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W.P.Nos.13517 & 13520 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.02.2024

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THE HONOURABLE MS. JUSTICE R.N.MANJULA

W.P.Nos.13517 & 13520 of 2021

Tajunisa Begam ... Petitioner in WP.No.13517 of 2021

Jeelani Begam ... Petitioner in WP.No.13520 of 2021

Vs.

1. The State of Tamil Nadu,
rep.by its Secretary to Government,
School Education Department,
Secretariat, Chennai - 9.
2. The Director of Government Examinations,
O/o the Directorate of Government Examinations,
College Road, Chennai - 6.
3. The Deputy Director (Administration)
of Government Examinations,
O/o the Directorate of Government Examinations,
College Road, Chennai - 6. ... Respondents in both WPs.

Prayer in WP.No.13517 of 2021: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified MANDAMUS to call for records connected in R.C.No.029352/E2-1/2020, dated 30.11.2020 of the 2nd respondent and quash the same and consequently direct the respondents to extend



the benefits of G.O. (ID) No. 286, School Education (GE1) Department, dated 19.07.2016, G.O.(ID)No.238, School Education (Nee.Va.4(2)) Department, dated 07.04.2017, and G.O. (Pa) N0.72 School Education (GE) Department, dated 28.02.2019 and grant pension to the petitioner from the date of Retirement and pass such other order or orders.

Prayer in WP.No.13520 of 2021: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified MANDAMUS to call for records connected in R.C.No.101539/E2-1/2017, dated 21.12.2020 of the 2nd respondent and quash the same and consequently direct the respondents to extend the benefits of G.O. (ID) No. 286, School Education (GE1) Department, dated 19.07.2016, G.O.(ID)No.238, School Education (Nee.Va.4(2)) Department, dated 07.04.2017, and G.O.(Pa) N0.72 School Education (GE) Department, dated 28.02.2019 and grant pension to the petitioner from the date of Retirement and pass such other order or orders.

In both WPs.,

For Petitioner : Mr.S.N.Ravichandran, senior counsel
for Mr.G.Elanchezhiyan

For Respondents : Mr.P.Gurunathan,
Additional Government Pleader for RR1 to 3

COMMON ORDER

The petitioners had filed this Writ Petitions to quash the rejection order passed in R.C.No.029352/E2-1/2020, dated 30.11.2020 and R.C.No.101539/E2-1/2017, dated 21.12.2020 of the 2nd respondent and direct the respondents to



extend the benefits of G.O. (ID) No. 286, School Education (GE1) Department, dated 19.07.2016, G.O.(ID)No.238, School Education (Nee.Va.4(2)) Department, dated 07.04.2017, and G.O.(Pa) N0.72 School Education (GE) Department, dated 28.02.2019 and grant pension to the petitioners from their date of Retirement.

3. Heard, Mr.S.N.Ravichandran, learned senior counsel for the petitioners and P.Gurunathan, learned Additional Government Pleader for the respondents and perused the materials available on record.

4. When a similarly placed person has filed Writ Petition before this Court in W.P.No.18248 of 2020 via order dated 19.12.2023, this Court has held as under:-

"10. It is not denied that similarly persons like the petitioners have been regularised every now and then by G.O.(Ms.)No.524, Personnel & Administrative Reforms Department, dated 06.06.1983. Even though the G.O. contemplates only 5 years of completion of their services as a qualification of regularisation, the regularisation could be made as and when the vacancy was arising in the posts of Sweepers or sanitary workers.

11. Despite the petitioners had completed 10 years of service from the year 1989-2000, a proposal to regularise them has been sent in the year 2001. The petitioners fall under the remaining 16 Mazdoors and for whom the proposal had been sent for 8 conservancy Mazdoors. Though it is aggrieved by the Staff Committee constituted by the Government that their services can be regularised on the condition that no Mazdoor shall be appointed in future and their services could be regularised only from the date of issuance of the Government Order, they were not regularised in view of the subsequent G.O.(Ms.)No.212, Personnel & Administrative Reforms (P) Department, dated 29.11.2001.



The said G.O. has been issued to ban all Government recruitments except the working posts like Teachers, Doctors and Police Constables.

