

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 23.12.2022

PRONOUNCED ON : 06.04.2023

CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P.(MD)No.12738 of 2019

I.Salaludeen Ibrahim

... Petitioner

vs.

1.The State of Tamil Nadu,
represented by its Secretary,
Department of School Education,
Fort St. George,
Chennai-600 009.

2.The Director of School Education,
College Road, Chennai-600 006.

3.The District Educational Officer,
Melur Educational Officer,
Melur – 625 016, Madurai District.

4.The Correspondent,
Al-Ameen Higher Secondary School,
K.Pudur, Madurai.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Mandamus, to direct the respondents to approve the petitioner's appointment with effect from 01.06.1998 with time scale of pay as admissible for that post and release the differential pay, allowance and other attendant benefits including pensionary benefits from the said date forthwith.

For Petitioner	: Mr.C.Arul Vadivel @ Sekar
For R1 to 3	: Mr.D.Sadiq Raja Additional Government Pleader
For R4	: No appearance *****

ORDER

This writ petition is filed for issuance of a writ of Mandamus, to direct the respondents to approve the petitioner's appointment with effect from 01.06.1998 with time scale of pay as admissible for that post and release the differential pay, allowance and other attendant benefits including pensionary benefits from the said date forthwith.

2. The brief facts of the case as stated in the affidavit is that the petitioner

was appointed on 01.06.1998 as Secondary Grade Assistant in Al-Ameen Higher Secondary School, K.Pudur. Madurai, a private minority aided institution. The said Secondary Grade Assistant post was sanctioned to the school by the 1st respondent, vide G.O.Ms.No.523, School Education (D1) Department, dated 29.12.1997. After the appointment, the 4th respondent submitted the proposal to approve the appointment. The 3rd respondent, vide order, dated 15.08.1998, returned the proposal stating that as per G.O.Ms.No.394, School Education (D2) Department, dated 12.09.1997, approval could not be granted for the petitioner, since the petitioner is possessing B.Ed., qualification and no B.T. Assistant can be appointed in the post of Secondary Grade Assistant after 10.07.1995.

3. Hence the petitioner filed a petition in W.P.(MD)No.1151 of 2004 and this Court, vide a common order, dated 13.12.2004, directed the 3rd respondent herein to approve the petitioner's appointment in accordance with G.O.Ms.No. 125, dated 12.11.2003 and G.O.Ms.No.4, dated 19.01.2004, issued by the School

Education Department. Further, the Court directed the 3rd respondent to make consolidated pay from 12.11.2003 and treat the petitioner's service from 01.06.1998 for the purpose of service benefits. Pursuant to the order the school again submitted the proposal dated 20.01.2005 to grant approval and the 3rd respondent, vide his proceedings, dated 16.06.2015, approved the petitioner's appointment with consolidated pay of Rs.4,000/- per month with effect from 12.11.2003. Subsequently, based on G.O.Ms.No.99, Education Department, dated 27.06.2006, the petitioner was granted time scale of pay from 01.06.2006, vide proceedings, dated 14.09.2006.

4. The contention of the petitioner is that the scheme of consolidated pay would arise only in respect of appointments approved, vide G.O.Ms.No.4, School Education (X2) Department, dated 19.01.2004, which governs only the vacancies arising from 01.06.2003 and the appointments made therein. In the petitioner's case, the post was sanctioned vide, G.O.Ms.No.523, School Education (D1)

Department, dated 29.12.1997, before the issuance of G.O.Ms.No.4. Therefore, the petitioner's appointment would not come within the scheme of consolidated pay. Subsequently, the petitioner was granted time scale of pay from 01.06.2006 instead of 01.06.1998. The delay caused in passing approval cannot be fasten on the petitioner. Infact, subsequently, an order was issued, vide G.O.Ms.No.79, School Education dated 14.06.2002, to fill the post of Secondary Grade Teachers only with the candidates possessing B.Ed., qualification. The petitioner's retirement date on attaining superannuation was 31.07.2018, but the petitioner was granted re-employment for the academic year and the petitioner has served from 01.08.2018 to 31.05.2019. The petitioner came to know that several teachers appointed before 01.04.2003 filed writ petitions before this Court to grant time scale of pay. Since the petitioner is also placed on the same footing, the petitioner should be considered on par with the similarly placed persons and direct the respondents to grant the benefits as per G.O.Ms.No.79.

5. The respondents have filed a counter affidavit stating that the petitioner's approval was declined pursuant to G.O.Ms.No.394 School Education (D2) Department, dated 12.09.1997, since the B.T. Assistants could not be appointed in the post of Secondary Grade Teacher. The issue of Child Psychology arose from the issuance of G.O.Ms.No.559, Education, Science and Technology Department, dated 11.07.1995, directing the educational authorities not to approve the appointment of B.Ed., Teachers in the Secondary Grade Teacher vacancies. Prior to 11.07.1995, the Government permitted the Aided Schools to appoint B.T. Assistants in the Secondary Grade Teacher vacancies, due to the non-availability of the candidates with Diploma in Teachers Education (D.T.Ed.) qualification for appointment to the post of Secondary Grade Teachers. When the candidates were available, the aforesaid G.O.Ms.No.559, dated 11.07.1995, was issued. Even after the issuance of aforesaid G.O.No.559, dated 11.07.1995, the Aided Schools continued to appoint B.T. Assistants in Secondary Grade Teacher vacancies.

Hence, the Government did not approve those appointments and hence the respondents pray to dismiss the writ petition.

6. Heard Mr.C.Arul Vadivel @ Sekar, learned Counsel appearing for the petitioner, Mr.D.Sadiq Raja, learned Additional Government Pleader appearing for respondents 1 to 3.

