



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 27.01.2022

CORAM:

THE HONOURABLE DR JUSTICE ANITA SUMANTH

W.P. (MD) Nos.21334 to 21343 of 2018

and W.M.P(MD)No.18126 of 2021

and W.M.P(MD)Nos.19206, 19207, 19208, 19209,
19210, 19211, 19212, 19213, 19214, 19215 of 2018

In W.P(MD)No.21334 of 2018:

A.Arul Dhason

... Petitioner

Vs.

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

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

3. The Director of Elementary Education,
College Road, Chennai - 600 006.

4. The Joint Director of School
Education (Elementary),
College Road, Chennai - 600 006.

5. The Chief Educational Officer,
Nagercoil, Kanyakumari District.

6. The District Educational Officer,
Kuzhithurai, Kanyakumari District.

7. The District Elementary Educational Officer,
Nagercoil, Kanyakumari District.

8. The Correspondent,
St. Joseph's Middle School,
Ramanthurai - 629 193
Kanyakumari District.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of



India to issue a writ of Mandamus directing the respondents to approve the appointment of petitioner's service as Headmaster of Middle School in the 8th respondent School with all attendant service benefits including the arrears of salary and allowance during the period between 01.06.1985 to 01.06.1997 in terms of the orders of the Division Bench of this Court dated 24.03.2008 in W.A.Nos.1329 of 2000 etc., batch more particularly in W.P.No.5004 of 1988.

G.Joys Mary (Died)

A.Thason, H/o. Late. G.Joys Mary	...Petitioner in WP(MD)No.21335/ 2018
Miller Singh	...Petitioner in WP(MD)No.21336/ 2018
H.Judit Mary	...Petitioner in WP(MD)No.21337/ 2018
S.Leema Rose	...Petitioner in WP(MD)No.21338/ 2018
D.Jeba Raj	...Petitioner in WP(MD)No.21339/ 2018
R.Alex	...Petitioner in WP(MD)No.21340/ 2018
J.Rajam	...Petitioner in WP(MD)No.21341/ 2018
P.Joseph Reginald	... Petitioner in WP(MD)No.21342/ 2018
L.Jesu Mary	... Petitioner in WP(MD)No.21343/ 2018

Vs

1. The State of Tamil Nadu,
Rep. by its Secretary,
Department of School Education,
Fort St. George, Chennai - 600 009.
2. The Director of School Education,
College Road, Chennai 600 006.
3. The Director of Elementary Education,
College Road, Chennai 600 006.
4. The Joint Director of School Education (Elementary),
College Road, Chennai 600 006.
5. The Chief Educational Officer,
Nagercoil, Kanyakumari District.
6. The District Educational Officer,
Kuzhithurai, Kanyakumari District.
7. The District Elementary Educational Officer,
Nagercoil, Kanyakumari District.
8. The Correspondent,
St. Joseph's Middle School,
Ramanthurai - 629 193,
Kanyakumari District.

... Respondents in WP(MD)No. 21335 to
21339 and 21341 to 21343/ 2018



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,
Nagercoil, Kanyakumari District.
4. The District Educational Officer,
Thuckalay, Kanyakumari District.
5. The Correspondent,
St. Joseph's Higher Secondary School,
Mulagumoodu-629 167
Kanyakumari District. ... Respondents in WP(MD)No.21340/2018

Prayer in WP(MD). 21335/ 2018 :- Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Mandamus directing the respondents to approve the appointment of petitioner's service as Secondary Grade Teacher in the 8th respondent School with all attendant service benefits including the arrears of salary and allowance during the period between 01.06.1987 to 05.06.2003, in terms of the Orders of the Division Bench of this Honble Court dated 24.03.2008 in W.A.Nos.1329 of 2000, etc., batch, more particularly in WP.No.5004 of 1988.

