



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 21.03.2022

CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P. (MD)Nos.2347 & 2348 of 2016

and

W.P. (MD)Nos.2074, 2075 & 2076 of 2016

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W.P. (MD)No.2347 of 2016

J. Annie

... Petitioner

VS

1. The Director of School Education,
O/o the Director of School Education,
DPI Compound, College Road, Chennai.
2. The District Educational Officer,
Office of the District Educational Office,
Thallakulam, Madurai,
Madurai District.
3. The Correspondent,
St. Joseph Girls Higher Secondary School,
Old Kuyavar Palayam,
Madurai, Madurai 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 relating to the impugned order passed by the 2nd respondent in his proceedings in O.Mu.No.875/Aa4/2015 dated 25.03.2015 and quash the same as illegal and consequentially to direct the respondents to confer selection grade in the post of Secondary Grade Teacher with effect from 01.07.2007 and disburse the consequential benefits arising thereof within the period that may be stipulated by this Court.

W.P. (MD)No.2348 of 2016

S.Punitha

... Petitioner

VS

1. The Director of School Education,
O/o the Director of School Education,
DPI Compound,
College Road, Chennai.
2. The District Educational Officer,
Office of the District Educational Office,
Thallakulam, Madurai,
Madurai District.



3. The Correspondent,
St. Joseph Girls Higher Secondary School,
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PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, to call for the records relating to the impugned order passed by the 2nd respondent in his proceedings in O.Mu.No.875/Aa4/2015 dated 25.03.2015 and quash the same as illegal and consequentially to direct the respondents to confer selection grade in the post of Secondary Grade Teacher with effect from 14.06.2006 and disburse the consequential benefits arising thereof within the period that may be stipulated by this Court.

(In both cases)

For Petitioner : M/S.A.Afriitha Fathima
for C.Venkatesh Kumar

For Respondents : Mr.V.Omprakash for R1 & R2
Government Advocate (Civil side)

No appearance for R3

COMMON ORDER

This Writ Petition in W.P.(MD)No.2348 of 2016 is filed to quash the impugned order dated 25.03.2015 and direct the respondents to confer the Selection Grade in the post of Secondary Grade Teacher with effect from 14.06.2006 and disburse the consequential benefits.

2.This Writ Petition in W.P.(MD)No.2347 of 2016 is filed to quash the impugned order dated 25.03.2015 and direct the respondents to confer the Selection Grade in the post of Secondary Grade Teacher with effect from 14.06.2006 and disburse the consequential benefits.

3.The brief facts of the case in W.P.(MD)No.2348 of 2016 are that the petitioner was qualified with B.Sc., (Physics) and B.Ed., and initially appointed as Secondary Grade Teacher on 14.06.1996 in the third respondent School which is a Private Aided Minority School. The petitioner's appointment was approved on 10.07.1998. Even though, the petitioner is qualified to be appointed as B.T. Assistant, the petitioner was appointed only as Secondary Grade Teacher. Subsequently, the petitioner was directed to attend Child Psychology Training as contemplated under G.O.Ms.No.155 School Education (D2) Department, dated 03.10.2002. After completion of the Child Psychology Training, the petitioner was conferred with the time scale of pay in pay band of Rs.4500-125-7000. The petitioner



has undergone Child Psychology Training from 02.05.2003 to 01.06.2003. Under G.O.Ms.No.413 Finance (PGC) Department, dated 04.11.2010, the petitioner was brought under the old pension Scheme.

4. The brief facts of the case in W.P.(MD)No.2347 of 2016 are that the petitioner was qualified with B.A., (History), M.A. (History) and B.Ed., and initially appointed as Secondary Grade Teacher on 01.07.1997 in the third respondent School which is a Private Aided Minority School and the same was approved by the authorities vide proceedings dated 17.10.1997. Subsequently, the petitioner was directed to attend Child Psychology Training as contemplated under G.O.Ms.No.155 School Education (D2) Department, dated 03.10.2002. After completion of the Child Psychology Training, the petitioner was conferred with the time scale of pay in pay band of Rs.4500-125-7000. The petitioner has undergone Child Psychology Training from 02.05.2003 to 01.06.2003. Under G.O.Ms.No.413 Finance (PGC) Department, dated 04.11.2010, the petitioner was brought under the old pension Scheme.

