



W.A.No.749 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 04.03.2024

CORAM

THE HON'BLE Mr. JUSTICE R. MAHADEVAN
AND
THE HON'BLE Mr. JUSTICE MOHAMMED SHAFFIQ

W.A.No.749 of 2024
AND
C.M.P.No.5006 of 2024

1.The State of Tamil Nadu
Rep. by the Secretary
Department of School Education
Fort St. George, Chennai 600 009

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

3.The District Elementary Educational Officer
Villupuram, New Bus Stand
Near Collectorate, Villupuram 605 602

4.The Assistant Elementary Educational Officer
Villupuram New Bus Stand
Near Collectorate, Villupuram 605 602

.. Appellants

Vs.

1.S.Jeyalakshmi

2.The Correspondent
Tamil Evangelical Lutheran Church
No.7 Court Road, Villupuram 605 602

.. Respondents

Writ Appeal filed under Clause 15 of the Letters Patent, against the order



W.A.No.749 of 2024

dated 24.07.2023 passed in W.P.No.22189 of 2019.

WEB COPY

For Appellants : Mr.UM.Ravichandran
Special Government Pleader
For 1st Respondent : Ms.H.Mary Sowmi Rexi

JUDGMENT

(Judgment of the Court was delivered by R. MAHADEVAN, J.)

The appellant authorities have come forward with this intra-court appeal aggrieved by the order dated 24.07.2023 passed by the learned Judge allowing the writ petition in W.P.No.22189 of 2019 filed by the first respondent/writ petitioner.

2.The first respondent/writ petitioner has filed the aforesaid writ petition praying to issue a Writ of Certiorarified Mandamus to quash the proceedings dated 29.03.2016 issued by the 3rd appellant and for a further direction to the authorities to approve her appointment as Middle Graduate Teacher from the date of her initial appointment viz., 25.07.2002 with all other attendant benefits including time scale of pay.

3.The case of the first respondent herein before the writ court was that she



W.A.No.749 of 2024

got qualified in B.Sc. (Maths) and B.Ed. Degrees and appointed as B.T.

Assistant (Maths) by the second respondent school at Villupuram on 25.07.2002 and her vacancy was approved. She joined duty on 25.07.2002 in the second respondent school and continued to work till attaining the age of superannuation on 31.05.2013. As per G.O.Ms.No.79 (Secondary Education-U1) dated 14.06.2002, the Secondary Grade Posts in the middle school would be equal to Standards 6, 7 and 8 with Graduate Teachers for the posts which fell vacant since 01.06.2002. Since the first respondent was qualified, the second respondent recognised her educational qualifications and appointed her as Middle Grade Graduate Teacher with effect from 25.07.2002, since the then Headmistress of TELC Middle School, Chidambaram had been further promoted. When a proposal was sent to the fourth appellant to grant approval of the appointment of the first respondent, it was denied on the ground that she was irregularly appointed as Middle Grade Graduate Teacher overlooking the subsequent Government Order in G.O.Ms.No.100 dated 27.06.2003.

4.A counter was also filed on behalf of the third appellant justifying the stand taken as above before the writ Court, wherein it was stated that the first respondent was appointed consequent to transfer vacancy of Secondary Grade Teacher contrary to G.O.Ms.No.79. It was further stated that to uplift the



W.A.No.749 of 2024

education of the students of VI, VII and VII standards, appointments of the

education of the students of VI, VII and VIII Standards, appointments of B.Ed. qualified teachers were made and therefore, when the post of Secondary Grade Teacher falls vacant due to retirement, resignation or promotion, that post should be converted as Middle Grade Graduate Teacher and filled up by B.Ed. qualified persons in the scale of pay of Rs.4500-125-7000 applicable to the post of Secondary Grade Teachers with one advance increment, ie., Rs.4625-127-7000/-. It was also stated that the advance increment should be borne by the Management.

5.That apart, it was contended on behalf of the appellants before the writ Court that since the second respondent herein had appointed the first respondent not in permanent vacancy but only consequent to promotion, approval of appointment in the regular scale of pay as applicable to B.T. Assistant with effect from the date of initial appointment on 24.07.2002 is not permissible. Without following the procedure, the second respondent had appointed the first respondent as Middle School Teacher. There is no question of granting approval to the said post and the first respondent had been granted with such approval only after introduction of G.O.Ms.No.100 dated 27.06.2003.

6.The learned Judge, after hearing both sides, allowed the writ petition, however, placing a caveat in favour of the authorities from granting interest for



W.A.No.749 of 2024

the benefits, by the order impugned herein.

