



W.P(MD)No.5468 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 24.04.2023

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)No.5468 of 2023

and

W.M.P.(MD)Nos.5107 & 8153 of 2023

Shenbagavalli

... Petitioner

Vs.

1.The Chief Educational Officer,
Thanjavur.

2.The District Elementary Education Officer,
Thanjavur District,
Thanjavur.

3.The Block Elementary Education Officer,
Kumbakonam,
Thanjavur District.

4.The Headmaster,
Srinagar Colony Government Aided School,
Kumbakonam,
Kumbakonam,
Thanjavur District.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari, to call for the records relating to the order of the third respondent made in Na.Ka.No.331/A3/2019, dated 24.02.2023 and quash the same as it is arbitrary and illegal.



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For Petitioner : Mr.R.Suriyanarayanan

For Respondents : Mr.N.Satheeshkumar
Additional Government Pleader for R1 to R3

ORDER

Heard the learned counsel on either side.

2. The writ petitioner was appointed as secondary grade teacher in the 4th respondent aided school on 22.08.1997. The petitioner was overqualified for the said post. Dispute arose as to whether such overqualified candidate can be appointed as secondary grade teacher. The issue was resolved by the Hon'ble Division Bench of the Madras High Court in two rounds of litigation. The decisions were rendered in *(2002) WLR 173 (Secretary & Correspondent Uswathun Hasana Oriental (Arabic) Girls Higher Secondary School Vs. State of Tamil Nadu)* and *2004-2-L.W. 591 (State of Tamil Nadu Vs. Pallivasal Primary School rep. by its Correspondent, Mudukulathur)*. The Hon'ble Division Bench held that the appointment of such overqualified candidates can be approved from the date when they completed child psychology training. Their past service will be taken into account for the purpose of pension. The petitioner completed her child psychology training on 02.06.2003. She was however given selection grade with effect from



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11.12.2007. Since the petitioner was given corresponding monetary benefit, pursuant to conferment of selection grade, excess pay was sought to be recovered vide order dated 16.06.2015. Questioning the same, the petitioner filed W.P.(MD)No.10567 of 2015. The said writ petition was allowed on 26.06.2015 on the ground that the recovery order was passed without affording an opportunity of hearing to the petitioner. Thereafter, the order dated 29.12.2022 was passed holding that the petitioner was erroneously granted excess pay and that the same should be recovered. Questioning the same, the petitioner filed W.P.(MD)No.463 of 2003. It was allowed on 09.01.2002 in the following terms:-

“6. The facts in the present case are not in dispute. Admittedly, the petitioner entered into service in the year 1997. Though the petitioner claimed that she acquired child psychology training in the year 2003 after six years from the date of appointment and subsequently, she was granted selection grade and special grade, however, the respondents claimed that without undergoing child psychology training, she has obtained selection grade and special grade pay, which is not sustainable one. As rightly pointed out by the learned counsel appearing for the petitioner that without raising any objection, the educational authorities granted selection grade and special grade pay and without taking disciplinary action against the authorities and without providing opportunity to the petitioner, the present impugned order has been passed which is not sustainable one. Hence, the impugned order is liable to be set aside. Accordingly, the order of the third respondent dated 29.12.2022 is set aside. However, liberty is granted to the educational authorities to hear the petitioner and pass appropriate orders.”

Availing the opportunity granted to them, once again the impugned order came



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to be passed on 24.02.2023 calling upon the petitioner to pay the excess amount received by her in 23 equal monthly installments. Challenging the same, the present writ petition came to be filed. I granted an order of interim stay of recovery on 14.03.2023. For vacating the same, the department has filed a petition.

3. The learned counsel appearing for the petitioner reiterated all the contentions set out in the affidavit filed in support of the writ petition. His primary contention is that the impugned order of recovery runs counter to what is known as *White Washer* Judgment pronounced by the Hon'ble Apex Court. He also pointed out that the Government of Tamil Nadu issued G.O.Ms.No.286, Finance [Pension] Department, dated 28.08.2018. The categorical stand of the petitioner is that since for more than five years, the petitioner had been paid what according to them was excess pay, it cannot be recovered. He would further point out that the order of recovery was passed only in the year 2015 which is beyond the period of five years. He submitted that the petitioner is verge on retirement and that the petitioner has only few years to retire shortly and therefore, effecting recovery from the monthly pay would cause great hardship. He pressed for setting aside the impugned order and allowing the writ petition as prayed for.



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4. I am not persuaded by the submission of the learned counsel appearing for the petitioner. As rightly pointed out by the learned Additional Government Pleader, the issue had been settled long back. The Hon'ble Division Bench in *pallivasal* case had categorically confirmed that the appointment of overqualified candidate would be approved only from the date when he or she completed the child psychology training and their past service would be counted for pension. It is well settled that an employee is given selection grade only on completion of 10 years of service. Applying the decision of the Hon'ble Division Bench, the petitioner's service can be counted for all purposes except pension only with effect from 02.06.2003. She could have been given selection grade only with effect from 01.06.2013. The petitioner is not an illiterate person. She knew that her appointment was valid only from 02.06.2003. The *White Washer* case will apply only where the employees were innocent and excess payment was made through inadvertence. The case on hand cannot be brought under such category. The petitioner knew fully well that when she had completed hardly four years of service, she could not be put in selection grade. This Court cannot lose sight of the fact that if excess pay cannot be recovered, public interest eventually suffers. The authorities will



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have to necessarily proceed against the erring management. They may also have to pull up the authorities who were responsible for sanctioning the conferment of erroneous selection grade for the petitioner. But for these reasons, this Court will not be justified in interfering with the impugned order for recovering excess pay made to the petitioner. If I set aside the impugned order, I would be acting contrary to the Division Bench decision rendered in Pallivasal's case. The order impugned in the writ petition is sustained. The Writ Petition is dismissed.

5. The learned counsel appearing for the petitioner states that the petitioner should be given selection grade with effect from 01.06.2013 onwards. He would also add that after the present issue cropped up with the year 2015, the petitioner had been denied the benefit of selection grade. If that be so, the respondent shall work it out and if any book adjustment can be made, that shall be made. Even while sustaining the impugned order, I direct the respondents to confer selection grade on the petitioner with effect from 01.06.2013 onwards. It may also be seen that after carrying out such exercise if excess pay made to the petitioner stands adjusted, then, recovery shall not be made.



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6. With this direction to the respondents 1 & 2, the Writ Petition is dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

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Index : Yes / No
Internet : Yes/ No
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G.R.SWAMINATHAN, J.

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