



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 15.02.2022

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THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.(MD) No.22547 of 2019

and

W.M.P.(MD) No.19319 of 2019

A.Muthu

... Petitioner

-vs-

1.The Secretary,
School Education Department,
Fort St. George, Secretariat, Chennai.

2.The Joint Director of School Education (HSC),
Directorate of School Education,
Nungambakkam, Chennai.

3.The Chief Educational Officer,
Pudukkottai District, Pudukkottai.

... Respondents

Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus to call for the records of the impugned order in Na.Ka.No.4823/A1/2019, dated 17.07.2019 passed by the 3rd respondent and quash the same and consequently direct the respondents to regularize the petitioner's services from the date of the petitioner's initial appointment on 08.07.2004 with consequential benefits.

For Petitioner : Mr.S.Arulandu

For Respondents : Mr.V.Om.Prakash, Government Advocate

O R D E R

The order impugned dated 17.07.2019 passed by the 3rd respondent rejecting the claim of the writ petitioner for retrospective regularisation with effect from 08.07.2004 is under challenge in the present writ petition.

2.The petitioner was initially appointed as temporary P.G. Assistant on consolidated pay. Subsequently, his services were regularised with effect from 01.06.2006.

3.The learned counsel for the petitioner mainly contended that the petitioner is loosing two years of service on account of no



fault and therefore, the services are to be regularised with effect from the initial date of appointment.

4.The learned counsel for the petitioner is of an opinion that the petitioner was initially appointed through the Teachers Recruitment Board and therefore, for all purposes, the date of initial appointment is to be taken into consideration. The benefit of retrospective regularisation was granted by the Tamil Nadu Administrative Tribunal in order dated 09.01.2003 and such a benefit is to be extended to the petitioner, who is also similarly placed.

5.The learned Government Advocate appearing on behalf of the respondents objected the said contention by stating that the initial appointment of the petitioner was temporary on consolidated pay. The respondents filed a counter affidavit stating that the petitioner was initially appointed in the school through Parent Teacher Association of the School on a monthly consolidated pay. He was not regularly appointed as per the Recruitment Rules applicable to the Education Department. The appointment made through Parent Teacher Association is not a valid appointment with reference to the Recruitment Rules applicable to the Education Department. Thus, the benefit of regularisation cannot be granted from the date of initial appointment. However, the order dated 25.06.2004 reveals that the writ petitioner was appointed by the Joint Director of School Education (HSC) and the said order further states that the petitioner was appointed on temporary basis on certain terms and conditions. The terms and conditions stipulated in the order of appointment clearly state that the petitioner will not be treated as government employee, he will be paid consolidated pay and he has to execute a bond paper. It further states that the petitioner cannot claim any pension, gratuity or bonus as applicable to the regular government employees. The consolidated appointment was granted for five years and in the event of regularisation, they will be brought under the Contributory Pension Scheme. It is clearly stated that the petitioner's services will not be regularised as P.G. Assistant and regular time scale of pay will not be granted and further, the petitioner cannot claim any seniority or priority. When the petitioner accepting the said terms and conditions of the appointment was working, however, the Government has taken a policy decision to regularise the services of the writ petitioner. Accordingly, the benefit was granted from 01.06.2006.

6.This Court is of the considered opinion that grant of regularisation in favour of the petitioner itself is a concession extended, as the initial appointment was not made in accordance with the Recruitment Rules in force. The petitioner was not appointed on regular basis in the time scale of pay. He was appointed on consolidated pay on certain terms and conditions. Thus, the concession extended cannot be further extended so as to grant regularisation by the Courts. The services of the



petitioner was regularised in the year 2006 and the petitioner has filed the present writ petition in the year 2019 seeking retrospective regularisation after a lapse of about 13 years. The first representation after the order of regularisation in the year 2006 was sent by the writ petitioner on 04.03.2019. Thus, the petitioner has not approached the authorities within a reasonable period of time and consequently, the writ petition itself is liable to be rejected on the ground of laches.

7. Incidentally, this Court asked the learned counsel for the petitioner as to, what is the working hours of these teachers working in schools. It is stated that these teachers are working 14 hours per week. A week consists of 168 hours (7x24). Out of 168 hours, a P.G. Assistant is working 14 hours per week and drawing a salary of more than One Lakh. The salary has been paid from and out of the tax payers money. The responsibility and accountability attached to these teachers are far more higher than the employees working in private sectors. Teaching is a noble profession. Teachers are expected to maintain good conduct. The teachers, being the responsible persons in the society, imparting education to the children, their conduct in the society must be upto the mark and full devotion to duty is of paramount importance. Painfully, there are several instances now in the public domain that teachers are involving in many heinous offences, including sexual harassment of children studying in the schools. Many number of such cases are frequently reported in recent days. The Department of Education has to take effective measures to control the conduct of these teachers across the State of Tamil Nadu.

8. The decent salary paid to these teachers whether in commensuration with the performance of their duties and hours of duty are to be reviewed by the competent authorities of the Government for the purpose of enforcing work discipline in schools. Allotment of works are to be regulated.

9. Even during the pandemic situation, near about 4 crores employees lost their job. Many families lost their livelihood on account of several factors. Small industries are struggling to revive their business. Even under these conditions, the teachers are being paid full salary for about two years, though the schools were completely closed. In some States across the country, a portion of the salary was deducted from the government employees so as to provide assistance to the COVID affected people, who lost their regular income. Even such measures are not taken by the State of Tamil Nadu. Contrarily, throughout pandemic, the teachers are getting full salary without even attending the school or otherwise.

10. The Government of the day is expected to protect the public interest and the public money. The Government cannot waste the public money and the constitution mandates that the State spends



money judiciously and in the interest of public and at no circumstances, Government can spend money, which is not in consonance with the public welfare schemes. Therefore, a balancing approach is required. No doubt, these teachers are entitled for a decent salary. However, it is to be considered whether they are performing their duties in accordance with the rules in force and to the expectation to the parents and the students who all are studying in the school.

11.This Court is of the considered opinion that no doubt corrective measures are taken by the Government then and there. However, the measures are found to be insufficient to bring back work discipline in schools. The teachers, who all are working in the schools and their activities and conduct both inside and outside the schools are to be monitored by the appropriate authorities and periodical reports are to be submitted to the higher authorities for taking effective measures and actions.

12.As far as the case of the writ petitioner in concerned, he has been already extended with the concession of regularisation, despite the fact that his initial appointment was not in accordance with the Recruitment Rules in force. Thus, the said concession cannot be extended further so as to grant retrospective regularisation from the date of initial appointment. However, the petitioner has not challenged the order of regularisation dated 28.08.2006, but submitted a representation in the year 2019 and order was passed thereafter by the authorities rejecting the claim. Thus, the petitioner has made an attempt to restore the lapsed cause of action after many years and accordingly, he is not entitled for any relief.

13.In view of the facts and circumstances, the 1st respondent is directed to initiate further steps to ensure that the teachers in schools and their conduct and the teaching quality are monitored periodically and all appropriate actions are initiated.

14.With the above observations and directions, this Writ Petition stands dismissed. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (Cs-I)

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/ /2022

Sub Assistant Registrar(CS)

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To

- 1.The Secretary to Government,
The State of Tamil Nadu,
School Education Department,
Fort St. George, Secretariat, Chennai.
- 2.The Joint Director of School Education (HSC),
Directorate of School Education,
Nungambakkam, Chennai.
- 3.The Chief Educational Officer,
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+1 CC to M/s.SPL GP (SR-6446[F] dated 15/02/2022)

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