



W.P.(MD)Nos.2567 and 2569 of 2020

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 08.12.2022

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

**W.P.(MD)Nos.2567 and 2569 of 2020
and
W.M.P.(MD).Nos.2207 and 2208 of 2020**

A.Selvaraj, B.Sc.,M.A., B.Ed.,
B.T.Tamil,
Ramanathan Chettiyar Higher Secondary School,
Puduvayal - 630 108,
Karaikudi Taluk,
Sivagangai District. ... Petitioner in W.P.(MD)No.2567 of 2020

R.Shanthi, M.Sc.,M.Ed., M.Phil.,
P.G.Assistant,
Ramanathan Chettiyar Higher Secondary School,
Puduvayal - 630 108,
Karaikudi Taluk,
Sivagangai District. ... Petitioner in W.P.(MD)No.2569 of 2020

Vs.

1. The State of Tamil Nadu,
Represented by its Secretary,
Education Department,
Secretariat,
Chennai - 600 009.



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2. The Director of School Education,
College Road,
Chennai - 600 006.
3. The Chief Educational Officer,
Sivagangai District,
Sivagangai - 630 560.
4. The District Educational Officer,
Devakottai,
Sivagangai District.
5. The Secretary,
Ramanathan Chettiyar Higher Secondary School,
Puduvayal - 630 108,
Karaikudi Taluk,
Sivagangai District.

... Respondents in
in both W.Ps'

PRAYER : Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus calling for the entire records connected with the impugned order passed by the fourth respondent vide proceedings in Na.Ka.No.35/A4/2017, dated 01.04.2019 and quash the same and consequently, direct the respondents to count the past service of the petitioners from 02.11.1998 to 15.04.2004 and 02.11.1998 to 28.08.2003 respectively for the purpose of pension in the light of the order passed in W.A.(MD)No.307 of 2019, in the case of V.Vasanthi vs. State of Tamil Nadu represented by its Secretary and others Vs. Pallivasal Primary School reported in 2019 (4) CTC 865.



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For Petitioner
in both W.Ps' : Mr.S.N.Ravichandran

For Respondents : Mr.S.Shaji Bino
in both W.Ps' Special Government Pleader

COMMON ORDER

Since the issue raised in both these Writ Petitions is one and the same, with the consent of the learned counsel appearing for both sides, both the Writ Petitions have been heard together and are disposed of by this common order.

2. The case of the petitioners is that the fifth respondent is an Aided Non-Minority Institution and the petitioners were appointed as Secondary Grade Teachers on 02.11.1998. The fifth respondent / School Management had submitted proposals for approval of the appointments of the petitioners to the fourth respondent, but the same was returned on the ground that the appointment of higher qualified persons in the Secondary Grade Post is contrary to G.O.(Ms)No.559 dated 11.07.1995. Challenging the said G.O.(MS)No.559, dated 11.07.1995, a batch of Writ Petitions were



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filed before this Court and the same were dismissed by a common order, dated 19.05.1998. As against the dismissal of the Writ Petitions, a batch of Writ Appeals in W.A.Nos.991 to 998 of 1998 were filed and the Hon'ble Division Bench of this Court, by judgment dated 29.06.2001, disposed of the Writ Appeals, directing that the appointment of the persons between 11.07.1995 and 19.05.1998, be approved on condition that they should undergo one month Child Psychology Training. In pursuance thereof, the Government issued G.O.(Ms)No.155, School Education Department, dated 03.10.2002. Since the appointments of the petitioners were after the cut-off date, i.e., 02.11.998, they were not sent for one month Child Psychology Training and hence, they were relieved from service on 18.12.2002 and appointed as Teachers on 19.12.2002. It is further submitted that as against G.O.(MS)No.155, dated 03.10.2002, several Writ Petitions and Appeals were filed and by order dated, 02.04.2004, this Court, upheld the said Government Order and directed the Government to count the past services of the teachers for pensionary benefits in the case of ***State of Tamil Nadu and others vs. Pallivasal Primary School*** reported in ***2004 (2) LW 591***. Further, the Tamil Nadu Recognized Private School Managers Association