Prayer in WP(MD). 21336/ 2018 :- Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Mandamus directing the respondents to approve the appointment of petitioners service as Physical Education Teacher in the 8th respondent School with all attendant service benefits including the arrears of salary and allowance during the period between 02.06.1997 to 13.06.2002, in terms of the Orders of the Division Bench of this Honble Court dated 24.03.2008 in W.A.Nos.1329 of 2000, etc., batch, more particularly in WP.No.5004 of 1988.

Prayer in WP(MD). 21337/ 2018 :- Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Mandamus directing the respondents to approve the appointment of petitioners service as Tamil Pundit in the 8th respondent School with all attendant service benefits including the arrears of salary and allowance w.e.f. 01.06.2009, in terms of the Orders of the Division Bench of this Honble Court dated 24.03.2008 in W.A.Nos.1329 of 2000, etc., batch, more particularly in W.P.No.5004 of 1998.



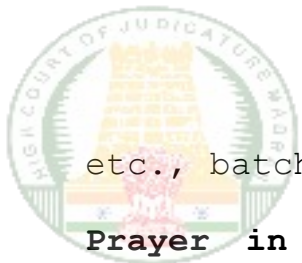
Prayer in WP(MD). 21338/ 2018 :- Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Mandamus directing the respondents to approve the appointment of petitioners service as Sewing Mistress in the 8th respondent School with all attendant service benefits including the arrears of salary and allowance during the period between 01.06.1986 to 04.10.2005, in terms of the Orders of the Division Bench of this Honble Court dated 24.03.2008 in W.A.Nos.1329 of 2000, etc., batch, more particularly in W.P.No.5004 of 1998.

Prayer in WP(MD). 21339/ 2018 :- Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Mandamus directing the respondents to approve the appointment of petitioners service as Physical Education Teacher in the 8th respondent School with all attendant service benefits including the arrears of salary and allowance w.e.f. 15.06.2002, in terms of the Orders of the Division Bench of this Honble Court dated 24.03.2008 in W.A.Nos.1329 of 2000, etc., batch, more particularly in W.P.No.5004 of 1988.

Prayer in WP(MD). 21340/ 2018 :- Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Mandamus directing the respondents to approve the appointment of petitioners service as Lab Assistant in the 5th respondent School namely St.Josephs Higher Secondary School, Mulagumoodu, w.e.f.07.01.1991 with all attendant service benefits including the arrears of salary and allowance, in terms of the Orders of the Division Bench of this Honble Court dated 24.03.2008 in W.A.Nos.1329 of 2000, etc., batch, more particularly in W.P.No.6609 of 1987.

Prayer in WP(MD). 21341/ 2018 :- Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Mandamus directing the respondents to approve the appointment of petitioners service as Physical Education Teacher in the 8th respondent School with all attendant service benefits including the arrears of salary and allowance w.e.f. 01.06.1987 to 31.05.1997, in terms of the Orders of the Division Bench of this Honble Court dated 24.03.2008 in W.A.Nos.1329 of 2000, etc., batch, more particularly in W.P.No.5004 of 1988.

Prayer in WP(MD). 21342/ 2018 :- Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Mandamus directing the respondents to approve the appointment of petitioners service as Secondary Grade Teacher in the 8th respondent School with all attendant service benefits including the arrears of salary and allowance during the period between 01.06.1986 to 03.06.1990, in terms of the Orders of the Division Bench of this Honble Court dated 24.03.2008 in W.A.Nos.1329 of 2000,



etc., batch, more particularly in W.P.No.5004 of 1988.

Prayer in WP(MD). 21343/ 2018 :- Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Mandamus directing the respondents to approve the appointment of petitioners service as Tamil Pundit in the 8th respondent School with all attendant service benefits including the arrears of salary and allowance w.e.f. 01.06.1987, in terms of the Orders of the Division Bench of this Honble Court dated 24.03.2008 in W.A.Nos.1329 of 2000, etc., batch, more particularly in W.P.No.5004 of 1988.

