



W.P.No.40722 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Orders reserved on 28.02.2023

Orders delivered on 28.03.2023

CORAM :

THE HON'BLE Mrs.Justice **J.NISHA BANU**

W.P.No.40722 of 2015

P.Andaperumal,
B.T.Assistant,
C.M.S.Evangelical Suvi David Memorial
Higher Secondary School,
Karisal, Karisalpatti PO.,
Tiruvelnveli District. Pin.627 414.

..Petitioner

Vs

1. The State Govt. of Tamilnadu,
represented by the Secretary to Govt.,
Education Department,
Fort St.George,
Chennai - 600 009
2. The Joint Director of School Education,
College Road,
Chennai - 600 006.
3. The Chief Educational Officer,
Cheranmahadevi at Tirunelveli.
4. The District Educational Officer,
Cheranmahadevi at Tirunelveli.



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5 The Correspondent,
C.M.S.Evangelical Suvi david Memorail
Higher Secondary School,
Karisal, Karisalpatti PO.,
Cheranmahadevi (Via)
Tirunelveli District. Pin - 627 414

..Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution to issue a Writ of Certiorarified Mandamus to call for the entire records connected with the impugned order passed by the 2nd respondent vide Mu.Mu.No.092127/D2/E3/2014 dated 03.08.2015 by confirming the order of the 4th respondent, vide Na.Ka.No.4758/A3/2014 dated 24.03.2015, and quash the same and consequently, direct the respondents to approve the appointment of the petitioner w.e.f. 19.06.2002 as Middle Grade Assistant as per G.O.Ms.No.79 dated 14.06.2002, with all consequential benefits in the light of judgment passed in W.P(MD),No.1654/2015 dated 02.11.2006, and by counting the past service from 19.06.2002 to 31.05.2006, for the purpose of old pension in the light of the order passed in W.A.(MD).No.307/2019 dated 02.08.2019 reported in 2019(4) CTC 865.

(Prayer amended vide order dt.19.12.2022 ade in WMP.No. 33419/2022 in W.P.No.40722/2015)



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For Petitioner : Mr.S.N.Ravichandran
For Respondents : Mrs.Mythreye Chandru,
Special Govt.Pleader
for R1 to R4
No appearance for R5

ORDER

This Writ Petition has been filed challenging the order passed by the 2nd respondent dated 03.08.2015 by confirming the order of the 4th respondent dated 24.03.2015, rejecting to approve the appointment of the petitioner with effect from 19.06.2002 as Middle Grade Graduate Assistant and consequently direct the respondents to approve the appointment of the petitioner w.e.f. 19.06.2002 as Middle Grade Assistant as per G.O.Ms.No.79 dated 14.06.2002, with all consequential benefits in the light of judgment passed in W.P(MD),No.1654/2015 dated 02.11.2006, and by counting the past service from 19.06.2002 to 31.05.2006, for the purpose of old pension in the light of the order passed in W.A.(MD).No.307/2019 dated 02.08.2019 reported in 2019(4) CTC 865.



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2. Heard the learned counsel for the petitioner and the learned Special Government Pleader appearing for the 1st to 4th respondents.

3. The case of the petitioner is that the 5th respondent School is an Aided Religious Minority Institution, in which, a vacancy arose for the post of Secondary Grade Teacher, due to the order of dismissal of one Tmt.C.Shanthi on 31.10.2000. In the said vacancy, the 5th respondent Management, selected and appointed the petitioner vide order dated 19.11.2000 and submitted proposal for approval to the 4th respondent. The 4th respondent did not approve the appointment of the petitioner on the ground that C.Shanthi, who was dismissed by the 5th respondent School Management, filed a writ petition challenging her order of dismissal. The said writ petition was dismissed by order dated 30.04.2002. In the meanwhile, the Government of Tamil Nadu issued G.O.(Ms.)No.79, dated 14.06.2002, upgrading the post of Secondary Grade Teacher in the Middle/ High School and directed the Aided Schools to appoint B.Ed., qualified



