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W.P.No.22189 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.07.2023

CORAM :

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

W.P.No.22189 of 2019  
and W.M.P.Nos. 21463 & 21464 of 2019

S.Jeyalakshmi

.. Petitioner

VS

- 1.The State of Tamil nadu  
Rep. By the Secretary,  
Department of School Education,  
Fort St.George, Chennai – 09.
- 2.The Director of Elementary Education,  
College Road, Chennai – 600 006.
- 3.The District Elementary Educational Officer,  
Villupuram, New Bus Stand,  
Near Collectorate,  
Villupuram – 605 602.
- 4.The Assistant Elementary Educational Officer,  
Villupuram, New Bus Stand,  
Near Collectorate,  
Villupuram – 605 602.
- 5.The Correspondent  
Tamil Evangelical Lutheran Church  
Middle School,  
No.7, Court Road,  
Villupuram 605 602

.. Respondents

Petition filed under Article 226 of the Constitution of India praying to issue a writ of certiorarified mandamus calling for the records relating to the impugned proceedings issued by the 3<sup>rd</sup> respondent District Elementary Educational Officer in O.Mu.818/Aa4/2016 dated 29.03.2016, quash the same and further



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direct the 3<sup>rd</sup> respondent District Elementary Educational Officer to approve the appointment of petitioner as Middle Grade Graduate Teacher from the date of her initial appointment viz., 25.07.2002 with all other attendant benefits including time scale of pay.

For Petitioner : Ms.Mary Sowmi Rexi H  
for M/s.Isaac Chambers

For Respondents : Mr.R.Neethi Perumal  
Government Advocate  
for R1 to R4

### ORDER

Writ petition has been filed in the nature of a certiorarified mandamus seeking the records relating to the impugned proceedings issued by the 3<sup>rd</sup> respondent, the District Elementary Educational Officer in O.Mu.818/Aa4/2016 dated 29.03.2016 and quash the same and further direct the 3<sup>rd</sup> respondent / the District Elementary Educational Officer to approve the appointment of petitioner as Middle Grade Graduate Teacher from the date of her initial appointment on 25.07.2002 with all other attendant benefits, including time scale of pay.

2. In the affidavit filed in support of the writ petition, the petitioner stated that having qualified with B.Sc (Maths) and B.Ed., degrees, she was appointed as B.T. Assistant (Maths) by the fifth respondent / Tamil Evangelical Lutheran Church Middle School at Villupuram on 25.07.2002. She was approved in the vacancy on



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24.07.2002 consequent to the promotion of the then Headmistress of TELC Middle School, Chidambaram. She joined on 25.07.2002 forenoon in the fifth respondent school and continued to work, till attaining the age of superannuation on 31.05.2013.

3. In the affidavit, she further stated that the respondents had issued G.O.Ms.No.79 (Secondary Education – U1) dated 14.06.2002 directing that the Secondary Grade Posts in the Middle School would be equal to Standards 6,7 and 8 with Graduate Teachers for the posts which fell vacant since 01.06.2002.

4. The petitioner was qualified to be so-appointed as Secondary Grade Teacher in the fifth respondent school. The fifth respondent, therefore recognizing her educational qualifications, appointed her as Middle Grade Graduate Teacher with effect from 25.07.2002 since the then Headmistress of TELC Middle School, Chidambaram had been further promoted.

5. The fifth respondent then submitted a proposal to the fourth respondent / Assistant Elementary Educational Officer at Villupuram to grant approval of the appointment of the petitioner and to disburse the grant-in-aid towards her salary. It had been



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further stated in the affidavit that two further Government Orders were issued one on 27.06.2003 in G.O.Ms.No.100 (School Education – Budget) and the other dated 12.11.2003 in G.O.Ms.No.125 (School Education (X2) Department). It had been further stated that for streamlining of standards from VI to X, only B.Ed., Graduate Teachers were appointed in all the schools. The petitioner was therefore recognized consequent to the passing of Government Order in the year 2003.

6. The respondents placed reliance on G.O.Ms.No.100 dated 27.06.2003 while the petitioner placed reliance on G.O.Ms.No.79 dated 14.06.2002. In such circumstances, the third respondent had passed the impugned order on 29.03.2016 claiming that the petitioner had been irregularly appointed as Middle Grade Graduate Teacher overlooking the subsequent Government Order in G.O.Ms.No.100 dated 27.06.2003. The respondents, therefore, granted sanction to the petitioner in her post only with effect from 31.03.2004. The present petition has been filed claiming that the petitioner should be so recognized with effect from 25.07.2002.

7. A counter affidavit had been filed by the third respondent justifying the order passed by stating that the fifth





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consequent to promotion, approval of appointment in the regular scale of pay as applicable to B.T. Assistant with effect from the date of initial appointment on 24.07.2002 cannot be granted is not permissible.

