



WEB COPY



W.P.No. 27047 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 17.12.2024

Coram:

THE HONOURABLE Mrs.V.BHAVANI SUBBAROYAN

W.P.No. 27047 of 2024

D.Stella Jayanthi

...Petitioner

Vs.

1. Government of Tamilnadu
rep. By its Secretary to Government,
School Education Department
Fort St. George, Chennai – 600 009
2. The Director of School Education,
Directorate of School Education,
DPI Complex, College Road,
Chennai – 600 006
3. The Accountant General (A&E)
O/o the accountant general
361, Anna Salai, Teynampet,
Chennai – 600 018
4. The Block Educational Officer – 2
The Block Educational office,
Tirupattur Union,
Tirupattur District – 635 601
5. The Correspondent,
RCM Aided Middle School,
Koviloor Road, Pudukottai Post,
Tirupattur District – 635 602

...Respondents



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Prayer: Writ Petition filed under Article 226 of Constitution of India for issuance of Writ of Certiorarified Mandamus calling for the records of the 4th respondent in his proceedings in Na.Ka.N.1862/A3/2023 dated 31.07.2023 quash the same and consequently direct the 4th respondent herein to refund the recovered amount of Rs.2,74,831/- from the petitioner on 07.08.2023 with interest and to count the service rendered by the petitioner from the date of joining the service as secondary grade teacher i.e., 18.08.1997 to 01.06.2003 as qualifying service and send the revised proposal to the 3rd respondent and to grant pension with all consequential benefits and arrears with interest and to release the same within the period fixed by this Court.

For Petitioner : Mr.N.Elumalai

For Respondents : Mrs.Mythreye Chandru for R1, R2 and R4
Special Government Pleader
Mr.P.Manorajan for R3
Standing Counsel

ORDER

This Writ Petition has been filed for issuance of a Writ of Certiorarified Mandamus calling for the records of the 4th respondent in his proceedings in Na.Ka.N.1862/A3/2023 dated 31.07.2023 quash the same and consequently direct the 4th respondent herein to refund the recovered amount of Rs.2,74,831/- from the petitioner on 07.08.2023 with interest and to count the service rendered by the petitioner from the date of joining the service as secondary grade teacher



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i.e., 18.08.1997 to 01.06.2003 as qualifying service and send the revised proposal to the 3rd respondent and to grant pension with all consequential benefits and arrears with interest and to release the same.

2. According to the petitioner, she joined as a Secondary grade teacher at St.Anthoniyar Higher Secondary School at Udhayendiram on 18.08.1997 and the same was approved by the 3rd respondent on 19.09.1997. In the meantime, the Government vide G.O.Ms.No.155 dated 03.10.2002 ordered that the teachers, who were appointed prior to 19.05.1998 in B.Ed., qualification were required to undergo one month training in the child psychology and after completion of training the appointment of petitioner would be approved and the past service rendered by the persons would not be counted for pensionary benefits. As against the same, the petitioner preferred W.P.No.19670 of 2003 and the Hon'ble Division Bench of this Court directed the Government that no recovery be made from the petitioner, which was already released grants and paid salaries, further the petitioner's past service shall be counted for her pensionary benefits alone. The petitioner completed the child psychology training between 02.05.2003 and 31.05.2003. The petitioner retired on 31.05.2003 and the petitioner has sent the application form for superannuation pension for aided school teacher through the



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correspondent of the 5th respondent, however, the 3rd respondent returned the proposal for pension stating that the petitioner not governed under G.O.No.430 dated 06.08.2004, hence the old pension scheme shall not applicable to the petitioner and her past service shall not be calculated for pensionary benefits immediately and the petitioner submit representation to the 4th respondent explain the status mentioned above. But the 4th respondent by his impugned proceedings dated 31.07.2023, vide Na.ka.No.1862/A3/2023 recovered a sum of Rs.2,74,831/- from the petitioner and the salary of the petitioner was also re-fixed by the 4th respondent inspite of the order passed in W.P.No.19670 of 2003 dated 02.04.2004, hence this petition.