In all Writ Petitions:

For Petitioners : Mr.Isaac Mohanlal
Senior Counsel
for Issac chambers

In W.P(MD)Nos.21334 to 21339 of 2018 and 21341 to 21343 of 2018:

For R1 to R7 : Mr.K.S.Selvaganesan
Additional Government Pleader

In W.P(MD)No.21340 of 2018:

For R1 to R4 : Mr.K.S.Selvaganesan
Additional Government Pleader

In W.P(MD)Nos.21334 to 21339 of 2018 and 21341 to 21343 of 2018:

For R8 : Mr.Vivek Kumar
for M/s.H.Thayumanasamy

In W.P(MD)No.21340 of 2018:

For R5 : Mr.Vivek Kumar
for M/s.H.Thayumanasamy

C O M M O N O R D E R

Read this order in conjunction with my order dated 25.01.2022, as follows:

"Heard Mr.Isaac Mohanlal, learned counsel on record for the petitioners, Mr.K.S.Selvaganesan, learned Additional Government Pleader for the official respondents and Mr.Vivek Kumar, learned counsel for Mr.H.Thayumanaswamy, for the School.

2. Admittedly, the State has been sitting tight and has not implemented the directions issued by the Division Bench dated 24.03.2008 in W.P.No.5004 of 1988 (2008 (4) MLJ 289). The specific direction of the Division Bench is to dispose the representations filed by the St. Joseph's Middle School, which is the party in that writ petition, within sixteen



weeks from the date of receipt of that order.

3. Since the School has not pursued the matter, the petitioners, being directly aggrieved parties have filed representations on 15.02.2018. The premise of this representation is to urge action of the State in implementing order of the Division Bench dated 24.03.2008. Those representations have been forwarded by the Joint Director of Elementary Education to the Chief Educational Officer and District Educational Officer for necessary action. Even after communication, there has been no light at the end of the tunnel.

4. The defence put up by Mr.K.S.Selvaganesan, learned Additional Government Pleader is to the effect that, as the Schools have not pursued the order of the Division Bench, this would exonerate the State from implementing the order of the Division Bench. This is rejected straight away. Such a submission does not behove the State.

5. There is no necessity for any of the parties in a litigation to pursue or make a representation for implementation of an order passed by the Court and it is incumbent upon the authority to which directions have been issued to implement the same strictly in line with the directions and the time frames imposed.

6. In light of communication dated Nil February 2018 of the JDEE, Mr.K.S.Selvaganesan, learned Additional Government Pleader requests a days' time to verify whether action has been taken and orders passed, failing which a time frame will be fixed by this Court as a final opportunity to enable the State to implement the 2008 orders.

7. All petitioners have moved on in their career paths and one petitioner is stated to have passed away. The aforesaid will not impact the prayers in writ petitions insofar as they relate only to the period of their service in St. Joseph's Middle School.

8. The same position obtains in W.P.(MD).No.21305 of 2018 and the only difference in facts are in regard to the School, which in this case is a Higher Secondary School, the post, a lab assistant and the fact that the petitioner continues in the same school till date.

9. Bearing the aforesaid differences in fact, the observations and the directions issued in the preceding paragraph of the order, and passed in other nine writ



petitions, would equally apply in this case as well.

10. List on **27.01.2022** ”.

2. Since the matter is being disposed finally today, it appropriate that the rival contentions of the parties are recapitulated. The petitioners in the nine Writ Petitions were working in the 8th respondent School, the St.Joseph Middle School, Ramanthurai, Kanyakumari District (in short, R8/School'), an aided minority institution.

3. R8 was established as a primary school in 1846 and upgraded to the status of a middle school in 1985. The school had approached this Court seeking approval and sanction for grant-in-aid for the upgraded middle school. Those Writ Petitions came to be allowed on 06.12.1990 and thereafter, the Chief Educational Officer had granted affiliation to the school on 02.09.1991.

4. The school thereafter sought implementation of the order of the court by its representation dated 13.08.1992. The writ petitions were decided on 06.12.1990 as a batch, as against which, the State filed the petitions for Special Leave before the Hon'ble Supreme Court. All matters were remanded to the High Court for fresh consideration in the light of the judgment of the Constitutional Bench of the Supreme Court in *T.M.A. Pai Foundation and Others Vs. State of Karnataka and Others* (2002) 8 SCC 481.