5. The contention of the petitioners are that if the petitioner's earlier service from 1996 was taken into account, the petitioners are entitled to Selection Grade / Special Grade. The third respondent School submitted a proposal to the second respondent seeking to confer Selection Grade with effect by 14.06.2006 by taking into consideration the petitioner's initial appointment as Secondary Grade Teacher. However, the second respondent, vide order, dated 01.07.2007 has refused to confer Selection Grade on the ground that the petitioner's pay scale was fixed after completing the Child Psychology Training from 02.06.2003. The contention of the petitioner is that though the third respondent granted the order in respect of similarly placed person, the second respondent has rejected the same. This Honourable Court has passed several orders conferring Selection Grade and Special Grade especially in W.P. (MD) No.19571 to 19573 of 2013, vide order, dated 06.01.2014 has allowed the writ petition following the earlier judgment made in W.P.(MD)No.6505 of 2007 dated 16.08.2012. Therefore, the petitioner prayed to quash the impugned order and confer the Selection Grade and Special Grade by taking the service rendered from 14.06.1996.

6. The second respondent has filed a counter affidavit stating that since the petitioner is having higher qualification, he was not eligible to hold the post of Secondary Grade Teacher. There were series of litigation in this issue and the Government has issued G.O.Ms.No.559, dated 11.07.1995 restricting the appointment of graduate trained Teachers in the vacancies of Secondary Grade Teachers. Initially, this Court granted an Interim order and based on the Interim order, the competent authorities approved the appointment of Graduate Teachers in the post of Secondary Grade Teachers. However, this Court, vide order, dated 19.05.1998 upheld



petitions. The Division Bench, vide order, dated 19.06.2001 has confirmed the order passed by the learned Single Judge with certain directions. Accordingly, the Government has issued G.O.Ms.No.155, dated 03.10.2002 wherein the appointment of Graduate Trained Teachers posted in Secondary Grade Teacher's post during the period from 11.07.1995 to 19.05.1998 were approved after giving Child Psychology Training for one month. After completion of such training, the salary shall be released from the date of completion of the training. In the Government order, it was specifically stated that the employees are entitled to salary, only after the completion of the Child Psychology Training. Any salary paid prior to such training and directed to be recovered. The said G.O.Ms.No.155 was put to challenge in Pallivasal's case and the Division Bench has upheld G.O.Ms.No.155 dated 03.10.2002 with only one modification, wherein recovery alone was not allowed and other portion of the Government Order was upheld. The said Government Order declined granting of the Selection Grade and Special Grade by calculating the earlier service. Since the service after Child Psychology Training alone was recognized, the petitioner is not entitled to Selection Grade and Special Grade.

7. Heard Ms. A.Afritha Fathima, learned Counsel appearing for the petitioner, Mr.V.Om Prakash, learned Government Advocate appearing for the respondent Nos 1 & 2 and no appearance for third respondent.

8. The writ petitioners are B.T. Assistant but appointed in Secondary Grade Teacher vacancies post i.e. the teachers did not possess requisite qualification required for the post of Secondary Grade Teacher. In other words, the teachers were over qualified. The issue of appointing teacher with higher qualification to the post of Secondary Grade Teacher has a long history and the same is narrated hereunder:

i. The Government issued G.O. Ms. No. 559 Education, Science and Technology Department dated 11.07.1995 and did not approve the appointment of B.T Assistants / Tamil Pandit in the Secondary Grade post vacancies. Thereafter the government has issued another G.O. Ms. No. 203 Education, Science and Technology Department dated 19.03.1996 stating that such appointment should not be restored to after 11.07.1995, which is the date of issue of G.O. 559. Challenging the said G.O. 559 several writ petitions were filed and the litigation attained finality in Division Bench in Secretary and Correspondent, Uswathun Hasana Oriental (Arabic) Girls Higher Secondary School, Pallapatti, 639 205 VS the State of Tamil Nadu and others reported in 2002 Writ Law Reporter 173, wherein it has been held that the G.O. 559 is valid, the B.Ed. teachers do not possess the requisite qualification to be appointed in the vacancy of Secondary Grade Teacher post. Since several persons were appointed and



