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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.12.2023

CORAM

THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

Writ Petition No.20819 of 2019

M.G.Helan
W/o.D.Samuel Jayachandran ... Petitioner

Vs.

1. The Director of School Education
   D.P.I. Campus
   Chennai-6.

2. The Chief Educational Officer
   Tiruvallur
   Tiruvallur District.

3. The District Educational Officer
   Avadi Educational District
   Chennai-71.

4. The Correspondent
   Dasar Higher Secondary School (Aided)
   Dasarpuram
   Tirunindravur 602 024
   Tiruvallur District. ... Respondents

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Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, to call for the entire records connected with the impugned order of the 3rd respondent passed in Na.Ka.No.1378/A2/2019 dated 14.06.2019, quash the same and directing the respondents to approve the appointment of the petitioner as Secondary Grade Teacher with effect from 27.07.1995 so as to enable the petitioner to count the service for annual increments from 01.04.1996 to 01.04.2003, selection grade in the cadre of secondary grade teacher from 2005 retrospectively in the cadre of B.T. Assistant from 2018 with all consequential benefits.

For Petitioner : Mr.P.Ganesan
For Respondents : Mr.K.H.Ravikumar
Government Advocate for 1 to 3
Dr.P.Vasudevan, for R4

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O R D E R

This writ petition has been filed seeking to quash the impugned order dated 14.06.2019 of the 3rd respondent bearing reference Na.Ka.No.1378/A2/2019, direct the respondents to approve the appointment of the petitioner as Secondary Grade Teacher with effect from 27.07.1995 and count the service for annual increments from 01.04.1996 to 01.04.2003,

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selection grade in the cadre of secondary grade teacher from 2005 with all consequential benefits.

2. The case of the petitioner is as follows:

2.1. The petitioner has acquired B.Sc (Home Science) in 1984, B.Ed., in 1989, M.A. (Sociology) in 1986 and M.Ed., in 1995. She was selected and appointed to the post of Secondary Grade Assistant in the fourth respondent school on 27.07.1995. While being so, the Government issued orders to fill up vacancies with BT qualified persons as Secondary Grade teachers. However, the petitioner did not possesses Secondary Grade qualification but she was appointed as Secondary Grade teacher with B.Ed., qualification. Thereafter, the Government issued G.O.Ms.No.559, Education, Science and Technology Department dated 11.07.1995 directing the educational authorities to not to approve the appointment of B.Ed., teachers in the Secondary Grade teacher vacancies. While so, a batch of writ petitions were filed by the various aided schools questioning G.O.Ms.No.559 and the same came to be dismissed on 19.05.1998.

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Aggrieved against the order dated 19.05.1998, writ appeal Nos.991 to 998 of 1998 were filed and the same were rejected by a Hon'ble Division Bench of this Court on 29.06.2001, however, protected the services of B.Ed teachers, who were appointed in the Secondary Grade vacancies before 19.05.1998.

2.2. In this regard, the Government issued G.O.Ms.No.155, School Education (D-2) Department dated 03.10.2002 stating that the B.Ed teachers, who were appointed in the Secondary Grade teacher vacancies to undergo child psychology training for one month and on completion of such training, their services would be approved. The said G.O.Ms.No.155 was challenged and the Hon'ble Division Bench vide 2004 (2) Law Weekly 591 has also upheld the above order, however, with a direction to take the past service rendered by the teachers for pensionary benefits.

2.3. As per the above order, the petitioner has completed the child psychology training for one month from 02.05.2003 to 31.05.2003, her

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appointment was approved from 31.05.2003, she was promoted as B.T. Assistant (History) on 02.06.2008, she was given selection grade in the year 2019 and annual increments were given from 01.04.2003. Thus, the petitioner's juniors are getting higher salary and other benefits than her and she is not able to get any benefits from 27.07.1995 to 31.05.2003. If the petitioner's service was approved from 27.07.1995, she would get annual increments from 01.04.1996 to 01.04.2003, selection grade in the cadre of secondary grade teacher from 2005, special grade from 2015 onwards and for revised pay commission arrears and revised scale of pay, she is entitled to count the above period of service for pensionary benefits. Hence, the petitioner filed a writ petition in W.P.No.14643 of 2019 seeking to approve the appointment of the petitioner as secondary grade teacher with effect from 27.07.1995 so as to enable the petitioner to count the service for annual increments from 01.04.1996 to 01.04.2003, selection grade in the cadre of secondary grade teacher from 2005. Pending the above writ petition, the impugned order dated 14.06.2019 has been passed rejecting the petitioner's request and W.P.No.14644 of 2019 came to be closed with a

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direction to challenge the impugned order. Therefore, the petitioner filed the present writ petition challenging the impugned order dated 14.06.2019.

3. The learned counsel for the petitioner submitted that the impugned order is liable to be set aside on the ground that the third respondent has rejected the claim of the petitioner citing the judgement of Hon'ble Supreme Court in ***SLP (C) D.No.1327 of 2019 [Director of Elementary Education and others vs. Rajathi]*** wherein the Hon'ble Supreme Court has permitted the petitioner therein to approach the High Court by filing a review application with regard to the ground in the memo of appeal and even if the respondent was to be approved then she could be approved only from the date of completion of psychology training and the payment of all benefits of service ought to have been given with effect from the date on which the respondent completed the training.

