



W.P.(MD)No.10323 of 2016

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 10.02.2023

CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P.(MD)No. 10323 of 2016

and

W.M.P(MD)No. 8072 of 2016

S.Selvi

... Petitioner

Vs.

1. The State of Tamil Nadu,
Represented by its Secretary,
Department of School Education,
Fort Saint George, Chennai – 600 009.
2. The Director of School Education,
College Road, Chennai – 600 006.
3. The Accountant General of Tamilnadu,
Office of the Accountant General,
Chennai – 600 018.
4. The District Educational Officer,
Tenkasi - 627811
Tirunelveli District.
5. The Correspondent,
Punitha Arulappan Higher Secondary School.

... Respondents



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PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of *Writ of Certiorarified Mandamus*, calling for the records relating to the impugned proceedings issued by the 2nd Respondent Director of School Education in O.Mu.No. 30956/w5/e1/2013, dated 20.09.2013, quash the same and further Direct the respondents 1 to 4 to reckon the service rendered by the petitioner during the period from 03.11.1989 to 30.05.1994 (4 years 6 months and 27 days) as qualifying service for the purpose of pensionary and other terminal benefits and sanction and release monetary benefits in terms.

For Petitioner	: Mr.K.Ragatheesh Kumar, for M/s.Isaac Chambers
For R-1, 2 & 4	: Mr.D.Sadiq Raja, Additional Government Pleader
For R-3	: Mr.P.Gunasekaran, Standing Counsel
For R-5	: No appearance

ORDER

This writ petition is filed for *Writ of Certiorarified Mandamus*, to quash the impugned proceedings issued by the 2nd Respondent in O.Mu.No.30956 / w5/e1/2013, dated 20.09.2013 and seeking further direction to the respondents 1 to 4 to reckon the service rendered by the petitioner, during the period from



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03.11.1989 to 30.05.1994 (4 years 6 months and 27 days) as qualifying service for the purpose of pensionary and other terminal benefits and sanction and release monetary benefits in terms.

2. The petitioner was initially appointed as Secondary Grade Teacher in the 5th respondent school on 07.10.1982 in a sanctioned post and the same was approved by the official respondents. Thereafter, the school was upgraded into Higher Secondary school from 1988-1989. The petitioner was possessing requisite qualification to the P.G. Assistant (Chemistry) and hence, the petitioner was promoted and appointed as P.G. Assistant on 03.11.1989. The newly upgraded Higher Secondary school was recognized by the Government, but the Government delayed in releasing of grant-in-aid towards the same. The 5th respondent school has approached this Court, by way of filing writ petition in W.P(MD)No.15848 of 1994, seeking disbursement of grant-in-aid towards newly upgraded schools and the same was allowed by this Court, vide order, dated 08.08.1995. In view of this order, the Government has issued G.O.Ms.No.323 Education, Science and Technology (HS2) Department, dated 06.05.1996



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sanctioned grant-in-aid to the 5th respondent school for the post of five PG assistant and one part time Vocational Instructor, with effect from 01.06.1994 and the petitioner has received salary under grant-in-aid from 01.06.1984. However, the petitioner service under self-finance section was not granted any grant in aid. Hence, the petitioner is seeking to calculate the said period for the purpose of pensionary benefits. For this the petitioner has relied on G.O.Ms.No.143, Education (V2) Department, dated 30.01.1987, wherein the government has calculated the unsanctioned service rendered in recognized Matriculation school to one Rev.Fr.Stanislaus. By relying on the aforesaid G.O. another person namely one M.Jeyaraj, Headmaster was granted the same relief and the government issued G.O.Ms.No.18 Education, Science and Technology (D2) Department dated 09.01.1997 and revised the pensionary benefits. However, the G.O.Ms.No.18 was canceled by issuing G.O.Ms.No.314 School Education Department (D2), dated 12.12.1999 immediately and it was stated in the said G.O. that the period of service rendered in the recognized school under the unsanctioned post prior to 01.06.1991 cannot be taken into consideration for fixation of pay or terminal benefits. The candidates who availed the benefits under G.O.Ms.No.18



