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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 13.09.2022

Pronounced on : 13.12.2022

CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P(MD)Nos.7785 to 7788 of 2017
and W.M.P(MD).Nos.6051 to 6054 of 2017

E.Subramanian

... Petitioner
in W.P(MD).No.7785 of 2017

L.Glory Christobe Mary Bai

...Petitioner
in W.P(MD).No.7786 of 2017

M.Zeenath Niza

...Petitioner
in W.P(MD).No.7787 of 2017

A.Syed Imam

...Petitioner
in W.P(MD).No.7788 of 2017

Vs.

1.The State of Tamil Nadu
Rep. by its Secretary,
Department of School Education,
Fort St. George,
Chennai-600 009.



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- 2.The Director of School Education,
College Road,
Chennai-600 006.
- 3.The Chief Educational officer,
Virudhunagar District,
Virudhunagar-626 001.
- 4.The District Educational Officer,
Virudhunagar District,
Virudhunagar-626 001.
- 5.The Correspondent,
Muslim Higher Secondary School,
Sivakasi-626 123,
Virudhunagar District.

... Respondents

PRAYER: Writ Petitions in W.P(MD).Nos.7785 to 7788 of 2017 are filed under Article 226 of the Constitution of India for issuance of Writ of Mandamus, to direct the respondents 1 to 4 to give approval to the petitioners' appointment as Post Graduate Assistants' (Commerce), (Mathematics), (Tamil) and (Economics) in the 5th respondent Muslim Higher Secondary School, Sivakasi, during the period between 16.07.1987 and 31.05.1991, 16.07.1987 to 31.05.1991, 16-07-1987 to 31.05.1991 and 16.07.1987 and 01.01.1997 respectively, with all attendant benefits including the arrears of salary and allowance.

For Petitioners	: Mr.K.Ragatheesh Kumar
(In all cases)	M/s.Isaac Chamber
For Respondents	: M/s.D.Farjana Ghowshia
(In all cases)	Special Government Pleader for R1 to R4
	No appearance for R5



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COMMON ORDER

These Writ Petitions have been filed seeking direction to the respondents 1 to 4 to give approval to the petitioners' appointment as Post Graduate Assistant (Commerce, Mathematics, Tamil and Economics) in the 5th respondent Muslim Higher Secondary School, Sivakasi, during the period between 16.07.1987 and 31.05.1991 and 16.07.1987 and 01.01.1997, with all attendant benefits including the arrears of salary and allowance.

2. The brief facts as stated in the affidavit are that the petitioners were appointed as Post Graduate Assistant in Commerce, Mathematics, Tamil and Economics in the fifth respondent school, namely, Muslim Higher Secondary School at Sivakasi on 16.07.1987, which is a recognized, Aided Minority institution and they possessed the requisite qualification of master degrees and they were continued to work in the said post, until their retirement on attaining superannuation on 31.05.2016. The petitioners put in total service of 28 years 10 months and 15 days without break and unblemished. Upon upgradation of the 5th respondent school as Higher Secondary School in the academic year 1987-1988, the school appointed eligible candidates as PG Assistant (Commerce, Mathematics,



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Tamil and Economics) w.e.f 16.07.1987 along with the petitioners and other teachers, based on the requirement of the school. The respondents 1 to 4 have not extended grant-in-aid towards the petitioners' salary.

3. The fifth respondent school filed W.P.No.13299 of 1988, seeking for a writ of Mandamus, directing the respondents therein to grant teaching aid and financial assistance to the Higher Secondary Course from the academic year 1987-1988, as the school was upgraded as Higher Secondary School from the academic year 1987-1988, vide G.O.M.S.No.267, Education Department, dated 29.02.1988. The writ petition was allowed on 06.12.1990, following the earlier judgment of the Hon'ble Division Bench in W.P.Nos.12364 of 1984 etc., batch dated 10.09.1990 (reported in 1991 WLR 130), directing the respondents to release grant-in-aid towards the salary of the teachers appointment. Aggrieved over the same, the Government filed the Civil Appeal No.5381 of 1990, etc., batch before the Hon'ble supreme Court and the Hon'ble supreme Court by an order dated 04.03.2003, remanded all the cases to the High Court for fresh consideration, based on the Decision of the Constitution Bench of the Supreme



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Court in *TMA PAI Foundation and others Vs. State of Karnataka Case and others* reported in *2002 (8) SCC 481*.

4. The Hon'ble Division Bench of Principal Seat took up the matters for reconsideration, as per the direction of the Hon'ble Supreme Court in Writ Appeals Nos.1329 of 1999 etc., batch and allowed all the Writ Petitions and Writ Appeals filed by the school by order dated 24.03.2008, including W.P.No.13299 of 1988, filed by the 5th respondent school. The Hon'ble Division Bench allowed the Writ Petitions and Writ Appeals with a directions to the respondents are bound to approve the petitioners appointment from the initial date of his appointment viz., 16.07.1987. During the pendency of the above cases, even though the school is eligible to have 10 posts of PG Assistants, the first respondent sanctioned only 5 posts of PG Assistants including the petitioners' post, vide G.O.Ms.No.552, Education (HS2) Department, dated 11.06.1992. In view of the same, DEO approved their appointments as PG Assistant (Commerce, Mathematics, Tamil and Economics) in the Fifth Respondent School with effect from 01.06.1991 and salary was also released from that date vide proceedings in Ni.Mu.No.9762 A4/92 dated 16.10.1992.