4. The learned Government Advocate for respondents 1 to 3 submits that G.O.Ms.No.559 and G.O.Ms.No.155 have been upheld by this Hon'ble

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High Court and the only concession given by this Court is to count their service for pension, who were appointed prior to 19.05.1998 and the same was also accepted at the relevant point of time. Since the petitioner had completed child psychology training on 31.05.2003, on the very next day itself, i.e., from 01.06.2003, her service was approved in the secondary grade teacher. In the meanwhile, the Government has filed SLP against the order passed in W.A.No.956 of 2018 and the Hon'ble Supreme Court permitted the petitioner therein to approach the Hon'ble High Court by filing review with regard to the grounds raised in the appeal. Therefore, the service of the petitioner as per G.O.Ms.No.155 dated 03.10.2002 has been approved and now, the grievance of the petitioner with regard to annual increments from 01.04.1996 to 01.04.2003 as well as selection grade in the cadre of secondary grade teacher from 2005 and seeking selection grade retrospectively in B.T. Assistant from 2018 and the consequential revision of pay based on the above said entitlement and the pensionary benefits is not acceptable. Since the petitioner's service was approved from 01.06.2003 onwards, i.e., the period on which the child psychology was completed, she

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was given with all the benefits from the date of approval of her service and therefore, the relief sought for by the petitioner is not acceptable since the service of the petitioner was approved as per G.O.Ms.No.155, which was also upheld by this Hon'ble High Court. Hence, the prayer sought for the petitioner is not acceptable and writ petition is liable to be dismissed.

5. The Hon'ble Division Bench of this Court, in the case of the ***State of Tamil Nadu, represented by its Secretary, Education Department, Chennai and others Vs. Pallivasal Primary School***, passed in W.A.No.249 of 2002 dated 02.04.2004, has already dealt with this aspect and had held that such regularization can only be on and after the date, when the teacher completes the Child Psychology training. However, their past services shall count for the purpose of pension. The relevant portion of the order reads as follows:

> *8. Their right to be regarded as persons eligible for confirmation / approval can be said to arise only after they acquired, after their training, a minimum prescribed qualification. The Government here has shown great*

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concession to them by allowing them to retain their position even without obtaining the requisite diploma or certificate in child psychology by giving to them training in child psychology. We see nothing wrong in the Government directing that their approval / confirmation can only be on and after the date they complete the training. Their past service however shall counter for pension.

6. Following the decision in ***Pallivasal Primary School's*** case, orders came to be passed by a Hon'ble Division Bench of this Court in the case of the ***Director of Elementary Education, Chennai and others Vs. Sundaravel Raj*** in W.A.(MD).Nos.74 of 2015 and 957 of 2016 dated 21.03.2018 in the following manner:

'9.The management of various Schools, which had appointed Teachers like the respondents had challenged the validity of G.O.Ms.No155 dated 03.10.2002 and the matter travelled upto the Division Bench and the Division Bench in the case of The State of Tamil Nadu and others v. Pallivasal Primary School reported in 2004-2-L.W. 591 upheld G.O.Ms.No.155 dated 03.10.2002. The only relief granted to the Teachers, who were appointed in Secondary Grade vacancies, is the grant of salaries, whereby restraining the

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department from effecting any recovery. Therefore, paragraph No.3(7) of G.O.Ms.No.155 alone was set aside and rest of the Government Order was upheld in the said decision. It was subsequently ordered that approval/confirmation of the appointment can be only after the date of completion of the child psychology training. Further the Division Bench observed that the past service I.e prior service child psychology training shall count. After the decision rendered in the case of Pallivasal has attained finality, the respondent/writ petitioners seek for salary for the earlier period as well as for other monetary benefits such as increment, selection grade and special grade, etc. We have given our careful consideration. We find in paragraph No.7 of its judgment, the Hon'ble Division Bench has noted the various condition in G.O.Ms.No.155 and held that the respondent therein would be entitled to relief as granted to similarly placed teachers. If that is so, the ultimate conclusion would have been to grant benefit from the date of completion of the child psychology training. However in the penaltimate portion of the order her salary has also been included. In our considered view, the direction to pay salary does not corroborate with the observation made by the Division Bench, in the decision in the case Suganthi Victoria. The Government had admitted that at best it can be taken as a decision pertaining to the said case on its factual matrix and that cannot be taken as a precedent. In the case of Government of Tamil Nadu v. Sri Rao

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Bahadur AKD Dharmaraja Girls Higher Secondary School in W.A.(MD)No.3442 of 2002 dated 08.09.2006, the Division Bench, relying on the decision of the case reported in 2002 Writ L.R. 173, held that the salary can be paid only after completion of the child psychology training and accordingly, allowed the Government appeal.'

10.The learned counsel for the respondents/writ petitioners relied on certain other orders passed by various single Benches including one of us (TSSJ) and on perusal of the same, we find that in none of those decisions, the full effect of G.O.Ms.No.155 and the conditions therein have been thoroughly examined. Apart from that, the decision in the case of Pallivasal Primary School has not been specifically noted. Therefore, we are of the considered view, that those decisions cannot be referred to advance the case of the respondents/writ petitioners, though some of them have attained finality. Needless to state that if there has been a wrong decision, it cannot be treated as precedent.'

7. On a perusal of the aforesaid decisions made by this Court, this Court is of the view that the petitioner is entitled to claim regularization only from the date when she completes the Child Psychology Training and that for the purpose of calculating her pension alone, her past services can

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be taken into account. Hence, in view of the various decisions of this Court, this Court is of the view that the claim made by the petitioner regarding the other benefits can be decided only by the Government, if she is otherwise eligible.

With the above directions, this Writ Petition is disposed of. There shall be no order as to costs.

01.12.2023

Index : Yes/No
Speaking order:Yes/No
Neutral citation:Yes/No

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