



W.P.(MD)No.8314 of 2012

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***BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT***

|                             |                               |
|-----------------------------|-------------------------------|
| <i>Judgment Reserved On</i> | <i>Judgment Pronounced On</i> |
| <b>11.10.2022</b>           | <b>23.01.2023</b>             |

CORAM

THE HONOURABLE MRS.JUSTICE **S.SRIMATHY**

**W.P.(MD)No. 8314 of 2012**  
**and**  
**M.P(MD)Nos.2 & 3 of 2012 & 2 of 2015**

1. A.Annadurai
2. M.Anandaraj
3. S.Amuthan

... Petitioners

vs.

1. The Principal Secretary to Government,  
Education Department,  
Fort Saint George, Chennai – 600 009.
2. The Director of Elementary Education,  
Nungambakkam,  
Chennai – 600 009.
3. The Chief Educational Officer,  
Karur District, Karur.
4. P.Azhagurasu
5. K.Selvaraj
6. R.Shanmugasundaram



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7. M.Vasanthi

8. K.Chandru

... Respondents

***[R-4 to R-6 impleaded as per order, dated 24.02.2015]***

***[R-6 & R-7 impleaded as per order, dated 07.07.2015]***

**PRAYER :** Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a ***Writ of Certiorarified Mandamus***, to call for the records of the 1<sup>st</sup> respondent in and by his proceeding G.O.(3D) No.78, School Education (G2) Department, dated 25.05.2012 quash the same and consequently, direct the respondents to regularize the petitioners service as Secondary Grade Teacher w.e.f. 03.01.2002, as per the orders passed by this Court in W.P. (MD)No.879 of 2006, dated 27.04.2010.

For Petitioners : M/s.T.Lajapathi Roy

For R-1 to R-3 : Mr.S.Kameswaran  
Government Advocate (Civil Side)

For R-4 : Mr.B. Saravanan

For R-5 & R-6 : Mr.H.Mohammed Imran, for  
M/s.Ajmal Associates

### **ORDER**

This Writ Petition is filed to quash the impugned order passed in G.O.(3D) No.78, School Education (G2) Department, dated 25.05.2012 and



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consequently direct the official respondents to regularize the petitioner's service as Secondary Grade Teacher, with effect from 03.01.2002, as per order passed by this Court in W.P. (MD)No.879 of 2006, dated 27.04.2010.

2. The brief facts as stated in the affidavit are that the petitioners belong to Schedule Caste Community. The 1<sup>st</sup> petitioner has completed in the year July 2001 and registered in the Employment Exchange on 27.11.2001 in Registration No.4217/2001. The 2<sup>nd</sup> petitioner has completed in the year 2001 and registered on 23.11.2001 in Registration No.4794/2001 and the 3<sup>rd</sup> petitioner has completed in the year 2001 and registered on 23.11.2001 in Registration No. 4194/2001. The 3<sup>rd</sup> respondent had taken steps for appointment of Secondary Grade Teachers in 2001 for filling 207 vacancies, which are available at the time of making appointment. Out of which 22 vacancies were back log vacancies for SC/ST community and Most Back Class candidates. As per communal reservation in Rule 22 of the Tamil Nadu State and Subordinate Services, 31% of seats reserved for Other community (OC), 30% for Back Ward Class (BC), 20%, Most Backward Class (MBC) and 18% for Schedule Caste (SC) and 1% for Schedule Tribe (ST). As per the communal reservation, out of the 207 vacancies, 117 seats



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ought to be reserved for BC and OC, 41 seats for MBC and 49 seats for SC & ST candidates. The 3<sup>rd</sup> respondent called for interview, for all the 207 vacancies by inviting names from the District Employment Exchange, Karur, based on the seniority of registration. Even though, these petitioners were registered their names in the year 2001 itself and they are seniors in the Schedule Caste category, but, they were not called for interview. Without calling the petitioners for interview, the respondents have appointed 135 candidates, out of which 117 persons belong to OC & BC. Even though, the total vacancies are 207, the 3<sup>rd</sup> respondent filled the entire seats for the BC quota and without filling all the vacancies for MBC and SC and ST, and the 3<sup>rd</sup> respondent failed to follow the communal reservation under Rule 22 of the Tamil Nadu State and Subordinate Services. The petitioners have submitted several representations. Hence, the 3<sup>rd</sup> respondent again called for an interview on 11.01.2002 for filling up of vacancies for SC/ST candidates and they were assured that they will be given appointment in SC/ST category. After verification of the names and confirming the residential and communal status, the above list was forwarded to the 3<sup>rd</sup> respondent by the District Collector by an order, dated 19.02.2002, for making suitable appointments. Even after receipt of the same, no appointments were made.



