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W.P.No.9245 of



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :24.04.2024

CORAM

THE HONOURABLE MR.JUSTICE MUMMINENI SUDHEER KUMAR

W.P.No.9245 of 2021

C.Alakesan

... Petitioner

Vs.

1. The Government of Tamil Nadu,
Represented by its Secretary to Government,
Education, Science and Technology,
(HS-II) Department, Secretariat,
Fort St. George, Chennai – 600 009.
2. The Joint Director of School Education (Vocational Instructor),
DPI Complex, College Road,
Chennai – 600 006.
3. The Chief Educational Officer,
Villupuram District, Villupuram.
4. The Headmaster, A.V.N.C Government Higher Secondary School,
G.Ariyalur – 605 751, Thirukoilur Taluk,
Villupuram District.

... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records of the proceedings in Na.Ka.En.8195 /V1/E1/2018 dated 26.09.2018 on the file of



the 2nd respondent, and to quash the same as illegal and without jurisdiction, and to consequently direct the respondents to regularize the service of the petitioner as a full time vocational instructor in terms of G. O. (Ms) No. 35 dated 09.02.2007 with all attendant benefits and allowances.

For Petitioner : Mr.R.Harikrishnan
for Mr.Govind Chandrasekhar

For Respondents : Mr.K.H.Ravikumar,
Government Advocate

ORDER

The petitioner herein was appointed as Vocational Instructor (Accountancy and Auditing) on temporary basis with consolidated pay of Rs.1,000 per month on 28.01.2004 in the 4th respondent School by the Parent Teacher Association of the said School and the petitioner is continuing in the said post as on date. While so, on coming to know that the Government permitted the Director of School Education to appoint 201 fully qualified part-time Vocational Teachers in the 201 Vocational Grade-II vacant posts in the time scale of pay of Rs.4500-125-6000/- by issuing G.O (Ms) No.35, School Education Department (VE) Department dated 09.02.2007, the petitioner made a claim for extending the similar benefit to the petitioner on



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the ground that he was also similarly placed like the 201 Vocational Teachers, who are covered by the said Government order. Considering the claim of the petitioner, the 4th respondent submitted a proposal bearing No.12/2016-17 dated 24.08.2016 to the District Chief Educational Officer, Villupuram. As the said proposal was not considered by the 3rd respondent herein, the petitioner approached this Court by filing W.P.No.30948 of 2017 and this Court by an order dated 29.11.2017, having taken note of the Government Order in G.O (Ms) No.35, School Education Department (VE) Department dated 09.02.2007, directed the respondents therein to consider the case of the petitioner pursuant to the proposal submitted by the 4th respondent dated 24.08.2016 and in the light of the above said Government order. Pursuant thereto, the case of the petitioner was considered and the same was rejected by the 2nd respondent on the ground that the petitioner was appointed by the Parent Teacher Association and therefore, he is not entitled to the benefit in terms of G.O (Ms) No.35, School Education Department (VE) Department dated 09.02.2007. Aggrieved by the said order dated 26.09.2018 passed by the 2nd respondent, the petitioner approached this Court by filing the present Writ Petition.



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2. The learned counsel for the petitioner contended that though the petitioner was similarly placed like the 201 Vocational Teachers, who are covered by G.O (Ms) No.35, School Education Department (VE) Department dated 09.02.2007, in an arbitrary manner, the petitioner was excluded from extending the benefit under the said Government order and also further contended that under similar circumstances, various persons who are similarly situated like the petitioner have approached this Court and their claim was upheld and this Court passed orders extending the benefit of G.O (Ms) No.35, School Education Department (VE) Department dated 09.02.2007 to such petitioners and thus, he placed reliance on the decisions of the learned Division Benches of this Court in W.A (MD) No.1223 of 2013, W.A (MD) No.1463 of 2016, W.A (MD) No.2445 of 2018 and W.A (MD) No.1350 of 2019 etc., It is also further contended that the said orders passed by learned Single Judge of this Court confirmed by the learned Division Benches and were also implemented extending the benefits of G.O (Ms) No.35, School Education Department (VE) Department dated 09.02.2007 to the Vocational Teachers covered by the said orders.

