



W.A.No.3013 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.06.2024

CORAM

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM
and
THE HONOURABLE MR. JUSTICE C.KUMARAPPAN

W.A.No.3013 of 2021
and
C.M.P.No.20684 of 2021

1. State Of Tamil Nadu,
Rep. By Its Secretary,
Higher Secondary Education Department,
Fort St. George, Chennai 600 009.

2. The Director Of School Education,
DPI Campus, College Road,
Chennai 600 006.

3. The Chief Educational Officer,
Villupuram District.

... Appellants

Vs.

K.Manivannan

... Respondent

Prayer :- Writ Appeal filed under Clause 15 of Letters Patent, praying to set aside the order dated 26-11-2019 passed in W.P.No.32674 of 2019 and allow the Writ Appeal.



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For Appellants : Mr.U.M.Ravichandran,
Special Government Pleader.

For Respondent : Ms.Sridevi N. for
Mrs.S.Sunnitha.

J U D G E M E N T

(Judgement of the Court was delivered by S.M.Subramaniam J.)

State preferred the present writ appeal challenging the writ order dated 26.11.2019 passed in W.P.No.32674 of 2019. The Writ Court passed common order in respect of seven writ petitioners and the respondent in the present writ appeal is the petitioner in W.P.No.32674 of 2019.

2. It is not in dispute that the first respondent was appointed as PG Assistant on consolidated pay during the ban period. The initial appointment of the respondent was not in accordance with the service rules. Admittedly, the respondent was not recruited through the Teachers Recruitment Board which is the mode of recruitment prescribed for recruiting candidates to the post of PG Assistant.

3. Considering the continuity of services, the Government thought fit to regularise the services of the consolidated pay P.G. Assistants and



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accordingly, issued orders regularising their services with effect from 01.06.2006 based on G.O.Ms.No.99 School Education Department dated 27.06.2006. Accordingly, the respondent was regularly appointed in a sanctioned post in a time scale of pay with effect from 01.06.2006.

4. As per the rules for promotion, on completion of 10 years of service in the post of PG Assistant, a teacher becomes eligible for promotion to the post of Head Master and Head Mistress of Higher Secondary School. A penal for the year 2015 was prepared by the Education Department. The dispute arose on the question, whether the respondent is eligible for promotion to the post of Head Master and whether he has completed 10 years of his service or not. The claim of the respondent was that his initial date of appointment on consolidated pay is to be taken into consideration for reckoning the period of seniority. The Department said that the regular services from the date of regularisation is to be taken into consideration for the purpose of reckoning the seniority of an employee as per the rules in force.

5. We are of the considered opinion that the date of regular appointment in the sanctioned post in the time scale of pay alone is the date from which the seniority of an employee is to be reckoned for the purpose of



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grant to promotions. The said legal position has been reiterated by the Division Bench of this Court in ***Review Application No.60 of 2020 in Writ Appeal No.3904 of 2019 dated 17.08.2021***. The Division Bench reiterated the above principles in para 28 and 29 as under:

“28. It is settled law that seniority of a person has to be counted from the date of his initial appointment, if he was appointed in a regular post, selection to which is by way of regular mode of recruitment. Therefore, the corollary is, where the initial appointment is not according to rules, i.e., ad hoc, as a stopgap arrangement, the discharge of duty in such post cannot be taken into account for determining seniority.

29. When already the Government Orders issued by the Government are clear about fixing of the seniority, the same cannot be now altered by the judicial intervention. It is also to be seen that when the First Division Bench passed the order, based on the concession given by the Government, the right of the other parties (review petitioners/appellants in W.A.No.723 of 2020 and other similarly placed teachers), who were not arrayed as parties to the proceedings, would be affected and the same was not brought to the notice of this Court.”



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6. It is brought to the notice of this Court that the said order of the Division Bench is taken by way of an appeal before the Hon'ble Supreme Court of India and subjudice. However, the respondent herein is not a party to the SLP but the appellants are the parties to the SLP.

7. As far as the writ order under challenge in the present writ appeal is concerned, the relief sought for is to extend the benefit of regularisation to the employee from the date of his initial appointment as consolidated pay P.G. Assistant. The regularisation itself has been granted by way of concession in these cases since the employees were not appointed in accordance with the recruitment rules in force. Their initial appointment was irregular and cannot be regularised in view of the legal principles settled by the Constitutional Bench of the Hon'ble Supreme Court of India in the case of *State of Karnataka vs. Uma Devi (2006) 4 SCC 1*. The legal principles are reiterated time and gain by the Supreme Court in catena of judgments.

8. However, in the present case, set of P.G. Assistants secured an order before the learned Single Judge of this Court in W.P.No.4991 of 2015 dated 30.07.2009, wherein the learned Single Judge has granted the relief to regularise the services of these consolidated pay P.G. Assistants from their



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date of initial appointment. The said order was not implemented by the State.

Instead of initiating appropriate action, another set of writ petition was filed seeking implementation of the said order passed by the learned Single Judge.

Such a course of action cannot be approved and to implement an order of Writ Court, another writ is not entertainable. That apart, the Division Bench of this Court, in the case of ***K.Tamilmani and others vs. The Government Tamil Nadu, School Education Department, in Review Application No. 60 of 2020 in Writ Appeal No.3904 of 2019 dated 17.08.2021*** held that the initial appointment of the respondent herein cannot be taken into consideration for the purpose of reckoning the seniority and the seniority is to be counted only from the date on which the respondent was regularly appointed in the time scale of pay in sanctioned post i.e., from the date of regularisation of his services. The said order is under challenge before the Supreme Court and no stay has been granted.

9. In any event, the respondent is eligible to claim seniority from the date of appointment into the regular services in the sanctioned post and they cannot seek seniority from the initial date of appointment as consolidated pay P.G. Assistant and the said appointment was found to be irregular and was



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not made by following the recruitment rules in force. Recruitment to the post of P.G. Assistant is to be made only through the Teachers Recruitment Board. The respondent was not appointed by the Teachers Recruitment Board through open competitive process. For all these reasons, the writ order impugned dated 26.11.2019 in W.P.No.32674 of 2019 is set aside. However, the benefit if any granted in SLP by the Hon'ble Supreme Court in favour of any such employee, the same may be extended to the respondent herein also.

10. With the above observations, the writ appeal stands allowed. No costs. Consequently, connected miscellaneous petition is closed.

(S.M.S.J.,)

(C.K.J.,)

13.06.2024

Index : Yes/No

Internet: Yes/No

Speaking order/Non-Speaking order

Neutral Citation : Yes/No

(sha)



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S.M.SUBRAMANIAM, J.

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