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Hence, the petitioners have submitted a representation to the 3<sup>rd</sup> respondent, wherein the 3<sup>rd</sup> respondent, vide order, dated 29.07.2002, informed that after the receipt of the report from the District Collector he sought for a Special permission from the 2<sup>nd</sup> respondent and after obtaining the permission, the appointments will be made. In the meanwhile, the District Collector also sent a request to the 3<sup>rd</sup> respondent to make the necessary appointments, vide letter, dated 31.05.2003. Despite, all recommendations the 3<sup>rd</sup> respondent did not take any steps to appoint the petitioners. In the meantime, the 3<sup>rd</sup> respondent appointed the petitioners as Secondary Grade Teachers on consolidated pay temporarily for a sum of Rs. 3,000/-per month, as per G.O.Ms.No.100 Education, dated 27.06.2003. Since the petitioners have no other option, they joined the service.

3. The contention of the petitioners is, as per original notification the petitioners are entitled to get regular appointment as per communal reservation. The respondents were making regular appointments however, the subsequent appointments were made on consolidated basis. When the petitioners are entitled to get regular appointment as per communal reservation the appointment on consolidated pay is illegal. Narrating the above circumstances, earlier the



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petitioners had filed a writ petition in W.P(MD)No.20625 of 2004 and the same was withdrawn with liberty and filed another writ petition in W.P(MD)No.879 of 2006, for Writ of Mandamus directing the respondents to appoint the petitioners as regular secondary grade teacher, with effect from 03.07.2002. This Court, after considering the plea has passed the final orders on 27.04.2010, directing the respondents to consider the petitioners' claim for regularizing the appointment with effect from 03.01.2002 as stated in their representation dated 03.10.2005 in the light of G.O.Ms.No.100, dated 27.06.2003.

4. The contention of the petitioners is that the Government has passed Special Government Order in G.O.Ms.No.116, Education, dated 11.09.2003, in which the Government considering the recommendation of the Director of School Education, ordered that the 37 vacancies to the post of Secondary Grade Teacher relatable to the year 2001-2002 should be considered as a special case and should be filled up as vacancies of the year 2003-2004. Some of the candidates claiming benefit under the said G.O. filed a writ petition before the Principal Bench of this Court in W.P.No.30734 of 2008 and the writ petition was allowed 27.01.2009 holding that they are entitled to be considered under



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G.O.Ms.No.116, dated 11.09.2003 and directed to the authorities to consider the names for the purpose of appointment to the 37 vacancies under Schedule Caste category. Aggrieved over an appeal was filed by the respondents in W.A.No.249 of 2011, was also dismissed by the Division Bench of this Court. Since the respondents have not passed any order, the petitioner preferred contempt petition. Pending contempt petition, the Government has passed the impugned order refusing to regularize the petitioners' service from 03.01.2002, but directed to regularize the service from the date of the petitioners' appointment under consolidated pay, that is from 20.07.2004, 28.04.2004 and 29.09.2004, only. The impugned order passed in G.O(3D)No.78 School Education (G2) Department, dated 25.05.2012 is totally against the orders passed by this Court and in totally it is non application of mind and hence, the petitioners claimed to allow this writ petition and direct the respondents to regularize the petitioners' service from 03.01.2002.

