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WA.1298, 1299 & 1300 of 2012

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.06.2024

CORAM

THE HONOURABLE Mr.JUSTICE **S.M.SUBRAMANIAM**

AND

THE HONOURABLE Mr.JUSTICE **C.KUMARAPPAN**

WA.Nos.1298, 1299 & 1300 of 2012

The Tamil Nadu Higher Secondary
Post Graduate Teacher's Welfare Association
(Regd.No.281/97)
(TNPSC Recruited teachers only (state body)
rep. by its President M.Elavarasan

... Appellant in all WAs.

Vs.

1. The Secretary to Government of Tamil Nadu,
School Education
(HS-II) Department,
Fort St. George, Chennai-9.
2. The Director of School Education,
D.P.I Compound,
College Road, Chennai-6.
3. The Secretary
Tamil Nadu Public Service Commission,
Government Estate,
Chennai-2.
4. I.Kalanith Garijam
5. J.Nanjappan
6. D.Duglux Manoharan
7. S.Jayaprakash
8. C.P.Anandi Selvarani



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9. R.Sekaran
10. G.Rajendran
11. D.V.Kalaimani
12. M.Jothimanickam
13. The Tamil Nadu Higher Secondary
Post Graduate Teachers Association,
Rep. by its President,
24/35, Bells Road,
Triplicane, Chennai-5.

... Respondents in all WAs

Prayer in all the WAs: Writ Appeal filed under Clause 15 of The Letters Patent, praying to set aside the order dated 30.11.2020 made in WP.Nos.44342, 44343 & 44344 of 2006 by allowing the same as prayed for and pass such further order or orders as this Hon'ble Court may deem fit and proper in the circumstances of the case.

For Appellant : Ms.Auxilia Peter
in all WAs
For Respondents : Mr.U.M.Ravichandran
in all WAs. Special Government Pleader for R1 & R2
Mr.R.Bharanidharan
Standing Counsel (TNPSC) for R3
No Appearance-RR6, 8, 10 & 12
Not Ready in Notice – RR4, 5, 7, 9, 11 & 13

COMMON JUDGMENT

[Judgment of the Court was delivered by **S.M.SUBRAMANIAM, J.**]

The Tamil Nadu Higher Secondary Post Graduate Teachers Welfare Association are the appellant in the three Writ Appeals instituted challenging



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the common order dated 30.11.2010 passed in batch of writ petitions.

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2. The service Association of Government servants maintaining a writ petition regarding the grievances of its members is to be considered at the first instance. The relief sought for in the writ petitions by this Association are to direct the Government Authorities to re-fix the seniority in accordance with law by placing the Post Graduate Teachers placing the members of the petitioner Association, who were appointed through Tamil Nadu Public Service Commission to the post of Post Graduate Assistants. Consequential relief to grant promotion to the post of Headmasters/Headmistress are also sought for in the writ petitions.

3. Fixation or re-fixation of seniority and grant of promotion to the higher cadre are the individual grievances of the employees. In the event of re-fixation of seniority, some of the members of the appellant-Association may be granted promotions, some may not be granted. Even revision of seniority may affect only few members of the Association. This exactly is the reason why the Courts have consistently held that services Association cannot maintain the writ petitions in respect of the individual grievances in service matters. An aggrieved person has to approach the Court of law for redressal of his grievances.



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4. The learned Special Government Pleader would rely on the judgment of the Division Bench in WA.No.717 of 2005 dated 19.04.2005, wherein the issue regarding maintainability of a writ petition by the Government Employees Association are considered and the relevant paragraphs read as under:-

“4. In our opinion, the appellant had no locus standi to file the writ petition or this writ appeal.

5. A Division Bench of this Court in Formation of Indian Network Marketing Association, Chennai vs. M/s. Apple FMCG Marketing Pvt. Ltd. Chennai and others (Writ Appeal No.688 of 2005 dated 7.4.2005) has held that such writ appeals are liable to be dismissed on the ground of lack of locus standi (vide paragraphs 6 to 13). In paragraph - 6 of the said judgment it was observed :-

" It is well settled that ordinarily a writ petition or writ appeal can only be filed by someone who is personally aggrieved".

