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W.P.(MD)No.24599 of 2016

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 18.04.2023

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THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P.(MD)No.24599 of 2016

and

W.M.P.(MD)No.17722 of 2016

N.Catherine

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... Petitioner

vs.

1.The Director of School Education,
Chennai.

2.The Regional Accounts Officer,
(Education Department),
Regional Accounts Office,
C.E.O. Office Complex,
Thamukkam, Madurai.

3.The District Education Officer,
Melur Education District,
Melur, Madurai.

4.The Correspondent,
O.C.P.M. Girls Higher Secondary School,
Thallakulam, Madurai.

... Respondents



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PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, to call for the entire records pertaining to the communication, dated 19.12.2016, of the 4th respondent on the basis of audit objection that has made by the 2nd respondent vide Para No.21(1) in his audit report in connection with the petitioner acquirement of additional qualification of M.Phil (Physics) in Ponnaiyah Ramajayam Institute of Science and Technology (PRIST), Yagappa Chavadi, Thanjavur (Deemed University) and to quash the same and consequently, to direct the respondents to continue the drawl of her salary by considering such additional qualification as recognized and eligible for all purposes in connection with her service.

For Petitioner : Mr.S.Srinivasa Ragavan
For R1 to 3 : Mr.V.Omprakash
Government Advocate

ORDER

This writ petition is filed for writ of Certiorarified Mandamus, to quash the communication, dated 19.12.2016, of the 4th respondent on the basis of audit objection that was made by the 2nd respondent in his audit



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report in connection with the petitioner acquirement of additional qualification of M.Phil. (Physics) in Ponnaiyah Ramajayam Institute of Science and Technology (PRIST), Yagappa Chavadi, Thanjavur (Deemed University) and consequently to direct the respondents to continue the drawl of her salary by considering such additional qualification as recognized and eligible for all purposes in connection with her service.

2. The petitioner has acquired educational qualification of M.Sc., B.Ed., in Physics subject and joined the 4th respondent School in regular vacancy in the cadre of P.G. Assistant. While in service, the petitioner intended to acquire additional qualification of M.Phil. (Physics). The petitioner submitted a requisition letter to the 4th respondent for the purpose of continuing her M.Phil. course. The School granted permission and the petitioner has completed the course during the academic year 2009-2010 and the same was entered in the service



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register. The School has granted incentive increment based on the M.Phil. qualification. On 19.12.2016, the 4th respondent served the copy of the audit objection to the petitioner, wherein it was objected that the petitioner did not get prior permission from the 1st respondent for completing M.Phil. course. Therefore, the respondents directed the School to recover the additional salary which was paid to the petitioner from 17.05.2010. The further objection is that the petitioner has obtained M.Phil., from PRIST University. The said University is not a recognized University. Therefore, the respondents declined to grant incentive increment to the petitioner and also directed the School to recover the same. Aggrieved over the same, the present writ petition is filed.

3. The official respondents have filed counter affidavit stating that the PRIST Deemed University is not recognized and the petitioner has not obtained prior permission. Moreover, the objection of the respondents is that the M.Phil., degree was stopped by all Universities.



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Hence respondents prayed to dismiss the writ petition.

4. Heard Mr.S.Srinivasa Ragavan, learned Counsel appearing for the petitioner and Mr.V.Omprakash, learned Government Advocate appearing for respondents 1 to 3 and perused the records.

5. The 1st objection of the respondents is that the PRIST Deemed University is not recognized. It is seen subsequently, the University Grants Commission has recognized the said University vide Letter No. F. 8-1/2013 (CPP-I/PU) dated 16.01.2014 and the same was communicated to the State Government. Thereafter the State Government had issued G.O.Ms.No.39, Personnel and Administrative Reforms (S) Department, dated 30.04.2014, wherein in Serial No.501 the PRIST University is mentioned. Therefore, the said allegation cannot be entertained. More so, the G.O., grants recognition giving retrospective effect.



