



W.P.(MD)Nos.25224 to 25226 of 2018

WEB COPY **BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

<i>Judgment Reserved On</i>	<i>Judgment Pronounced On</i>
19.04.2023	07.07.2023

CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P.(MD)Nos.25224 to 25226 of 2018

M.Marudhanayagam ... Petitioner in W.P.(MD)No.25224 of 2018

P.Kalaiyarsi ... Petitioner in W.P.(MD)No.25225 of 2018

M.Kannan ... Petitioner in W.P.(MD)No.25226 of 2018

Vs.

1.The State of Tamilnadu,
Rep. by the Secretary to Government,
School Education (R1) Department,
Secretariat,
Chennai-9.

2.The Director of School Education,
College Road,
Chennai-6.

3.The District Educational Officer,
Musiri,
Trichy District.



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4. The Chief Educational Officer,
Trichy District.

.... Respondents in all Writ Petitions

PRAYER in W.P(MD)Nos.25224 & 25226 of 2018: Writ Petitions filed under Article 226 of the Constitution of India for issuance of ***Writ of Certiorarified Mandamus*** to call for the records relating to the impugned order passed by the first respondent in his Letter No.13970/Pa.Ka.4 (1) Department, dated 01.11.2018 and quash the same as illegal, arbitrary and consequently directing the respondents to give equal scale of pay to the post of Full Time Watchman on par with the permanent Watchman post from 16.05.1997 to 04.05.1998 in the light of the Hon'ble Apex Court judgment reported in ***2016(IV) LLJ 513 (SC) State of Punjab Vs. Jagjitsing and others*** together with interest of 18% respectively.

PRAYER in W.P(MD)No.25225 of 2018: Writ Petitions filed under Article 226 of the Constitution of India for issuance of ***Writ of Certiorarified Mandamus*** to call for the records relating to the impugned order passed by the first respondent in his Letter No.13970/Pa.Ka.4 (1) Department, dated 01.11.2018 and quash the same as illegal, arbitrary and consequently directing the respondents to give equal scale of pay for the petitioner's husband to the post of Full Time Watchman on par with the permanent Watchman post from 16.05.1997 to 04.05.1998 in the light of the Hon'ble Apex Court judgment reported in ***2016(IV) LLJ 513 (SC) State of Punjab Vs. Jagjitsing and others*** together with interest of 18% respectively.



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In all Writ Petitions

For Petitioners : Mr.D.Selvanayagam

For Respondents : Mr.V.Om Prakash
Government Advocate

COMMON ORDER

These Writ Petitions have been filed for ***Writ of Certiorarified Mandamus***, to quash the impugned order, dated 11.01.2018 with a consequential direction to the respondents to give equal scale of pay to the post of fulltime watchman on par with the permanent watchman post for a period from 16.05.1997 to 04.05.1998 in the light of the Hon'ble Apex Court judgment reported in ***2016(IV) LLJ 513 (SC) State of Punjab Vs. Jagjitsing and others.***

2. Heard Mr.D.Selvanayagam, learned counsel appearing for the petitioners and Mr.V.Om Prakash, learned Government Advocate appearing for the respondents. Perused the material documents available on record.

3. The petitioners in W.P(MD)Nos.25224 to 25226 of 2018 and the petitioner's husband in W.P.(MD)No.25225 of 2018 had failed in SSLC.



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They were selected for the post of fulltime watchman through the Employment Exchange on merits and as a contingent staff and joined service in a Government High School, Trichy District. Subsequently, their service was regularized through G.O.Ms.No.367, School Education (R-1) Department, dated 20.08.1997. They were appointed through employment exchange with necessary qualifications in the sanctioned post.

4. The contention of the petitioners is that their service ought to be regularized with effect from the date of initial appointment. But the District Educational Officer, Musiri, vide proceedings, dated 07.10.1999 has regularized their service only with effect from 06.05.1998. The 3rd respondent has no jurisdiction to pass any orders changing the date of regularization from the date mentioned in the Government order. The Chief Educational Officer, Trichy has already ordered for the petitioners' regularization with effect from 01.04.1983, vide his order, dated 19.02.1998 and inspite of that the District Educational Officer has passed an order, dated 29.01.2008 stating that the regularization with effect from 06.05.1998 is correct. The petitioners have submitted several representations to regularize the service from the initial date of appointment or



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atleast from the date mentioned in the Government order in G.O.Ms.No.367, School Education (CR.1) Department dated 20.08.1997. But the respondents have not considered the claim. Infact the Headmaster has recommended for regularization from the date of appointment. In the meanwhile, they had attained superannuation.