3. On the other hand, the respondents filed a counter-affidavit resisting



the claim made by the petitioner on the ground that the petitioner has approached this Court belatedly, only in the year 2017 i.e., almost after a period of decade, since the date of issuance of G.O (Ms) No.35, School Education Department (VE) Department dated 09.02.2007 and also placed reliance on decision of the learned Division Bench of this Court rendered in W.A.No.995 of 2020 dated 01.12.2020.

4. This Court has carefully considered the submissions made on either side and also perused the entire material on record.

5. The only ground on which the impugned order came to be passed is that the petitioner was appointed by the Parent Teacher Association and therefore, he is not entitled for the benefit under G.O (Ms) No.35, School Education Department (VE) Department dated 09.02.2007.

6. A perusal of G.O (Ms) No.35, School Education Department (VE) Department dated 09.02.2007 makes it clear that the 201 Vocational Teachers in whose favour, the said Government order was issued were also appointed by the respective Parent Teacher Associations only, but not by the



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Management or the respondents. Therefore, the ground on which the impugned order came to be passed is totally unsustainable and the same is a result of sheer non-application of mind by the respondent no.2. Then coming to the various orders passed by the learned Division Benches of this Court relied upon by the petitioner is concerned, a perusal of the said order, especially the order in W.A (MD) No.1233 of 2013 dated 26.04.2017, it is noticed that the learned Division Bench after having taken note of the elaborate order passed by another learned Division Bench of this Court in W.A.Nos.158 and 159 of 2012 dated 07.02.2012 dismissed the said appeal. The relevant portion from the order dated 07.02.2012 passed in W.A.Nos.158 and 159 of 2012 reads as under:-

“3.On the ground that some of the unqualified Vocational Instructors had also sought for regularisation, the Government issued G.O.Ms.No.358, School Education Department, dated 18.8.1997, directing to impart a short term training for those unqualified teachers and thereafter regularise them. There is no controversy that in terms of the G.O., large number of unqualified Vocational Instructors were also sent for training and were regularised after a



WEB COPY

W.P.No.9245 of



prolonged litigation upto the Apex Court. The respondents in these writ appeals did not approach the Court on earlier occasions seeking regularisation. Nevertheless, having noticed that similarly placed persons were regularised after they were sent for training in terms of the G.O., the respondents/writ petitioners approached the Court by filing writ petitions seeking regularisation of their service. Having considered that similarly placed persons were sent for training and later they were regularised, the learned Judge directed to extend the same benefit to the writ petitioners on the ground that such benefit should not be denied merely because they did not approach the Court on time.

4.Heard Mr.E.Sampathkumar, learned Special Govt. Pleader [Education] for the petitioners and Mr.V.Bharathidasan, learned counsel taking notice on behalf of the respondents. In our opinion, of course, the Court should extend the benefit to the persons who are vigilant and approach the Court on time, for such reliefs. But the fact



WEB COPY

W.P.No.9245 of



remains that a large number of Vocational Instructors were appointed and when the question of regularisation came up for consideration before the Government earlier, the Government, as a one time measure, regularised all those who possessed the minimum educational qualification. Later, realizing the difficulties experienced by the other Vocational Instructors, who are not qualified, again, the Government, as a one time measure, extended the benefit of regularisation, but imposing a condition that those persons should undergo a short term training. This G.O. is applicable to all those who are working as Vocational Instructors without qualification. In all fairness, when a list was forwarded for training, the respondents' name should have also been sponsored. But, for some reason or other, the names of the respondents have not been sponsored for training. But the delay cannot be given that much importance, thereby affecting the right of the respondents. So long as the G.O. grants certain benefits to unqualified



WEB COPY

W.P.No.9245 of



Vocational Instructors, we find no infirmity in the order passed by the learned single Judge applying the said G.O. after rejecting the stand of the Government that the respondents had not approached the Court on an earlier point of time. Hence, we find no merit to entertain these writ appeals. Accordingly, the writ appeals are dismissed. No costs. Connected miscellaneous petitions are closed.”

7. Further, it is also evident from the said order that the special leave petitions filed against the said order were also dismissed by the Hon'ble Apex Court and consequently, the Government issued G.O.2D No.50, School Education Department dated 27.08.2014, implemented the order passed in W.A.Nos.158 and 159 of 2012. The very same view was taken by another learned Division Bench in W.A.No.1463 of 2016 by order dated 30.10.2017 and also in W.A.No.2445 of 2018 by order dated 23.01.2019. Therefore, in the light of the orders passed by the learned Division Benches of this Court as noted above, this Court is left with no other option except to follow the said decisions and the law laid down by the learned Division Bench of this Court



as noted above.