WEB COPY

7.We have heard the learned counsel on either side and also perused the entire papers, including the order impugned herein. The learned Judge has placed reliance on the order of a learned Judge dated 02.11.2006 in WP (MD) No. 1664 of 2005 and the decision rendered by a Division Bench of this court in *The District Elementary Educational Officer and Others vs. Indirani and others* [2016 SCC OnLine Mad 31562].

8.On a perusal of the Division Bench judgment of this Court referred to supra, it is seen that the learned counsel appearing for the State in that case argued that since no prior approval was taken, the benefits should not be made available from 2002, but from 2006 when G.O.Ms.No.99 School Education (Budget-II) Department dated 27.06.2006 was issued waiving the condition of lack of prior approval. This argument was not accepted by the Court on the reason that as per the G.O. of the year 2002, the private respondents were eligible for appointment and since they have been appointed earlier, there could not have been any prior approval for the appointment and the benefits prior to 2002 from the initial date of appointment has not been granted. The Division Bench affirmed the reason of the learned Judge in the order impugned therein,



W.A.No.749 of 2024

who had ordered in favour of the writ petitioners therein that they are eligible for appointment and entitled for benefits from the initial date of appointment.

For better appreciation, the judgment of the Division Bench is extracted below:

“The private respondents were appointed as Middle Grade Graduate Teachers on 29.06.1998, but on that date, they were over qualified for the appointment to the said post. However, vide G.O.Ms.No.79, School Education Department, dated 14.06.2002, such appointments were permitted, but with prior approval.

2.It is the case of the private respondents that in fact, they were so regularised and thus, they are entitled to the benefit of pay from that date accordingly, rather than, consolidated pay being granted to them.

3.In terms of the impugned order dated 24.11.2014, the learned Single Judge has ruled in favour of the private respondents.

4.The learned counsel for the appellants contends that since no prior approval was taken, the benefits should not be made available in from 2002 but from 2006, when G.O.Ms.No.99 School Education (Budget-II) Department dated 27.06.2006 was issued waiving the condition of lack of prior approval.

5.We are unable to accept the plea for the reason that the present case is one, as per the G.O. of the year 2002, the private respondents were eligible for appointment and since they have been appointed earlier, there could not have been any prior approval for the appointment and the benefits prior to 2002 from the initial date of appointment has not been granted.

6.We thus, find no infirmity in the impugned order. We may also note that a coordination Bench of this Court has opined likewise, while dismissing the appeal against the order of the learned single Judge in W.A (MD) No.190/2007 decided on 23.07.2008.

7.Writ appeals dismissed. No costs....”

9.With regard to the order passed by the learned Judge in W.P.(MD)No.1664 of 2005 dated 02.11.2006, the date of appointment of the



W.A.No.749 of 2024

petitioner therein is 08.08.2002. The petitioner therein has been working from the said date and the proposals have also been received by the authorities which were kept pending till the Director issued proceedings on 27.01.2004. In the circumstances, the learned Single Judge held that it cannot be a ground to deny approval of the petitioner's appointment from 08.08.2002. The proceedings of the Director referred to in that case in the counter affidavit dated 27.01.2004 is applicable to the teachers who were appointed after 01.06.2003. Since the petitioner therein, having been appointed as early as on 08.08.2002, his appointment has to be approved in terms of G.O.Ms.No.79 and accordingly he is entitled to time scale of pay, it was held.

10.In the case on hand, since the initial employment of the first respondent was on 25.07.2002, the learned Judge, in the order impugned herein, held that the first respondent is entitled for the benefits. This court is of the view that the learned Judge has correctly dealt with the facts and the case laws and had allowed the writ petition, but placing a caveat in favour of the authorities from granting interest for the benefits, since the first respondent had retired on attaining the age of superannuation in the year 2013, but filed the writ petition only in the year 2019. Hence, there is no ground made out by the appellants to interfere with the order so passed by the learned Judge.



W.A.No.749 of 2024

WEB COPY

11. In the result, the writ appeal stands dismissed. The appellant authorities are directed to comply with the order of the learned Judge within a period of eight weeks from the date of receipt of a copy of this judgment. No costs. Connected miscellaneous petition is closed.

[R.M.D, J.] [M.S.Q, J.]

04.03.2024

Neutral Citation : Yes/No
gya

To

1. The Secretary to Government
Department of School Education
Fort St. George, Chennai 600 009

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

3. The District Elementary Educational Officer
Villupuram, New Bus Stand
Near Collectorate, Villupuram 605 602

4. The Assistant Elementary Educational Officer
Villupuram New Bus Stand
Near Collectorate, Villupuram 605 602

R. MAHADEVAN, J.
AND
MOHAMMED SHAFFIQ, J.

gya



WEB COPY



W.A.No.749 of 2024

W.A.No.749 of 2024

04.03.2024