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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.03.2024

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THE HON'BLE DR.JUSTICE **D.NAGARJUN**

W.P.No.4524 of 2016

and

WMP.No.3863 of 2016

and

W.M.P.No.2938 of 2017

S.Muruganandam

S/o T.Saminathan

St.Joseph's Higher Secondary School,

Cuddaore-1.

... Petitioner

Vs.

1. The State of Tamilnadu,
Rep by its Principal Secretary
to Government,
School Education Department,
Secretariat, Fort St.George,
Chennai - 600 009.
2. The Director of School Education,
DPI Campus, College Road,
Chennai - 600 006.
3. The Chairman,
The Teachers Recruitment Board,
4th Floor, EVK Sampth Maligai,
DPI Campus, College Road,
Chennai - 600 006.



4. The Director,
RashtriyaMadhyamikshikshaAbhiyan(RMSA)
DPI Campus College Road,
Chennai - 600 006.

5. The Headmaster,
St.Joseph's Higher Secondary School,
Cuddalore -1.

6. The Government of India,
Rep by its Secretary to Government,
Ministry of Human Resources Development,
No.302 - C, ShastriBhawan,
New Delhi.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India seeking for issuance of a Writ of Mandamus to direct the 1st respondent to forthwith absorb the petitioner on a time scale of pay on par with other Government teachers in accordance with the proposal contained in G.O.Ms.No.28 dated 30.01.2015 before recruiting new teachers as per G.O.Ms.No.28 dated 30.01.2015.

For Petitioner : Mr.T.Balaji

For Respondent Nos.1,2 & 4 : Mr.R.V.Dinesh Raj Kumar
Additional Government Pleader

For Respondent No.3 : Mr.C.Kathiravan

**ORDER**

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This writ petition is filed for issue of writ of Mandamus directing the 1st respondent to forthwith absorb the petitioner on a time scale of pay on par with other Government teachers in accordance with the proposal contained in G.O.Ms.No.28 dated 30.01.2015 before recruiting new teachers as per G.O.Ms.No.28 dated 30.01.2015.

2. The petitioner had acquired B.Sc qualification in 1983, B.Ed (Special Education) in 1985 and M.Ed in 1986. Considering the Special Education qualification of the petitioner, he was appointed as a Resource Teacher under Integrated Education for the Disabled Children Scheme (IEDC) on 18.06.1986. Since then, he has been working continuously as a Special Teacher and subsequently, he also acquired M.Sc degree in the year 1992 and studied further M.Phil in the year 1990. The petitioner has also completed 29 years of unblemished service.

3. From the year 2009-2010, the IEDC, a centrally sponsored scheme implemented by Director of School Education, Chennai -6, has been replaced by a new scheme called “Inclusive Education for Disabled at Secondary



Stage”(IEDSS) for providing education for children with special needs from classes IX to XII. After the introduction of the new scheme, the Special Educators working in IEDSS were allowed to work under IEDSS at secondary level. The qualification for the post of Special Teacher working under IEDC/IEDSS has been prescribed by Ministry of Human Resource Department as well as the Rehabilitation Council of India, New Delhi. One of the eligible qualifications for the said post is B.Ed with a 2 year Diploma in Special Education. On 16.07.2013, the 2nd respondent has issued proceedings to verify the qualification of Special Teachers working under IEDSS to be in conformity with Regulations framed by IEDSS. Accordingly, Certificate Verification was conducted by the Chief Education Officer, in which the petitioner participated and as the petitioner was having the educational qualifications to work as Special teacher under IEDSS, he was allowed to continue as such under IEDSS from April, 2009 till date.

4. While so, the Government of Tamilnadu issued G.O.Ms.No. 28 School Education Department dated 30.01.2015 for creating 202 Special B.Ed Graduation Teachers for effective implementation of IEDS scheme in Tamil Nadu. The Government Order has sanctioned the Special Teacher posts under



IEDS Scheme with regular time scale of pay of Rs. 9300-34800 + 4600 GP.

The post of Special Teacher was also directed to be filled up through Teachers Recruitment Board. Further, in the said Government Order, it has been indicated as Special B.Ed Graduate Teacher without reference to any educational qualification for the post. According to the petitioner, she is fully qualified for appointment to the post of Special Teacher.

5. It is submitted by the learned counsel for the petitioner, that the petitioner was informed that her employment and the employment of other similarly placed teachers working on consolidated pay for several years are likely to be terminated and after such termination, said posts will be shown as vacancies so that recruitment can be done contemplated in G.O.Ms. No. 28 dated 30.01.2015. The petitioner apprehends that there is imminent threat of removal from services. The petitioner further states that the 1st respondent has decided to create vacancies on permanent basis in a regular time scale of pay for teachers' to teach special children and as per the judgment of the Hon'ble Supreme Court in Amarendra Kumar Mohapatra and others V. State of Orissa. It is submitted that the respondents are proceeding further jeopardizing the services of the petitioner.



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6. No counter affidavit is filed by the respondents.

7. Heard both sides perused the records.

8. In the year 2016, teachers similarly placed like the petitioner, filed writ petition W.P.No.2937 of 2021 claiming regularization of their service and the relevant portion the orders in W.P.No.2937 of 2021 is extracted hereunder:-

" In similar such circumstances, during 2016, similarly placed 433 Special Teachers approached the Kerala High Court for regularization and filed a writ petition in W.P(C)No.2470 of 2013 (G) Shafi O.P and 432 others Vs.State of Kerala) and got the orders. The relevant portion of the order is extracted hereunder:-

"19. This Court is also of the view that the teachers who are appointed as Resource Teachers in this State are also entitled to similar benefits,



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provided they possess all the prescribed qualifications. The Resource Teachers cannot be deprived of the legitimate benefit of regular pay and other monetary benefits including maternity leave and other leaves etc. as available to the ordinary teachers in the State.