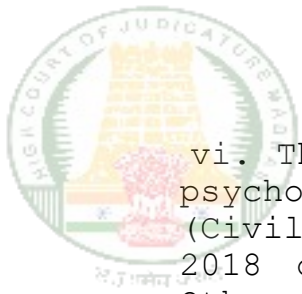
Government had taken a sympathetic view and submitted before the Honourable Court that the Government would consider to give practical training or even choose to individually examine each case on its own merits.

ii. Based on the same the Government had issued G.O. Ms. 155 dated 03.10.2002. The said G.O. was challenged in several writ petitions and in writ appeal W.A. No. 249 / 2002 batch the State of Tamil Nadu and others VS Pallivasal Primary School reported in 2004-2-L.W. 591 and the issue had attained finality. The Honourable Court has upheld the G.O. 155 and has held in paragraph 8 that "the Government has shown great concession to them by allowing them to retain their position even without obtaining the requisite diploma in child psychology and we see nothing wrong in the government directing **their approval / confirmation can only be on and after the date they complete the training.**" In Pallivasal case the only relief granted to the teachers is that already paid salary would not be recovered. The Clause No. 3 (vii) of G.O. 155 alone was set aside and the rest of the G.O. was upheld.

iii. Thereafter again the teachers started fresh litigations by filing the fresh petitions claiming special grade, selection grade, incentive increment for higher studies, incentive increment, annual increments and other benefits. Again, several writ petitions and writ appeal were filed and conflicting judgments were rendered. Thereafter the issue was settled in W.A. (MD) No. 74 / 2015 batch wherein it has been held that the teachers are not entitled to salary, selection grade / special grade, increments and other benefits for the period rendered prior to child psychology training. In other words the teachers are entitled salary, selection grade / special grade, increments and other benefits only after completion of child psychology training.

iv. The benefits of G.O. Ms. No. 155 School Education (D2) Department, dated 03.10.2002 was extended to teachers who were appointed from 11.07.1995 to 19.05.1998. The G.O. Ms. No. 150 Education Department (B1) Department dated 02.07.2007 was extended to 22 teachers who were appointed from 20.05.1998 to 29.06.2001 (being the date of judgment in Uswathun Hasana case).

v. In Pallivasal case the Honourable Court has held that the past service can be calculated only for the pensionary benefits. However, there is no discussion on the issue and it is only a passing remarks. Thereafter the government has taken the same into consideration and has issued G.O.No.413 issued by the Finance (PGC) Department, dated 04.11.2010 granting pensionary benefits by taking the past service into consideration.



vi. The issue of paying the benefits after completion of child psychology was considered before Hon'ble Supreme Court in SLP (Civil) Diary No. 1327 of 2019 filed against W.A. No. 956 / 2018 dated 04.07.2018 in Director of Elementary Education & Others Vs S. Rajathi & Another, wherein it has been held that, "We however permit the petitioners to approach the High Court by filing a review application with regard to ground in the memo of appeal that even if respondent was to be approved then she could be approved only from the date of completion of psychology training which was completed on 05.10.2016 and the payment of all benefits of served ought to have been with effect from 05.10.2016 on which date the respondent completed the training. We further grant liberty to the appellants to come again in event the order is passed against them. With the aforesaid liberty, the Special Leave Petition is disposed of."

