



W.P(MD)No.2474 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 23.03.2023

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)No.2474 of 2020

Inbavalli

... Petitioner

Vs.

- 1.The State of Tamil Nadu,
Represented by its Secretary,
Education Department,
Secretariat, Chennai – 9.
- 2.The Director of Collegiate Education,
College Road, Chennai – 6.
- 3.The District Educational Officer,
Melur, Madurai.
- 4.The Block Educational Officer,
Melur, Madurai District.
- 5.The Correspondent,
Abdulkalam Azad Middle School,
Melur, Madurai District.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, calling for the records connected with the impugned order passed by the



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3rd respondent vide Na.Ka.No.4115/A4/2019 dated 10.06.2019 and quash the same and directing the respondents to approve the appointment of the petitioner w.e.f 09.02.1998, as Secondary Grade Teacher in the 5th respondent school with all consequential benefits in the light of the order passed W.P.No.9072 of 2005 dated 19.12.2007 and W.P.No.24787 of 2012 dated 03.08.2017.

For Petitioner : Mr.S.N.Ravichandran

For Respondents : Mr.N.Satheesh Kumar,
Addl. Government Pleader for R1 to R4.

ORDER

Heard the learned counsel for the writ petitioner and the learned Additional Government Pleader for the official respondents.

2.The writ petitioner was appointed as Secondary Grade Teacher in the fifth respondent school on 09.02.1998. The fifth respondent is a an aided minority institution. The petitioner was holding the degrees of B.A. and B.Ed. When the management submitted proposal for approving the petitioner's appointment, it was returned on the ground that the petitioner being higher qualified, the appointment is contrary to

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G.O.(Ms)No.559 dated 11.07.1995. Similarly placed individuals had filed writ petitions before the Madras High Court questioning the said government order. The writ petitions were dismissed on 19.05.1998. Challenging the same, writ appeals were filed. The writ appeals were disposed of by the Hon'ble Division Bench vide order dated 29.06.2001 in W.A.Nos.991 of 1998 etc. Recording the undertaking of the learned Additional Advocate General appearing for the State, the Hon'ble Division Bench directed that candidates who were appointed before 19.05.1998 should be called upon to undergo one month child psychology training and thereafter, their appointments will be approved with effect from the date of completion of training. To this effect, the Government issued G.O.(Ms)No.155, dated 03.10.2002. Pursuant to issuance of G.O.(Ms)No.155, the petitioner was also sent for training and she completed the same on 02.06.2003. Her appointment was approved vide proceedings dated 06.11.2003 issued by the fourth respondent with effect from 02.06.2003. The petitioner has been subsequently representing to the authorities for approval from the date of original appointment ie., 09.02.1998. The petitioner's request came to be rejected vide proceedings dated 10.06.2019 on the file District Educational



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Officer, Melur. Challenging the same, the present writ petition came to be filed.

3.The learned counsel for the writ petitioner reiterated all the contentions set out in the affidavit filed in support of the writ petition and called upon this Court to set aside the impugned order and grant relief as prayed for. The learned counsel for the petitioner primarily relied on the order dated 19.12.2007 made in W.P.No.9072 of 2005. A learned Judge of this Court had directed that the service of the writ petitioner therein shall be regularized with effect from the date of initial appointment and for disbursement of consequential benefits. The learned counsel pointed out that the writ petitioner herein is similarly placed. W.A.(MD)Nos.11055 of 2009 filed against the said order was dismissed on 01.10.2009 and S.L.P.(MD)No.13151 of 2012 was also dismissed on 09.08.2012. The said order was also given effect to. It is pointed out by the learned counsel that quite a few orders have been passed on the same lines. My attention is drawn to the order dated 03.08.2017 made in W.P.(MD)No.24787 of 2012, the order dated 01.03.2023 made in W.P.(MD)Nos.3753 of 2015 etc, the order dated 03.02.2020 made in W.P.(MD)No.2426 of 2020 and the order of the Hon'ble Division Bench



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made in W.A.Nos.74 of 2015 etc, dated 21.03.2018. The learned counsel for the petitioner would also submit that after passing of order by the Hon'ble Division Bench upholding G.O.(Ms)No.559, dated 11.07.1995, the Government itself diluted the position and candidates like the petitioner came to be appointed as Secondary Grade Teachers. The learned counsel contended that Section 20(3) of the Tamil Nadu Private Schools Regulations Act, 1973 empowers the Government to grant relaxation and that this aspect of the matter was not brought to the notice of the Hon'ble Division Bench when it upheld G.O.(Ms)No.155. The core argument of the learned counsel for the petitioner is that like the petitioner a very large number of over qualified candidates had been appointed as Secondary Grade Teachers and a substantial number of them had already been granted the benefits that is now sought in this writ petition. According to him, it would be invidious and patent breach of the equality principle to deny the benefit to the petitioner alone. He suggested that this Court can set aside the impugned order and call upon the Government to consider exercising the power of relaxation provided under Section 20(3) of the Tamil Nadu Private Schools Regulations Act, 1973.