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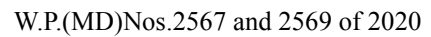
filed a Writ Petition in W.P.No.19271 of 1992, seeking a direction to approve the appointment of the over-qualified teachers, appointed as Secondary Grade Teachers and the said Writ Petition was dismissed, by order dated 19.05.1998, as against which, Writ Appeal in W.A.No.1282 of 1998 came to be filed and the same was also dismissed, against which, the said Association preferred S.L.P.Civil No.3687 of 2003. The Hon'ble Apex Court, dismissed the Special Leave Petition and confirmed the order passed by this Court. However, their past services rendered in the cadre of Secondary Grade Teachers in the very same Management School were not taken into consideration for the purpose of pension. Hence, the petitioners have filed Writ Petitions before this Court in W.P.(MD)Nos.3473 and 3474 of 2019. This Court, by order, dated 15.02.2019, directed the respondents therein to consider the petitioners' representations dated 11.05.2016 and 30.08.2016 respectively and pass appropriate orders on merits and in accordance with law, after affording sufficient opportunity of hearing to the petitioners. However, without providing any opportunity as directed by this Court, the fourth respondent has mechanically passed the present impugned order, dated 01.04.2019 rejecting the petitioners' claim and refused to grant



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benefits to the petitioners for pension by calculating the service rendered between 1998 and 2004. Challenging the same, the present Writ Petition.

3. The learned counsel appearing for the petitioners would submit that they had not undergone one month Child Psychology Training on the ground that subsequent G.O.(Ms).No.79, dated 14.06.2002 was issued and the very same Management appointed the petitioners in the Junior Grade Teachers as Tamil as well as Maths. The petitioners were appointed in the said post on 16.04.2004 and 29.08.2003. However, their appointments were approved only on 31.05.2004 as consolidated employees and the petitioners were brought under time scale of pay on 01.06.2006. Prior to that, the State introduced the Contributory Pension Scheme vide G.O.(Ms).No.259, dated 16.08.2003, which clearly contemplates that the New Pension Scheme would be applicable to the persons who joined Government Service on or after 01.04.2003. The grievance of the petitioners is that the petitioners' past services rendered as Secondary Grade Teachers were not calculated for the purpose of extending the benefit of old pension scheme. He further submitted that the similarly situated persons like that of the petitioners



4. The learned Special Government Pleader appearing for the respondents would submit that immediately after the order of rejection, the respondents were relieved from the post and were appointed afresh in another post. Subsequently, they were appointed as Junior Grade Teacher as per G.O. No. 125, School Education Department, dated 12.11.2003 on the same pay and subsequently, were brought to time scale of pay under Government Order. At this point of time, they cannot be sent for



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Child Psychology Training. In view of the facts that they did not continue as Secondary Grade Teacher, neither they were sent for Child Psychology Training and rejoined in the same post, nor continued in the post of Secondary Grade Teacher after Child Psychology Training and were subsequently appointed afresh in a post of Junior Grade B.T. and not at this distance point of time, it is not possible to send them for Child Psychology Training as the petitioners are now working as B.T.Assistant (Tamil) and P.G.Assistant (Maths), the question of counting their services as Secondary Grade Teacher from 02.11.1998 for pension purposes does not arise. In these circumstances, it is not possible to count their services from 02.11.1998. Accordingly, he prayed for dismissal of these Writ Petitions.