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Teachers as B.T.Assistants, in the secondary grade vacancies arising on or after 1.6.2002. Hence, the 5th respondent School issued order of reappointment to the petitioner as B.T.Assistant on 19.06.2002 as per the said G.O.Ms.No.79 and submitted a proposal dated 21.03.2003 for approval of appointment of the petitioner with effect from 19.06.2002. When the said proposal is pending, the Government issued another Government Order in G.O.(Ms.)No.125 dated 12.11.2003 downgrading the post of B.T. Assistant Teacher, as Junior B.T., on consolidated pay of Rs.4000/- only for the vacancies arising on or after 01.06.2003. The 4th respondent instead of approving the petitioner's appointment as B.T.Assistant as per G.O.Ms.No.79 with effect from the date of his initial appointment, passed an order approving the appointment as Junior B.T., w.e.f. 01.06.2003 on consolidated pay vide proceedings dated 02.06.2006 as per G.O.(Ms)No.125 dated 12.11.2003. Thus, the petitioner was denied Old Pension Scheme. The petitioner sent representation dated 7.11.2014 to the 2nd respondent for approval of appointment w.e.f 19.6.2002 as B.T. Assistant with all consequential benefits as per G.O.Ms.79. The 3rd



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respondent also recommended and forwarded proposal on 04.01.2015 to the 2nd respondent for approval of the petitioner's appointment w.e.f. 19.06.2002. However, the 2nd respondent rejected the claim of the petitioner by order dated 03.08.2015. Hence, the writ petition with the aforesaid relief.

4. Learned counsel for the petitioner would submit that 5th respondent is a Religious Minority Institution. Therefore, no permission is required for upgrading and conversion of the secondary grade vacancies as B.T.Assistant post as per G.O.(Ms)No.79 dated 14.06.2002. It is an automatic upgradation as held by this Court in S.Joseph Vijaya vs. The Chief Educational Officer passed in W.P.(MD) No.3579 of 2017 and W.P.(MD)No.16333 of 2016 dated 12.07.2017.

5. Learned counsel for the petitioner would further submit that in identical circumstance, the Government of Tamil Nadu has issued G.O.Ms.No.61 School Education (P1) Department dated 20.04.2012 approving the appointment of M.Kala as B.T.Assistant w.e.f.1.6.2002 who



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was appointed in the Secondary Grade vacancy in the Hindu Aided Middle School, Kudangulam on 01.06.1999, as per G.O.Ms.No.79, on the basis of the order passed by this Court in W.P.No.7494 of 2011 dated 20.06.2011. He would further submit that the issue of counting the past service for the purpose of granting old pension came up for consideration before the Madurai Bench of Madras High Court in the case of V.Vasanthi v. State of Tamil Nadu reported in 2019(4) CTC 865, in which, the Division Bench has held that the date of Approval of Appointment of the writ petitioner cannot be construed as the date relevant for considering the applicability of the Pension Scheme and it is the original date, on which, the writ petitioner got appointed that matters for consideration as to whether the writ petitioner is governed under the Old Pension Scheme or not. He would submit that the aforesaid decision is squarely applicable to the case of the petitioner and prayed to allow the writ petition.

6. Per contra, the learned Special Government Pleader appearing for the respondents 1 to 4 would submit that the 5th respondent has not made



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any entry in the service register for relieving the petitioner from service after his appointment on 19.11.2000 and the 5th respondent has also not made any entry in the service register of the petitioner for his reappointment on 19.06.2002. In the writ petition, the petitioner has not stated the date of his relief after his appointment on 19.11.2000. G.O.Ms.No.130 School Education dated 27.09.2004 speaks about the appointments made between 14.06.2002 to 31.05.2003, without obtaining prior order covering the post of secondary grade teacher as middle grade graduate teacher post. Therefore, the petitioner could not be considered by applying G.O.Ms.No.130. Similarly, since the petitioner was originally appointed on 19.11.2000, he could not be considered to avail G.O.Ms.No.79 School Education dated 14.06.2002. The petitioner was originally appointed on 19.11.2000 only as Secondary Grade Teacher. To avail the benefit of G.O.Ms.No.79 School Education dated 14.06.2002, he was re-appointed in the same post on 19.06.2002 and that too, without obtaining prior order of the Government converting the vacant post of secondary grade teacher as middle grade graduate teacher. For the irregularity and illegality committed by the 5th



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respondent, the petitioner is not entitled to claim the benefits as a matter of right. Therefore, she would pray to dismiss the writ petition.

7. This Court, considered the submissions made on either side and perused the materials available on records.

8. It is not in dispute that the Secondary Grade Teacher Post, which fell vacant on 31.10.2000 in the 5th respondent School, due to the dismissal of one C.Shanthi is a sanctioned post. It is well settled position of law that once an appointment was made to the sanctioned post, prior approval is not necessary and admittedly, the appointment of the petitioner herein is to the sanctioned post.