7. The petitioner was appointed by the 4th respondent Private Aided Minority School on 01.06.1998 in a Secondary Grade Teacher post, but the petitioner was possessing B.T. Assistant. As per G.O.Ms.No.559, dated 11.07.1995, such appointments cannot be approved. The said G.O. was challenged in several writ petitions and such appointments were elaborately discussed in the case of Secretary & Correspondent Uswathun Hasana Oriental (Arabic) Girls Higher Secondary School Pallapatti reported in 2002 Writ LR 173, wherein the Hon'ble Court had held that the said G.O. is valid, since the B.T.

Assistants cannot handle children from 1 to 6 years of age and appointments made defying the G.O. are illegal. Since such teachers were in service for several years and hence the Government submitted before the Hon'ble Court that the Government would grant them Child Psychology training for one month and thereafter the service would be regularized. Thereafter the Government issued G.O.Ms.No.155 dated School Education Department dated 03.10.2002, wherein the Teachers ought to undergo child psychology training for a period of one month and on completion of the training, from the next day onwards, their service would be regularized. The said G.O.Ms.No.155 was put to challenge in State VS Pallivasal Primary School represented by its Correspondent reported in 2004 2 Law Weekly 591 and this Court has upheld the validity of the said G.O. In the said G.O. it has been stated that the teacher would be entitled to regularize the service the next day of completion of the training.

8. The G.O.Ms.No.155 was applicable to the teachers who were recruited from 11.07.1995 to 19.05.1998. In the present case, the petitioner was appointed on 01.06.1998. There were some 22 persons who were appointed after the said date i.e. 19.05.1998 and the said persons filed writ petitions praying to extend the benefits to them. Based on the order of the Court, the government issued G.O.Ms.No.150 School Education dated 02.07.2007 extending the benefits of G.O.Ms.No.155. Thereafter such benefits were extended to the said 22 persons after they had completed child psychology training. But such benefits cannot be extended to the petitioner herein, since the petitioner had not undergone any child psychology training at all. At this stage the respondents cannot be directed to send the petitioner for child psychology training, since the petitioner had retired from service on 31.07.2018. Therefore, this Court is of the considered opinion that the petitioner is not entitled to regularize the service from 1998 onwards since the claim of the petitioner is against the said two judgments rendered by the Hon'ble

Division Bench as well as it is against G.O.Ms.No.155, School Education Department, dated 03.10.2002.

9. The next claim of the petitioner is that the Government has issued G.O.Ms.No.79, Department of School Education, dated 14.06.2002, stating that whenever a Secondary Grade Teacher post falls vacant, the said post ought to be upgraded as B.T. Assistant post, after getting approval from the Chief Educational Officer. In the present case, the petitioner was appointed from 01.06.1998 onwards, based on the sanctioned post granted to the said School in G.O.Ms.No. 523 dated 29.12.1997 and the said post is available from 1997 onwards. In the year 2002, G.O.Ms.No.79, Department of School Education, dated 14.06.2002, was passed. The contention of the respondents is that the G.O.Ms.No.79 was issued to appoint B.T. Assistant in the Secondary Grade vacancy to take classes from standards 6 to 8. Since in the earlier round of litigation this Court directed the Educational Authorities to confer the benefits of consolidated payment from

12.11.2003. Treating the petitioner's case as a special case and after getting permission from the Joint Director, vide proceedings, dated 23.03.2005, the respondents approved the appointment of the petitioner on consolidated pay with effect from 12.11.2003 on condition that the period from 01.06.1998 to 11.11.2003, will not be taken for any monetary benefits. Hence, the appointment of the petitioner itself is a concession granted to the petitioner on the strength of the orders passed by this Court in W.P.(MD).No1151 of 2004, dated 13.12.2004.

10. After hearing the rival contentions it is seen that the said G.O.Ms.No.79 can be invoked only when the Secondary Grade Post fell vacant, the said post shall be upgraded as B.T. Assistant post by the Chief Educational Officer, thereafter the said post shall be filled up by appointing the qualified B.T. Assistant. In the present case the petitioner was serving in the said post, the same cannot be shown as vacant. Therefore, this Court is of the considered opinion that

when the post is not vacant, invoking G.O.Ms.No.79 would not arise and hence the petitioner is not entitled to the benefits under the said G.O.

11. In the earlier round of litigation, when the petitioner sought to regularize the said period, this Court has directed the respondents to consider the claim of the petitioner under G.O.Ms.No.125, Education Department, dated 12.11.2003 and G.O.Ms.No.4, School Education (X2) Department, dated 19.01.2004. In order to obey the orders of this Court, the respondents have granted consolidated pay for the period. Thereafter, regularized the service from 2006 onwards. Therefore, this Court is of the considered opinion that the respondents had rightly treated the petitioner under the exiting government orders and also based on the order passed by the Hon'ble Court in W.P.(MD)No.1151 of 2004. Seen from any angle the petitioner is not entitled to the benefit as claimed by the petitioner in the present writ petition. Infact the petitioner was granted concession in the earlier round of litigation and as a special case the petitioner

was granted consolidated pay and thereafter regularized in service from 2006 onwards. Therefore, this Court is of the considered opinion that the petitioner is not entitled to any benefits. With the above said observations, the writ petition is dismissed. No costs.

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

06.04.2023

Tmg

To

- 1.The Secretary,
State of Tamil Nadu,
Department of School Education,
Fort St.George, Chennai-600 009.
- 2.The Director of School Education,
College Road, Chennai-600 006.
- 3.The District Educational Officer,
Melur Educational Officer,
Melur – 625 016,
Madurai District.

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