9. The petitioner has relied on the orders passed in several writ petitions granting the relief, but the issue was settled subsequently in W.A.(MD) No. 74 of 2016 and the Division Bench has taken note of the several orders and has held as under:

"10. The learned counsel for the respondents/writ petitioners relied on certain other orders passed by various single Benches including one of us (TSSJ) and on perusal of the same. We find that in none of those directions, the full effect of G.O.Ms.No.155 and the conditions therein have been thoroughly examined. Apart from that, the decision in the case of Pallivasal Primary School has not been specifically noted. Therefore, we are of the considered view, that those decisions cannot be referred to advance the case of the respondents/writ petitioners, though some of them have attained finality. Needless to state that if there has been a wrong decision, it cannot be treated as precedent."

Therefore, this Court is of the considered opinion that the wrong orders cannot be cited as precedent and the orders cited by the petitioner cannot be followed.

10. The petitioner has relied on Division Bench order passed in W.A.(MD)No.1474 of 2017, dated 17.09.2021. Even though this Division Bench order was passed subsequently, an earlier Division Bench order was not referred in the W.A. (MD) No. 1474 / 2017 order. In the earlier Division Bench order rendered in W.A.(MD)No.74 of 2015, the Court has elaborately dealt with G.O.Ms.No.155, dated 03.10.2002. where it has been held as under:

"3. The entire background in which the Government Order came to be issued is set out in that Government



Order. By G.O.Ms.No.559 dated 11.07.1995 it was directed that B.Ed. Teachers shall not be appointed in Secondary Grade vacancies. Despite that order, appointment of persons like the appellants/petitioners before us were made in contravention of that Government Order. The validity of that G.O. was also challenged unsuccessfully. In the Writ Appeals preferred against the judgment dismissing the writ petitions, the Division Bench upheld G.O.Ms.No.559. The natural consequence of that could have been the throwing out of employment persons like the appellants/petitioners who had been employed in violation of that G.O."

...

"7. Pursuant to which, G.O.Ms.No.155 dated 03.10.2002 was issued. The said Government Order provided for imparting one month child psychology training for all those Teachers, who possessed B.Ed. qualification and appointed in Secondary Grade vacancies, which appointment was held to be not sustainable by the Division Bench. As the Teachers does not possess the requisite qualification, the Government, while granting such concession imposed a condition, which appears to have been unequivocally accepted by the Teachers. Otherwise, they would have lost the chance of getting absorbed into service. The question would be as to whether the Teachers would be entitled to get salary from the date of first appointment, i.e., the order of irregular appointment and as to whether they would be entitled for salary in the Secondary Grade scale from the date of completion of child psychology training. There can be no controversy on the aspect as the Government order clearly stipulates as to from what date the Secondary Grade scale of pay is liable to be paid to those Teachers including the respondents. This is contained in Clause 3(iii) of G.O.Ms.No.155 dated 03.10.2002, which reads as follows:

"(iii)மேற்கண்ட நியமனங்கள் அரசாணைக்குப் புறம்பாக செய்யப்பட்டுள்ளதாலும், இந்நியமனதாரர்களால் தொடரப்பட்ட ரிட் மனுக்கள் மற்றும் அதனை எதிர்த்து தள்ளுபடி செய்யப்பட்டுள்ளதாலும் மேற்கண்ட நியமனங்களுக்கு நியமன முதல் ஒப்புதல் வழங்கிஇ அந்நாள் முதல் ஊதியம் வழங்க இயலாது. எனவே, மேற்கண்ட பயிற்சியை முடித்த நாளிலிருந்து இவர்களுக்கு முறையான இடைநிலை ஆசிரியர்களாக நியமன ஒப்புதல் அளித்து, அந்த நாளிலிருந்து மட்டுமே இடைநிலை ஆசிரியர் ஊதியம் வழங்க வேண்டும் என்று ஆணையிடப்படுகிறது."