5. The respondents have filed counter affidavit stating that the petitioners were not sponsored by the Employment Exchange. Hence, they were not selected. Thereafter, the Government in their order in G.O.Ms.No.116 School



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Education Department, dated 11.09.2003 have permitted to fill up the backlog vacancies of 37 posts of secondary grade teachers as a special case for the Academic year 2002-2003. The Government order has specifically stated that these 37 backlog vacancies ought to be filled up for the Academic year 2002-2003 only. The G.O.Ms.No.100 School Education Department, dated 27.06.2003, have directed that the Secondary Grade Teachers should be appointed only on contract basis on consolidated pay of Rs.3,000/-per month by the 4<sup>th</sup> respondent and those candidates appointed on consolidated pay will be brought into regular establishment, after completion of 5 years of service. Hence, the petitioners were appointed on consolidated pay by the 4<sup>th</sup> respondent on 28.09.2004. One S.Amuthan and two others had filed a writ petition in W.P(MD)No.879 of 2006 before this Court directing the respondents to appoint the petitioners as regular secondary grade teachers with effect from 03.01.2002 in the backlog vacancies. This Court vide order, dated 27.04.2010, has directed the respondents to consider the claim of the petitioners in the light of G.O.Ms.No. 116. The petitioners' herein have joined under consolidated pay and they were brought into regular time scale of pay with effect from 01.06.2006 as per G.O.Ms.No.99 School Education (Budget 2) Department, dated 27.06.2006 and



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therefore the petitioners are not entitled to any relief and prayed to dismiss the writ petition.

6. Heard M/s.T.Lajapathi Roy, learned counsel appearing for the petitioner and Mr.S.Kameswaran, learned Government Advocate(Civil Side) appearing for R-1 to R-3 and Mr.B. Saravanan, learned counsel appearing for R-4 and Mr.H.Mohammed Imran, for M/s.Ajmal Associates, learned counsel appearing for R-5 & R-6. Perused the material documents available on record.

7. When the writ petition was pending certain private persons have filed impleading petition and they were impleaded vide order, dated 24.02.2015 in M.P(MD)No.182 of 2014. These impleaded private respondents were already appointed and if the claim of the writ petitioners were allowed then the seniority of the impleaded private respondents would be affected. Moreover, the employment seniority upto October 2001 was called for and the writ petitioners had registered their names only in November 2001 and therefore they were not in the zone of consideration. Therefore, the Leaned Counsel appearing for the impleaded private respondents prayed to dismiss the writ petition.



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8. The petitioners herein have also filed a writ petition in W.P(MD)No.4515 of 2012, praying to direct the respondents to reserve two posts of Headmaster Elementary School for the petitioners pending writ petition and this Court has granted an interim order and the same is pending.

9. The claim of the respondents are that the petitioners' herein have joined under consolidated pay and they were brought into regular time scale of pay with effect from 01.06.2006 as per G.O.Ms.No.99 School Education (Budget 2) Department, dated 27.06.2006 and the same would be evident from the table below:

| Sl.No. | Name of the Individual                 | Date of joining as consolidated pay teacher | Date on which Regular time scale of pay granted |
|--------|----------------------------------------|---------------------------------------------|-------------------------------------------------|
| 1.     | S.Amuthan<br>Secondary Grade Teacher   | 28.09.2004 F.N                              | 01.06.2006                                      |
| 2.     | A.Annadurai<br>Secondary Grade Teacher | 28.09.2004 F.N                              | 01.06.2006                                      |
| 3.     | M.Anandaraj<br>Secondary Grade Teacher | 28.09.2004 F.N                              | 01.06.2006                                      |



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**10.** The claim of the petitioners is that, since the earlier recruitment for the post of 207 vacancies, the respondents have granted regularization from the date of appointment in time scale of pay. Subsequently, the respondents have recruited for the 37 backlog vacancies under consolidated pay only. The respondents ought to have recruited like other candidates and granted regularization from 2001 onwards, with the consequential benefits of monetary benefits and seniority. Since non sponsoring of petitioners' name and belated appointment by the respondents, the petitioners are claiming they should be appointed in the regular appointment from 03.01.2002.

**11.** Since the claim of the petitioner was not granted the petitioner had filed W.P.(MD)No.879 of 2006 and this Court vide order dated 27.04.2010 directed the respondents to consider the petitioner's claim for regularization of their appointment with effect from 03.01.2002 as stated in their representation dated 03.10.2005 in the light of G.O.Ms.No.116 dated 11.09.2003. Since the same was not considered the petitioners had filed contempt petition in Cont.P.(MD) No. 265 of 2011 in W.P.(MD)No.879 of 2006 and this Court has directed to comply with the order, on or before 27.04.2010. As per the directions of this Court, the



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Government in their G.O.(3D)No.78, School Education (G2) Department, dated 25.05.2012 have considered the representation of the petitioners and six others and passed orders regularizing the service of the petitioners, from the date of joining of service on consolidated pay. Since the respondents have not granted regularization from 03.01.2002 and aggrieved over the same the petitioners have filed the present writ petition with the claim to regularize, as per the orders of this Court in W.P(MD)No.879 of 2006.