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challenged the clauses 1 to 3 of G.O.Ms.No.314, dated 12.12.1999 in W.P. (MD)Nos. 10758 and 10759 of 2006. These writ petitions were dismissed, vide order, dated 11.06.2007. Aggrieved over the said dismissal order, writ appeals were filed in W.A.(MD)Nos.291 & 292 of 2008 (by Gabriel Jeletin's case) and the Hon'ble Division Bench of this Court was pleased to allow the writ appeals, by setting aside the Clauses 1 to 3 of the G.O.Ms.No.314, vide order, dated 26.06.2008. Against the said order, the Government has preferred SLP(Civil) Nos.3969 and 3970 of 2010 and the same were also dismissed, vide order, dated 22.03.2010, uploading the order of the Hon'ble Division Bench of this Court. In compliance to the same, the Government has issued G.O.Ms.No.125 School Education Department, dated 13.04.2010. Hence, the learned counsel appearing for the petitioner submitted a detailed representation to grant benefits based on the above proceedings. Without taking into account of the aforesaid proceedings, the respondents have passed the impugned order refusing to add self-finance period for calculating petitioner's pensionary benefits. Aggrieved over the same, the present writ petition is filed.



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salary paid to the appellants between the period 09.01.1997 to 12.11.1999. We clarify that the order passed by us shall not be treated as precedent in any other case.”

As far as the 5th respondent school is concerned, the Government did not grant any grant-in-aid prior to 01.06.1994. But granted grant-in-aid only through G.O.Ms.No.323 dated 06.05.1996 and the grant-in-aid is from 01.06.1994 for the salary of teaching and non-teaching only. To that effect, G.O.Ms.No.50 dated 20.01.1995 was also passed. Therefore, service rendered for a period from 19.06.1989 to 01.06.1994 cannot be granted and hence, the petitioner is not entitled to the same and prayed for dismissing the writ petition.

4. Heard Mr.K.Ragatheesh Kumar, for M/s.Isaac Chambers, learned counsel appearing for the petitioner and Mr.D.Sadiq Raja, learned Additional Government Pleader appearing for the respondents 1, 2 & 4 and Mr.P.Gunasekaran, learned Standing counsel appearing for the 3rd respondent. Perused the material documents available on record.



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5. It is seen that the G.O.Ms.No.143 is declared as bogus by the Learned Single Judge in W.P.(MD)No.7818 of 2009 vide order dated 16.03.2011 in the case of Kamalabai Amaladass v. the Secretary to Government and others. The Learned Single Judge has further held that he had perused the said G.O. and the letter written by the Secretary and the said G.O.Ms.No.143 is nothing to do with the pension. The said Judgment is followed in
W.P.(MD)No.4494 of 2009 dated 16.08.2012
W.P.(MD)No.649 of 2012 dated 09.04.2013
W.P.(MD)No.20419 of 2015 dated 18.11.2015

Therefore, this Court is of the considered opinion that the G.O.Ms.No.143 cannot be relied on since it has been declared as bogus one.

6. Then the government issued G.O.Ms.No.18 dated 09.01.1997 granting benefits to one M.Jeyaraj. Relying on the said G.O.Ms.No.18 several persons stated demanding to disburse the benefits. The government after two years woke up to the reality and cancelled the said G.O.Ms.No.18 by issuing G.O.Ms.No.314 dated 12.11.1999. The individuals affected by G.O.Ms.No.314 had challenged G.O.Ms.No.314 and recovery proceedings with consequential