Another condition, which would be relevant for the present case is clause 3(viii) of G.O.Ms.No.155 dated 03.10.2002, which reads as follows:

“(iii) மேற்கண்ட நபர்கள் நியமன ஒப்புதலின்றி பணிபுரிந்த காலத்தை அங்கீகரிக்கப்பட்ட தனியார் பள்ளிகளில் பதவி உயர்வுக்கோ ஊதிய நிர்ணயத்திற்கோஇ ஓய்வூதியப் பயன்கள் வழங்குவதற்கோ கணக்கில் கொள்ளக் கூடாது என்றும் தெரிவிக்கப்படுகிறது.”

இடைநிலை ஆசிரியர் பணியிடத்தில் நியமிக்கப்படும் பட்டதாரி:தமிழாசிரியர் தகுதி பெற்ற நபர்களுக்கு இடைநிலை ஆசிரியர்களுக்கான ஊதிய விகிதம்தான் வழங்கப்படும் என்றும், வேறெந்த சிறப்புச் சலுகையும் அளிக்கப்படமாட்டாது என்றும். அவர்கள் இடைநிலை ஆசிரியராக பணியாற்றும் காலத்தில் உயர் கல்வித் தகுதிக்கான சிறப்பு ஊதிய உயர்வு வழங்கும் திட்டம் இவர்களுக்குப் பொருந்தாது என்றும் இதற்கான உறுதிமொழிச் சான்று சம்பந்தப்பட்ட நபர்களிடமிருந்து பெறப்பட வேண்டுமென்றும் தெரிவிக்கப்படுகிறது.

9.The management of various Schools, which had appointed Teachers like the respondents had challenged the validity of G.O.Ms.No155 dated 03.10.2002 and the matter travelled upto the Division Bench and the Division Bench in the case of The State of Tamil Nadu and others v. Pallivasal Primary School reported in 2004-2-L.W. 591 upheld G.O.Ms.No.155 dated 03.10.2002. The only relief granted to the Teachers, who were appointed in Secondary Grade vacancies, is the grant of salaries, whereby restraining the department from effecting any recovery. Therefore, paragraph No.3(7) of G.O.Ms.No.155 alone was set aside and rest of the Government Order was upheld in the said decision. It was subsequently ordered that approval/confirmation of the appointment can be only after the date of completion of the child psychology training. Further the Division Bench observed that the past service i.e. prior service child psychology training shall count. After the decision rendered in the case of Pallivasal has attained finality, the respondent/writ petitioners seek for salary for the earlier period as well as for other monetary benefits such as increment, selection grade and special grade, etc. We have given our careful consideration. We find in paragraph No.7 of its judgment, the Hon'ble Division Bench has noted the various condition in G.O.Ms.No.155 and held that the respondent therein would be entitled to relief as granted to similarly placed teachers. If that is so, the ultimate conclusion would have been to grant

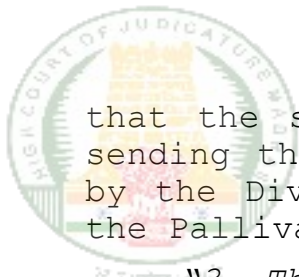


benefit from the date of completion of the child psychology training. However in the penultimate portion of the order her salary has also been included. In our considered view, the direction to pay salary does not corroborate with the observation made by the Division Bench, in the decision in the case Suganthi Victoria. The Government had admitted that at best it can be taken as a decision pertaining to the said case on its factual matrix and that cannot be taken as a precedent. In the case of Government of Tamil Nadu v. Sri Rao Bahadur AKD Dharmaraja Girls Higher Secondary School in W.A.(MD)No.3442 of 2002 dated 08.09.2006, the Division Bench, relying on the decision of the case reported in 2002 Writ L.R. 173, held that the salary can be paid only after completion of the child psychology training and accordingly, allowed the Government appeal

"10. The learned counsel for the respondents/writ petitioners retired on certain other orders passed by various single Benches including one of us (TSSJ) and on perusal of the same. We find that in none of those directions, the full effect of G.O.Ms.No.155 and the conditions therein have been thoroughly examined. Apart from that, the decision in the case of Pallivasal Primary School has not been specifically noted. Therefore, we are of the considered view, that those decisions cannot be referred to advance the case of the respondents/writ petitioners, though some of them have attained finality. Needless to state that if there has been a wrong decision, it cannot be treated as precedent.

