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*W.A. No. 2218 of 2019
and W.P.No. 32455 of 2019*

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : **15.03.2023**

CORAM:

**THE HONOURABLE MR. JUSTICE D.KRISHNAKUMAR
AND
THE HONOURABLE MRS JUSTICE K. GOVINDARAJAN THILAKAVADI**

**W.A.No. 2218 of 2019
and
W.P. No. 32455 of 2019**

W.A.No. 2218 of 2019

1. The Secretary
Department of School Education,
Fort St George, Chennai- 600009.
2. The Director of School Education,
DPI Campus, College Road,
Chennai – 600 006.
3. The Joint Director of School Education,
(Secondary Education)
DPI Campus, College Road,
Chennai – 600 006.
4. The District Educational Officer, Chennai North,
Egmore, Chennai - 600008

... Appellants

Vs.

1. M.S. Sivakumar
2. The Correspondent,
Sir. M.Ct. M. Hr. Sec. School,
Purasawalkam, Chennai – 600084.

... Respondents



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*W.A. No. 2218 of 2019
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PRAYER: Writ Appeal filed under Clause 15 of the Letters Patent against the order passed in W.P.No. 7949 of 2011 dated 08.03.2018.

For Appellants : Mr. U. Baranidharan
Additional Government Pleader

For Respondents : Mr. V. Selvaraj
for Mr. C. Johnson
for R1
Mrs. Abitha Banu for R2

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Sir M.Ct. Muthiah Chettiar Higher
Secondary School Trust,
Represented by its Trustee, Mr. Tarun Ghai,
No. 23, Dr. Raja Annamalai Road,
Purasawalkam, Chennai – 600 084

...Petitioner

VS

1. The Secretary to the Government,
Department of School Education,
Fort. St George, Chennai – 600 009.
2. The Director of School Education,
D.P.I. Compound, College Road,
Chennai – 600 006.
3. The Joint Director of School
Education (Sec. Education),
D.P.I. Compound, College Road,
Chennai – 600 006.
4. The Chief Educational Officer-
Chennai District,
Egmore, Chennai – 600 008.



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5. The District Educational Officer-
Chennai (West), D.P.I. Compound,
College Road, Chennai – 600 006.

6. Mr. M.S. Sivakumar

...Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, for the issuance of Writ of Certiorari calling for the records leading to the impugned order dated 08.11.2019 bearing Na.Ka.No. 36897/T2/E2/2018 passed by the second respondent and quash the same.

For Petitioner	:	Mrs. Abitha Banu
For Respondents	:	Mr. U. Baranidharan, Additional Government Pleader for R1 to R5 Mr. V. Selvaraj for Mr. C. Johnson for R6

COMMON JUDGMENT

[Judgment of the Court was delivered by *D.KRISHNAKUMAR, J.*]

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According to the first respondent, in exercise of the powers conferred, he was appointed by the Correspondent/fifth respondent as Secondary Grade Teacher on 09.08.1993 on consolidated pay, anticipating the vacancy caused due to the retirement of one T.K. Govindarajan and he has been



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discharging his function as a Teacher to the full satisfaction of all concerned. Therefore, the first respondent made several requests and representation to the fifth respondent management and other official respondents for approval of his appointment in regular basis.

2. The first respondent further stated that Government passed an order in G.O.Ms. No. 539 Education (M1) Department dated 21.04.1986, permitted all schools including aided schools to fill-up Secondary Grade vacancies with B.T./B.Ed., and Tamil Pandits on contract basis. Such appointments were later regularized vide G.O.Ms. No. 510 (Education) Department dated 10.05.1989 and paid regular time scale pay as applicable to Secondary Grade Teacher. Therefore, the first respondent is fully qualified meritorious candidate ought to have been regularized with effect from 01.06.1994.

3. The first respondent also submitted that the fifth respondent sent proposal to the fourth respondent for evaluating the educational certificates of the first respondent but no orders have been passed. Subsequently there was a bar order issued by the Government in G.O.Ms. No. 559 dated



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11.07.1995 which has no relevancy as he was appointed as early as 1993 and also the Government Order in G.O.Ms. No. 155 dated 03.10.2002, has no relevancy as the first respondent has been working as a Secondary Grade Teacher since 1993 and earned enough experience in handling the children of Secondary Grade. Therefore, one month training (child Psychology) as ordered in the above G.O. has no relevancy.