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12. *The regularisation is being done only by virtue of G.O.(Ms.)No.524, Personnel & Administrative Reforms Department, dated 06.06.1983, which was issued by considering the long services of the persons working as daily wages for several years. When a welfare measure is implemented against certain number of similarly placed persons, it should also be extended to rest of the persons of the same category. Even though there is no ill intention on the part of the Government, the hurdles were realised in view of G.O.(Ms.)No.212, Personnel & Administrative Reforms (P) Department, dated 29.11.2001. The above G.O. ought not to have been understood in a way it bars even the regularisation exercise that has to be taken as per the policy decision already taken in that regard.*

13. *If the purpose of G.O.(Ms.)No.212, Personnel & Administrative Reforms (P) Department, dated 29.11.2001 has not been understood wrongly, the petitioners would have got their regularisation much earlier. There cannot be any second thought that the date of regularisation can be taken effect from the date of issuance of the order. In the case of the petitioners or specifically as against the remaining 16 Mazdoors the date of regularisation subsequent to 31.03.2003 will play a major difference. Because the persons who have got regularisation before 31.03.2003 will be covered under the old pension scheme and all those persons whose services have been regularised later than 31.03.2003 will not get the benefit of old pension scheme.*

14. *In fact, the very regularisation itself is needed only to accommodate the Mazdoors to come under regular scheme in which they are entitled to get the retiral benefits including pension. If such benefits are not extended to the remaining 16 Mazdoors, the very purpose of regularisation itself will be lost. In fact, the Government was conscious of what is being done and what is being to given to its employees by putting a conscious condition that no Mazdoors shall be appointed in future similar to the petitioners.*

15. *Under such circumstances and also taking into consideration of the various earlier judgments which have confirmed the entitlement of similarly placed persons like petitioners about their regularisation w.e.f. the completion of 10 years of*



service, I feel the same benefit can be extended to the case of the petitioners as well.

16. Though it is correct to state that the regularisation can be taken effect only from the date of issuance of G.O. in view of the reasons already stated in case of these petitioners the date of the G.O. cannot be interpreted from the date of issuance of the Government Orders dated 29.09.2006 ad 29.11.2007 respectively.

17. Had there not been a wrong presumption about the ban, the petitioners-services could have been regularised by issuing the G.O. any time subsequent to the proposal that was sent as early as in the year 2001.

18. So in order to mitigate the above difficulty and also to bring the petitioners under the old pension scheme as it was applicable to the similarly placed persons whose services have been regularised before 31.03.2003, I feel the regularisation of the petitioners should be given with effect from the date of completion of their 10 years of service.

In view of the same, this Writ Petition is allowed and the order passed by the 1st respondent in Lr.No.49090/Maintenance/2020-2, dated 22.05.2020 is set aside and the 1st respondent is directed to consider the petitioners case as a special case in view of the hurdles placed in the form of wrong presumption of the ban order and issue orders for regularisation of the petitioners services w.e.f. the date of completion of 10 years of their respective service and attendant benefits, within a period of eight (8) weeks from the date of receipt of a copy of this order. No costs. Consequently, connected Miscellaneous Petition is closed."

5. Since the above observation is applicable to the facts and relief sought in the present case also, this Writ Petition can also be disposed on the similar lines.

6. In view of the above, these Writ Petitions are **allowed** and the rejection orders passed by the second respondent in R.C.No.029352/E2-1/2020, dated

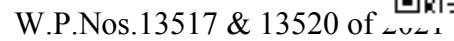


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30.11.2020 and R.C.No.101539/E2-1/2017, dated 21.12.2020 are set aside. The first respondent is directed to issue orders for regularisation of the petitioners services w.e.f. the date of completion of 10 years of their respective service and attendant benefits, in the light of the order dated 19.12.2023 passed in W.P.No.18248 of 2020, within a period of eight (8) weeks from the date of receipt of a copy of this order. No costs.

06.02.2024

Internet : Yes/No
Speaking/Non- Speaking
Neutral: Yes/No
jrs



1. The State of Tamil Nadu,
rep.by its Secretary to Government,
School Education Department,
Secretariat, Chennai - 9.

3. The Deputy Director (Administration)
of Government Examinations,
O/o the Directorate of Government Examinations,
College Road, Chennai - 6.



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R.N.MANJULA, J.
jrs

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