11. In the light of the above reasoning, we are of the considered view that the order passed by the Writ Court directing disbursement of salary from the date of original appointment, cannot be sustained, in the light of explicit condition imposed in G.O.Ms. No. 155, which was upheld by the Division Bench in a Public Interest Litigation. Thus, for the above reasons, the writ appeals filed by the department has be to allowed."

11. The order passed in Pallivasal's case was also not brought to the knowledge of the Division Bench, while passing the order in W.A. (MD) No. 1474 / 2017. In Pallivasal's case, the affected employees had raised a plea regarding salary and also other benefits. The Division Bench has clearly rendered that the employees are not entitled to any claim and only relief granted is



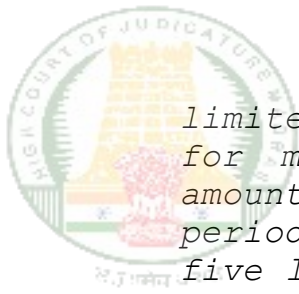
that the salary already paid need not be recovered. The issue of sending the teachers belatedly to the training was also considered by the Division Bench in Pallivasal case. The relevant portion of the Pallivasal case is extracted hereunder:

"3. The entire background in which the Government Order came to be issued is set out in that Government Order. By G.O. Ms. No: 559 dated 11.07.1995 it was directed that B.Ed. Teachers shall not be appointed in Secondary Grade vacancies. Despite that order, appointment of persons like the appellants / petitioners before us were made in contravention of that Government Order. The validity of that G.O. was also challenged unsuccessfully. In the Writ Appeals preferred against the judgment dismissing the writ petitions, the Division Bench upheld G.O. Ms. No: 559. The natural consequence of that could have been the throwing out of employment persons like the appellants / petitioners who had been employed in violation of that G.O.

4. With a view to mitigate their hardships, the Court, after recording a submission made by the learned Additional Advocate General that efforts would be made to save the employment of these persons, left it open to the Government to frame an appropriate scheme in that regard.

5. The Government thereafter provided training in child psychology to the persons who had been appointed in contravention of the G.O. 55 9 prior to the date of dismissal of the writ petition on 12.09.1997. Those persons were to be confirmed in their places after completion of training and with effect from the date they complete the training.

6. The Government Order No: 155 directs recovery of salary paid to the appellants/ petitioners on the ground that prior to their completing the training, they could not have held the posts that were held by them. There is no dispute about the fact that these persons had actually worked. Salary paid to persons who had actually rendered service cannot be regarded as amount paid as gratis. More over the Division Bench had noticed the fact that these persons had been working and had indicated that it would be equitable to allow them to remain in employment. It was left to the Government to device a scheme by which these persons could acquire qualifications which were essential for holding the post to which they had been appointed at a time when they did not possess the qualification. The salary that had been paid to them during that period when they were actually teaching, even though without the requisite qualifications, in our view, is not an amount which they should be called upon to repay. It has been noticed by the Division Bench which upheld the G.O. Ms. No: 559 that most of these teachers came from a poor background, that it was after a great deal of effort before that they could equip themselves to a



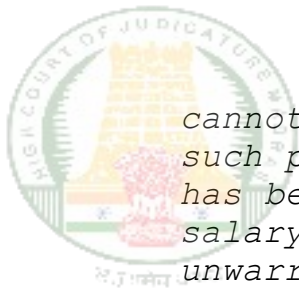
limited extent and thereafter had been working in the schools for meager salaries. Directing such persons to repay huge amounts, huge amounts because the entire salary paid over a period of nearly nine years would amount to inasmuch as over five lakhs of rupees per person, would cause untold hardship to such teachers. We, therefore, set aside that part of the Government Order namely sub-para (vii) of Para 3 which directs recovery from these teachers.

