physiology on 21.12.2007, her appointment was regularized but she was not paid the salary by the Government for the period from 01.03.2001 to 21.12.2007. In that backdrop, the Petitioner had made a representation dated 25.09.2017 to reckon her service for the period from 01.03.2001 to 21.12.2007 and pay her the arrears of salary and other benefits and has filed this Writ Petition for the same.

4.It has been held by the Division Bench of this Court in Secretary & Correspondent Uswathun Hasana Oriental (Arabic) Girls Higher Secondary School -vs- The State of Tamil Nadu (2002 Writ L.R. 173), after duly considering the statutory provisions,



that the requirement of Trained Secondary School Leaving Certificate (hereinafter referred to as 'T.S.L.C.' for short) of Secondary Grade is mandatory for a teacher appointed in a primary school as she is required to know the behaviour of the children and kindergarten methods to bring up children and that it would be improper to equate those teachers possessing T.S.L.C. with others obtaining B.T. or B.Ed., Degree, which is meant for teaching students in High School and Higher Secondary level.

5.The Hon'ble Supreme Court of India has also taken the same view as evident from the decisions in P.M. Latha -vs- State of Kerala [(2003) 3 SCC 541], Yogesh Kumar -vs- Govt. of NCT, New Delhi [(2003) 3 SCC 548] and Dilip Kumar Ghosh -vs- Chairman [(2005) 7 SCC 567] while dealing with similar provisions in the corresponding statutes of other States in the country. It would be useful here to refer to the decision of the Hon'ble Supreme Court of India in Dilip Kumar Ghosh -vs- Chairman [(2005) 7 SCC 567] in which it has been held as follows:-

"10.The Rules, as noticed above, were framed primarily for recruitment of teachers for primary school and the Rules were designed to give an incentive to the teachers who are specifically trained to teach in primary schools. The rationale behind the framing of this Rule is that JBT/PTTC certificate trained teachers should be appointed so that they can impart proper education to the primary school students in terms of the aims and object with a trained hand. The Rules purposely laid an emphasis that all the candidates for teachers in primary schools who possessed JBT/PTTC should be appointed for a development of the child. The primary education is up to fourth standard. There is a middle education and then secondary and higher secondary education. For teaching in the primary school, therefore, one must know the child psychology and development of a child at a tender age. As already noticed, the candidates like the appellants who are trained in B.Ed., degree are not necessarily to be equipped to teach the students of primary class. They are not trained and equipped to understand the psychology of a child of tender age."

6.It must also to be highlighted here that Section 20 of the Tamil Nadu Recognised Private Schools Regulation Act, 1973, creates an absolute bar for any person to be employed as a teacher in a Private School without possessing the required qualifications. The Hon'ble Supreme Court of India in State of Orissa -vs- Mamata Mohanty [(2011) 3 SCC 436] has held that a



person who did not possess the requisite qualification on the date of appointment shall not be entitled for grant-in-aid scheme till he completes the deficiency, and that her case could be considered only from the date of completing the deficiency for extending the benefit of grant-in-aid scheme. It would be useful to refer to relevant passage in that decision which are squarely applicable to the case on hand and the same are extracted below:-

"29. Education is the systematic instruction, schooling or training given to the young persons in preparation for the work of life. It also connotes the whole course of scholastic instruction which a person has received. Education connotes the process of training and developing the knowledge, skill, mind and character of students by formal schooling. The excellence of instruction provided by an educational institution mainly depends directly on the excellence of the teaching staff. Therefore, unless they themselves possess a good academic record/minimum qualifications prescribed as an eligibility, it is beyond imagination of anyone that standard of education can be maintained/enhanced.

33. it is evident that education is necessary to develop the personality of a person as a whole and in totality as it provides the process of training and acquiring the knowledge, skills, developing mind and character by formal schooling. Therefore, it is necessary to maintain a high academic standard and academic discipline along with academic rigour for the progress of a nation. Democracy depends for its own survival on a high standard of vocational and professional education. Paucity of funds cannot be a ground for the State not to provide quality education to its future citizens. It is for this reason that in order to maintain the standard of education the State Government provides grant-in-aid to private schools to ensure the smooth running of the institution so that the standard of teaching may not suffer for want of funds.

34. Article 21-A has been added by amending our Constitution with a view to facilitate the children to get proper and good quality education. However, the quality of education would depend on various factors but the most relevant of them is excellence of teaching staff. In view thereof, quality of teaching staff cannot be compromised. The selection of the most



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suitable persons is essential in order to maintain excellence and the standard of teaching in the institution. It is not permissible for the State while controlling the education it may impinge the standard of education....

37. It is a settled legal proposition that if an order is bad in its inception, it does not get sanctified at a later stage. A subsequent action/development cannot validate an action which was not lawful at its inception, for the reason that the illegality strikes at the root of the order. It would be beyond the competence of any authority to validate such an order. It would be ironic to permit a person to rely upon a law, in violation of which he has obtained the benefits. If an order at the initial stage is bad in law, then all further proceedings consequent thereto will be non est and have to be necessarily set aside. A right in law exists only and only when it has a lawful origin.