5. A similarly placed person, namely, Kannan filed a writ petition W.P(MD)No.2392 of 2008 and the same was allowed, vide order, dated 01.08.2011. The respondents have preferred an appeal in W.A.SR(MD)No. 24829 of 2013 with huge delay and the same was dismissed, vide order, dated 12.08.2013. Against the dismissal order, the respondents have preferred a Review application (MD)No.83 of 2015 and the same was allowed on 03.07.2015. The delay of preferring the writ appeal was condoned and the Registry was directed to number the writ appeal and the same was numbered as W.A(MD)No.985 of 2015 and the same was allowed 03.07.2015, adopting the order passed in Review Application No.83 of 2015, vide order, dated 03.07.2015.

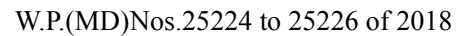


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6. The contention of the petitioner in view of the judgment by the Hon'ble Supreme Court in the case of *State of Punjab Vs. Jagjitsing and others* reported in *2016(IV) LIJ 513 SC* and in the Judgment reported in *2017(1) MLJ 431 SC, Yashpal Vs. Union of India*, the petitioner is entitled to get equal pay scale for a period from 16.05.1977 to 06.05.1998 which is the period the petitioners' service was not regularized though he was serving the sanctioned post of Watchman. Therefore, the petitioners' claim to refix the pensionary benefits for the period that they have worked. The respondents have extracted the work but without any equal scale of pay. The petitioners have submitted representations, dated 18.12.2017, 07.06.2017 and the same were received by the respondents, but there was no reply.

7. Therefore, the petitioners have filed a writ petition in WP(MD)No.6594, 6595 & 6596 of 2018 for Mandamus to grant equal scale of pay in the light of the *Jagjitsing's case*. The said writ petition was disposed of, vide order, dated 27.03.2018 and the respondents were directed to consider and pass orders. Since the respondents have not passed any order, the petitioners



8. The respondents have filed counter stating that the petitioners were employed as Watchman temporarily on contingent staff on 16.05.1977 and continued in that post till 16.05.1997, which is contrary to G.O.Ms.No.52 Finance Department, dated 16.05.1977 wherein the government banned appointment on contingent basis from 14.01.1977. However, the Government has considered the claim of the petitioners and the claim of the similarly placed persons and granted regularization through G.O.Ms.No.367, School Education Department dated 20.08.1997. Accordingly, the service of the petitioners was brought under regular stream with effect from 06.05.1998. The petitioners were promoted to the post of Head Constable in Pro.No.6015/A1/99, dated 07.10.1999. When the petitioners attained the age of superannuation at 60 years, the petitioners were retired from service on 30.08.2008.



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9. The similarly placed persons, namely, M. Kannan and C. Israel have filed writ petitions in W.P(MD)Nos.2392 of 2008 and 12258 of 2009 for regularizing their service and the same was allowed, vide order, dated 01.08.2011. Aggrieved over the said order, the Department has preferred writ appeal in the case of C. Israel in W.A.(MD)No.1158 of 2013 and the same was allowed. The respondents had preferred SLP No.17267 of 2014 and the same was dismissed. Thereafter the respondents complied with the order by issuing G.O.Ms.No.194 Higher Education (C2) Department dated 24.11.2014. In the case of M. Kannan the respondents preferred writ appeal in W.A.SR(MD)No. 24829 of 2013 with huge delay and the same was dismissed, vide order, dated 12.08.2013.

10. Against the dismissal order, the respondents have preferred a Review application (MD)No.83 of 2015 and the same was allowed on 03.07.2015. The delay of preferring the writ appeal was condoned and the Registry was directed to number the writ appeal and the same was numbered as



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W.A(MD)No.985 of 2015 and the same was allowed 03.07.2015, adopting the order passed in Review Application No.83 of 2015, vide order, dated 03.07.2015. Against this writ appeal order the said Kannan has not preferred SLP and the order has become finality. The petitioners were not a party in the said writ petitions and they have filed writ petition after lapse of 10 years in W.P(MD)No.6596 of 2018 for granting equal scale of pay. This Court has directed to consider and pass orders. The respondents after considering the same has held that there is specific embargo in G.O.Ms.No.52 Finance Department, dated 14.01.1977 to appoint any persons on contingent basis in any department after 14.01.1977. Therefore, the petitioners cannot demand to regularize their service from the date of initial appointment. The Government after taking a compassionate view directed to regularize the service, with effect from 06.05.1998.

