



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON: 11.02.2022

PRONOUNCED ON: 22.02.2022

CORAM

THE HONOURABLE MRS.JUSTICE **S.SRIMATHY**

W.P. (MD) No.2519 of 2015

and

M.P (MD) No.2 of 2015

L.Subbulakshmi

... Petitioner

vs.

1.The State of Tamilnadu,
represented by its Secretary to Government,
Educational Department,
St. George Fort, Chennai-600 009.

2.The Director of School Education,
College Road, Chennai-600 006.

3.The District Educational Officer,
Virudhunagar,
Virudhunagar District.

4.The Correspondent,
St.Antony's High School,
Melanmarainadu,
Virudhunagar District.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned order passed by the 3rd respondent, O.Mu.No.3747/A5/2013, dated 06.12.2013 and to quash the same as illegal and in violation of settled law and thereby to direct these respondents to disburse the arrears of salary along with other monetary and service benefits due for the period from 01.10.1999 to 31.05.2003 by regularizing the service from the date of appointment.

For Petitioner : Mr.F.X.Eugene

For Respondents : Mr.N.Ramesh Arumugam

Government Advocate (Civil side)

O R D E R

This Writ Petition is filed for issuance of a Writ of Certiorarified Mandamus, to quash the impugned order passed by the 3rd respondent, O.Mu.No.3747/A5/2013, dated 06.12.2013 and to direct



these respondents to disburse the arrears of salary along with other monetary and service benefits due for the period from 01.10.1999 to 31.05.2003 by regularizing the service from the date of appointment.

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2.The brief facts of the case are that the petitioner completed B.A. History in the year 1984 and B.Ed., in the year 1993. The petitioner was appointed as Secondary Grade Teacher from 01.10.1996 in the fourth respondent School which is a Private Minority Aided School. The appointment was approved, vide proceedings, dated 26.08.1997. The petitioner contended that the salary was suddenly stopped from the month of November 1999, since the petitioner was a graduated teacher, appointed in the Secondary Grade Teacher post. However, the petitioner was permitted to continue in the service. The Government issued in G.O.Ms.No.155, School Education Department (D2), dated 03.10.2002.

3. The contention of the petitioner is that the Government decided to approve such appointments, who are possessing higher qualification and posted in Secondary Grade Teacher post. The Teachers are directed to undergo one month child psychology training. The petitioner completed the training from 02.05.2003 to 31.05.2003 and the petitioner's appointment was approved on 02.06.2003 and thereafter, she was receiving salary from 02.06.2003. The petitioner relies on judgments rendered in W.P.No.19821 of 2003 and W.P.No.16383 of 2000. The petitioner submitted a representation stating that she was working from 01.10.1999 till 31.05.2003 and her appointment was approved in the proceedings, dated 01.10.1996. Therefore, she is eligible for all service and monetary benefits. Since the same was declined by the impugned order, the petitioner has preferred this Writ Petition.

4.The respondents have filed the counter affidavit stating that as per G.O.Ms.No.155, under Clause 3 (iii), the appointed teacher is not eligible for salary from the date of original appointment and they are eligible only from the date of completion of child psychology training. Under Clause 3 (vii), it is stated to recover the salary which was already paid to them. The G.O.Ms.No.155, was put to challenge and this Court in **Pallivasal case** reported in **2004 2 Law Weekly 591** has upheld the G.O.Ms.No.155 and has held as under:

"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 training to them training in child psychology. We see



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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.

....

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.

11. We, therefore, allow the writ appeals and writ petitions to the limited extent of directing that no recovery be made from the persons to whom the Government had already released grants and paid salaries. The writ appeals / writ petitions are disposed of accordingly. Connected miscellaneous petitions are closed."

5. This Pallivasal Judgment was passed as early as 02.04.2004. The petitioner is relying on the order passed in the Writ Petition stated supra, which was passed on 03.11.2008. It is not known why the Division Bench order was not brought to the knowledge of the learned single Judge. When the entire G.O. was upheld, only the salary portion that too a recovery alone was quashed the claim of the petitioner cannot be entertained. In such circumstances, the petitioner cannot claim salary for the period from 1999 to 2003 from the Government. Infact the Government was intended to recover from the Teachers who have been already paid, but because of the Pallivasal case the recovery was not ordered. Now the petitioner is claiming to pay salary to such period, which is illegal and against the order passed in Pallivasal Case.



6. The petitioner tried to distinguish the Pallivasal case by stating the petitioner's appointment was approved by the authorities. The Pallivasal case dealt with batch of writ appeals, writ petitions and the teachers who were approved, not approved, salary already paid, salary not paid etc. Hence the issue raised by the petitioner is already considered and the claim was declined in paragraph 10 of the Pallivasal case, which is reproduced supra. Therefore, this Court is of the considered opinion that the petitioner is not entitled to any salary for the period from 01.10.1999 to 31.5.2003 from the Government.

7. Therefore, the Writ Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

/ /2022

Sub Assistant Registrar (CS)

Tmg

Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the Advocate/litigant concerned.

To

1. The Secretary to Government,
Educational Department,
St. George Fort, Chennai-600 009.
2. The Director of School Education,
College Road, Chennai-600 006.
3. The District Educational Officer,
Virudhunagar,
Virudhunagar District.
4. The Correspondent,
St. Antony's High School,
Melanmarainadu,
Virudhunagar District.



+1 CC to M/s.F.X.EUGENE, Advocate (SR-7938[F] dated 22/02/2022)

+1 CC to M/s.SPL GP (SR-8035[F] dated 23/02/2022)

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KMV (CO)
KB (03.03.2022) 5P 7C