10. It had also been contended on behalf of the respondents vehemently before this Court that without following the procedure the fifth respondent had appointed the petitioner as Middle Grade Teacher. It is contended that therefore there is no question of granting approval to the said post and the petitioner had been granted with such approval consequent to introduction of G.O.Ms.No.100 dated 27.06.2003.

11. Learned counsel for the petitioner, however, placed reliance on the judgment of a learned Single Judge of this Court dated 02.11.2006 in W.P.(MD) No. 1664 of 2005.

12. The petitioner therein had been working from 08.08.2002 and the proposal for her post was kept pending till proceedings were issued on 27.01.2004. The relief sought for in that particular writ petition was for payment of necessary benefits between 08.08.2002 and 27.01.2004. The relevant portion of the



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order of the learned Single Judge is extracted below:-

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*"5... Admittedly, the date of appointment of the petitioner is 08.08.2002, and the same is not disputed. Since the petitioner has been working from the said date and the proposals having been received by the respondents, which were kept pending till the Director issued the proceedings on 27.01.2004, cannot be a ground to deny the approval of the petitioner's appointment from 08.08.2002. The Director proceedings referred to in the counter affidavit dated 27.01.2004, is applicable to the teachers, who were appointed after 01.06.2003. The petitioner having been appointed as early as on 08.08.2002, the petitioner's appointment shall be approved in terms of the G.O.Ms.No.79 (School Education) Department dated 14.06.2002, and the petitioner is entitled to time scale of pay.*

*6. Hence, the impugned order passed by the third respondent dated 24.09.2004 is set aside and a direction is issued to the third respondent to approve the appointment of the petitioner from 08.08.2002, in accordance with G.O.Ms.No.79 (School Education) Department, dated 14.06.2002, and revised orders shall be passed, within a period of four weeks from the date of receipt of a copy of this order. The arrears of salary payable to the petitioner from 08.08.2002, after adjusting the salary period from 19.01.2004, shall be calculated and paid within a period of three months from the date of receipt of a copy of this order."*

12. Learned counsel for the petitioner also placed reliance on a Division Bench judgment of this Court reported in the case of *The District Elementary Educational Officer and others v S.Indirani and others* [2016 SCC OnLine Mad 31562]. The judgment in



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entirety is be extracted below:-

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*"The private respondents were appointed as Middle Grade Graduate Teachers on 29.06.1998, but on that date, they were over qualified for the appointment to the said post. However, vide G.O.Ms.No.79, School Education Department, dated 14.06.2002, such appointments were permitted, but with prior approval.*

*2. It is the case of the private respondents that in fact, they were so regularised and thus, they are entitled to the benefit of pay from that date accordingly, rather than, consolidated pay being granted to them.*

*3. In terms of the impugned order dated 24.11.2014, the learned single Judge has ruled in favour of the private respondents.*

*4. The learned counsel for the appellants contends that since no prior approval was taken, the benefits should not be made available in from 2002 but from 2006, when G.O.Ms.No.99 School Education (Budget-II) Department dated 27.06.2006 was issued waiving the condition of lack of prior approval.*

*5. We are unable to accept the plea for the reason that the present case is one, as per the G.O. of the year 2002, the private respondents were eligible for appointment and since they have been appointed earlier, there could not have been any prior approval for the appointment and the benefits prior to 2002 from the initial date of appointment has not been granted.*

*6. We thus, find no infirmity in the impugned order. We may also note that a coordinate Bench of this Court has opined likewise, while dismissing the appeal against the order of the learned single Judge in*



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W.A.(MD) No.190/2007 decided on 23.07.2008.

*7. Writ appeals dismissed. No costs. Consequently connected Miscellaneous Petitions are closed."*

13. The Division Bench of this Court affirmed the reason of the learned Single Judge who had ordered in favour of the writ petitioners therein that they are eligible for appointment and entitled for benefits from the date of initial date of appointment.

14. The initial date of appointment of the petitioner herein was 25.07.2002. That she was qualified cannot be denied or disputed. However, she had been appointed consequent to promotion of the earlier Secondary Grade Teacher. It is therefore contended on behalf of the respondents that she had been appointed when there was no sufficient vacancy, but this issue had been specifically addressed in the judgment referred above and learned Single Judge and Division Bench had ruled that the petitioners therein are entitled for benefits right from the date of initial employment.

15. The initial employment as pointed out earlier was 25.07.2002. The petitioner is therefore entitled for the benefits therein. But since the petitioner had retired on attaining the age of



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superannuation in the year 2013 and had filed writ petition only in the year 2019, I would specifically place a caveat in favour of the respondents from granting interest. Necessary proceedings may be issued within a period of sixteen weeks from the date of receipt of a copy of this order.

16 In light of the above, writ petition stands allowed. No costs. Connected miscellaneous petitions are closed.

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Index:Yes/No  
Neutral Citation:Yes/No  
ssm

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C.V.KARTHIKEYAN,J.

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