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5. The respondents 1 to 4 have not approved the petitioners' service during the period between 16.07.1987 and 31.05.1991, even after the orders of the Hon'ble Division Bench dated 24.03.2008. In spite of various representations and the requests made in this regard by the school as well as the petitioners, the same were not considered. According to the respondents, this school is in need of the posts of PG Assistants (Commerce, Mathematics, Tamil and Economics) and the same were sanctioned the same to the school with effect from 01.06.1991. Based on the order of Hon'ble Division Bench, dated 24.03.2008, the first respondent had approved the appointment of one George Stephen as BT Assistant (Science) in St. Joseph's Higher Secondary School, Mulagumoodu at Kanyakumari District from 01.09.1985 to 31.07.2000, vide G.O (1D) No.413, School Education [Ni. Va.1(1)] Department, dated 27.11.2015. The respondents have approved the appointments of various similarly placed persons, but the petitioners' appointments were not approved. Hence, the present petition has been filed.

6. The counter affidavit has been filed by the fourth respondent, wherein it is stated that the writ petitions itself are not maintainable. The case of the petitioners is that, they were initially appointed as PG Assistants (Commerce,



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Mathematics, Tamil and Economics) by the fifth respondent school on 16.07.1987. The appointment was made purely by management of the fifth respondent. From the date of appointment to till 31.05.1991, the petitioners were working under private management and they were not come under the Government servant status. Further, at the time of the appointment, the petitioners posts were not sanctioned by the Authority. The fifth respondent school was upgraded from High School to Higher Secondary School from 1987-1988 through G.O.M.S.No.267 Education Department, dated 29.02.1988. The above said G.O., reveals that as follows:-

“The Government sanction the up gradation of the Muslim High School, Sivakasi, Kamarajar District into Higher Secondary School from the academic year 1987-1988 without any grant or financial assistance from the Government in any way.”

7. Moreover, there is no sanctioned posts granted to the school and they themselves appointed the teachers without any grant or financial assistance from the Government, for which, the Government cannot be made liable to pay. The Government has issued order, vide G.O.Ms.No.552, Education (HS2)



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Department, dated 11.06.1992 for Minority and Non-minority Private Higher Secondary Schools opened in 1987-1988 and not extended Government grant so far on regular basis. So, the sanction of grant is for posts in Higher Secondary Sections from 01.06.1991 to the 13 Schools in respect of 6 Districts. As per G.O., sanction is accorded to the creation of 65 posts of Post Graduate Assistants in the Scale of Pay of Rs.1820-60-2300-75-3200 at the rate of 5 posts for each school. The 5th respondent school is one of the beneficiaries of the said G.O, out of the 13 Schools. As per the said G.O., 5 Post Graduate Assistants posts were sanctioned to the fifth respondent School by the fourth respondent. Based on the sanction order, the petitioners were appointed as Post Graduate Assistant (Commerce, Mathematics, Tamil and Economics) from 01.06.1991 as sanctioned post in the fifth respondent school. Hence, the petitioners posts were sanctioned in non-sanctioned posts and Government has not granted any grant-in-aid to the said posts. Apart from that these petitioners cannot claim any mandatory benefits to their appointment and the said period cannot be included into their service.

8. In the present case, the authorities did not give any approval to the petitioners' appointment for the Post Graduate Assistant (Commerce,



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Mathematics, Tamil and Economics) in the fifth respondent school, during the period between 16.07.1987 and 31.05.1991. On that ground, in the above said period the petitioners were not working as Government Servent and that period was not made entry in the service record and for that period, the Government did not give any grant-in-aid to that post and that particular period purely come under the Private Management. For the above said reasons, the period between 16.07.1987 and 31.05.1991, could not be regularized by the authority neither for monetary benefits or any other purpose. Apart from that, no rules are also available for regularization of the said period because the petitioners were working in non-sanctioned posts, under the control of the fifth respondent management. Therefore, this Court has to dismiss these petitions with cost.

9. Heard both sides and perused the materials available on record.

10. In similar writ petition, this Court held that the respondents are bound to pay the amount as stated in the writ petition.

11. On perusal of records, it shows that the petitioners were appointed as PG Assistant in the fifth respondent school, namely Muslim Higher Secondary School at Sivakasi, which is a Recognized, aided Minority institution and the



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school has not granted any financial assistance. The Government granted permission for upgradation of the fifth respondent school as higher secondary school in the academic year 1987 to 1988, the school appointed eligible candidates as PG Assistants to handle Higher Secondary Sections as per the norms in vague. The petitioners were served under the management. During the year 1987 to 1991, the petitioners were not working as Government servants for that period, the Government did not give any grant-in-aid to their posts and that particular period purely come under the Private Managment. Hence, the petitioners were working under the private management as well as in the non-sanctioned posts. The petitioners' appointment itself is not in sanctioned post, at that time of appointment (i.e) 16.07.1987 and then the petitioners can not claim any constitutional right in respect of that period they worked under the Private Management of the fifth respondent shcool.

12. In view of the above facts and the circumstances of this case and the order passed in W.A.No.1329 of 2000 and etc., batch, the claim of the petitioners' is declined and this Court does not find any merits in these cases.



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13. Accordingly, these writ petitions are dismissed. No Costs. Consequently, the connected miscellaneous petitions are closed.

13.12.2022

Index : Yes / No

Internet : Yes

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To

1. The Secretary,
Department of School Education,
Fort St. George,
Chennai-600 009.
2. The Director of School Education,
College Road,
Chennai-600 006.
3. The Chief Educational officer,
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5. The Correspondent,
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Sivakasi-626 123,
Virudhunagar District.



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S.SRIMATHY, J

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