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THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 13.12.2021

Pronounced on : 07.01.2022

CORAM:

THE HONOURABLE MRS.JUSTICE S. SRIMATHY

W.P(MD) No.2298 of 2017 and
WMP(MD).Nos.1886 and 1887 of 2017

V. Vellaichamy

: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 Chief Educational Officer,
Madurai District at Madurai.

4.The District Educational Officer,
Thallakulam,
Madurai, Madurai District.

5.The Secretary,
National Co-operative Sugar Mills,
Higher Secondary School,
15-B, Mettupatti and Post,
Madurai District - 625 502.

: Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of to issue a Writ in the nature of Writ of Certiorarified Mandamus to call for the records relating to the impugned proceedings issued by the 4th respondent District Educational Officer, Madurai vide O.Mu.No.7422/A2/2015, dated 13.11.2015, quash the same and further direct the 4th respondent District Educational Officer, Madurai to approve the appointment of the petitioner as Office Assistant in the 5th respondent school w.e.f. 01.06.1991 to 02.06.1994 and disburse grant-in-aid towards his salary and all other monetary benefits, and further direct the 4th respondent District Educational Officer, Madurai to reckon the half of the service of the petitioner in the 5th respondent school under un sanctioned post i.e., from 01.06.1985



to 31.05.1991 as qualifying service period for pension and other retirement benefits.

For Petitioner : Mr. S.Xavier Rajini

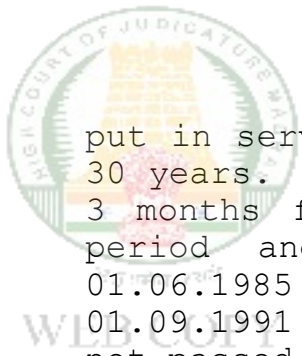
For Respondents : Mr.P. Ragavendran
(R1 to R4) Government Advocate

For R5 : Not appeared

O R D E R

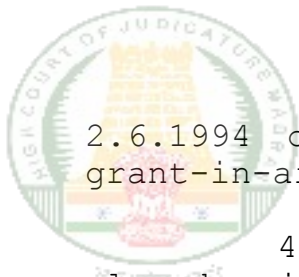
This Writ Petition has been filed to quash the impugned proceedings issued by the 4th respondent District Educational Officer, Madurai vide O.Mu.No.7422/A2/2015, dated 13.11.2015, and further direct the 4th respondent District Educational Officer, Madurai to approve the appointment of the petitioner as Office Assistant in the 5th respondent school w.e.f. 01.06.1991 to 02.06.1994 and disburse grant-in-aid towards his salary and all other monetary benefits, and further direct the 4th respondent District Educational Officer, Madurai to reckon the half of the service of the petitioner in the 5th respondent school under unsanctioned post i.e., from 01.06.1985 to 31.05.1991 as qualifying service period for pension and other retirement benefits.

2. The brief facts of the case are that the 5th respondent school was established as Middle School in the year 1983 and the State Government has sanctioned three posts to viz., 1) Tamil Pandit 2) Secondary Grade Teacher 3) Physical Education Teacher. Thereafter, in the year 1983 it was upgraded as high school and again upgraded as Higher Secondary School in the year 1996. The state Government has not granted any grant-in-aid in the High School Sections and the management has paid the salary to the staff from their own fund. The strength of the school was more than 1000 in the year 1983. Insofar as the High School is concerned the petitioner was appointed as Office Assistant on 31.05.1983 on consolidated pay. The minimum qualification prescribed for the post of Office Assistant is 8th Std., as per the Tamil Nadu Recognized Private Schools (Regulation) Rules, 1974. Under the Open University System in Madurai Kamaraj University the petitioner passed the Introduction Course in April 1985 which is equivalent to pass of 8th Standard and was admitted in the Pre-Foundation Course from July 1985. Thereafter, the State Government sanctioned four post to the school viz., one Headmaster, two B.T Assistants and one office Assistant with effect from 01.06.1991 vide G.O.Ms.No.447 (Education (D1) Department), dated 08.05.1992. The school absorbed all the incumbents with effect from 01.09.1991. However, the petitioner's appointment was not considered for absorption but new appointment order was issued with effect from 03.06.1994. The petitioner has



put in service 30 years from 31.05.1983 to 31.05.2013 for more than 30 years. But the respondents have reckoned the service of 18 years 3 months from 03.06.1994 to 31.05.2013 as the Government service period and sanctioned pension. The unsanctioned post from 01.06.1985 to 31.05.1981 was not included and the period from 01.09.1991 to 03.06.1994 was not included since the petitioner has not passed VIII standard.

