



W.P.(MD)No.1611 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 04.01.2023

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.(MD)No.1611 of 2020

R.Krishnasamy

... Petitioner

Vs.

1. The District Educational Officer,
Sankarankovil,
Tenkasi District.

2. The Block Educational Officer,
Vasudevanallur,
Tenkasi District.

3. The Secretary,
V.Gandhi Primary School,
Vasudevanallur,
Tenkasi District.

... Respondents

PRAYER : Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus, calling for the records of the first respondent herein in Na.Ka.No.628/A1/2019, dated 09.01.2020 and quash the same and consequently, direct the respondents 1 and 2 herein to approve the appointment of the petitioner herein as



W.P.(MD)No.1611 of 2020

Secondary Grade Teacher with effect from 02.06.2003 and pay salary from 02.06.2003 to 25.05.2005 with all attendant benefits and privileges in the light of the order dated 21.01.2015 in W.P.No.7596 of 2013.

For Petitioner : Mr.T.Pon Ramkumar

For Respondents : Mr.J.Ashok
Addl. Govt. Pleader for R1 and R2
No appearance for R3

ORDER

This Writ Petition has been filed to call for the records of the first respondent in Na.Ka.No.628/A1/2019, dated 09.01.2020, quash the same and consequently, direct the respondents 1 and 2 herein to approve the appointment of the petitioner herein as Secondary Grade Teacher with effect from 02.06.2003 and pay salary from 02.06.2003 to 25.05.2005 with all attendant benefits and privileges in the light of the order dated 21.01.2015 in W.P.No.7596 of 2013.



W.P.(MD)No.1611 of 2020

WEB COPY

2. The case of the petitioner is that he was appointed as Secondary Grade Teacher in the third respondent School on 16.04.1998. He is a graduate in B.Ed., degree. The Government issued G.O.Ms.No.559, School Education Department, dated 11.07.1995 against the appointment of graduate teachers in the Secondary Grade Post. Batch of Writ Petitions were filed challenging the said Government Order and by an order dated 29.06.2001, a Division Bench of this Court directed the authorities to approve the appointments which were made from 11.07.1995 to 19.05.1998 by giving appropriate training. Thereafter, G.O.Ms.No.155, School Education Department, dated 03.10.2002 came to be issued enabling the teachers to undergo one month Child Psychology Training and to approve such appointment from the date of completion of such training. The petitioner though appointed on 16.04.1998, i.e., earlier to the cut off date fixed by the Hon'ble Division Bench namely, i.e., 19.05.1998, he was not sent for Child Psychology Training as per G.O.Ms.No.155, School Education Department, dated 03.10.2002 and therefore, he filed a Writ Petition before the Principal Seat of this Court. Thereafter, the petitioner was sent for one month Child Psychology Training on 25.05.2005. After



W.P.(MD)No.1611 of 2020

WEB COPY

completion of such training, the third respondent approved the appointment of the petitioner only from 25.06.2005, whereas all the teachers were sent for training in 2003 were given regularisation with effect from 02.06.2003. The petitioner made a representation on 08.10.2018 to approve the appointment of the petitioner as Secondary Grade Teacher with effect from 02.06.2003. However, there was no response. Hence, the petitioner has filed a Writ Petition before this Court in W.P.(MD)No.1396 of 2019. This Court, by order dated 06.03.2019, issued a direction to the respondents 1 and 2 to consider the representation of the petitioner dated 08.10.2018, pursuant to same, the first respondent has passed an impugned order. Challenging the same, the present Writ Petition has been filed.

3. The learned counsel appearing for the petitioner would submit that similarly situated persons as that of the petitioner were sent for Child Psychology Training from 01.05.2003 to 01.06.2003 as per G.O.Ms.No.155 dated 03.10.2002. However, the petitioner was not sent for Child Psychology Training along with them, but he was sent for training only from 25.05.2005 to 24.06.2005 after a lapse of two years. He further submitted



W.P.(MD)No.1611 of 2020

that on the very same set of facts several Writ Petitions were filed by other teachers and this Court allowed the Writ Petitions and directed the respondents therein to approve the appointment of the petitioners therein with effect from 02.06.2003 and pay salary for the left out period.

4. In support of his contention, the learned counsel relied upon the judgment of this Court in W.P.(MD) No.7596 of 2013, wherein the very same issue came up for consideration before the learned Single Judge and the learned Single Judge allowed the Writ Petition and approved the appointment of the petitioner therein from 02.06.2003, which order was taken up on appeal by the Government, but since the appeal was dismissed by the Division Bench, the order passed by the learned Single Judge was confirmed. Hence, playing reliance of the said order, the learned counsel prays for allowing the Writ Petition.