5. The Writ Appeals thereafter came to be disposed on 24th March 2008 in *G.Sahadevan Nair, Kanyakumari District Vs. Government of Tamil Nadu, rep. by its Secretary, Education Department, Chennai and others* (2008 (4) MLJ 289) in favour of the Schools and against the State. In conclusion, the following directions came to be issued:

29. For the aforesaid reasons, we allow the various writ petitions by giving the following directions :-

(i) The State of Tamil Nadu and the other authorities concerned shall consider the application of each of the Institution for grant-in-aid within a period of 16 weeks without being influenced by the fact that such institutions had been established without obtaining any prior permission and also by the fact that such institutions had given letter in writing indicating that after obtaining recognition they will not claim any grant-in-aid. However, while considering such application, the relevant facts such as the existence of necessary infrastructure, teacher-student ratio and the eligibility of the concerned teacher to hold the post should be considered.

(ii) If it is found that any particular institution is entitled to receive any aid, decision should be taken with regard to eligibility within a period of four months and should be communicated to the concerned institution.



(iii) If any institution is found eligible to receive such aid, necessary payment shall be made within a further period of four months from the date of such sanction.

(iv) The continued right of any institution to receive any aid is to be considered keeping in view the relevant G.O., applicable from time to time.

(v) Similarly, in respect of minority institutions, which were receiving aid in respect of some of the posts and were seeking for approval and payment of aid for any additional post, such question is required to be considered within a period of four months by keeping in view the teacher pupil ratio applicable during any particular period.

(vi) If, on the other hand, any school or any post is found ineligible for sanction of grant, such decision should be communicated to the concerned institution by giving brief reasons within a period of three weeks from the date of order of refusal.

6. These orders have become final. Despite a lapse of more than 1 1/2 decades, the State has admittedly yet to comply with the directions of the Division Bench. As recorded by me in order dated 25.01.2022, the justification advanced by the State for non-compliance of the order passed by the Division Bench is two-fold.

7. Firstly, they state that the School has not pursued implementation of the order passed by the Division Bench. I reiterate that this argument is unacceptable for reasons set out on my order dated 25.01.2011 extracted above. Needless to say, the State and authorities are duty bound to carry out the directions of the court within the time frames stipulated. I am appalled that such a submission could be made at all.

8. The second submission is premised upon a tabulation of the relevant particulars in the case of nine petitioners as provided by the learned Additional Government Pleader, and is extracted below:

S. No .	Case Number and Petitioner name	Period of Claim	Remarks
1.	W.P (MD) No.21334 of 2018 A.Aruldasan	01.06.1985 to 01.06.1997	On 02.06.1997 subsequently he was appointed as a middle school H.M in the same school and he attained Superannuation on 30.09.2009



2.	W.P (MD) No.21335/2018 G.Joys Mary	01.06.1987 to 05.06.2003	On 06.06.2003 subsequently she was appointed as Secondary Grade Teacher in the same school and he attained Superannuation on 31.05.2009 expired on 14.02.2020
3.	W.P (MD) No.21336 of 2018 Miller Singh	02.06.1997 to 13.06.2002	In the vacant of one Rajam (W.P(MD)No.21341 of 2018) who transfer to some other school. He was appointed on 2.6.1997 and on 13.06.2002 resigned the job and got employment in the Government School
4.	W.P (MD) No.21337 of 2018 H.Judit Mary	From 01.06.2009 to till date	Appointed as Tamil Pandit on 01.06.2009 in the vacant of L.Jesumary (W.P(MD)No.21343 of 2018) and the said post remains unapproved till date
5.	W.P (MD) No.21338 of 2018 S.Leema Rose	01.06.1986 to 04.10.2005	Appointed as sewing mistress on 01.06.1986 and left from the service on 04.10.2005.
6.	W.P (MD) No.21339 of 2018	From 15.06.2002 to till date	He was appointed as physical education teacher on 15.06.2002 in the vacant of Miller Singh (W.P(MD)No.21336 of 2018) and the said post remains unapproved till date.
7.	W.P (MD) No.21341 of 2018 J.Rajam	01.06.1987 to 31.06.1997	She was appointed as a physical education teacher on 01.06.1987 subsequently she was transferred to another school on 31.05.1997.
8.	W.P (MD) No.21342 of 2018 P.Joseph Reginald	01.06.1986 to 03.06.1990	He was appointed as secondary grade teacher on 01.06.1986, subsequently his appointment was approved w.e.f 04.06.1990 and he got superannuation on 06.06.2012
9.	W.P (MD) No.21343 of 2018 L.Jesu Mary	01.06.1987 to 31.08.2006	She was appointed as Tamil Pundit on 01.06.1987 and got superannuation on 31.08.2006.