3. The contention of the petitioner is that he was appointed as Office Assistant on 31.05.1983 but pass 8th Std., only from 01.06.1985 and therefore, he is atleast eligible for all the monetary benefits from 01.06.1985 onwards. The petitioner has referred to G.O.Ms.No.18 (Education, Science and Technical Education (D2) Department, dated 09.01.1997 and G.O. (1D).Ms.No.125 (Education (VE) Department), dated 13.04.2010 directing to calculate the service period in the unsanctioned post to be treated as qualifying service period for pension and other retirement benefits. The petitioner also claimed he should be granted salary from 01.06.1991 to 02.06.1994 and the respondents are bound to disburse the grant-in-aid adding the said period. The petitioner submitted representations dated 11.07.2013, 17.03.2014, 25.11.2014 and 21.07.2015 to calculate the qualifying service from 1983 onwards. But the respondents denied quoting G.O.Ms.No.447 (Education (D1) Department, dated 08.05.1992 and the school is eligible for grant-in-aid only from 01.06.1991 onwards. Also stated that the petitioner was not eligible to be appointed as Office Assistant as on 01.06.1991, since the petitioner has not passed 8th Standard and the petitioner has completed Pre Foundation Course under Open University Foundation Course in the month of November 1993. Therefore, his appointment was from 03.06.1994 onwards. The petitioner stated that he has dis-continued his studies due to financial strain on 29.01.1965. Thereafter, he Joined as Office Assistant on 31.05.1983 in the unsanctioned post, then, joined Pre-Foundation Course which is equivalent to SSLC and the minimum qualification for joining said course is passing of 8th Standard. However, the authorities have permitted the candidates who has not passed 8th Std., directing them to undergo one year Introduction Course that is equivalent to passing of 8th Standard. The University has not conducted any examination for Introduction Course and it was treated as passing of 8th Standard and the University has issued certificate to the petitioner as per Letter dated 02.11.2016. Thereafter, the petitioner joined the pre foundation course in the year 1984 and after completion of the Introduction course in the month of April 1985 and has passed pre foundation course in the month of July 1985. When the school was sanctioned the post through G.O.Ms.No.447 (Education (D1) Department), dated 08.05.1992, the petitioner has passed the Introduction Course in the month of April 1985, which is equivalent to pass of 8th Standard. Therefore, the petitioner is eligible to be appointed as Office Assistant from 01.06.1991 to



2.6.1994 on par with similarly placed persons and disburse the grant-in-aid towards salary.

4. The contention of the petitioner is the State Government already issued Government orders to include the service of unsanctioned post as qualifying service period for pension and other retirement benefits and has relied on G.O.Ms.Nos.18 and 125. Since the claim of the petitioner was rejected vide impugned order dated 13.11.2015 the present Writ Petition is filed.

5. The 4th respondent has filed detailed counter stating the 5th respondent school is non-minority school and was getting grant-in-aid. The school was sanctioned one Headmaster, two B.T Assistants and one Office Assistant through G.O.Ms.No.447, dated 08.05.1992. The 5th respondent school appointed the petitioner as office Assistant with effect from 03.06.1994. Since the petitioner has not passed 8th Std., the petitioner was not granted an approval of appointment. Therefore, the petitioner is eligible to all service and monetary benefits from the year 1994 onwards. The service in un-sanctioned post cannot be taken for any monetary and service benefits. Mere completion of Introduction Course in the Open University scheme cannot be a ground to regularize the period. Because the introduction course is only qualifying course for appointment under Pre-Foundation Course. Since the 5th respondent school is non-minority school for appointment of teaching and non-teaching post prior approval is necessary from the educational authorities, since the same was not obtained the petitioner cannot claim regularizing service period from 1991 to 1994.

6. Heard the learned counsel appearing on either side and perused the materials available on record.

7. The contention of the petitioner to regularize the period of appointment from 31.05.1983 to 31.05.1991 in unsanctioned post cannot be granted. It is not only unsanctioned post but there was no grant-in-aid granted to the school during that period, in short it is an unaided post. Admittedly, the 5th respondent is non-minority unaided school. Therefore, that period cannot be added as "period of service" since the said period can never be considered as "Government Service". This issue was considered in Devakadacham case by this Court and has rejected the claim of the teacher. The petitioner is relying on G.O.Ms.Nos.18 and 125. This Court in another case has also held that the said G.O. 143 is bogus and relying on the G.O. 143, the G.O. 18 was passed and the G.O. 143 was passed to avoid Contempt. Therefore, this Court holds that the said period cannot be calculated either for monetary benefits nor for pensionable service. The entire history of the issue is narrated in hereunder:



d). One Mariappan had filed a writ petition W.P. (MD) No. 4494 of 2009 seeking benefits relying on G.O. Ms. No. 143. The entire facts were brought to the notice of the Hon'ble Court. The Hon'ble Court has held that the G.O. 143 is bogus one and no such government order is in existence and the correct version of GO 143 was produced before the court. In W.P. (MD) No. 649 / 2012 the Hon'ble Court has elaborately discussed the issue and has dismissed the writ petition. In similar cases in W.P. (MD) No. 8661 / 2011,



W.P. (MD) No. 20419 / 2015 and W.P. (MD) No. 20326 / 2018, 2849 / 2015 and 12927 / 2014 batch the Honourable Court has dismissed the writ petitions.

e). The fact remains the service rendered in any school, when the grant-in-aid was not granted i.e. unaided service or any Matriculation service, unsanctioned post, then the said period cannot be included for fixation of salary and pension. In Gabriel case the order was passed without adverting to the fact that the claim is based on bogus Government Order and the claim of unaided service cannot be included, therefore the order passed in Gabriel case is per incuriam and the same cannot be followed as precedent. Thereafter in a subsequent order of the Division Bench vide order dated 05.07.2018 rendered in W.A. (MD) No. 1267 / 2014 filed by Secretary to Government VS Veerabadran and W.A. (MD) No. 40 / 2015 filed by Secretary to Government VS P. Mabel Flora, the Honourable Court had held that the Devakadasham case ought to be followed and rejected the order passed in Gabriel case."

For the reasons stated above this Court is of the considered view that the petitioner is not entitled to calculate the service from 01.06.1985 to 31.05.1991 for any monetary benefits or for calculating the pensionable service, since the said service is unaided service.

8. The next claim of the petitioner is he had claimed to include the service from 01.06.1991 to 31.05.2013. Admittedly, the service from 03.06.1994 to 31.05.2013 was taken into consideration and the petitioner is receiving pension for this period. Now, the petitioner seeks to include the period from 01.06.1991 to 03.06.1994. The reason stated by the petitioner is that, the school was granted sanctioned post through G.O.Ms.No.447 dated 08.05.1992 giving effect from 01.06.1991. But the respondents have rejected to calculate this period, i.e. the period from 1991 to 1994 stating the petitioner has not qualified to hold the post, since the petitioner has not passed 8th Standard. But the petitioner is taking a plea that he has completed 7th Std., in the year 1975, has undergone the Introduction Course for one year and completed in April 1985, has joined the Pre-Foundation Course in July 1985 and has passed the Pre-Foundation Course in November 1993. Since he has completed the Pre-Foundation Course which is equivalent to passing 8th Standard, the petitioner is taking a plea it ought to have been taken as 8th Standard pass. The petitioner is relying on Judgment rendered in this Court in W.P. (MD). No. 24636 / 2004 reported in 2008 (3) MLJ 212 S. Rajkumar Vs. Chairman, Tamil Nadu Electricity Board, Chennai and others, wherein this Court has held in paragraph No.17 as follows:



"17. As Pre-Foundation course has now been made equivalent to pass in SSLC, the logical conclusion that could be arrived at is that the petitioner, who had appeared in Pre-Foundation course conducted by the Madurai Kamaraj University and failed, should be treated as SSLC failed Candidate. As per the he Board proceedings (FB) No.46, dated 13.10.1995, 8th Standard pass is the minimum educational qualification for entering into the service of Electricity Board."

9. The contention of the petitioner is that the qualification fixed for the post of Office Assistant is 8th Standard pass. The Pre-Foundation Course is equivalent to SSLC. To join the Pre-Foundation Course the candidate ought to have passed 8th Standard. If any candidate has not passed 8th standard, then the candidate ought to undergo the Introduction Course for one year. Since the petitioner has passed 7th standard, the petitioner was admitted in Introduction Course for one year and completed in April 1985 and admitted in Pre-Foundation Course in July 1985, then the petitioner ought to be taken as 8th Standard pass. The respondents opposed the said contention stating that the prospectus of Madurai Kamaraj University has been stated that the Introduction Course is not equivalent to VIII standard and No certificate will be issued for completing Introduction Course. To substantiate the contention, the petitioner relied on S. Rajkumar (referred supra) wherein it has been held "the candidate appeared in Pre-Foundation course and failed, should be treated as SSLC failed Candidate". Applying the same analogy "the candidate appeared in Introduction Course and admitted in Pre-Foundation Course, should be treated as VIII Standard pass candidate, since for admission for Pre-Foundation Course the candidate should pass VIII standard, if not pass then ought to undergo Introduction Course for one year. After undergoing Introduction Course and with that qualification if any candidate is admitted in Pre-Foundation Course, then the candidate ought to be treated as VIII standard pass".

10 . The issue of equivalency of "Pre-Foundation Course to SSLC" and "Foundation Course to Higher Secondary Course" was considered by this Hon'ble Court in a Division Bench in the case of Mohamed Hasan Refayee VS the Tamil Nadu Public Service Commission filed in W.A. No. 213 / 2018, vide order dated 19.07.2019 it has been held that,

"33. In view of the above said discussion and in view of the changed situation, the petitioner cannot now after 2009, claim to be eligible, to be considered for selection to the posts included in the Combined Subordinate Services Examination-I, because his graduation degree now cannot be considered to be a



valid, in view of the fact that he has not either passed the 11th standard public examination under the old pattern or the 12th standard public examination under the new pattern and because of the fact that the Government in the year 2009 have issued G.O. Ms. No. 144, Personnel & Administrative Reforms Department, dated 20.11.2017 and in subsequent clarifications, taken a consistent stand that graduation degrees obtained on the basis of foundation courses conducted by Madurai Kamaraj University would not be considered as valid degree, to be eligible for appointment in public services."

11. On analysing the entire issue it is seen that the Madurai Kamaraj University has categorically stated in the prospectus that Introduction Course is not equivalent to VIII standard. But applying the analogy the Hon'ble Court in S. Rajkumar case (referred supra) has held it can be treated equivalent. But subsequently the issue was settled by the Equivalency Committee that the Introduction Course is not equivalent to VIII standard, Pre-Foundation Course is not equivalent to SSLC and Foundation Course is not equivalent to plus two course. But until 2009 the courses were considered as equivalent.

12. Therefore this Court is of the considered opinion that the petitioner has joined the Introduction Course and completed in April 1985 and joined the Pre-Foundation Course in June 1985 ought to be considered as VIII standard pass. Therefore, the petitioner is having VIII standard pass in June 1985 and when the School was sanctioned Office Assistant post in the year 1991, the petitioner service from 1991 shall be considered for the purpose of calculating the service for pension alone. It is abundantly made clear that the petitioner is **not entitled** to any arrears of salary for the said period from 01.06.1991 to 02.06.1994, but entitled only to the calculate the period from 01.06.1991 to 02.06.1994 for pension benefits alone.

13. For the reasons stated above, this Court has set aside the impugned order dated 13.11.2015 to a limited extent and directed the respondents to include the service of the petitioner from 01.06.1991 to 02.06.1994 and grant pensionary benefits alone. As far as the period from 01.06.1985 to 31.05.1991, this Court is of the considered opinion the petitioner is not entitled to any benefits since the said period cannot be considered as government service, since there was no grant-in-aid and it is a non-sanctioned post as held in Devakadasham's case and Veerabhadran's case.



14. The writ petition is partly allowed as stated above. No costs. Connected Miscellaneous petitions are closed.

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Sd/-

Assistant Registrar(T & P)

/ /2022

Sub Assistant Registrar(CS)

trp

To

1. 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,
Madurai District at Madurai.

4.The District Educational Officer,
Thallakulam,
Madurai, Madurai District.

+1 CC to M/s.SPL.GP (SR-989[F] dated 10/01/2022)

W.P(MD) No.2298 of 2017 and
WMP(MD).Nos.1886 and 1887 of 2017
07.01.2022

nsn(CO)

TR(03.02.2022) 9P 6C