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4.The respondents have filed a detailed counter affidavit and the learned Additional Government Pleader took me through its contents. The learned Additional Government Pleader strongly submitted that the very institution of the present writ petition is an abuse of legal process. He lamented that several orders have been obtained before this Court by suppression of material facts. He drew my attention to atleast quite few order of the Hon'ble Division Bench negating the stand now taken before this Court. His basic objection is that an issue that had been already decided cannot be allowed to re-adjudicated again and again. He pressed for dismissal of the writ petition.

5.I carefully considered the rival contentions and went through the materials on record. Let me consider the contention of learned counsel for the writ petitioner one by one. The petitioner relies on the order dated 03.08.2017 made in W.P.(MD)No.24787 of 2012 (A.Philomena Vs. Government of Tamil Nadu and Others). The said order mechanically follows the earlier order dated 19.12.2007 made in W.P.No.9072 of 2005. W.P.No.9072 of 2005 was filed by one Varatharajan. He pleaded that he was appointed as Secondary Grade Teacher in an aided institution on



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28.03.1998 and that he has not been regularized from the said date on the ground that he had not completed the child physiology course. The prayer was extracted in paragraph No.1. The case of the petitioner and his contentions were set out in paragraph Nos.3 and 4. The petitioner had relied on G.O.(Ms)No.122, Scheduled Caste and Scheduled Tribes Welfare Department, dated 02.08.2005. As rightly pointed by Shri.N.Satheesh Kumar, learned Additional Government Pleader this government order was applied only to the Secondary Grade Teachers working in the schools run by the Adi Dravidar Welfare Schools. Paragraph No.7 of G.O.(Ms)No.122, dated 02.08.2005 is as follows:-

“7.மேற்காணும் சூழ்நிலையில் ஆதிதிராவிடர் நல இயக்குநரின் செயற்குறிப்பினை அரசு தீர் பரிசீலனை செய்து, ஆதிதிராவிடர் மற்றும் பழங்குடியினர் நலப்பள்ளிகளில் பட்டாதாரி ஆசிரியர் தகுதிபெற்று இடைநிலை ஆசிரியர்களாக பணிநியமனம் பெற்று பணிபுரிந்து வரும் நபர்களுக்கு அவர்கள் குழந்தைகள் மனநல பயிற்சியை முடிந்த மின்னர் அவர்கள், அப்பகுதியில் பணியேற்ற நான் முதல் பணிவரன்முறை செய்ய அரசு ஆணையிடுகிறது.”

6.The Government Advocate who was supposed to defend the interest of the department agreed with the factual as well as legal position



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canvassed by the learned counsel for the writ petitioner therein. Since the Government Counsel himself had conceded, the learned Judge went on to hold that there cannot be any impediment for issuing direction for regularization with effect from the writ petitioner's appointment therein ie., 28.03.1998. The department ought to have to filed an appeal within time. The writ appeal was filed with delay. In my view, the State ought to have requested the Hon'ble First Bench to permit them to go before the learned Single Judge by pointing out that a concession had been either fraudulently or erroneously given and that it has got serious financial consequences. Instead the matter appeared to have been argued on merits. The Hon'ble First Bench concluded that since the matter was conceded before the learned Single Judge, the writ appeal would not lie. In that view of the matter, the petition for condonation of delay stood rejected and the writ appeal itself was dismissed at the SR stage. The Hon'ble Supreme Court did not intervene. This round of litigation at best could have yielded benefit for that particular individual alone as no principle of law was laid down. Varatharajan order formed the basis for allowing similar unsustainable claims subsequently. I hold that reliance on the order made in Varatharajan's case is absolutely misplaced.



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7.The learned counsel for the petitioner may be justified in his contention that the Government had departed from the original stand that higher qualified teachers ought not to be appointed as Secondary Grade Teachers. The learned Additional Government Pleader would come up with justification that change in syllabus and other considerations led the Government to alter its policy. In my view, issuance of G.O.(Ms)No.79, dated 14.06.2002 will not in any way advance the case of the writ petitioner. This was subsequent to the decision of the Hon'ble Division Bench. Order 47 of Civil Procedure Code is to the effect that change in the legal position subsequently is not a ground for review. The policy of the Government right from 1986 was that higher qualified candidates should not be appointed to the post of Secondary Grade Teacher. It was reiterated firmly in G.O.(Ms)No.559, Education, Science and Technology Department, dated 11.07.1995. The petitioner's appointment was subsequent to issuance of G.O.(Ms)No.559, dated 11.07.1995. Therefore, there is no equity in the petitioner's claim. In any event, G.O.(Ms)No.559, dated 11.07.1995 was upheld by the Hon'ble Division Bench. However, taking a humanitarian view to protect the careers of the candidates who had been appointed before the dismissal of the writ



