



W.P.(MD)No.863 of 2020

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 05.12.2022

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.(MD)No.863 of 2020

Rajakumar

... Petitioner

Vs.

1. The Secretary to Government,
School of Education Department,
Secretariat,
Chennai – 600 009.

2. The Director of Elementary Education,
DPI Compound,
Nungampakkam,
Chennai – 600 006.

3. The District Educational Officer,
Ramanathapuram District,
Ramanathapuram.

... Respondents

PRAYER : Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus calling for the records relating to the impugned order passed by the third respondent in Na.Ka.A5/1438/2019 dated 06.08.2019 and quash the same as illegal and consequently directing the respondents 1 and 2 to regularize the service of the petitioner from the date of his initial appointment i.e., from the date of entry into service till 01.06.2006 for the purpose of seniority and promotion with all consequential monetary and service benefits.



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For Petitioner : Mr.SP. Vijay Nivas
For Respondents : Mr.Thambidurai,
Government Advocate

ORDER

This Writ Petition has been filed to call for the records of the impugned order passed by the third respondent in Na.Ka.A5/1438/2019, dated 06.08.2019, quash the same and consequently, direct the respondents 1 and 2 to regularize the service of the petitioner from the date of his initial appointment, i.e., from the date of entry into service till 01.06.2006 for the purpose of seniority and promotion with all consequential monetary and service benefits.

2. The case of the petitioner is that the petitioner was working as B.T.Assistant in Government Higher Secondary School, Poomparai, Kodaikanal, Dindigul District. He was earlier appointed as Elementary School Teacher on consolidated pay at Panchayat Union Primary School, Mettukarkalathur, R.S.Mangalam, Ramanathapuram District, vide proceedings dated 16.11.2004. The petitioner has completed M.Sc., and



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B.Ed., and when he was working as Elementary School Teacher for more than ten years, the people who were appointed along with the petitioner requested the Government to regularise their services from consolidated payment. Pursuant to their prolonged grievances, the Government issued G.O.No.99, School Education, dated 27.06.2006, to regularise their services with effect from 01.06.2006. On the basis of the said Government Order, the petitioner's service was also regularised on 18.08.2016. However, the grievance of the petitioner is that though the petitioner was appointed in the year 2004, he was regularised only from 2006. Hence, the present Writ Petition.

3. The learned counsel appearing for the petitioner would submit that the issue that arises in the present Writ Petition is no longer *res integra* and is squarely covered by the decision of this Court in the case of ***T.Kunju Krishn and others Vs. The Government of Tamil Nadu represented by its Secretary and others*** in ***W.P.No.4991 of 2015***. Accordingly, he prayed for appropriate orders.



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4. Per contra, the learned Government Advocate appearing for the respondents would submit that though initially this Court had passed several orders regularising the services of the Teachers from the date of their initial appointment, however, all those cases were clubbed together and listed before the Hon'ble Division Bench of this Court in W.A.(MD)Nos.299 of 2020 etc., batch, wherein, the Hon'ble Division Bench of this Court rejected the request of all those similarly placed persons like the petitioner and allowed the Writ Appeal filed by the respondents. Hence, the prayer sought for in the Writ Petition cannot be granted and accordingly, he prayed for dismissal of the Writ Petition.

5. Heard the learned counsel appearing for the parties and perused the materials placed before this Court.

6. The facts in the present case are not in dispute. Admittedly, the petitioner was initially appointed in the year 2004, however, his service was regularised from 2006. The short issue that arises in the present Writ Petition, is whether the petitioner is entitled to be regularised in his services



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from the date of initial appointment, i.e., from 16.11.2004 with consequential monetary benefits. The very same issue came up for consideration before the Hon'ble Division Bench of this Court in W.A.(MD) Nos.299 of 2020 etc., batch, dated 01.06.2021 and the relevant portion of the judgment is extracted hereunder:

"..... 57. In our considered view, the said decision regularising the teachers, who were appointed in the year 1990 can be of no assistance to respondents 1 to 18 herein. The reason being the terms and conditions of their appointment and how they were treated at the first instance. Above all, respondents 1 to 18, having accepted the appointments, joined the post, worked on consolidated wages and having enjoyed the benefit of regularisation granted in 2006, which itself was a big concession granted to them, are wholly estopped from contending that the services rendered by them as Junior Grade Teachers on consolidated pay should also be reckoned for all purposes including monetary benefits. The plea is thoroughly misconceived. Equally the decision in W.P.Nos.21316 and 21317 of 2015 can in no manner advance the case of respondents 1 to 18.

(Emphasis added)



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58. *The learned counsel has placed reliance on the decision in the case of Direct Recruit Class II Engineering Officers Association vs. State of Maharashtra & Ors., [(1990) 2 SCC 715]. This decision can be made applicable to determine the status of a person, who was appointed to a post according to the rule and status of a person, who was appointed on ad hoc basis and not according to rules. In the first category of cases, it has been held that they should be given the benefit of seniority and their period of service shall be counted from the date of their appointment and not from the date of their regularisation or confirmation. This decision cannot be applied to the case of respondents 1 to 18, as they were appointed to a post, which was a post created by downgrading an existing post, given a different nomenclature, viz. Junior Grader Teacher with salary paid on consolidated basis. The terms and conditions of recruitment were made known to all the candidates including respondents 1 to 18. Therefore, they can never raise a plea that their recruitment having been done by TRB, is in accordance with the Rule and therefore, their seniority should be counted from the date of appointment. It may be true that the recruitment was done by the TRB, but it was a special recruitment for a specific purpose to a special category of post with wages on consolidated basis. Therefore, the decision of the Hon-ble Supreme Court*



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cannot be applied to the case of respondents 1 to 18.

59. That apart, the belated attempt made by the respondents / writ petitioners is liable to be rejected for several reasons. Firstly, they are estopped from contending contray to the Government Orders, contrary to the terms and conditions of the Government Orders and contrary to the conditions contained in the agreement to which they have agreed. Secondly, the challenge to the policy decision to downgrade the post to that of the Junior Grade Teacher was rejected and the decision of the Government has been upheld. The request made by some of the teachers to reckon the period of service prior to 01.06.2006 was directed to be considered by the Director of School Education pursuant to an order passed in a writ petition. The representation was considered and rejected and the same has not been challenged and after lapse of nearly fourteen years, suddenly the respondents / writ petitions have come up with this fanciful claim, which is absolutely untenable and unsustainable in law.

60. The present attempt of the respondents / writ petitioners is to march over the regularly promoted PG Assistants, who are only 62 number, whereas the Junior Grade Teachers, like the respondents / writ petitioners are more than 3000. Thus, the relief sought for by the respondents / writ petitioners is misconceived and liable to



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be rejected and accordingly, rejected.

61. In the result, the writ appeals are allowed and the orders and directions issued in the writ petitions are set aside and consequently, the writ petitions are dismissed. No costs. Consequently, connected miscellaneous petitions are closed."

7. Considering the above submissions and taking into account the ratio laid down by the Hon'ble Division Bench of this Court in W.A.(MD) Nos.299 of 2020 etc., batch, dated 01.06.2021, the prayer sought for in the present Writ Petition cannot be granted and this Writ Petition is liable to be dismissed.

8. Accordingly, this Writ Petition is dismissed. No costs.

05.12.2022

Index : Yes / No

Speaking Order : Yes / No

vji



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