



W.P.(MD)No.8995 of 2018

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 16.03.2023

CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P.(MD)No.8995 of 2018

and

W.M.P(MD)No. 8406 of 2018

N.Gunasekarn

... Petitioner

vs.

1.The Secretary of Government of Tamil Nadu,
Department of School Education,
St. George Fort,
Chennai.

2.The Director of School Education,
DPI Campus,
Nungambakkam,
Chennai.

3.The Chief Educational Officer,
O/o. the Chief Educational Office,
Thanjavur District.

4.The District Educational Officer,
O/o. District Educational Office,
Pattukottai,
Thanjavur District.

... Respondents



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PRAYER: Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a writ of Certiorarified Mandamus, calling for the records pertaining to the impugned order passed by the 3rd respondent vide his proceedings in O.Mu.No.1667 Aa1/2017 dated 27.04.2017 and quash the same as illegal and consequently directing the 2nd and 3rd respondents to count the service rendered by the petitioners as B.T. Assistant (Social Science) in the K.V.S. Matriculation Higher Secondary School, Virudhunagar District which is a recognized Private Unaided School for a period from 14.06.1989 to 20.11.1999 for the purpose of Pay fixation and Pension in addition to the service rendered by the petitioner as B.T.Assistant in the Government High School Poovathur, upto the date of the petitioner's retirement.

For Petitioners : No appearance

For Respondents : Mr.M.Ramesh

Government Advocate

ORDER

This writ petition is filed for issuance of a *writ of Certiorarified Mandamus*, to quash the impugned order passed by the 3rd respondent, dated 27.04.2017 and consequently to direct the respondents to grant pensionary benefits with effect from 25.11.1999, with all consequential benefits and arrears of pay and allowances.



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2. The petitioner was appointed as B.T. Assistant in the K.V.S Matriculation Higher Secondary School, Virudhunagar District, for a period from 14.06.1989 to 20.11.1999. Thereafter, the petitioner had tendered resignation on and was appointed in Government High School, Aavanam, Pattukottai Taluk, Thanjavur District and was promoted to various posts, and finally retired from service on 31.09.2018. The petitioner was granted pensionary benefits by calculating his service in the School from 25.11.1999 to 31.09.2018. Now, the petitioner is claiming to add the service rendered from 14.06.1989 to 20.11.1999 in the K.V.S Matriculation Higher Secondary School, Virudhunagar District.

3. The K.V.S Matriculation Higher Secondary School, Virudhunagar District, is a Private School. The petitioner is relying on G.O.Ms.No.143, Education V2 Department, dated 30.01.1987, wherein it has granted pensionary benefits by adding the matriculation school service. But the said G.O. was held as bogus by the Learned Single Judge in W.P.(MD) No.4494 of 2009. Subsequently, based on the said G.O., another person has received the same benefits in



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G.O.Ms.No.18 Education, Science and Technology (D2) Department dated 09.01.1997. The said G.O. was revoked / cancelled by the Government by issuing G.O.Ms.No.314 School Education (D2) Department, dated 12.12.1999, wherein it is stated that the service rendered in unaided school cannot be taken into account for fixing the salary and pension. The issue was challenged in W.P. (MD) No. 10758 / 2006 and W.P. (MD) No. 10758 / 2006 and the said writ petition was dismissed vide order dated 11.06.2007 stating that the earlier GO 143 and GO 18 were issued to particular individuals and the same cannot be applied to the writ petitioners. Aggrieved over the individuals had preferred writ appeals in W.A. (MD) No. 291 and 292 of 2008 and the said writ appeals were allowed vide order dated 26.06.2008. Aggrieved over the government preferred SLP (Civil) CC No. 3969 ? 3970 / 2010 and vide order dated 22.03.2010 the SLP was dismissed.