9. The other issue as to the date of approval of appointment is no longer *res integra* in the light of the judgment reported in **2018(1) WLR 410** (*The Government of Tamil Nadu rep. by the Secretary to Government, Department of School Education v. J.Remila and another*)



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(W.A.(MD)No.1350 of 2017 dated 14.11.2017). The Division Bench, while answering the question as to the lack of prior permission for conversion of post and the appointment made by the institution without getting such permission, held that "the impugned proceedings which is the subject matter of challenge in the writ petition, interfered with an overall administrative control of the minority institution over its staff and abridges/dilutes their right to establish and administer their educational Institution and upheld the order passed by the learned Single Judge in allowing the writ petition"

10. Further, in the decision reported in **2019 (4) CTC 865 (V.Vasanthi v. State of Tamil Nadu)** (W.A.(MD)No.307 of 2019 dated 02.08.2019), the issue of counting the past service for the purpose of granting old pension came up for consideration before the Madurai Bench of Madras High Court, in which, it is held as follows:

12. A careful perusal of the above observation made in the said Pallivasal Primary School case would show that even though approval of the appointment of the teacher, who has undergone Child Psychology Training, will take effect only on



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completion of such training, the past service rendered by such teacher i.e., service rendered before the completion of such training, is bound to be counted for pension. In other words, the service period of such teacher commences from the date of the appointment and not from the date of approval, even though the monetary benefits start to accrue only from the date of completion of the training. Therefore, for all practical purposes, the date of appointment is not altered and remain to be the same. Therefore, the date of approval of appointment of the writ petitioner cannot be construed as the date relevant for considering the applicability of the pension scheme and on the other hand, it is the original date, on which the writ petitioner got appointed that matters for considering as to whether the writ petitioner is governed under the Old Pension Scheme or not. At this juncture, it is relevant to note that in G.O.Ms.No.259, Finance (Pension) Department, dated 06.08.2003, a proviso to Rule 2 of the Tamil Nadu Pension Rule 1978, was introduced by way of amendment, wherein and whereby, it is contemplated that the Tamil Nadu Pension Rules 1978 shall not apply to Government Servants “appointed” on or after 1st April 2003 to services and posts. The word “appointed” referred in the said proviso cannot be construed



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to mean approval of such appointment.

13. In fact, the very same issue was considered by one of us (KRCBJ) in W.P(MD)No.3308 of 2007. The Contributory Pension Scheme was introduced to the newly recruited employees, who are recruited on or after 01.04.2003. Relevant clause 3(i) of G.O.Ms.No. 259 dated 06.08.2003, which has introduced the New Contributory Pension Scheme, was taken into consideration in the said case and it was found that the said Government Order introducing New Contributory Pension Scheme, would apply only to persons, who were recruited on or after 01.04.2003 and not in respect of persons, who were recruited earlier to 01.04.2003. In that case, though the writ petitioner therein was recruited on 26.03.2003, he joined the duty on 04.04.2003 after obtaining the medical certificate from the Medical Board, since he is a physically challenged person. Therefore, it was found therein that the date of joining of such person cannot be considered as date of appointment as such event of appointment had already taken place well before 01.04.2003. We are informed that the above said order has been given effect to.

11. In view of the above decisions, this Court is of the opinion that



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the denial of approval of appointment of the petitioner as Middle Grade Graduate Teacher with effect from 19.06.2002 by the respondent cannot be countenanced as it amounts to discrimination and violation of Article 14 of the Constitution of India. The prayer sought for by the petitioner is sustainable.

12. For the aforesaid reasons, the impugned order dated 03.08.2015 passed by the 2nd respondent confirming the order passed by the 4th respondent dated 24.03.2015 is set aside. The respondents are directed to approve the appointment of the petitioner with effect from 19.06.2002 as Middle Grade Graduate Assistant and to grant all consequential benefits to the petitioner, by counting the past service from 19.06.2002 to 31.05.2006, for the purpose of old pension scheme. Accordingly, the Writ Petition is allowed. No costs.

28.03.2023

Index :Yes/No
Speaking/Non-speaking order
vsi



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- To
1. The State Govt. of Tamilnadu,
represented by the Secretary to Govt.,
Education Department,
Fort St.George,
Chennai - 600 009
 2. The Joint Director of School Education,
College Road,
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J.NISHA BANU, J.

vsi

Pre-delivery order in
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