



CONT P(MD)No.243 of 2022

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 09.06.2023

PRONOUNCED ON : 07.11.2023

CORAM

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

CONT P(MD)No.243 of 2022

P.Mariammal

... Petitioner

vs.

1.K.Nanthakumar I.A.S.,
The Director of School Education,
D.P.I Campus, College Road,
Chennai.

2.A.Balamuthu,
The Chief Educational Officer,
Ramanathapuram,
Ramanathapuram District.

... Contemnors

PRAYER: Petition filed under Section 11 of the Contempt of Court Act, 1971, to punish the respondent for willfully disobeying and not complying with the order of this Court, dated 02.09.2021, in W.P.(MD)No.10573 of 2013.

For Petitioner : Mr.V.R.Shanmuganathan
For Contemnors : Mr.V.Omprakash
Government Advocate



CONT P(MD)No.243 of 2022

WEB COPY

ORDER

This Contempt Petition is filed for noncompliance of the order passed in the Writ Petition W.P.(MD)No.10573 of 2013, vide order, dated 02.09.2021.

2. The prayer in W.P.(MD)No.10573 of 2013 is for writ of Certiorarified Mandamus, to quash the impugned proceedings dated Nil-06-2013 of the 1st respondent as illegal and consequentially to regularize the services of the petitioner as full time Vocational Instructor on par with her juniors by upgrading the petitioner's scale pay from consolidated pay to that of Vocational Instructors Grade II i.e., Secondary Grade Teacher scale of pay and then to that of full time scale of pay i.e., to Vocational Instructors Grade I i.e., B.T. Assistant scale of pay.

3. The brief facts of the case are that the petitioner was appointed as Vocational Instructor in Accountancy and Auditing in the 3rd respondent School on 25.09.1997 on consolidated pay of Rs.500/- and the same was approved on 04.06.2002 with effect from 26.09.1997 under G.O.Ms.No.991, Education



CONT P(MD)No.243 of 2022

WEB COPY

Department, dated 16.07.1990. Under G.O.Ms.No.991 the Chief Educational Officer seems to have appointed 346 vocational instructors, of which 235 were found to be fully qualified and G.O.Ms.No.680, dated 20.09.1996 was passed approving those 235 persons and were regularized with effect from the date of the G.O. i.e. 20.09.1996.

4. In the meantime the G.O.Ms.No.6 dated 04.01.2000 was issued whereby General and Specific Rules applicable to the holders of permanent posts in the Tamil Nadu School Educational Subordinate service was made applicable to the vocational instructors. Earlier G.O.Ms.No.217, dated 13.05.1997 was issued wherein it was decided to release the grant with effect from 01.06.1995 to certain approved private schools run on self-finance basis for more than 3 years. The said Private School was in serial No.8, wherein 5 posts of P.G. Assistants and one part time Vocational Instructor was sanctioned to the said School. Thereafter G.O.Ms.No.74, dated 10.06.2002 was passed whereby certain part time vocational instructors who were on the consolidated pay were brought to regularized full time scale of pay. The order states that about 361 persons have been identified as full time vocational instructors and of them about 235 persons



CONT P(MD)No.243 of 2022

WEB COPY

(appointed under G.O.Ms.No.680) and 126 persons (approved under G.O.Ms.No. 74) and totally 361 would be entitled to the scale of pay as Secondary Grade Teacher Vocational Teacher Grade II from the date of the G.O.Ms.No.74, dated 10.06.2002. The petitioner's junior namely V.Arthi was benefitted under G.O.Ms.No.74, dated 10.06.2002. Similarly placed and appointed part time vocational instructors also faced similar problems and they got similar order and they got approval from their date of appointment. For instance one V.Arthi appointed on 31.05.2000 at Kairathal Jalalia Higher Secondary School, Keelakarai got an order dated 05.09.2001 in W.P.16099 of 2001 and approved by an order dated 05.07.2002 by proceedings dated 26.11.2002. Infact she was permitted scale of pay following G.O.Ms.No.74, dated 10.06.2002 with effect from the date of the G.O. i.e. with 10.06.2002 i.e. scale of pay equal to Secondary Grade Teacher – Vocational Instructor Grade – II. Under G.O.Ms.No.35 dated 09.02.2007 the part time qualified vocational instructors were ordered to be appointed in the vacancies as per the seniority and the said Arthi was also approved in Grade I Vocational Instructors vide proceedings dated 31.05.2007 in the B.T. Assistant scale of pay. Further the petitioner had relied on in one another similar case rendered in Susila Vs. the Director of School Education Department