4. Unfortunately, the previous round of litigation was not brought to the knowledge of the subsequent Hon'ble Coordinate Bench. The same issue was extensively considered in W.A.Nos.648 of 2003 filed in S. Devakadaksham VS the District Educational Officer reported in 2006 (4) MLJ 1580 and the writ



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appeals were dismissed vide order dated 13.09.2006. The judgment of the Division Bench in S.Devakadaksham's case (cited supra) was not brought to the notice of the Division Bench which heard the writ appeals in W.A.Nos. 291 and 292 of 2008. The judgment S.Devakadaksham's case (cited supra) disposed a batch of writ appeals and the Division Bench considered extensively the provisions of Tamil Nadu Recognised Private Schools (Regulation) Act 1973 and has rendered a finding that the service rendered in a non-sanctioned post, no grant-in-aid post or matriculation school service could not be counted for the purpose of pension and pay fixation. All the teachers, who were granted benefit based on G.O.Ms.No.18, faced recovery proceedings based on G.O.Ms.No.314 referred above. The action based on the G.O.Ms.No.314 was upheld by the Division Bench in its judgment in S.Devakadaksham's case (cited supra). Aggrieved individuals preferred an SLP against the Devakadaksham's case and the SLP was also dismissed. However two cases W.P.(MD) No.4881 of 2015 escaped from the net and writ appeals preferred by those two teachers in W.A.Nos.291 and 292 of 2008 alone was allowed on the sole ground that they were discriminated in the matter of counting the service in the non-sanctioned post based on the benefits given to a teacher in terms of G.O.Ms.No.18.



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Therefore, the service rendered in Matriculation Schools cannot be added along with the Government service for calculating pension and other benefits.

5. The same issue is considered by this Court in W.P.(MD)No.4881 of 2015 and the relevant portion is extracted hereunder:

“3. The claim of the deceased petitioner is to add the service rendered in the Matriculation School and thereafter, calculate the pensionary benefits and relying on G.O.Ms.No.143, Education Department (V2), dated 30.01.1987. The Learned Government Advocate submitted that the said Government Order is bogus and the veracity of the said G.O. was considered by this Court in V.Mariappan vs. Secretary to Government, School Education Department in W.P.(MD)No.4494 of 2009, dated 16.08.2012 and has been held that,

“17. The actual Government Order in G.O. Ms.No. 143 School Education Department dated 30.01.1987 is also produced before this Court. I have perused the same and the same has nothing to do with the matter of pension. Therefore, the petition could not place his reliance on G.O. Ms.No.143.

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19. The petitioner heavily relied on G.O.Ms.No.18 and the Division Bench judgment dated 26.06.2008 in



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W.A.Nos. 291 and 292 of 2008. The arguments advance by the Learned Counsel for the petitioner looks attractive. But on deeper scrutiny it has no merit.

20. As rightly contended by the Learned Additional Government Pleader, the Division Bench in its judgment in W.A.Nos.291 and 292 of 2008 took into account G.O.Ms. No. 143 which was a bogus one. Furthermore, the judgment of the Division Bench in S.Devakadaksham's case (cited supra) was not brought to the notice of the Division Bench which heard the writ appeals in W.A.Nos. 291 and 292 of 2008. The judgment S.Devakadaksham's case (cited supra) disposed a batch of writ appeals and the Division Bench considered extensively the provisions of Tamil Nadu Recognised Private Schools (Regulation) Act 1973 and has recorded a finding that the service rendered in a nonsanctioned post could not be counted for the purpose of pension and pay fixation. All the teachers, who were granted benefit based on G.O.Ms.No. 18, faced recovery proceedings based on G.O.Ms.No.314 referred above. The action based on the G.O.Ms.No.314 was upheld by the Division Bench in its judgment in S.Devakadaksham's case (cited supra). However two cases escaped from the net and writ appeals preferred by those two teachers in W.A.Nos.291 and 292 of 2008 alone was allowed on the sole ground that they were discriminated in the matter



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of counting the service in the non-sanctioned post based on the benefits given to a teacher in terms of G.O.Ms.No.18.

21. As stated above, the judgment of the Division Bench in S.Devakadaksham's case (cited supra) rendered in a batch of cases, was not brought to the notice of the later Division Bench. The Division Bench categorically held that the action of the Government in withdrawing G.O.Ms.No.18 in G.O.Ms.No.314 is perfectly in order. It is made clear that the person, who rendered service in nonsanctioned post, could not claim to count the same for the purpose of pay fixation and pension. Hence I am of the view that the reliance placed on by the petitioner on G.O.Ms.No.18 and Division Bench judgment in W.A.Nos. 291 and 292 of 2008 are of no use, in view of the judgment of the Division Bench in S.Devakadaksham's case (cited supra).