3. The learned Special Government Pleader appearing for the respondents 1, 2 and 4 and the learned standing counsel appearing for the 3rd respondent would submit that based on the audit, the pay of the petitioner has been refixed in the minimum of the time scale of pay 4500-125-700 with effect from 02.06.2003 and the pay has been refixed in the revised scale of pay with effect from 01.01.2006 and 01.01.2016 vide proceedings of the Block Educational Officer, Tirupattur dated 31.07.2003. The petitioner also agreed to repay the excess pay and allowances drawn from 18.08.1997 and consequently remitted a sum of



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Rs.2,74,831/- in the Government Account on 07.08.2023, while so, the petitioner has filed the present petition, thereby pleaded to dismiss the present Writ Petition.

4. Heard the learned counsel on either side and perused the documents placed on record.

5. It is to be noted that the Accountant General, Chennai has returned the proposal with the following remarks vide Lr.No.P22/2/12226407/ADK/44 dated 16.06.2023 with the following remarks:-

“Smt.D.Stella Jayanthi has joined as Secondary Grade Assistant on 18.08.1997 and underwent Child Psychology Course from 02.05.2003 to 31.05.2003. The G.O.413/ dated 09.11.2010 r/w G.O.155 dated 03.10.2022 clarifies that the teachers, who underwent child psychology course are to be extended old pension scheme and not covered under G.O.No.430 Finance (Pension) Department dated 06.08.2004 and there is no mention about the pay regulation / counting of past service. Hence the pay may be regulated from 02.06.2003 in the minimum time scale 4500-125-7000 with award of selection grade / special grade from 10 years / 20 years from 02.06.2003 and the revised pension proposal forwarded for admittance of pensionary benefits”

6. At this juncture, it is pertinent to point out that the petitioner was appointed as Secondary Grade Teacher based on the graduation qualification in



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the secondary grade vacancy contrary to G.O.No.559 dated 11.07.1995, which prohibits appointment of graduates in the secondary grade teacher vacancy.

Further, based on the decision of the Hon'ble Division Bench of this Court in W.A.Nos.991 to 998 of 1998 dated 29.06.2001, the Government has taken a policy decision to absorb such appointments between 11.07.1995 to 19.05.1998 in the time scale of pay of secondary grade subject to the condition that such services will be approved and regularised only from the date of completion of one month Child Psychology training. Admittedly, the petitioner underwent the said training from 02.05.2003 to 31.05.2003 and consequently, the petitioner has become eligible for regular time scale of pay with effect from 02.06.2003. Since the petitioner was not having qualification of diploma in teacher training as on the date of appointment, such appointment is considered as irregular and therefore, the service rendered from 18.08.1997 to 01.06.2003 was not considered as regular service.

7. It cannot be brushed aside that already the similar issue has been dealt with by this Court in W.P.No.12846 of 2015, wherein this Court rendered a judgment and the same is also reported in 2004 LW 591, wherein Clause (iii) of G.O.Ms.No.115 was confirmed and quashed Clause (viii) regarding counting of



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service for pension benefits by partly allowing the prayer. As against the same, the petitioner therein filed W.A.No.978 of 2016 and the Hon'ble Division Bench of this Court by Judgment dated 07.02.2018 dismissed the same and upheld the order of the learned single judge. Aggrieved against the same, the petitioner therein preferred S.L.P.No.32748 of 2019 and the Hon'ble Apex Court by order dated 21.10.2019 dismissed the Special Leave Petition. Further, the Hon'ble Apex Court in Civil Appeal No.1272 of 2011 dated 09.02.2011 has held that '*if the essential qualification for recruitment to a post is not satisfied, ordinarily the same cannot be condoned. Such an act cannot be ratified. An appointment which is contrary to the statute / statutory rules would be void in law*'

8. Considering all the above said facts and circumstances of the case and taking note of the fact that the petitioner is eligible for regular time scale of pay only from 02.06.2003, the date on which, the petitioner has acquired the requisite qualification for holding the post of secondary grade teacher after completion of Child Psychology Training as prescribed in G.O.Ms.no.155 dated 03.10.2002, this Court is of the view that the petitioner has no legitimate right to claim for the time scale of pay of secondary grade teacher with effect from 18.08.1997, hence the petitioner shall be not be entitled to count the service rendered by her prior to the date of completing the child psychology training and hence the excess amount



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paid by the Government was recovered, which cannot be found fault with. It is made clear that the petitioner is entitled for the pensionary benefits, as per Rules prevailing as on date.

In view of the above, the Writ Petition is disposed of. No costs.

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- Index : Yes / No;
Internet : