



W.P.No.2937 of 2021

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.10.2023

CORAM

THE HONOURABLE MS. JUSTICE R.N.MANJULA

W.P.No.2937 of 2021

and

W.M.P.Nos.3295 & 3297 of 2021

1. N.R.Bhuvaneshwari
2. D.Sabika
3. N.Seetha Lakshmi
4. B.Vani
5. B.Mahima
6. R.Sharmila Banu
7. M.Manjula Devi
8. D.Nanda Kumar
9. C.Vasanthi
10. R.Anandan
11. P.Padmini
12. P.Ulaganathan
13. A.Bestia Mary
14. A.Hema Arockiya Mary



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15. B.Sangeetha
16. M.Dhurgadevi
17. S.Jabamalai Mary
18. S.G.Sumathira
19. C.Niruba Flower Queen
20. K.Senthamaraikannan
- 21 S.Sakthivel
22. K.Mercy Vetri Selvi
23. K.Selvi
24. V.Amirthavalli
25. A.Saralmary
26. V.Helan Jayarani
27. D.Vincent
28. L.Jeyamary
29. S.Shanthi
30. B.Dhanalakshmi
31. R.Jayanthi
32. S.Sasikala
33. K.Manjula
34. V.Kalaichelvi
35. M.P.Kumar
36. M.Rathi

... Petitioners

Vs.



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1. The State of Tamil Nadu,
Rep. by its Principal Secretary,
Department of School Education
St.George Fort,
Chennai- 600 009.
2. The Director of School Education,
Directorate of School Education,
DPI Compound, College Road,
Chennai- 600 006.
3. The Chairman,
The Teachers Recruitment Board,
4th Floor, EVK Sampath Maligai,
DPI Campus, College Road,
Chennai- 600 006.
- 4 . The Project Director
Rashtriya Madhamik Shiksha Abhiyan (RMSA),
DPI Compound, College Road,
Chennai- 600 006.
5. The Union Of India
Rep by its Secretary to Government,
Ministry of Human Resource Development,
No.302-C, Shastri Bhawan,
New Delhi.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, directing the second respondent to frame ad hoc rules in line with G.O.(Ms).No.28, dated 30.01.2015 providing for absorption of the petitioners on and from the date of their appointment on a time scale of pay on par with similarly place government teachers within a time frame.



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For Petitioners : Mr.K.M.Ramesh, Senior Counsel

For Respondents : Mr.R.Siddharth,
Government Advocate for R3
Mr.T.Arunkumar
Govt. Advocate for R1, R2 & R4
Mr.Avinash Krishnan Ravi
Central Govt. Standing Counsel
for R5

ORDER

The petitioner has filed this Writ Petition seeking to direct the second respondent to frame ad hoc rules in line with G.O.(Ms).No.28, dated 30.01.2015 providing for absorption of the petitioners on and from the date of their appointment on a time scale of pay on par with similarly placed government teachers within a time frame.

2. Heard Mr.K.M.Ramesh, learned Senior Counsel for the petitioners, Mr.R.Siddharth, learned Advocate for the third respondent, Mr.T.Arunkumar, learned Government Advocate for Respondents 1, 2 and 4 and Mr.Avinash Krishnan Ravi, learned Central Government Standing Counsel for the fifth respondent.



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3. The petitioners are employed as Special Teachers for Differently Abled Children for more than 20 to 30 years. During 1974, the Central Government formulated a scheme called Integrated Education for the Disabled Children (IEDC). The state of Tamil Nadu implemented the said scheme with 100% financial support through NGOs and teachers were appointed on regulated basis as Resource Teachers.

4. The aforesaid scheme (IEDC) has been replaced by a new scheme called Inclusive Education for Disabled at Secondary Stage (in short IEDSS) from the year of 2009-2010, for providing education for the children with the special needs from classes 9 to 12. The Special Educators like petitioners, who were previously working under IEDC were allowed to continue to work under IEDSS at secondary level.

5. From 17.04.2012, onwards, as per R.C.No.20201/PG2/ IEDSS/2012, the Resource Teachers were absorbed by the second respondent from such NGOs. The petitioners are imparting education to



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the physically challenged children with sincerity and passion. Even prior to 01.04.2012, the petitioners were working under NGO who are tasked to implement the scheme and they were paid monthly salary of B.T Scale. Later, they were taken up under the direct control of respondents 2 to 4 as per the proceedings of the Director of School Education vide R.C.20281/PD2/IEDSS/2012 dated 17.04.2013. The petitioners were paid BT Scale of pay to their bank account by ECS directly.

6. After considering the various representations from the Special Teachers across the State seeking absorption and pay regularization, the State of Tamil Nadu has issued a G.O.(Ms).No.28 School Education Department, dated 30.01.2015 for creation of 202 approved posts of special teachers for 2178 special children. The number of posts were identified as per the existing Special Teachers like petitioners under IEDSS Scheme and the number of children were identified as per the number of children beneficiaries as on that date. However, the said G.O.No.28 was not given effect for a long time and the petitioners were not absorbed or regularized. Further respondents 2 to 4 started fresh



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recruitment process through the Teachers Recruitment Board (TRB) instead of absorbing the services of the petitioners.

7. In similar such circumstances, during 2016, similarly placed 433 Special Teachers approached the Kerala High Court for regularization and filed a writ petition in W.P(C).No.2470 of 2013 (G) (Shafi O.P. and 432 others Vs. State of Kerala) and got the orders. The relevant portion of the order is extracted hereunder :-

“19. This Court is also of the view that the teachers who are appointed as Resource Teachers in this State are also entitled to similar benefits, provided they possess all the prescribed qualifications. The Resource Teachers cannot be deprived of the legitimate benefit of regular pay and other monetary benefits including maternity leave and other leaves etc. as available to the ordinary teachers in the State.

20. In the light of the discussions as above, this Court is of the view that the State Government shall frame a scheme to regularize Resource Teachers, who have put more than 10 years of service and possess qualifications as prescribed. The Scheme also shall cover for payment of



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regular pay scale and to give service benefits as given to ordinary teachers in the State. Such a scheme shall be framed by the Government within a period of three months. The State shall give all benefits based on such scheme to eligible petitioners in these writ petitions without any further delay thereafter. Till such Scheme is framed, no qualified hands shall be terminated from the service.”

8. The above order has been referred by this Court in another case in W.P.(MD).No.15878 of 2018 (G.Saravanan vs. The Government of India & others) and the following order has been passed.

“13.Having recognised the need for their services and extracted such services from them, denying them official and formal recognition is,in my considered view, simply unfathomable and unacceptable.

14.While the grant of sanction or otherwise to an employee, is entirely within the domain of the employer-State who will take note of whether the candidate has the requisite credentials and has been rendering service as appropriate and as required, it is the unwillingness to take prompt and affirmative action to frame the Rules and initiate the process of regularisation of the services of the employees already rendering services, that rankles



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with the Court.

15. It is the petitioner's say that proceedings for certificate verification were undertaken by the Director of School Education in 2012, in which the petitioner had also participated. However, the process is not evidenced by any specific certificate that has been issued to the petitioner in this regard.

16. Be that as it may, the petitioner, who was appointed on 30.06.2011, continues to be in service till date and there is no stand in the counter as to any discrepancy in the appointment as such or any deficiency in the services rendered by him thus far. In such circumstances, I am of the categorical view that the petitioner's claim for regularization of services must be accepted.

17. The petitioner has sought the same relief by way of representation, which is pending before the respondents, from as early as on 05.07.2018. Inter alia, the petitioner has relied upon a decision of the learned Single Judge of the Kerala High Court who has considered a similar case and held in favour of the appointee.

18. In fine, a direction is issued to the State to frame Rules as envisaged in the above Government



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Order within a period of twelve weeks from today. The Rules must contain proper protection, and provisions for identification and absorption of those candidates who have the necessary credentials and have been appointed in government positions of Educator/Special Educator/Instructor for children with special needs, by whatever name or nomenclature called, even prior to the issuance of the aforesaid Government Order.”

9. The petitioners herein, are also similarly placed and hence this petition can also be disposed in the line of the earlier order passed in the above mentioned Writ Petition.

10. With the above observations, this Writ Petition stands disposed. No costs. Consequently, connected miscellaneous petitions are closed.

10.10.2023

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Index : Yes / No

Speaking / Non-speaking

Neutral Citation : Yes / No



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Department of School Education
St.George Fort,
Chennai- 600 009.
2. The Director of School Education,
Directorate of School Education,
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4th Floor, EVK Sampath Maligai,
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Rep by its Secretary to Government,
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R.N.MANJULA, J.

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