CONT P(MD)No.243 of 2022

WEB COPY

and two others in W.P.(MD)No. 13507 of 2013, dated 15.03.2013. And in Susila's case the respondents had preferred writ appeal along with condone delay in C.M.P.(MD)No.1448 of 2019 in W.A.(MD)No.SR.No.52081 of 2018 and the same was dismissed in SR Stage itself vide order 22.08.2022

5. Hence the petitioner claimed the same relief, when the respondents did not consider, the petitioner had filed W.P.(MD)No.14910 of 2011 and this Court, vide order, dated 04.12.2013, directed the respondents to consider and pass orders. The respondents had considered and rejected vide order dated Nil. 06.2013, hence the same was challenged in W.P.(MD)No.10573 of 2013 and this Court vide order dated 02.09.2021 had allowed the writ petition directing the respondents to grant approval. Since the order was not complied the present contempt is filed.

6. The respondents have filed counter in the contempt petition stating that the petitioner had resigned from the said job and had jointed Aandandur Government Higher Secondary School as P.G. Assistant post of Vocational Instructor and now working in the government service. The petitioner is



CONT P(MD)No.243 of 2022

WEB COPY

comparing with the persons who were appointed prior to the crucial date 1991-1992. The petitioner has no right to seek regularize the service when she was on self-finance post and no government grant is admissible. Moreover, the respondents had preferred writ appeal in SR stage.

7. The Learned Counsel appearing for the petitioner herein submitted that the respondents had complied with the order passed in the case of Susila in W.P. (MD)No.13057 of 2013, the respondents ought to comply with the order passed in W.P.(MD)No.10573 of 2013 also, since the petitioner is a similarly placed person. But the respondents submitted that the in order to avoid contempt, the respondents submitted a compliance report stating that the said Susila was appointed by granting one post to the school which was taken to the Directors Common Pool and the salary was fixed notionally from 10.06.2002 and the monetary benefits were granted from 15.03.2017.

8. It is seen the petitioner was appointed in the year 1997-1998 as part time Vocational Instructor on consolidated pay of Rs.500/-. Moreover, the school was not having sanctioned post and the petitioner was appointed in self-finance



CONT P(MD)No.243 of 2022

WEB COPY

stream. As per Government Letter No.245, School Education Department, dated 08.12.2008, the school was granted permission to start vocational course with a specific condition that no government aid or post would be granted to the institution. Based on the same the order impugned in the writ petition was passed. The petitioner is stating that the third respondent school is one of the beneficiaries under G.O.Ms.No.217 dated 13.05.1997 wherein the government had granted post to the school. But through government letter No.245 dated 08.12.2008 it is stated that the school was granted permission to start the school without grant-in-aid. In such circumstances, the G.O.Ms.No.217 dated 13.05.1997 ought to be analyzed in the light of section 14(A) of the Tamil Nadu Recognized Private School (Regulation Act) Act. Under section 14(A) any order including government order are nullified. Moreover, the petitioner was appointed after 1991-1992 but the persons referred by the petitioner were appointed prior to 1991-1992. Hence the respondents are aggrieved over the order and had preferred writ appeal. The issue raised by the respondents would have serious consequences on the State. Hence this Court is of the considered opinion that there is no willful contempt and the contempt petition is closed. The rights of the parties would arise after the disposal of the writ appeal. The petitioner and the respondents shall act



CONT P(MD)No.243 of 2022

WEB COPY

based on the orders that would be passed in the writ appeal.

Index : Yes / No

07.11.2023

Internet : Yes

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To

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Chennai.

2.The Chief Educational Officer,
Ramanathapuram,
Ramanathapuram District.



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CONT P(MD)No.243 of 2022

S.SRIMATHY, J

Tmg

Order made in
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