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6. The next contention that was raised by the respondents is that the petitioner has obtained permission from the Correspondent but did not obtained permission from the Education Department. The contention of the petitioner is that the Head of the Department is the Correspondent of the School and the petitioner has obtained permission from the Correspondent of the School. Therefore, the said allegation is erroneous.

7. The learned Government Advocate appearing for the respondents 1 to 3 submitted that the Head of the Department is the District Education Officer or the Chief Education Officer and not the Correspondent of the School for which he relied on G.O.Ms.No.944, Education (D2) Department, dated 29.07.1989.

8. The learned Counsel for the petitioner relied on the order passed in W.P.(MD)No.11046 of 2015, dated 26.11.2020, wherein the said G.O., was quashed. Moreover, the learned Counsel relied on the



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judgment rendered in the case of the *Director of Elementary Education, Chennai and others Vs. G.Vijayalakshmi and another* reported in *(2015) 6 MLJ 315* and submitted that unless the government issues any order within frame work of statute which governs recognised and aided school, the Director of the School Education cannot assume jurisdiction. The Correspondent or the Headmaster is the appropriate authority for granting permission or leave sanction etc. Moreover, the Recognized Aided Private Schools are not considered as government employee and hence are not coming within the Department of the School Education. Therefore, any G.O. cannot be applicable to the petitioner and hence the objection of the respondents ought not to be entertained.

9. After hearing this submission this Court has given its anxious consideration. On perusing G.O.Ms.No.944, Education (D2) Department, dated 29.07.1989, it is seen that the G.O., is issued only for the aided schools, whether it is minority or non-minority. The said G.O. states that



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the Director of School Education is the appropriate authority to grant permission to persons who are inclined to pursue higher qualifications. It further states if any person has not taken permission then disciplinary proceedings ought to be initiated against the said individual. The said G.O. was in existence until the issuance of the G.O.Ms.No.101, School Education (Budget-1), dated 18.05.2018. The said G.O.Ms.No.101 was issued in order to restructure the education department. The power granted to the Director was deleted in the said G.O.Ms.No.101.

10. The Learned Single Judge has passed an order, dated 26.11.2020, by relying on G.O.Ms.No.101, School Education (Budget-1), dated 18.05.2018. The Learned Single Judge has held that G.O.Ms.No.944, Education (D2) Department, dated 29.07.1989, is not applicable as on date, since the Government has modified the G.O. Therefore, this Court is of the considered opinion that until the



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G.O.Ms.No.101, School Education (Budget-1), dated 18.05.2018, was passed, the G.O.Ms.No.944, Education (D2) Department, dated 29.07.1989, was in existence and hence the said G.O. is applicable to the present case since the petitioner has completed the higher education prior to the issuance of the G.O.Ms.No.101 i.e. the petitioner has completed the course in the academic year 2009-2010.

11. The G.O.Ms.No.944 further states that if prior permission is not obtained, the delinquent is liable to be punished by taking disciplinary proceedings. In the present case, since the petitioner has completed in the year 2009-2010, at this stage disciplinary proceedings cannot be initiated. Therefore, as a token of violating the G.O. this Court is imposing a cost of Rs.500/- (Rupees Five Hundred only) to the petitioner. The impugned order is quashed. The respondents are directed to disburse the salary. However, Rs.500/- (Rupees Five Hundred only)



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shall be deducted and the same shall be remitted in the Treasury Account,
before disbursing the salary.

12. For the reasons stated supra, the writ petition is allowed in
above terms. No costs. Consequently, connected miscellaneous petition
is closed.

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

18.04.2023

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To

- 1.The Director of School Education,
Chennai.
- 2.The Regional Accounts Officer,
(Education Department),
Regional Accounts Office,
C.E.O. Office Complex,
Thamukkam, Madurai.
- 3.The District Education Officer,
Melur Education District,
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S.SRIMATHY, J

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