**12.** In the order passed in W.P(MD)No.879 of 2006 the Learned Single Judge had directed to consider the case of the petitioners in the light of G.O.Ms.No.116 and in the said G.O. it has been stated that the government had permitted to fill up the backlog vacancies of 37 posts of Secondary Grade Teachers as a **special case** for the Academic year 2002-2003. On perusal of the order passed in the writ petition and the said G.O., this Court is of the considered opinion that the respondents have considered the case of the writ petitioners sympathetically, that too in order to obey the orders of the Court as a “special case” have considered the case of the petitioners. Therefore, this Court is of the considered opinion that the claim of the petitioner is not sustainable in law.



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**13.** Moreover the impleaded respondents had rightly submitted that the petitioners cannot be considered for the recruitment along with them, since the writ petitioners have registered themselves in November 2001, whereas the seniority list called for from the Employment Exchange is upto October 2001. The Government has categorically clarified that the names were not sponsored by the District Employment Exchange and hence the names were not considered. Therefore, this Court is of the considered opinion that the writ petitioners were not in the zone of consideration at all and hence on this angle also the petitioners are not entitled to the prayer to regularize on 03.01.2002.

**14.** The claim of the writ petitioners is that they have registered their names in the year 2001 itself, for the post of Secondary Grade Teachers. When the respondents recruited for the post of Secondary Grade Teachers post, the District Employment Exchange has not sponsored the petitioners' name. Subsequently, the petitioners have submitted a representation to the respondents, thereafter, while filling the backlog vacancies of 37 posts the petitioners were sponsored and they have attended the interview on 03.01.2002 and thereafter, the petitioners were appointed on consolidated pay. Since the petitioner had attended the interview in



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the year 03.01.2002, the petitioner is claiming to grant the benefits, at least seniority from the date of interview. The claim of the petitioner cannot be entertained, since the petitioners had registered in the employment exchange, they will not give an automatic right to appointment. Moreover, the Fundamental Rules and Subordinate Service Rules have specifically stated that the government employee would be entitled to salary and other benefits from the date of appointment only. Therefore, the services were regularized on the date on which they were appointed on consolidated service i.e., 28.09.2004 onwards and the petitioners are entitled to monetary benefits from 28.09.2004. The government had rightly granted the benefits through G.O.(3D) No.78, School Education (G2) Department, dated 25.05.2012, Therefore this Court is declining the prayer of the petitioners for the reasons stated supra.

**15.** The petitioners were granted the seniority after regularization covering the period of consolidated pay and they were given a serial number, which is evident from the tabulation below:



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| Sl.No. | Name of the Teacher                    | Date of original seniority and serial number | Date of revised seniority of the petitioner and Serial Number (as on 01.01.2013) | Remarks |
|--------|----------------------------------------|----------------------------------------------|----------------------------------------------------------------------------------|---------|
| 1.     | A.Annadurai                            | 01.06.2006<br>Sl.No.51<br>(as on 01.01.2011) | 28.09.2004<br>Serial No.14                                                       |         |
| 2.     | M.Anandaraj<br>Secondary Grade Teacher | 01.06.2006<br>Sl.No.44<br>(as on 01.01.2011) | 28.09.2004<br>Serial No.13                                                       |         |
| 3.     | S. Amuthan                             | 01.06.2006<br>Sl.No.94<br>(as on 01.01.2012) | 28.09.2004<br>Serial No.72                                                       |         |

The petitioners were granted appointment as a 'Special Case' for the academic year 2003-2004. Therefore, the petitioners are not entitled to get any seniority or any monetary benefit, from the date when the petitioners had attended the interview since as on date the petitioners were not in service. Therefore, the claim of the petitioners is against the Service rules.