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 petitioners were appointed as Secondary Grade Teachers with higher qualification on 02.11.1998 and the said appointment is contrary to G.O. (Ms)No.559, dated 11.07.1995 on the sole ground that the petitioners'



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appointments were not approved by the Government. However, the fact remains that the petitioners have not filed any Writ Petitions challenging the refusal of appointment. However, the petitioners' claim that the School Management has also filed a Writ Petition before this Court and the same was also dismissed. Thereafter, admittedly, the petitioners' posts of Secondary Grade were not approved by the Government and thereafter, the Government passed G.O.(Ms)No.155, dated 03.10.2002, in which, the persons who were appointed with higher qualification, have to mandatorily undergo Child Psychology Training for period of one month. Since the appointments of the petitioners were after the cut-off date, i.e., 02.11.1998, they were not sent for one month Child Psychology Training and hence, they were relieved from service on 18.12.2002 and appointed as Teachers on 19.12.2002. Subsequently, the petitioners were appointed as B.T.Assistant (Tamil) and P.G.Assistant (Maths). Though the petitioners claimed that they were appointed on 16.04.2004 and 29.08.2003, whereas the said appointments were approved as consolidated pay on 31.05.2004. Further it was also undisputed fact that they were brought under the time scale of pay on 01.06.2006 and all those appointments are made under G.O.(Ms)No.79



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dated 14.06.2002. However, the fact remains that, prior to that, the State Government issued G.O.(Ms)No.259, dated 16.08.2003 wherein the Government introduced the Contributory Pension Scheme and fixing cut-off date as 01.04.2003, the persons who were appointed after 01.04.2003 placed under Contributory Pension Scheme, whereas, the persons appointed prior to 01.04.2003, their names are to be included in the old pension scheme. The grievance of the petitioners is that if the past service rendered by the petitioners as Secondary Grade Teachers is taken into consideration, they are entitled for old pension scheme in terms of G.O.(Ms)No.259, dated 16.08.2003. In order to avail such benefits, the petitioners have filed a Writ Petition in W.P.(MD)Nos.3473 and 3474 of 2019 before this Court. This Court, by order, dated 15.02.2017 issued a direction to the respondents to consider the petitioners' representation dated 11.05.2016 and 30.08.2016 respectively and pass appropriate orders on merits and in accordance with law, after affording sufficient opportunity of hearing to the petitioners. However, without providing any opportunity as directed by this Court, the fourth respondent has mechanically passed the present impugned order, dated 01.04.2019.



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7. However, the fact remains that earlier, the Secondary Grade post was not approved by the Government, unless the Government approved in terms of the Private School Regulations Act, the petitioners cannot claim that the post is approved one and they are entitled for calculating the past services rendered as Secondary Grade Teachers, whereas, the petitioners were given afresh appointment under G.O.(Ms)No.79, dated 14.06.2002. Initially, the Government appointed the petitioners on consolidated pay and subsequently, brought under time scale of pay on 01.06.2006. Once the post is not approved by the authorities, the claim made by the petitioners is not sustainable one. The learned counsel relied upon various decisions rendered by this Court with regard to calculation of Old Pension Scheme, whereas, all those decisions are related to the persons, who were appointed as Secondary Grade Teachers with higher qualification, to undergo one month Child Psychology Training and thereafter, approval order was granted to them and their services were considered for the purpose of Old Pension Scheme. Whereas, the petitioners were not undergone any Child Psychology Training and their post is not an approved post and they got appointment afresh as Junior Grade B.T.Assistant in terms of the above G.O and the claim made



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by the petitioners is not sustainable one. Hence, this Court is not inclined to interfere with the order impugned in these Writ Petitions and the prayer sought for in these Writ Petitions cannot be granted.

8. Accordingly, these Writ Petitions are dismissed. No costs. Consequently, connected Miscellaneous Petitions are closed.

08.12.2022

Index : Yes / No

Speaking Order : Yes / No

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To

1. The Secretary,
The State of Tamil Nadu,
Education Department,
Secretariat,
Chennai - 600 009.
2. The Director of School Education,
College Road,
Chennai - 600 006.
3. The Chief Educational Officer,
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M.DHANDAPANI,J.

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