6. In Indian Sugar Mills Association Vs. Secretary to Government, AIR 1951 All 1 a Full Bench of the Allahabad High Court held (vide paragraphs 10 and 11) :-

" The further argument is that any person, whether his interests are directly affected or not, can file an application challenging any Act of the Legislature or the order of the Government on the ground that it is ultra vires. In this connection we cannot do better than quote the decision of the learned Judges of the Supreme Court of the United States in Commonwealth of Massachusetts V. Andrew W.Mellon, 262 U.S. 447:67 Lawyers Edn. 1078, Sutherland, J. who



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delivered the opinion of the Court quoted with approval the remarks of Thomson, J. with whom Story, J. concurred, which were as follows:

"It is only where the rights of persons or property are involved, and when such rights can be presented under some judicial form of proceedings, that courts of justice can interpose relief."

Dealing with the question whether a single tax-payer can challenge the enforcement of a Federal Appropriation Act on the ground that it was invalid and would increase the burden of his taxes, the learned Judge observed:

"His interest in the moneys of the treasury-partly realised from taxation and partly from other sources-is shared with millions of others; is comparatively minute and indeterminable; and the effect upon future taxation of any payment out of the funds so remote, fluctuating, and uncertain that no basis is afforded for an appeal to the preventive powers of a Court of equity??If one tax-payer may champion and litigate such a cause, then every other tax-payer may do the same, not only in respect to the statute hereunder review, but also in respect of every other appropriation Act and statute whose administration requires the outlay of public money, and whose validity may be questioned. The bare suggestion of such a result, with its attendant inconveniences, goes far to sustain the conclusion which we have reached, that a suit of this character cannot be maintained."

Those remarks are with reference to a suit. They are much more applicable to proceedings under Article 226 which are of a summary



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and of a coercive nature without providing for a normal trial or a right of appeal except in those cases where a substantial question of interpretation of the constitution arises. This Court is being flooded with applications under Article 226 of the Constitution which is seriously affecting the normal work of the Court. We feel that the time has come when we may point out that Article 226 of the Constitution was not intended to provide an alternative method of redress to the normal process of a decision in an action brought in the usual courts established by law. The powers under this Article should be sparingly used and only in those clear cases where the rights of a person have been seriously infringed and he has no other adequate and specific remedy available to him".

7. No doubt, the law has developed since the above decision was given by the Allahabad High Court in the year 1951, yet it must be reiterated that the development in the law relating to locus standi in writ petitions only carved out some exceptions to the main rule which has been stated correctly by the Allahabad High Court, and it is not that this main rule itself has been totally abolished. Exceptions remain exceptions, and do not become the main rule. Hence, we must reiterate that ordinarily a writ petition can only be filed by a person who is personally aggrieved.

8. In Vinoy Kumar Vs. State of U.P., AIR 2001 SC 1739 the Supreme Court observed (vide paragraph-2):-

"Generally speaking, a person shall have no locus standi to file a writ petition if he is not personally affected by the impugned order or his fundamental rights have neither been directly or substantially invaded nor is there any imminent danger of such rights being



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invaded or his acquired interests have been violated ignoring the applicable rules. The relief under Article 226 of the Constitution is based on the existence of a right in favour of the person invoking the jurisdiction. The exception to the general rule is only in cases where the writ applied for is a writ of habeas corpus or quo warranto or filed in public interest. It is a matter of prudence, that the Court confines the exercise of writ jurisdiction to cases where legal wrong or legal injuries caused to a particular person or his fundamental rights are violated, and not to entertain cases of individual wrong or injury at the instance of third party where there is an effective legal aid organization which can take care of such cases. Even in cases filed in public interest, the Court can exercise the writ jurisdiction at the instance of a third party only when it is shown that the legal wrong or legal injury or illegal burden is threatened and such person or determined class of persons is, by reason or poverty, helplessness or disability or socially or economically disadvantaged position, unable to approach the Court for relief (emphasis supplied)."