5. Per contra, the learned Additional Government Pleader appearing for the respondents would submit that admittedly the petitioner was appointed as Secondary Grade Teacher with higher qualification,



W.P.(MD)No.1611 of 2020

whereas the required qualification for the Secondary Grade Teacher is Diploma in Teacher Education and hence the said appointment itself is *per se* illegal. Since during the relevant point of time many aided Schools appointed number of persons with higher qualifications, in order to resolve the issue, the Government issued G.O.Ms.No.155 dated 03.10.2002 as a one time measure to the persons who were appointed with higher qualifications, the Government stipulated a condition to undergo one month Child Psychology Training for a period of one month. Following the same, number of persons were sent for Child Psychology Training with effect from 02.06.2003 based on the seniority. However, the petitioner was sent for Child Psychology Training only from 25.05.2005 to 24.06.2005. Thereafter, the petitioner has become qualified to hold the post of Secondary Grade Teacher after completion of the Child Psychology Training from 25.06.2005 only. Hence, the petitioner has no right to seek that his appointment should be approved from 02.06.2003 before completion of the Child Psychology Training since his appointment itself was *per se* illegal.



W.P.(MD)No.1611 of 2020

WEB COPY

6. It is further stated that the order dated 21.01.2015 made in W.P.(MD)No.7596 of 2013 was over ruled by the Division Bench of this Court dated 21.03.2018 made in W.A.(MD)Nos.74 of 2015 and 957 of 2016. Hence, the petitioner cannot any more rely upon the order dated 21.01.2015 made in W.P.(MD)No.7596 of 2013 to urge his claim. Accordingly, he prayed for dismissal of the Writ Petition.

7. Heard the learned counsel appearing for the parties and perused the materials placed before this Court.

8. The facts in the present case are not in dispute. Admittedly, the petitioner possessed higher qualification, though he is not entitled to be appointed as Secondary Grade Teacher in the third respondent School, however, the petitioner was appointed as Secondary Grade Teacher on 16.04.1998 and at that time the requisite qualification for the Secondary Grade Post is Diploma in Teacher Education, whereas the petitioner possessed B.Ed and hence, the petitioner's appointment was not approved by the Educational Authorities. In order to resolve the issue, the



W.P.(MD)No.1611 of 2020

Government had issued G.O.Ms.No.155 dated 03.10.2002 as a one time measure to the persons who acquired higher qualifications should undergo one month Child Psychology Training and thereby, the petitioner was sent for Child Psychology Training from 25.05.2005 to 24.06.2005 and thereafter, his appointment was approved.

9. However, another Division Bench of this Court, while dealing with similar issue in W.A.(MD)Nos.74 of 2015 and 957 of 2016 relied upon the decision in W.A.(MD)No.3442 of 2002 dated 08.09.2006, held that the salary can be paid only after completion of the Child Psychology Training and accordingly allowed the appeal.

10. For better appreciation, the relevant portion of the judgment in W.A.(MD)Nos.74 of 2015 and 957 of 2016, reads as follows:

"The management of various Schools, which had appointed Teachers like the respondents had challenged the validity of G.O.Ms.No.155, dated 03.10.2002 and the matter travelled upto the Division Bench and the Division Bench in the case of The State



W.P.(MD)No.1611 of 2020

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, were by restraining the 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



W.P.(MD)No.1611 of 2020

*date of completion of the child psychology training. However in the penultimate 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 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".*

11. In view of the categorical decision rendered by this Court, the claim made by the petitioner with regard to approval of his appointment and claiming of salary with effect from 02.06.2003 to 25.05.2005 is untenable. Hence, the prayer sought in the Writ Petition cannot be granted.



W.P.(MD)No.1611 of 2020

WEB COPY

12. Accordingly, this Writ Petition is dismissed with the above

terms. No costs.

04.01.2023

NCC: Yes / No

Index : Yes / No

Speaking Order : Yes / No

vji

To

1. The District Educational Officer,
Sankarankovil,
Tenkasi District.
2. The Block Educational Officer,
Vasudevanallur,
Tenkasi District.
3. The Secretary,
V.Gandhi Primary School,
Vasudevanallur,
Tenkasi District.



WEB COPY



W.P.(MD)No.1611 of 2020

M.DHANDAPANI,J.

vji

W.P.(MD)No.1611 of 2020

04.01.2023