7. So far as the approvals / confirmation is concerned, Government was not under any duty to approve or confirm the appointment of appellants / petitioners who did not possess the qualifications prescribed when, they were improperly appointed to the posts. Their position cannot be equated to that of those who possess the qualification and had been duly appointed. Their remaining in their post was only by reason of a sympathetic view taken by the Division Bench which had upheld the Government Order which had directed that persons with B.Ed. Qualification are not to be appointed in Secondary Grade vacancies.

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 by giving to them training in child psychology. We see 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.

9. It was submitted by some of the counsel for the appellants / petitioners that there was delay in providing training. Complaint of this nature cannot be made by such of these persons. Even according to them over 1000 persons have been appointed contrary to the G.O. Ms. No: 559. The fact that Government took some time to formulate a scheme and provide training to them in batches cannot be a matter for complaint especially as the continued functioning of these persons as teachers was not disturbed on account of the time required by the Government for providing training.

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."

12. The petitioner is claiming the benefits beyond the scope of G.O. 155 and G.O. 150. Both the G.O. prescribes that the teacher would be considered after the completion of one month Child Psychology course. The claim of the petitioner to consider without completion of Child Psychology is going to the root of the issue and it is against the order passed by the Division Bench in Pallivasal Case and besides the entire exercise of issuing G.O. 155, G.O. 150 are being nullified. In Pallivasal case it has been held that the one month Child Psychology course itself is a concession granted to such appointments and the petitioner is seeking further concession is not permissible. If the claim of the petitioner is granted, it is against the judgment passed by Division Bench in Pallivasal case, wherein it has been specifically upheld the validity of G.O. Ms. No. 155 and categorically held the appointment shall be considered only after completion of one month Child Psychology course. The G.O. 155 has not been taken into account in any of the judgments cited by the petitioner. The comprehensive reading of all the three Division Bench judgments namely W.A. No. 991 of 1998 (Uswathun Hasana case), W.A. No. 242 of 2002 (Pallivasal case) and W.A.(MD)No.74 of 2015 (Sundarvel Raj case) would state,

- i. That the paid salary cannot be recovered.
- ii. The teachers are not entitled to any secondary grade teacher salary for the past period
- iii. The teachers are not entitled to any other monetary benefits such as annual increment, incentive increment for higher qualification, selection grade and special grade or any other benefits except pensionary benefits
- iv. The appointment shall be approved from the date of completion of child psychology training

13. This Court with pain is recording that there is trend followed by the litigants. The issue was settled in Pallivasal case
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as earlier as 02.04.2004 and the ratio decidendi of the judgment was not brought to the knowledge of the Court while dealing with the subsequent writ petitions. By this trend, diagonally opposite judgments are being rendered.

14. Therefore, this Court is of the considered opinion that the judgments rendered in W.A. No. 991 of 1998 (Uswathun Hasana case), W.A. No. 242 of 2002 (Pallivasal case) and W.A.(MD)No.74 of 2015 (Sundarvel Raj case) has held the correct preposition of law, where it has been clearly held that the petitioner is not entitled to calculate the service rendered prior to Child Psychology Training for any purpose. Therefore, this Court is of the considered opinion that the petitioner is not entitled to selection grade with effect from 14.06.2006 or special grade or any other benefits. Hence the impugned order is legally valid and there is no infirmity.

15. Hence, both the Writ Petitions are dismissed. No costs. Consequently connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

jbr

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 Director of School Education,
O/o the Director of School Education,
DPI Compound, College Road, Chennai.
2. The District Educational Officer,
Office of the District Educational Office,
Thallakulam, Madurai, Madurai District.

+4 CC to M/s.AJMAL ASSOCIATES, Advocate (SR-13368,13369[F] dated 22/03/2022)

+1 CC to M/s.SPL GP (SR-13887[F] dated 23/03/2022)

W.P. (MD)Nos.2347 & 2348 of 2016

21.03.2022

RD(19/05/2022) 13P 8C

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