9. *In State of Orissa Vs. Ram Chandra Dev & Another, AIR 1964 SC 685 the Supreme Court observed (vide paragraph - 8):-*

"But though the jurisdiction of the High Court under Article 226 is wide in that sense, the concluding words of the article clearly indicate that before a writ or an appropriate order can be issued in favour of a party, it must be established that the party has a right and the said right is illegally invaded or threatened. The existence of a right is thus the foundation of a petition under Article 226".

10. *Similarly, in Gadde Venkateswara Rao Vs. Government of*



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Andhra Pradesh, AIR 1966 SC 828 (vide paragraph- 8) the Supreme

Court observed:-

"The right that can be enforced under Article 226 also shall ordinarily be the personal or individual right of the petitioner himself (emphasis supplied), though in the case of some of the writs like habeas corpus or quo warranto this rule may have to be relaxed or modified".

11. In Sand Carrier's Owners' Union and Others Vs. Board of Trustees for the Port of Calcutta, AIR 1990 Cal 176 it was observed by the Calcutta High Court that "a Public Interest Litigation can be moved, where persons concerned for whose benefit it is moved are socially and educationally backward, and Public Interest Litigation is also maintainable in cases such as environmental pollution, etc."

However, it was also observed:-

"The members of such association may be affected by a common order and may have common grievance, but for the purpose of enforcing the rights of the members, writ petition at the instance of such association is not maintainable".

Accordingly, the Calcutta High Court dismissed the writ petition filed by the Owners' Union.

12. A similar view has been taken in Government Press Employees' Association, Bangalore Vs. Government of Mysore, AIR 1962 Mysore 25.

13. In Dr.Duryodhan Sahu Vs. Jitendra Kumar Mishra, (1998) 7 SCC 273 the Supreme Court observed that in service matters PILs should not be entertained.

14. Subsequently, in Ashok Kumar Pandey Vs. State of W.B., (2004)



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3 SCC 349 (Vide Paragraph - 16) the Supreme Court observed:-

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"Though in Dr. Duryodhan Sahu Vs. Jitendra Kumar Mishra (1998) 7 SCC 273 this Court held that in service matters PILs should not be entertained, the inflow of so-called PILs involving service matters continues unabated in the courts and strangely are entertained. The least the High Courts could do is to throw them out on the basis of the said decision". "

5. The above writ appeal related to the service conditions of Headmasters or Teachers. The Court held that aggrieved Headmaster or Teacher is at liberty to file writ petitions.

6. The Writ Appellant-Association in the present cases have not even filed the list of members along with the writ petition, which was filed in the year 2006. The Registry of High Court has to number the writ petition only if the members list are enclosed in the typed set of papers. In the absence of list of members, it may not be possible for the Authorities to implement the orders of the Court. The Members of the Association in the year 2006 may not be the members as of now. There is a possibility of addition of members. Several such issues are involved and in the event of entertaining the writ petition filed by the Association in the matter of seniority and promotion, it will result in an anomalous situation. The learned counsel for the appellant would submit that the very same appellant-Association has filed the writ petition on earlier



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occasions. However, we find that the issue regarding maintainability of a writ petition by an Association in service matters were not considered in the said judgments and therefore, the judgments relied on by the appellant are of any avail to them for the purpose of maintaining the present appeals. The Courts entertained the writ petitions on earlier occasion without considering the legal issue regarding maintainability.

7. In view of the fact that the Association cannot maintain a writ petition and the Writ Appeals are continuation of writ proceedings and therefore, the legal position not adjudicated in the writ petitions can be adjudicated in the Writ Appeals. In the present case, we found that the writ petitions are not maintainable, since the service matters relating to revision of seniority and promotion cannot be adjudicated. Consequently, both the Writ petitions and the Writ Appeals are dismissed. No costs.

[S.M.S., J.] [C.K., J.]
19.06.2024

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Index : Yes /No

Speaking order : Yes/No

Neutral Citation : Yes/No



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