8. Coming to the aspect of delay, raised by the respondents in making a claim for extending the benefits under the Government Order in question, this Court does not find any substance in the said contention, as the petitioner is very much continuing in service as on date and the very same issue of delay raised by the respondents in W.A (MD) No.1463 of 2016 was considered by the learned Division Bench and held as under:-

“9. The learned Additional Advocate General would next contend that the writ petitioners were initially appointed on various dates from 1991 to 2004 and they have approached this Court belatedly and therefore on the ground of delay and laches, the learned single Judge ought to have dismissed the writ petition. We are not inclined to accept such submission of the learned Additional Advocate General appearing for the appellants. In fact, the very same submission was made on behalf of the appellants herein before the Division Bench of this Court and it was rejected by Judgment dated 26.04.2017 passed in WA



WEB COPY

W.P.No.9245 of



(MD) No. 1233 of 2013 holding that even though there was delay in approaching this Court, such delay cannot be given much significance to deprive the valuable right of the respondents therein.”

9. In the light of the above order passed by the learned Division Bench dealing with the very same objection, this Court is not inclined to accept the contentions raised by the learned Additional Government Pleader on the ground of delay in making the claim.

10. Then, coming to the reliance placed by the learned Additional Government Pleader on the decision of the learned Division Bench in W.A.No.995 of 2020 dated 01.12.2020 is concerned, the learned Division Bench allowed the said Writ Appeal filed by the respondents on the ground that the respondent/ writ petitioner seized to be a vocational teacher with effect from 2004 i.e., much prior to the date of issuance of G.O (Ms) No.35, School Education Department (VE) Department dated 09.02.2007 and therefore, the respondent writ petitioner therein was found to be not entitled for extending the benefit of the said Government Order. But that is not the



case on hand and admittedly, the petitioner herein who was appointed in the year 1994 as vocational teacher has been continuing in service as on date and has made his claim for extending the benefit under G.O (Ms) No.35, School Education Department (VE) Department dated 09.02.2007 and proposals were also submitted, recommending for the same as early as in the year 2016. Hence the said decision relied upon by the respondents is of no help to advance the case.

11. A perusal of the said Government order, especially Paragraph Nos.2(ii) and (iii) makes it clear that the Government having taken note of the appointment and continuance of Vocational Teachers in huge numbers by the Parent Teacher Association of the respective Schools has chosen to extend the time scale only to the 201 Vocational Teachers, who are working in the sanctioned post on the ground that only 201 posts are available as on that date and the remaining 621 persons were appointed in unapproved posts. Whether the petitioner herein is working in an approved post or unapproved post is not clear from the material on record. Be that as it may, as already noted above, this Court has no option except to follow the orders passed by the learned Division Benches of this Court referred to above.



WEB COPY

12. In the light of the above, the impugned order passed by the respondent no.2 in Na.Ka.En.8195 /V1/E1/2018 dated 26.09.2018 is set aside and the matter is remanded back to the respondents 2 and 3 for re-considering the case of the petitioner for extending the benefit in terms of G.O (Ms) No.35, School Education Department (VE) Department dated 09.02.2007 in the light of the orders passed by learned Division Benches of this Court, as noted herein above and pass appropriate orders extending the benefit of G.O (Ms) No.35, School Education Department (VE) Department dated 09.02.2007 to the petitioner herein on par with the 201 persons, who were covered by G.O (Ms) No.35, School Education Department (VE) Department dated 09.02.2007 and extend all service benefits. However, the petitioner shall not be entitled to monetary benefits till the date of proposal and the petitioner shall be entitled for monetary benefits only with effect from the date of proposal submitted by the Head Master i.e., 24.08.2016 only.

13. Accordingly, the Writ Petition stands allowed, subject to the observations made herein above. No costs. Connected Miscellaneous



Petitions, if any shall stand closed.

WEB COPY

24.04.2024

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Index : Yes / No

Speaking order / Non-speaking order

Neutral Citation : Yes / No

To

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Education, Science and Technology,
(HS-II) Department, Secretariat,
Fort St. George, Chennai – 600 009.
2. The Joint Director of School Education (Vocational Instructor),
DPI Complex, College Road, Chennai – 600 006.
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WEB COPY

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MUMMINENI SUDHEER KUMAR, J.

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