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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **07.07.2023**

CORAM:

THE HONOURABLE **DR.JUSTICE ANITA SUMANTH**
AND
THE HONOURABLE **MR.JUSTICE R.VIJAYAKUMAR**

W.A.(MD)No.1387 of 2013
and
M.P.(MD)No.2 of 2013

1.The State of Tamilnadu
represented by its Secretary,
Department of School Education,
Fort St.George, Chennai – 600 009.

2.The Director of School Education,
College Road, Chennai – 600 006.

3.The Joint Director of School Education,
(Vocational Education),
College Road, Chennai – 600 006.

4.The Chief Educational Officer,
Tirunelveli – 627 009.

5.The District Educational Officer,
Tirunelveli, Tirunelveli District.

... Appellants

Vs.

1.C.Marianesam [Died]



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2.The Correspondent,
Mary Sargent Girls Higher Secondary School,
Palaymkottai, Tirunelveli-627 002.

3.Ramaiya

4.Dinesh Sesuraj

5.Deepthi

... Respondents

(R3 to R5 were impleaded as legal representatives of the deceased first respondent vide order of this Court in C.M.P.(MD)Nos.1046 of 2017, dated 12.03.2020)

PRAYER:- Writ Appeal filed under Clause 15 of Letters Patent to set aside the order, dated 22.03.2013 passed by this Court in W.P(MD)No. 11647 of 2008 and M.P(MD)Nos.1 and 2 of 2008 on the file of this Court.

For Appellants	:Mr.V.Om Prakash Government Advocate
For R3 to R5	:Mr.K.Ragatheeshkumar for M/s.Isaac Chamber
For R2	:No appearance

JUDGMENT

(Judgment of the Court was delivered by **DR.ANITA SUMANTH, J.**)

The sequence of dates and events in this matter would merit some attention.

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2. Recognising the necessity for Vocational Education, G.O.Ms.No.1719 had come to be issued by the State introducing this subject in Higher Secondary Schools. Part time Vocational Instructor posts had been created and qualifications prescribed as B.Sc./B.Ed (specialised in Home Science).

3. The Writ Petitioner/Respondent 1 in Writ Appeal, C.Marianesam (hereinafter referred to as R1), was appointed as a Double Part time Vocational Instructor in Child Welfare Nutrition on 14.09.1981. She possessed a two year Diploma in Home Science and an undergraduate Degree in History and held two years and six months of experience as a Nutritionist at the time of appointment. The appointment was approved by the Chief Educational Officer, Tirunelveli, on 12.10.1981.

4. Nine years into her appointment, G.O.Ms.No.712 (Education Department) was issued on 28.05.1990 intending to regularise the services of Double Part time Vocational Instructors from 1991 onwards,



such that, they would be absorbed to post of fully qualified Double Part time Vocational Instructor on regular basis. As the Writ Petitioner did not hold the necessary qualification, she gained no benefit under this Government Order.

5.G.O.Ms.No.967, (Education Department) was, thereafter, issued on 16.10.1992. Under this Government Order, primacy was given to experience, doing away with the educational qualification prescribed under G.O.Ms.No.1719. Thus, those candidates who had put in ten years of service in handling a vocational subject, were to be trained and regularised, even if they did not satisfy the educational qualifications prescribed under G.O.Ms.No.1719. The Writ Petitioner could very well have sought this benefit, but did not.

6.A narrow window was available for the above benefit till the issuance of G.O.No.834 dated 23.09.1994 cancelling G.O.Ms.No.967 and 712. Under this Government Order, all single and double Part-Time Vocational Instructors were to be brought to time scale of pay and the



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concerned authorities were directed to ensure that they were trained within the stipulated time frame. To be noted, the Writ Petitioner could well have sought the benefit of regularisation on the basis of her experience between 16.10.1992 and 29.09.1994, which she omitted to do.

7.The Writ Petitioner was, in pursuance of mandate under G.O.Ms.No.834, sent for training for a period of three months commencing from July 1996, completing the training on 05.10.1996. She was, thus, issued an order of appointment on 10.02.1998 to the post of Vocational Instructor Grade-II with effect from the date of completion of her training, being 05.10.1996. Her appointment was approved by the Chief Educational Officer on 07.04.1998. The appointment was for Vocational Instructor Grade-II on temporary basis, subject to regularisation in due course by the State.

8.G.O.Ms.No.6 framing ad hoc rules prescribing qualifications and service conditions for Vocational Instructors came to be issued on 04.01.2000 with effect from 23.09.1994. Under these rules, in addition



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to a degree, a Diploma was also found acceptable for appointment and thus, the qualifications of the Writ Petitioner found her suitable for appointment. The second limb of the qualification condition related to experience, which the Writ Petitioner possessed in abundance, having been in service from 1981.

9. On 15.04.2002, the Writ Petitioner made a representation for regularisation, that was forwarded through the necessary channels, but did not find favour of consideration. Hence, W.P.No.35714 of 2005 came to be filed seeking a Mandamus for consideration of her claim, that was disposed on 09.11.2005 directing the respondents to consider the same in twelve weeks.

10. On 23.02.2006, proceedings were issued directing the School/R2 to upgrade the post occupied by the Writ Petitioner from Grade-II to Grade-I with effect from 10.06.2002 invoking G.O.Ms.No.6, dated 04.01.2000.