11. After considering the claim of the petitioners, through the impugned order, the Government has declined the prayer of the petitioners. Based on the Government order, the petitioners cannot demand to regularize from the date of initial appointment. Moreover, the Government has relaxed the



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service rules in favour of the petitioners and granted regularization. Since the said regularization itself is a concession, the petitioners cannot seek further concession. Therefore, the respondents prayed to dismiss the writ petition.

12. After hearing the rival submission this Court has given its anxious consideration. It is an admitted fact that the petitioners were appointed as contingency staff on 16.05.1977 and the said appointment is not valid since there was ban for recruitment in G.O.Ms.No.52 Finance Department dated 14.01.1977. Since the appointment of petitioners are after the issuance of G.O.Ms.No.52, the petitioners are not entitled to regularization. When there was a ban for recruitment, the very appointment of the petitioners itself is legally not sustainable. The employment of the petitioners can be regularized, once they have served 10 years, provided there is some policy decision by the Government to regularize the said service. In the present case, the Government has taken a sympathetic view and has granted relaxation for not following reservation, the age relaxation and other relaxation. When the Government has taken a sympathetic view and granted regularization from 06.05.1998 onwards, the petitioners cannot have any grievance against the regularization.



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13. The Hon'ble Supreme Court has considered the case of regularization in the case of *Secretary to Government School Education Department Vs. Govindasamy, reported in 2014 CDJ SC 146*, wherein it is held that regularization of service is exclusive domain of the employer. This is followed in a subsequent Judgment rendered in the case of *Secretary to Government Commercial Taxes and Registration Department Vs. Singamuthu reported in (2017) 4 SCC 113* wherein it has been held that the temporary employee, casual employee etc., cannot seek regularization. In W.P(MD)Nos. 12901 of 2009 filed by one Esakki, this Court vide order, dated 02.03.2018 has observed that the Government has already regularized the service in favour of the employee and granted regularization, again the employees cannot seek further concession to regularize from the date of original appointment. In the present case the government has sympathetically granted regularization and hence the petitioner cannot have any grievance.

14. It is a settled preposition of law that if any Government order is issued, it will come into effect from the date of issuance of the Government



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order, unless, it has been specifically stated in the Government order that the order would take retrospectively. In the present case, the petitioners were regularized through G.O.Ms.No.367, School Education (R-1) Department, dated 20.08.1997, with effect from 06.05.1988. Therefore, the petitioners cannot seek any regularization prior to the said date.

15. The next contention that was raised by the petitioners is that they have been appointed in a sanctioned post. The same was refuted by the respondents by stating that there is no sanctioned post at all and that is why the petitioners were initially appointed under contingent staff. If there is any sanctioned post then regular appointment process would have been initiated and such process were not conducted at all. Therefore, the claim of the petitioners is incorrect. Moreover, the petitioners have not produced any appointment order to substantiate their case that they were appointed in a regular sanctioned vacancy and hence the said claim cannot be sustained. Therefore, this Court is of the considered opinion that the claim of the petitioners is ought to be rejected.

16. The next contention of the petitioners is that they are entitled



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to equal pay for a period from 16.05.1977 to 04.05.1998. Since they are doing the same and similar work as a regular Watchman in the sanctioned post and has relied on the Judgment rendered in *Jegjitsing's* case. The respondents submitted that the petitioners are not serving in any of the sanctioned post. Moreover, their appointment was not made through any regular recruitment process. There petitioners have not undergone the recruitment process of writing examination, not attended interview, reservation not followed and none of the recruitment process was followed while appointing the petitioners. In such circumstances, the petitioners cannot equate themselves with regular appointees who had undergone the examination or viva or and other recruitment conditions and rules. Therefore, the petitioners cannot claim that they are entitled to equal pay. It is within the domain of the employer to recruit any person and it is their right and power to appoint any person as contingent staff based on the needs and based on the financial commitment of the employer.

17. In the present case, when there was ban for recruitment itself, the appointment of the petitioners itself is legal. Therefore, the petitioners cannot seek to extend Article 14 to legalize the illegal appointment. Hence, this



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WEB COURT is not inclined to accept the contention of the petitioners.