4. Therefore, those teachers who were B.T. Graduate were not considered for the said appointment but those who were appointed prior to the Government Order based on the G.O.Ms. No. 155 dated 03.10.2002 and undergone for one year training programme have been considered for regularization of service. The first respondent was subsequently appointed by the Government as Junior Grade BT Assistant with effect from 19.01.2004 on consolidated pay of Rs. 4,000/- and thereafter his service of Junior BT Assistant was regularized with effect from 01.06.2006 giving regular time scale of pay as applicable to B.T. Teachers. Aggrieved by the same, the first respondent filed W.P.No. 14001 of 2003. This court by order dated 30.04.2003, disposed of the said writ petition by directing the respondents therein to deal with the representation and pass orders within



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a period of six weeks. The representation made by the respondents therein dated 02.06.2003 to regularize his services with effect from the date of the original appointment made pursuant to the said order was also rejected by order dated 21.10.2003. Therefore, he again filed W.P.No. 16064 of 2009 before this Court. This Court by order dated 11.08.2009, disposed of the writ petition, directing the first respondent therein to consider the petitioner's representation dated 12.07.2008, after affording opportunity to the petitioner within a period of twelve weeks from the date of receipt of a copy of this order.

5. Thereafter, the first respondent, again made a detailed representation on 23.09.2009, and the said representation was rejected. Aggrieved by the same, the first respondent filed W.P.No. 7949 of 2011, originally with a prayer for mandamus and the same was amended as certiorarified mandamus in W.M.P.No. 22227 of 2017.

6. The appellant filed a counter affidavit denying all the statements made by the first respondent. But however, the Writ Court had allowed the writ petition by holding that since the first respondent's appointment as



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Secondary Grade Teacher was under the fifth respondent school, which is a minority institution, no prior permission is required for making appointment.

7. According to the appellant, even though the first respondent has stated that he was appointed on 09.08.1993 as Secondary Grade Teacher but the proposal has been submitted only on 23.03.1998 to the Education Department as Secondary Grade Teacher and the same was denied stating that he was not eligible for appointment as Secondary Grade Teacher, subsequently the Government has passed G.O.Ms.No. 559, Education, Science and Technology Department dated 11.07.1995, wherein it was stated that there is a bar on BT Assistant to be appointed as Secondary Grade Teacher and the first respondent was qualified for B.T. Assistant. Therefore, he is not entitled for appointment as Secondary Grade Teacher and the same however been approved.

8. The appellant further stated that on Government policy decision of appointment of Junior Grade of BT Assistant on consolidated pay by G.O.Ms. No. 125 School Education (X2) Department dated 12.11.2003, the first respondent had been appointed as Junior BT Assistant Maths on 19.01.2004



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and the same has been accepted by the Department and the first respondent services have been regularized with effect from 01.06.2006 as regular BT Assistant and monetary benefits were also granted to the first respondent by the appellant as per the Government norms. Therefore, according to the appellant, the first respondent has continuous service in the school and the first respondent has attained the age of superannuation on 31.05.2019. Since the first respondent was appointed on 19.01.2004 and his services were regularized with effect from 01.06.2006, the first respondent is entitled under the contributory pensionary scheme. Therefore, the prayer sought for by the first respondent to regularize his service from 1993, is contrary to the Government Order and he is not entitled from 09.08.1993.

9. It is seen that the said regularization order dated 01.06.2006 has not been questioned by the first respondent passed by the appellant but he is only seeking for the rejection of the consequent order dated 11.01.2010 of the school authority by citing the reason that prior permission for filling the Secondary Grade Teacher in the fifth respondent school in the year 1993 is not required. Therefore, if the first respondent is aggrieved, he



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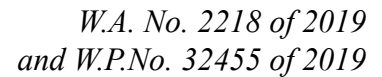
should have challenged the aforesaid order of the regularization by the Department with effect from 01.06.2006.

10. Taking into consideration the above fact and as discussed above, the first respondent has not challenged the Government order for regularization, we are inclined to modify the order passed by the writ court, the writ petitioner is entitled for regularization of service from the date of his appointment i.e with effect from 19.01.2004 as Junior B.T. Assistant in the 5th respondent school.

11. With the above modification, the writ appeal stands partly allowed.

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12. The petitioner management also filed a writ petition before this Court challenging the order passed by the Department dated 08.11.2019, wherein it is stated that, since the petitioner management has appointed the sixth respondent, without following the procedure as contemplated under the rules and also without obtaining permission from the Department,



13. Considering the fact that the appeal filed by the Department as against the order passed by this Court in W.P.No. 7949 of 2011 has been discussed by this Court and a detail order has been passed in the aforesaid paragraphs by allowing the writ appeal and setting aside the order passed by the writ court, therefore the impugned order passed by the respondent department dated 08.11.2019 bearing Na.Ka.No. 36897/T2/E2/2018 passed by the second respondent is also quashed and consequently the writ petition is allowed. No costs. Consequently, W.M.P. No. 32774 of 2019 is closed.

15.03.2023

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D.KRISHNAKUMAR, J.
and
K.GOVINDARAJAN THILAKAVADI, J.
(mrn)

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