



Writ Appeal No.1501 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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RESERVED ON
12.06.2024

PRONOUNCED ON
25.06.2024

CORAM

**THE HONOURABLE MR. JUSTICE D. KRISHNAKUMAR
AND
THE HONOURABLE MR. JUSTICE K.KUMARESH BABU**

**Writ Appeal No.1501 of 2022
and C.M.P.No.9815 of 2022**

- 1.State of Tamil Nadu,
Represented by its Secretary to Government,
School Education Department,
Fort St. George, Chennai – 9.
 - 2.The Director of School Education,
College Road, Chennai – 6.
 - 3.The Joint Director of School Education (Higher Secondary),
College Road, Chennai – 6.
 - 4.The Chief Educational Officer,
Trichy - 8.
 - 5.The District Educational Officer,
Trichy – 8.
- ... Appellants

Vs

- 1.S.Jayakumar
- 2.The Secretary and Correspondent,

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E.R. Higher Secondary School,
Chinthamani, Trichy – 2.

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3.A.Charles Prabakar

... Respondents

PRAYER:- Writ Appeal has been filed under Clause 15 of Letter Patent to set aside the order dated 05.08.2019 made in W.P.No.6680 of 2007 and pass such further order.

For Appellants : Mr.J.C.Duraiaraj
Additional Government Pleader

For Respondents : No appearance

JUDGMENT

(Judgment of the Court was made by Mr.K.KUMARESH BABU.,J.)

This Intra-Court Appeal had been preferred as against the order of the learned Single Judge, where a direction has been issued to the appellants to bring the first respondent into the time scale of pay based on the Government order dated 09.02.2007.

2. Heard Mr.J.C.Duraiaraj, learned Additional Government Pleader appearing for the appellants.

3. In spite of notice being served on the respondents, they had neither



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chosen to appear in person nor have they engaged any counsel. It is to be noted that the second and third respondents had also chosen not to appear before the learned Single Judge.

4. Mr.J.C.Durairaj, learned Additional Government Pleader appearing on behalf of the appellants would submit that a tall claim had been made by the first respondent as if he had been appointed by the second respondent as a Vocational Instructor on 31.08.1996. Further, he had also made a claim that his name had been included in the proposed list who were to sought to be brought under time scale of pay. In that context, he would submit that there was no such proposal to include the name of the first respondent for granting time scale of pay. He would further submit that the order of appointment as produced by the first respondent itself would indicate that his salary would be paid subject to the permission from the Government. He would further submit that the second respondent had not forwarded any such proposal seeking approval of the appointment of the first respondent to any of the appellants. He would further submit that only after G.O.Ms.No.35 was pressed into service, the first respondent



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challenged the orders of the second respondent dated 13.02.2007 which had been issued pursuant to G.O.Ms.No.35 dated 09.02.2007, wherein only 201 Technical Instructors who were listed in the enclosure to the said Government order were directed to be given time scale of pay. Hence, without challenging the Government order, consequential order passed by the second respondent cannot be interfered with. He would further submit that there has been no proposal from the second respondent Institution either to prove the appointment of the first respondent or to include his name for the grant of time scale of pay.

5. When that being so, he is not entitled for the grant of any time scale of pay. These aspects, according to him had been over looked by the learned Single Judge and had proceeded as if the counter does not disclose as to why the first respondent was not entitled to time scale of pay. He would also take us to the counter affidavit filed by the fifth appellant and contend that all these aspects have been averred in the counter affidavit and therefore, he would pray this Court to interfere with the order passed by the learned Single Judge.



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6. We have considered the submissions made by the learned counsel

appearing on either side and perused the materials available on record.

7. As rightly pointed out by the learned Additional Government Pleader, even though, the appointment order indicates that the payment of salary would be subject to the approval by the Government, the first respondent had not produced any proposal that had been forwarded by the second respondent to the appellants. The second respondent had not chosen to appear either before the learned Single Judge or even before us in spite of proper notice being served upon them. Even though, the first respondent had originally challenged the selection list, dated 13.02.2007, he had given up his claim to the said challenge. It is to be further noted that the alleged selection list as claimed by the first respondent dated 13.02.2007 was a off-shoot of the Government order in G.O.Ms.No.35 dated 09.02.2007. The said order also consists of name of 201 persons and that the said 201 persons were alone shown in the list of the second respondent for grant of time scale and therefore, the prayer sought for by the first respondent in the Writ Petition cannot be entertained as he had only challenged the consequential proceedings.



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8. Be that as it may, he had also given up his challenge to the said order. But, however, had sought parity with the persons who have been granted time scale of pay. As discussed above, neither the first respondent had produced any material evidence that his appointment by the second respondent had been brought to the notice of the appellants, neither by way of seeking grant of approval of his appointment nor to include his name in the list for grant of time scale of pay. The learned Single Judge had only taken into account the qualification of the first respondent. The learned Single Judge had not analysed as to whether the appointment had been duly made since no such communication had emanated from the second respondent to the appellants indicating the appointment of the first respondent which creates a doubt on the claim of the first respondent.

9. For the aforesaid reasons, we are inclined to interfere with the order passed by the learned Single Judge and accordingly, the Writ Appeal is allowed and the order passed by the learned Single Judge in W.P.No.6680 of 2007, dated 05.08.2019 is set aside. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is



closed.

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(D.K.K.,J.) (K.B., J.)
25..06.2024

Index: Yes/No
Speaking Order/Non Speaking Order
Neutral Citation:Yes/No
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D. KRISHNAKUMAR., J.
and
K.KUMARESH BABU.,J.

gba

A Pre-delivery Judgment made in
Writ Appeal No.1501 of 2022
and C.M.P.No.9815 of 2022

25.06.2024