



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.03.2024

CORAM

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

W.P.No.4527 of 2016

and

WMP.No.3866 of 2016

and

WMP.No.2941 of 2017

T.Selvam,
S/o Thangaraj,
Government Higher Secondary School,
Arumpavoor,
Perambalur District.

... 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 Sampath Maligai,
DPI Campus, College Road,
Chennai - 600 006.
4. The Director,



Rashtriya Madhyamik Shiksha Abhiyan (RMSA)
DPI Campus, College Road,
Chennai - 600 006.

5. The Headmaster,
Government Higher Secondary School,
Arumpavoor
Perambalur District.
6. The Government of India,
Rep by its Secretary to Government,
Ministry of Human Resources Development
No.302 - C, Shastri Bhawan,
New Delhi.

... Respondents

Prayer : Writ Petition has been 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 R1 to R4 : Mr.S.Rajesh
Government Advocate

For R5 : No appearance

ORDER



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This writ petition is filed seeking for direction to issue a 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 A.S.Ed qualification in 1990. 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 15.06.1990. Since then, he has been working continuously as a Special Teacher and subsequently, he also acquired B.A., degree in the year 2004 and studied further B.Ed(MR) in the year 2011. The petitioner has also completed 25 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 and 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 his 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. Therefore, the petitioner apprehends that there is imminent threat of services being terminated after having put in more than 10 years of continuous service on consolidated pay under the scheme of Central Government which has been adopted by the 1st respondent. 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' teaching special children and in the light of the judgment of the Hon'ble Supreme Court in Amarendra Kumar Mohapatra and others V. State of Orissa and others that the employee concerned should have to work for 10 years or more in the duly sanctioned post without the benefit or protection of the interim order of any Court or Tribunal. It is submitted that the respondents are proceeding further jeopardizing the services of the petitioner. Hence, the present writ petition.



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6. No counter affidavit is filed by the respondents.

7. Heard both sides and 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 and the relevant portion the order passed 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, provided they possess all the prescribed qualifications. The Resource Teachers cannot be



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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 terminated from the service."

8. The above order has been referred by this Court in another case in W.P.(MD) No.15878 of



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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 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



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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 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



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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 14.12.201, the said writ petition was disposed of directing the State to frame Rule as envisaged in G.O.Ms. No. 28 dated 30.10.2015 and for consideration of the representation of the petitioner therein, provide an opportunity of personal hearing to the petitioner and for regularisation of his appointment subject to verification of educational qualification and all other relevant considerations.



Aggrieved by the orders passed in W.P.MD No.15878 of 2018 the respondents therein preferred Writ Appeal No.36 and the said Writ Appeal was also dismissed on 18.12.2013 confirming the orders passed in W.P.(MD)No.15878 of 2018. No Special Leave Petition was filed challenging the same.

10. When this writ petition is taken up for hearing, learned Government Advocate 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 as far as the absorption of the petitioner is concerned, the same is pending with the Government and requested for short accommodation.

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

12. 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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