18. It is seen that the petitioners are seeking to regularize from the date of initial appointment since in the case of one C. Israel the respondents have granted the same relief. But that relief was based on the orders of the Court, wherein the respondents have lost in writ petition, writ appeal and SLP and in order to comply with the order the respondents had passed such order. Infact along with the said Israel, one Kannan had filed writ petition and the said writ petition was ordered along with Israel's writ petition. But the government preferred writ appeal belatedly in W.A.SR(MD)No.24829 of 2013 with huge delay and the same was dismissed, vide order, dated 12.08.2013. Against the dismissal order, the respondents have preferred a Review application (MD)No. 83 of 2015 and the same was allowed on 03.07.2015. The delay in preferring the writ appeal was condoned and the Registry was directed to number the writ appeal and the same was numbered as W.A(MD)No.985 of 2015 and the same was allowed 03.07.2015, adopting the order passed in Review Application No. 83 of 2015, vide order, dated 03.07.2015. the relevant portion of the order passed in Review Application is extracted hereunder:

“7.Perusal of G.O.Ms.No.367, School Education (R.1) Department, dated 20.08.1997, shows that taking note of the



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services of the respondent and others, Government have issued the 6 above said Order, bringing the respondent and other similarly placed persons, to time scale, from the respective dates, noted in the Government Order. G.O.Ms.No.367, School Education (R.1) Department, dated 20.08.1997 also shows that the respondent was one of those, employed, on contingent basis in Government Higher Secondary School, Ayyampalayam, Tiruchirappallai District. He was appointed on 16.05.1977 on such basis. By the aforesaid order, his services have been brought to time scale from 01.04.1983. Contention of the learned Special Government Pleader is that G.O.Ms.No.367, School Education (R.1) Department, dated 20.08.1997, was not challenged by the respondent, is not disputed. However, material on record, discloses that vide Letter No.6015/ A. 1/99, dated 07.10.1999, the District Educational Officer, Musiri has regularized the service of the petitioner from 05.05.1998 and when the Headmaster, Government Higher Secondary School, Pulivalam, sent a letter dated 24.12.2007, for retrospective regularization of the respondent from 01.04.1983, vide proceedings in O.Mu.No. 9913/A.1/2007, dated 29.01.2008, the District Educational Officer, Musiri, has rejected. Proceedings in O.Mu.No. 9913/A.1/2007 of the District Educational Officer, Musiri, dated 29.01.2008, has been 7 challenged in W.P(MD)No.2392 of 2008. One Mr.Israel, has filed W.P(MD)No.12258 of 2009, challenging the proceedings regarding regularization. Both the writ petitions filed by the petitioner and Israel, have been allowed by a common order dated 01.08.2011. Against the order passed in W.P(MD)No.



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12258 of 2009 filed by Israel, an appeal has been filed in W.A(MD)No.1158 of 2013 and that the same has been dismissed on 03.02.2014. Thereafter, Special Leave Petition No.17267 of 2014 has been filed and that the same has also been dismissed. Though Mr.D.Selvanayagam, learned counsel for the respondent submitted that the Government have issued G.O.Ms.No.194, Higher Education(C2)Department, dated 24.11.2014 implementing the order made in W.A(MD)No.1158 of 2013, dated 03.02.2014, in so far as Israel is concerned and therefore the same yardstick should be applied to the case of the respondent also, this Court is not inclined to accept the said submission for the reason that the above said Government Order has been issued only by way of implementation of the Hon'ble Division Bench directions with a rider that the concession given to Thiru.C.Israel shall not be extended to similar persons in future and in case if any claim by citing this case arises, it shall not be 8 entertained. It can also be deduced that the respondent is aware of the directions issued in the Government Order. Perusal of documents shows that admittedly G.O.Ms.No.367, School Education (R.1) Department, dated 20.08.1997 has not been challenged. It is a well settled legal position that mandamus cannot be issued to set aside an order passed by the competent authority. Indirectly, the respondent cannot seek for a mandamus, which would have the effect of setting at naught a Government Order. Writ of mandamus and certiorari are conceptually different.



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For the reasons stated supra, we deem it fit to allow the Review Application and accordingly, this Review Application is allowed. No costs. Consequently, connected Miscellaneous Petition is closed.”

In the aforesaid judgment passed by the Hon’ble Division Bench the claim of the petitioner was declined. The petitioner is similarly placed person and hence following the same the present writ petition is also liable to be dismissed.

19. The petitioners herein has filed a writ petition in W.P. (MD)No. 6596 of 2018, after 10 years from the date of retirement and prayed for mandamus and this Court directed to consider and pass orders. Based on the order of this Court the respondent have considered and declined the claim of the petitioners. Infact the petitioners have revived the dead claim by filing a simple Mandamus petition. Therefore, this Court is declining the claim of the petitioner on the ground of delay as well. Accordingly, these Writ Petitions are dismissed. No Costs.

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

07.07.2023



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To

- 1.The Secretary to Government,
State of Tamilnadu,
School Education (R1) Department,
Secretariat,
Chennai-9.
- 2.The Director of School Education,
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Chennai-6.
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S.SRIMATHY, J

KSA

**Common Order made in
W.P.(MD)Nos.25224 to 25226 of 2018**

07.07.2023