20. In the light of the discussions as above, this Court is of the view that the State Government shall frame a scheme to regularize Resource Teachers, who have put more than 10 years of service and possess qualifications as prescribed. The Scheme also shall cover for payment of regular pay scale and to give service benefits as given to ordinary teachers in the State. Such a scheme shall be framed by the Government within a period of three months. The State shall give all benefits based on such scheme to eligible petitioners in these writ petitions without any further delay thereafter: Till such Scheme is framed, no qualified hands shall be



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terminated from the service."

8. The above order has been referred by this Court in another case in W.P.(MD) No.15878 of 2018 (G.Saravanan Vs.The Government of India & others) and the following order has been passed.

" 13. Having recognised the need for their services and extracted such services from them, denying them official and formal recognition is, in my considered view, simply unfathomable and unacceptable.

14. While the grant of sanction or otherwise to an employee, is entirely within the domain of the employer-State who will take note of whether the candidate has the requisite credentials and has been rendering service as appropriate and as required, it is the unwillingness to take prompt and affirmative action to frame the Rules and initiate the process of regularization of the services of the employees already rendering services, that rankles with the



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Court.

15. It is the petitioner's say that proceedings for certificate verification were undertaken by the Director of School Education in 2012, in which the petitioner had also participated. However, the process is not evidenced by any specific certificate that has been issued to the petitioner in this regard.

16. Be that as it may, the petitioner who was appointed on 30.06.2011, continues to be in service till date and there is no stand in the counter as to any discrepancy in the appointment as such or any deficiency in the services rendered by him thus far. In such circumstances, I am of the categorical view that the petitioner's claim for regularization of services must be accepted.

17. The petitioner has sought the same relief by way of representation, which is pending before the respondents, from as early as on 05.07.2018. Inter alia, the petitioner has relied upon a decision of



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the learned Single Judge of the Kerala High Court who has considered a similar case and held in favour of the appointee.

18. In fine, a direction is issued to the State to frame Rules as envisaged in the above Government Order within a period of twelve weeks from today. The Rules must contain proper protection, and provisions for identification and absorption of those candidates who have the necessary credentials and have been appointed in government positions of Educator / Special Educator / Instructor for children with special needs, by whatever name or nomenclature called, even prior to the issuance of the aforesaid Government Order."

The petitioners herein are also similarly placed and hence this petition can also be disposed in the line of the earlier order passed in the above mentioned Writ Petition. "



9. Another writ petition in W.P.(MD) No. 15878 of 2018 was also filed by a person similarly placed like the petitioner and by order dated 14.12.2021, orders were passed directing the State to frame Rules as envisaged in G.O.Ms. No. 28 dated 30.10.2015 and to provide opportunity of personal hearing to the petitioner for regularization of his appointment subject to his educational qualification. Aggrieved by the orders passed in W.P.MD No.15878 of 2018 the respondents therein have preferred Writ Appeal No.360 of 2023 and the said Writ Appeal was dismissed on 18.12.2013 confirming the orders passed in W.P.(MD)No.15878 of 2018.

10. When this writ petition is taken up for hearing, learned Additional Government Pleader representing the respondents submitted that the Government has taken decision to implement the order of this Court in W.P.(MD)No.15878 of 2018 and absorb the petitioners therein and the same is pending with the Government.

11. Learned Government Advocate submitted copy of the letter dated 05.03.2024 addressed by Joint Director School Education Department, Chennai - 600 006 wherein it is stated as hereunder:



Thiru.S.Muruganandam has filed Writ Petition No.4524 of 2016 to issue direction to absorb the petitioner on a Time Scale of Pay on Par with Government Teacher in accordance with G.O.Ms.No.28, School Education Department, dated 30.01.2015 before recruiting B.T.Teachers (IEDSS).

In a similar Case, the Hon'ble High Court of Madras (Madurai Bench) has issued a direction to the First Respondent i.e. Secretary to School Education Department dated 14.12.2021 to frame rules an envisaged in the above Government Order, so as to regularise the service of the Special Teachers.

Hence, as per the direction of the Hon'ble Madurai Bench of Madras High Court necessary Proposals for adhoc rules are submitted to Government and the same is under consideration. Hence, I kindly request yourself to inform the same to the Hon'ble Court at time of hearing and get 4 weeks adjournment of the above writ petition.



12. The learned Government Advocate for the respondents submitted that in respect of the absorption of the petitioner, the same is under the consideration of the Government and requested some time to implement the orders.

13. Considering the submission made by both sides and on the basis of facts and circumstances of the case including the orders passed in W.A.No.360 of 2023 orders and writ petition in W.P.No.2937 of 2021 dated 10.10.2023 and also on the basis of letter of the Joint Director of School Education dated 05.03.2024, this writ petition disposed of directing the respondents to complete the framing of the rules in respect of the absorption of the petitioner within a period of six weeks from the date of receipt of the copy of this order. Consequently connected miscellaneous petitions are closed. No costs.

27.03.2024

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Index : Yes/ No
Neutral Citation : Yes/No
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DR.D.NAGARJUN, J.

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