22. For all the aforesaid reasons, the writ petitions fails and the same is dismissed. No costs.

4. Subsequently another the Division Bench in W.A. No. 1267 of 2014 and W.A.No.40 of 2015 vide order dated 05.07.2018 in the case of the Secretary to the Government and others Vs. of S. Veerabadran has followed the S.Devakadaksham's case (cited supra) and the relevant portion is extracted hereunder:



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11. We have considered the rival submissions. It is unfortunate that the decision in S.Devakadasham's case, referred to supra, wherein the validity of G.O.Ms.No.314 dated 12.12.1999 was upheld, was not brought to the notice of the Division Bench which subsequently considered the very same issue in Gabriel Jeletin's case. While the judgment of the Division Bench in S.Devakadasham's Case, takes into account the impact of the Government Orders vis-a-vis the provisions of Tamil Nadu Recognised Private Schools (Regulation) Act, and the Rules made there under, the subsequent judgment of the Division Bench proceeds, on the basis of G.O.Ms.No.18 and G.O.Ms.No.143. We are constrained to point out that in a later judgment, a learned Single Judge of this Court in K.Pitchai v. The State of Tamil Nadu made in WP (MD) No.20326 of 2013 dated 28.02.2018, has after referring to the various Government Orders and found that the Government Order in G.O.Ms.No. 143, Education (D2) Department, dated 30.01.1987 does not exist at all and it is a fake Government Order. In view of the above said conclusion of the learned Single Judge and the fact that the decision of the subsequent Division Bench was rendered in ignorance of the earlier Division Bench, the dictum of the earlier Division Bench, which is more elaborate, is entitled to more credence than the decision of the subsequent Division Bench, the Hon'ble Supreme Court



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in Sri Jagannath Temple Managing Committee Vs. Siddha Math and others reported in 2015 (16) SCC 542, has held that a subsequent decision of the Co-equal Bench rendered in ignorance of the earlier decision of the Division Bench cannot be said to be a binding precedent.

12. A learned Single Judge (Hon'ble Mr. Justice M. Srinivasan), as he then was, of this Court in The Special Tahsildar No. III V. Rangasamy Reddiar reported in 1988 (1) MLJ 317, had after referring to the judgment of the Full Bench of Patna High Court reported in AIR 1897 Patna 191, had held that when there are conflicting judgments of Co-equal Benches, it is open to the subsequent Bench to follow the decision which states the law more elaborately and accurately. Thus, looked at from any angle, the judgment of the Division Bench in Gabriel Jeletin's case, rendered in ignorance of the earlier Division Bench Judgment in S. Devakadasham's case, cannot be treated as a binding precedent. Further, the judgment of the Division Bench in Gabriel Jeletin's case has taken note of the Government Orders in G.O. Ms. No. 143, which has been held to be a fake Government order by this Court in WP (MD) No. 20326 of 2013. 13. In view of the above, we are constrained to follow the judgment of the Division Bench in S. Devakadasham's Case, Reported in 2006 (4) MLJ 1580. In view of the categorical pronouncement of the Division Bench in



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S.Devakadasham's Case, with which we agree, we are of the considered opinion that the judgments impugned in these Appeals viz., the judgment in WP No.26885 of 2013 and judgment in WP No.7627 of 2006 directing conferment of the benefits on the respondents in these Writ Appeals deserve to be set aside and they are accordingly set aside. The Writ Appeals stand allowed and both the Writ Petitions will stand dismissed. However, in the circumstances, there will be no order as to costs. Consequently, the connected miscellaneous petitions are closed."

5. Any service rendered in Self Finance institution or in any Matriculation school or unsanctioned post in an Aided School cannot be counted for granting pension since those service cannot be considered as government service. If the petitioner claim is accepted then any private employment ought to be included along with the government service and government would be made liable for paying pension for the private employment also, which can never be permitted at all. The petitioner has rendered in Matriculation School which is a Management School and a Self-Finance School, which is not aided school. Hence the petitioner is not entitled to the add such service. Therefore, basic claim itself is on a wrong footing. Hence, this writ petition cannot be entertained. Hence the legal heirs cannot be granted any liberty to adjudicate this issue.



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6. With the above said observation, this Writ Petition is dismissed.

No costs.”

6. Therefore following the earlier judgments cited supra the writ petition stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Index : Yes / No
Internet : Yes
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S.SRIMATHY, J

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**Order made in
W.P.(MD)No. 8995 of 2018**

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