9. His argument is that several of the writ petitioners have been transferred, have superannuated or even passed away pending proceedings, that is, either the Writ Petitions filed at the first instance, Writ Appeals or the present writ petitions and he would imply that this would somehow exonerate non-compliance with the order.

10. This submission is irrelevant apart from being undeserving of consideration. As may be seen from the tabulation, the claims made by the petitioners relate to periods of employment even prior to filing of the Writ Petitions at the first instance and the Division Bench has accepted and allowed their claims. Thus, subsequent events such as transfers or even their demise, would have no relevance at all.

11. The objection on maintainability advanced by the State is also misconceived. They would argue that the petitioners have no locus standi to seek the benefits that they do now, and it is only the school that could have sought enforcement of the orders. This is also rejected as I am of the categorical view that there could none more interested in service benefits than the concerned employee himself or herself. Thus, it is certainly open to the concerned employee to move this Court for appropriate relief.

12. The argument of the State that the present writ petitions are belated is also rejected. As recorded by me in order dated 25.01.2022, the School is stated to have filed a representation dated 09.11.2008 pursuing the relief granted in Writ Appeal. Though received by the authorities, it, admittedly has not been decided thus far.

13. The petitioners have also made representations urging implementation of order dated 24.03.2008 and those representations have been forwarded by the Joint Director of Elementary Education to the Chief and District Educational Officers for necessary action. This request is also pending as on date. Thus, I do agree with learned State counsel that there is a delay, but that delay is by the State.

14. Clearly, the State is in contempt of order of the Division Bench dated 24.03.2008. When pointed out and in order to avoid action in that regard, a final opportunity of four weeks is granted as requested by learned Additional Government Pleader, to comply with order of the Division Bench dated 24.03.2008.

15. Mandamus as sought for is issued directing the respondents to implement order of the Division Bench dated 24.03.2008 within a period of four(4) weeks from today. This Writ Petition is disposed as above. No costs. Consequently, connected miscellaneous petitions are closed.



16. List on 28.02.2022 under the caption 'for reporting compliance'.

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Sd/-

Assistant Registrar (CRL)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

CM

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,
State of Tamil Nadu,
Department of School Education,
Fort St. George,
Chennai - 600 009.

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

3. The Director of Elementary Education,
College Road, Chennai - 600 006.

4. The Joint Dierctor of School
Education (Elementary),
College Road, Chennai - 600 006.

5. The Chief Educational Officer,
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6. The District Educational Officer,
Kuzhithurai, Kanyakumari District.

7. The District Elementary Educational Officer,
Nagercoil, Kanyakumari District.



8.The District Educational Officer,
Thuckalay, Kanyakumari District.

+1 CC to M/s.SPL.GP (SR-2783[F] dated 28/01/2022)

+10 CC to M/s.ISAAC CHAMBERS, Advocate (SR-2957[F] dated 28/01/2022)

W.P.(MD) Nos.21334 to 21343 of 2018

and W.M.P(MD)No.18126 of 2021

and W.M.P(MD)Nos.19206, 19207, 19208,
19209, 19210, 19211, 19212, 19213, 19214, 19215
27.01.2022

KS (CO)

KB(24.02.2022) 12P 20C