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petition, the Hon'ble Division Bench probably nudged the Government to come out with a formula. Taking clue, the learned Additional Advocate General suggested that such appointees can be asked to undergo one month child psychology training and that their services can be regularized with effect from the date of completion of such training. To that effect, the Government issued G.O.(Ms)No.155, dated 03.10.2002 implementing the direction of the Hon'ble Division Bench. The appointees underwent training and their services regularized with effect from the date of completion of training. After thus getting a firm hold in their posts, they mounted challenge to G.O.(Ms)No.155, dated 03.10.2002. The Hon'ble Division Bench reversing the decision of the learned Single Judge upheld the validity of G.O.(Ms)No.155, dated 03.10.2002 in the decision reported in **2004-2-L.W. 591 (The State of Tamil Nadu and Others v. Pallivasal Primary School)**.

8.An impression was generated as if the Hon'ble Supreme Court in S.L.P.(C)No.22687 of 2003 gave liberty to seek appropriate remedy in accordance with law in the light of subsequent developments. It is not so. A careful look at the said order dated 25.04.2005 passed by the Hon'ble



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Supreme Court in S.L.P.(C)No.22687 of 2003 would indicate that it was directed against the order dated 10.09.2003 in W.A.No.1282 of 1998. In other words,, the judgment rendered in W.A.Nos.249 of 2002 etc (**2004-2-L.W. 591**) had become final. This judgment was subsequently followed by the Hon'ble Division Bench in W.A.No.978 of 2016 (K.Nallasivan Vs. State of Tamil Nadu), dated 07.02.2018. A learned Judge of this Court vide order dated 21.03.2022 in W.P.(MD)Nos.2347 of 2016 etc had elaborately traced all the developments. A recent decision of the Hon'ble Division Bench in W.A.(MD)No.450 of 2022 dated 22.12.2022 is also on the same lines. Thus, the weight of the authority is clearly ranged against the writ petitioner.

9.I must of course deal with another contention advanced by the learned counsel for the writ petitioner to the effect that when similarly placed individuals had been granted the benefits, it would not be proper to deny the same to the petitioner. The learned counsel for the writ petitioner relied on the order dated 17.08.2006 in W.A.(MD)No.231 of 2016 in this regard. The decision of the Hon'be Full Bench reported in **2021 (1) CWC 705 (The State Represented by its Secretary, School**



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Education Department, Fort St.George, Chennai - 600 009 and

another Vs. S.Rajaram and others) furnishes a direct answer. Paragraph

No.19 of the said order reads as under:-

“19.It is well settled that Article 14 of the Constitution of India cannot be invoked for perpetuating illegality. A wrong order passed in one case cannot be made the basis for compelling a public authority to pass similar order in any other case. Even if the State implements an erroneous order passed by the Court, it cannot be precluded from challenging a similar order passed in another case, simply because appeal was not preferred in the earlier case (Paragraph No.17 in State of Madhya Pradesh Vs. Ramesh Chandra Rajpai, reported in (2009) 13 SCC 635).”

10. There is yet another ground on which the petitioner will have to be non-suited. As rightly pointed out by the learned Additional Government Pleader, the petitioner's appointment was approved vide proceedings dated 06.11.2003 issued by the District Educational Officer, Madurai. A copy of the same has been enclosed at Page No.3 of the petitioner's typed set of papers. The said order reads that the petitioner



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was appointed as Secondary Grade Teacher in Adulkalam Azad Middle School with effect from 09.02.1998 by the school management and that she was sent for training by virtue of G.O.(Ms)No.155, dated 03.10.2002. Since the petitioner completed her training during the period from 02.05.2003 to 31.05.2003, her appointment was approved with effect from 02.06.2003. The petitioner had accepted the terms of the proceedings granting approval to her appointment, she has not so far questioned the same. Therefore, it is too late in the date for the petitioner to demand that her appointment should be approved with effect from 09.02.1998. Looked at from any angle, no case for interference is made out. The writ petition stands dismissed. No costs.

23.03.2023

NCC : Yes/No
Index : Yes / No
Internet : Yes/ No
ias

To:-

1.The Secretary,
Education Department,
Secretariat, Chennai – 9.

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2.The Director of Collegiate Education,
College Road, Chennai – 6.

3.The District Educational Officer,
Melur, Madurai.

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G.R.SWAMINATHAN, J.

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