40. lacking eligibility as per the rules/advertisement cannot be cured at any stage and making appointment of such a person tantamounts to an illegality and not an irregularity, thus cannot be cured. A person lacking the eligibility cannot approach the court for the reason that he does not have a right which can be enforced through Court. 50. In absence of an enabling provision for grant of relaxation, no relaxation can be made. Even if such a power is provided under the Statute, it cannot be exercised arbitrarily. Such a power cannot be exercised treating it to be an implied, incidental or necessary power for execution of the statutory provisions. Even an implied power is to be exercised with care and caution with reasonable means to remove the obstructions or overcome the resistance in enforcing the statutory provisions or executing its command. Incidental and ancillary powers cannot be used in utter disregard of the object of the Statute. Such power can be exercised only to make such legislation effective so that the ultimate power will not become illusory, which otherwise would be contrary to the intent of the legislature. 51. More so, relaxation in this manner is tantamount to changing the selection criteria after initiation of selection process, which is not permissible at all. Rules of the game cannot be changed after the game is over.



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56. It is a settled legal proposition that Article 14 is not meant to perpetuate illegality and it does not envisage negative equality. Thus, even if some other similarly situated persons have been granted some benefit inadvertently or by mistake, such order does not confer any legal right on the petitioner to get the same relief.

57. This principle also applies to judicial pronouncements. Once the court comes to the conclusion that a wrong order has been passed, it becomes the solemn duty of the court to rectify the mistake rather than perpetuate the same....

58. We are fully alive of the object and purpose of according recognition and affiliation to educational institutions. It is the educational authorities of the State which grant recognition to a Committee of Management for opening or running an educational institution. Affiliation is granted by the particular University or Board for undertaking the examination of the students of that college for awarding degrees and certificates. Therefore, while granting the recognition and affiliation even for non-governmental and non-aided private colleges, it is mandatory to adhere to the conditions imposed by them, which also include the minimum eligibility for appointment of teaching staff. The authority at the time of granting approval has to apply its mind to find out whether a person possessing the minimum eligibility has been appointed...."

7. The Division Bench of this Court in State of Tamil Nadu -vs- Pallivasal Primary School (2004 (2) LW 591) had earlier examined the cases of the persons similarly placed to the persons claiming the benefit of grant-in-aid from the Government towards their salary for working in private schools for the period prior to completing the training course in Child Psychology and held as follows:-

"7. So far as the approvals/confirmation is concerned, Government was not under any duty to approve or confirm the appointment of appellants/petitioners who did not possess the qualifications prescribed when, they were improperly appointed to the posts. Their position cannot be equated to that of those who possess the qualification and had been duly appointed. Their remaining in their post was only by reason of a sympathetic view taken by the Division Bench which had upheld the Government Order which had directed



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that persons with B.Ed. Qualification are not to be appointed in Secondary Grade vacancies.

8. Their right to be regarded as persons eligible for confirmation / approval can be said to arise only after they acquired, after their training, a minimum prescribed qualification. The Government here has shown great concession to them by allowing them to retain their position even without obtaining the requisite diploma or certificate in child psychology by giving to them training in child psychology. We see nothing wrong in the Government directing that their approval / confirmation can only be on and after the date they complete the training. Their past service however shall count for pension.

9. It was submitted by some of the counsel for the appellants / petitioners that there was delay in providing training. Complaint of this nature cannot be made by such of these persons. Even according to them over 1000 persons have been appointed contrary to the G.O. Ms. No: 559. The fact that Government took some time to formulate a scheme and provide training to them in batches cannot be a matter for complaint especially as the continued functioning of these persons as teachers was not disturbed on account of the time required by the Government for providing training.

10. A submission was also made for some of those among the appellants / petitioners that they have not been paid salary by the State. The State was not under any obligation to pay salary to persons who were not qualified and who have been appointed contrary to Government Order. Such persons must have been paid some amount by the management who employed them. Government cannot be directed to shoulder that liability for payment to such persons and in cases where payment had not been made. What has been said by us in relation to the persons who had received salary and recovery from whom has been held by us to be unwarranted, would apply to the Government as well as any direction to it to pay salary to a large number of such persons who did not, at the relevant time, possess the prescribed qualification, would result in a huge burden being imposed on the Government even when it had committed no wrong."

Similar view has been reiterated by the Division Bench of this Court in Director of Elementary Education -vs- Sundaravel Raj (Order dated 21.03.2018 in W.A. (MD) Nos. 74 of 2015 and 957 of 2016).



8. In that view of the matter, it would not be possible to extend the benefits of granting salary to the Petitioner by way of grant-in-aid by the Government from her initial appointment on 01.03.2001 till 21.12.2007 when she completed the training course in Child Psychology. This would not, however, preclude the right of the Petitioner to invoke Section 70 of the Indian Contract Act, 1872, to pursue the legal remedies to get the benefits from the management of the Fifth Respondent who had extracted the work from her, 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. This view is also fortified by the decision of the Division Bench of this Court in State of Tamil Nadu -vs- Pallivasal Primary School [2004 (2) LW 591].

9. It is needless to add here that the benefit of payment of salary by way of grant-in-aid to the Petitioner as Secondary Grade Assistant for the period from 22.12.2007 onwards in terms of the proceedings in Muu. Mu. No. 6279/Aa4/A5/2002 dated 31.10.2008 passed by the Third Respondent remains undisturbed.

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

Sd/-
Assistant Registrar(CS-IX)

//True Copy//

Sub Assistant Registrar

skr/gd

To

1. The Secretary to Government of Tamil Nadu,
Education Department,
Fort St. George,
Chennai - 600 009.
2. The Director of Elementary School Education,
College Road, Chennai - 600 006.
3. The District Elementary Educational Officer,
District Educational Office,
Thiruvallur,
Thiruvallur District.



4. The Assistant Elementary Educational Officer,
District Educational Office,
Puzhal Union,
Thiruvallur District.

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+1cc to the Government Pleader, S.R.No.36581

W.P. No. 28922 of 2017

AK-II (CO)

RGA(23/06/2022)