**16.** A similar recruitment process was undertaken by the same Education Department in the year 2004 with a condition that the recruited teachers will be considered for regularization, after completing five years in the consolidated pay. Subsequently, the Government has come out with another Government order



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relaxing the condition of five years, but regularized the teachers within two years i.e., in the year 2006 itself. A similar plea was raised to grant monetary benefits and seniority in Kunju Krishnan's case and the writ petition was allowed. The government preferred writ appeal in W.A.No.3904 of 2019 and the appeal was partly allowed granting seniority but declining monetary benefits. If seniority is granted persons already in the seniority list would be affected and those persons had preferred writ appeal both in Madras and Madurai. In Madurai the writ appeals in W.A.(MD)No.299 and 300 of 2021 were allowed vide order dated 01.06.2021 and has held as under:

*43. It is submitted by the learned counsel that three issues arise for consideration in these batch of cases, viz., (i) whether the writ petitioners/respondents 1 to 18 are entitled to be regularised from the date on which they were initially appointed on consolidated pay and whether they are entitled to get consequential monetary benefits; (ii) whether the period during which the writ petitioners/respondents 1 to 18 worked on consolidated pay/temporary basis can be taken as "qualifying service" for the purpose of calculating their seniority; and (iii) whether the impugned promotion panel dated 16.11.2019, issued by the Director of School Education without*



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*considering the seniority of the writ petitioners/respondents 1 to 18, is sustainable.*

*44. Issue Nos.1 and 2 have been considered by us in the preceding paragraphs and they have been answered by us in favour of the appellants and against the writ petitioners. Nevertheless, having taken note of the written submissions submitted by the learned counsel, we answer the issues as follows. The contention of the writ petitioners is that on account of non-joinder of necessary parties, the rights of the writ appellants/teachers are no way affected, insofar as Issue Nos.1 and 2 are concerned, as the issues relate to regularisation and monetary benefits, sought for by the writ petitioners, is an issue between the Government and the writ petitioners. The said submission is devoid of merits. The writ petitioners have failed to note as to what would be the consequences of relief being granted to them as prayed for in the writ petitions. If they have to be regularised from the date of their initial engagement as a Junior Grade Teacher and to be granted monetary benefits from the said date, undoubtedly, the writ petitioners would claim a march over the regularly appointed teachers, as they seek for higher placement in the seniority list. This is what precisely has been done by the writ petitioners by challenging the tentative promotion panel dated 16.11.2019. Therefore, non-impleadment of proper and*



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*necessary parties is a substantial ground on which relief has to be denied to the writ petitioners.”*

**17.** The government had preferred review application in Rev.Aplc. (MD)No.60 of 2020, vide order, dated 17.08.2020, where the Division Bench has held as follows:

.....

*“35. The First Bench, also had passed a reasoned order on 01.09.2020 to admit the review application. In view of the discussions made hereinabove, the Review Petition No. 60 of 2020 and W.A.No.723 of 2002 filed by the third parties, whose rights are affected by the said order, are allowed and consequently, the order dated 13.01.2020 passed in W.A.No. 3904 of 2019 is recalled. As a natural corollary, the order passed by the writ Court dated 30.07.2019 in W.P.No.4991 of 2015 is set aside and the writ petition is dismissed.”*

**18.** In both the cases it has been categorically held that the consolidated service period cannot be taken for fixing seniority. Therefore, the claim of the petitioner to fix his seniority by taking consolidated service period is illegal. If such claims are entertained, then it will be entertaining a plea that “if a



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person is enrolled in an Employment Exchange itself, then they would entitle for all benefits” and that is not totally against the principles of recruitment and public employment. Therefore, the claim of the petitioners cannot be entertained at all and hence claim of the petitioners is rejected.

**19.** Accordingly, this Writ Petition stands dismissed. No Costs. Consequently, W.M.P(MD)Nos.3672 & 6410 of 2021 are dismissed and other connected miscellaneous petitions are closed.

Index : Yes / No  
Internet : Yes  
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**23.01.2023**

To

1. The Principal Secretary to Government,  
Education Department,  
Fort Saint George, Chennai – 600 009.
2. The Director of Elementary Education,  
Nungambakkam,  
Chennai – 600 009.
3. The Chief Educational Officer,  
Karur District, Karur.

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**S.SRIMATHY, J**

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**Order made in**  
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