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relief of refixation of pay in the several writ petitions and the writ petitions were dismissed. Aggrieved over the individuals had filed writ appeals in S.Devakadasham v. District Educational Officer and others in W.A.(MD)No.648 of 2003. The issue of adding the service rendered in “Unaided Post” was considered by the Hon’ble Division Bench and has held that the said service rendered prior to the sanction of the posts cannot be included. The Hon’ble Division Bench has also considered the scope of G.O.Ms.No.18 and the scope of G.O.Ms.No.314 which has cancelled G.O.Ms.No.18 and held that the teachers are estopped from questioning the non-extension of benefits with retrospective effect, since there is no challenge to the G.O.Ms.No.340 and 341 which has sanctioned posts from the date of the G.O. and not from prior date. The Hon'ble Division Bench of this Court has dismissed the said writ appeals filed by the individuals, vide judgment, dated 13.09.2006 and has held

“36. It is now well settled that the Government is obliged to sanction grant for payment of salary to a person appointed to a post, only if it is a sanctioned post. The posts held by the appellants got sanctioned by the Government only under G.O.Ms.No.340 and 341 dated 01.04.1992. Therefore, the appellants are not entitled to the



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benefit of counting past services rendered by them prior to the sanction of their posts.”

Aggrieved over the judgment passed in the aforesaid writ appeal, the individuals have preferred SLP in C.A.No.558 of 2008 in SLP (C) No.2335 of 2007 and the same was dismissed, vide order, dated 16.04.2015.

7. Without bring it to the knowledge of the aforesaid of judgment, dated 13.09.2006 rendered in Devakadhasham's case, to the Hon'ble Division Bench in Gabriel Jeletin's case filed in W.A(MD)Nos.291 & 292 of 2008, unfortunately the writ appeals came to be allowed on 26.06.2008. If the earlier Hon'ble Division Bench judgment was brought to the knowledge of the subsequent Hon'ble Division Bench, the inconsistent order would not have been passed in Gabriel Jeletin's case in W.A(MD)Nos.291 & 292 of 2008.

8. Infact the Learned Single Judge in W.P.(MD)No.4494 of 2009 dated 16.08.2012 has held that the Devakadasham's case is perfectly in order and the order in W.A.No.291 and 292 of 2008 cannot be followed. Another Hon'ble



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Division Bench vide order dated 05.07.2018 in the case of the Secretary to Government v. S.Veerabadran in W.A.No.1267 and 2014 and W.A.No.40 of 2015 has followed the judgment of Devakadasham's case and declined to accept the judgment passed in Gabriel Jelestin's case in W.A(MD)Nos.291 & 292 of 2008 and the relevant portion is extracted hereunder:

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 Jelestin'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 in Sri Jagannath Temple Managing Committee v. Siddha Math and Others,



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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 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 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



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dismissed. However, in the circumstances, there will be no order as to costs. Consequently, the connected miscellaneous petitions are closed.

Therefore except the Gabriel Jelestin's case in W.A(MD)Nos.291 & 292 of 2008, other judgments rendered in S.Devakadaksham's case and other judgments have consistently held that the ratio laid down in D.Devakasakaham is correct and the Gabriel Jelestin's case in W.A(MD)Nos.291 & 292 of 2008 is not correct.

9. Admittedly, the petitioner has served from 03.11.1989 to 30.05.1994 in an unsanctioned and unapproved, self-financed management post. The service rendered in an unsanctioned post, unapproved post, self-financed management post, Matriculation service will be considered as private employment and cannot be equated with grant-in-aid service. Therefore the claim of the petitioner and similarly persons to include the private service can never be accepted. The claim of the petitioner is illegal and hence, the same cannot be granted. Hence, the petitioner is not entitled to claim such service to be included in the regular service.



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10. Accordingly, this Writ Petition stands dismissed. No Costs.

Consequently, connected miscellaneous petition is closed.

Index : Yes / No

Internet : Yes

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To

1. The State of Tamil Nadu,
Represented by its Secretary,
Department of School Education,
Fort Saint George, Chennai – 600 009.
2. The Director of School Education,
College Road, Chennai – 600 006.
3. The District Educational Officer,
Tenkasi - 627811
Tirunelveli District.



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S.SRIMATHY, J

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**Order made in
W.P.(MD)No.10323 of 2016**

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