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11. On 09.03.2006, a fresh appointment order was issued and on 21.07.2006, the Chief Educational Officer had approved the appointment of the Writ Petitioner as Grade-I Vocational Instructor with effect from 10.06.2002. The Writ Petitioner objected to the same, claiming regularisation from the date of her appointment being 14.09.1981. No order has been passed on this objection to this day.

12. Vide proceedings dated 22.05.2007, the Joint Director had upgraded the Writ Petitioner's post to Grade-I Vocational Instructor with effect from 05.10.1996 with monetary benefits with effect from 20.03.2007. The above proceedings to the extent of the upgradation came to be cancelled by proceedings dated 15.06.2007.

13. Orders dated 23.02.2006, 09.03.2006, 21.07.2006 and 15.06.2007 came to be challenged by way of Writ Petition in W.P(MD)No.11647 of 2008. As a sequitur to the comprehensive prayer seeking quashing of aforesaid four orders, the petitioner sought Mandamus directing the respondents therein to compute the Writ



Petitioner's service from the date of appointment, ie., 14.09.1981 and grant regularisation with effect from the same date.

14. There are many contradictions in the prayer itself. The Writ Petitioner has, by challenging order dated 15.06.2007, made it clear that she is in agreement that her date of regularisation should be 22.05.2007. That apart, she has not challenged the order of regularisation dated 07.04.1998 with effect from 05.10.1996.

15. The dichotomy is that she seeks appointment from 14.09.1981, which is the primary date of appointment. Thus, there has been some lack of clarity on the part of R1 in regard to what she would prefer as the date from which her services must be reckoned or regularised. This is on the one hand.

16. We now advert to the submissions of learned Government Advocate, who would, in addition to pointing out the discrepancies as noticed by us above, draw our attention specifically to G.O.Ms.No.69



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issued on 20.03.2007. This Government Order does find place in the pleadings before the Writ Court.

17. According to the appellants, this Government Order read with G.O.Ms.No.834 dated 23.09.1994, makes the position unambiguous that it is only upon completion of training that the services of the Writ Petitioner must be regularised. R1 has completed her training on 05.10.1996 and thus, they would urge that her appointment be confirmed only on and with effect from 05.10.1996. To this effect, orders have also been issued on 07.04.1998, that have never been the subject matter of challenge. This, in effect, is their case.

18. The area of dispute, thus, lies between 23.09.1994, which is the date that found favour with the learned Single Judge and 05.10.1996, as put forth by the State. Having heard the rival contentions, one thing emerges clearly. There has been substantial lack of clarity, not just on the part of the Writ Petitioner/R1, but on the part of the State as well, in fixing the dates of regularisation of Teachers and Vocational Instructors,



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as can be, seen from multiple and varying stands taken by the respondents over the years.

19. Various Government orders and clarifications have been issued from time to time, a reading of which reveals that the process and procedure followed for creation of Vocational Instructor posts has been fraught. Undoubtedly, it has evolved over the years culminating in the issuance of the statutory Rules. One can thus attribute no blame to the Writ Petitioner/R1 being ambivalent in her stand over the years.

20. What clinches the petitioner's case are the clear and categorical Rules framed under G.O.Ms.No.6, that set out qualifications and service conditions. Therein, a Diploma has been found to be sufficient to entitle a candidate for selection. We, thus, find no necessity to refer to any of the Government Orders that either precede or succeed G.O.Ms.No.6 and prefer to align our view in line with the view of the Writ Court in this regard.



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21. We are cognizant of the position that if each Government Order were to be applied independently, there would be flaws found, both in the procedure followed by the Writ Petitioner as well as by the appellants and we are convinced that such an approach would not lead to substantial justice. In the present case, what weighs with us is the undisputed position that the Writ Petitioner was fully qualified to hold the post of Vocational Instructor under G.O.Ms.No.6 dated 04.01.2000 with effect from 23.09.1994. Thus, we see no reason to deny her the benefit, as has been granted by order dated 22.03.2013 by the Writ Court.

22. We also bear in mind the fact that we are hearing the Writ Appeal now, in July 2023 and we have the benefit of the entire trajectory of events that have taken place from 1981 onwards with all intervening Government Orders and Rules. One thing that is consistent through all these years, is the service of the Writ Petitioner from 1981 onwards.

23. Learned Judge however has, however, restricted the benefit sought by the petitioner with effect from 1994 and that has been accepted



by the Writ Petitioner, as no appeal has been filed by her challenging order dated 22.03.2013. We are in agreement with the conclusion of the learned Judge and have no hesitation in confirming order dated 22.03.2013.

24.Despite there not being any interim stay of order dated 22.03.2013, there has been no compliance by the State of the direction at para No. 13 of the Writ Order. The Writ Petitioner had moved a Contempt Petition in Cont.P.(MD)No.1076 of 2013, that came to be closed on 17.07.2014 citing pendency of the Writ Appeal.

25.The Writ Petitioner has been made to wait, despite being successful in the first round of litigation, for a period of more than a decade as on date. The Writ Petitioner had attained superannuation on 31.05.2009, on the heels of the filing of the Writ Petition and has passed away on 02.12.2016 pending Writ Appeal. Thus, the direction in para No. 13 of the Writ order is reiterated, to be complied with, within a period of four weeks from date of receipt of a copy of this order.

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26.This Writ Appeal stands dismissed. No costs.

Consequently, connected miscellaneous petition is closed.

[A.S.M.J.] & [R.V.J.]
07.07.2023

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DR.ANITA SUMANTH, J.
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