



W.P.(MD)No.8933 of 2020

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 19.12.2022

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.(MD)No.8933 of 2020

and

W.M.P.(MD)No.8170 of 2020

J.Arockia Gracey

... Petitioner

Vs.

1. The State of Tamil Nadu,
Represented by its Principal Secretary,
Department of School Education,
Fort St.George,
Chennai - 600 009.
2. The Director of School Education,
Office of the Director of School Education,
DPI Campus,
Chennai - 600 006.
3. The District Educational Officer,
Office of the District Educational Officer,
Melur,
Madurai.
4. The Block Educational Officer,
Office of the Block Educational Officer,
Madurai West,
Madurai.



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5. The Correspondent,
R.C.Middle School,
K.Pudur,
Madurai - 600 007.

... Respondents

PRAYER : Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus calling for the records pertaining to the impugned order in Na.Ka.No.1861/A1/2019 dated 07.02.2020 on the file of the fourth respondent and quash the same as illegal and consequently for a direction, directing the respondents to re-fix the scale of pay of the petitioner in the post of B.T.Assistant with all consequential benefits such as differential pay, allowance and other attendant benefits including pensionary benefits with effect from 11.02.2003 in the light of the order of this Court in W.P.(MD)No.15556 of 2012, dated 07.09.2018.

For Petitioner : Mr.T.Lajapathi Roy

For Respondents : Mr.J.Ashok
Addl. Govt. Pleader for R1 to R4

ORDER

This Writ Petition has been filed to call for the records of the impugned order in Na.Ka.No.1861/A1/2019 dated 07.02.2020 passed by the fourth respondent, quash the same and consequently, direct the respondents to re-fix the scale of pay of the petitioner in the post of B.T.Assistant with



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all consequential benefits, such as, differential pay, allowance and other attendant benefits including pensionary benefits with effect from 11.02.2003 in the light of the order of this Court in W.P.(MD)No.15556 of 2012, dated 07.09.2018.

2. The case of the petitioner is that the petitioner was appointed as Middle Grade Graduate Teacher at R.C.St.Cecilia's Middle School, Manamadurai, Sivagangai District on 11.02.2003. She was appointed in the vacancy caused due to transfer of one V.Sagaya Mary on 10.02.2003 in the sanctioned post. The petitioner's appointment was also duly approved by the District Elementary Educational Officer, Sivagangai, vide proceedings, dated 07.06.2004. Though the petitioner was appointed in the sanctioned vacancy and entitled for regular scale of pay, she was not granted regular salary from 01.06.2006. Hence, the petitioner gave a representation to the respondents on 01.11.2019 requesting to re-fix the scale of pay in the post of B.T.Assistant in view of her initial appointment dated 11.02.2003, with all consequential benefits in accordance with G.O.(Ms)No.79, School Education Department, dated 14.06.2002. But, the same has not been



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considered. Hence, she filed a Writ Petition in W.P.(MD)No.25128 of 2019.

This Court, by order dated 27.11.2019, directed the respondents to consider the representation of the petitioner within a period of twelve weeks from the date of receipt of a copy of the order. Based on the same, the fourth respondent has passed the impugned order, dated 07.02.2020. Challenging the same, the present Writ Petition.

3. The learned counsel appearing for the petitioner would submit that the petitioner is entitled to be regularised from the date of entry into the service, i.e., on 11.02.2003 and accordingly, he prayed for appropriate orders.

4. Per contra, the learned Additional Government Pleader appearing for the respondents would submit that the issue that arises in the present Writ Petition, is no longer *res integra* and the same was decided by the Hon'ble Division Bench of this Court in W.A.(MD)Nos.299 of 2020 etc., batch, dated 01.06.2021, wherein this Court has held that "*the respondents 1 to 18, having accepted the appointments, joined the post, worked on*



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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". Accordingly, he declined the relief sought for in the present Writ petition and prayed for the dismissal of this Writ Petition.

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

6. The short issue that arises in the present Writ Petition, is whether the petitioner is entitled to be regularised in her services from the date of initial appointment, i.e., 11.02.2003 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:



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"..... 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

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



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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 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 contrary 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



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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 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."



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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. Consequently, connected Miscellaneous Petition is closed.

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Index : Yes / No

Speaking Order : Yes / No

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Fort St.George,
Chennai - 600 009.
2. The Director of School Education,
Office of the Director of School Education,
DPI Campus,
Chennai - 600 006.
3. The District Educational Officer,
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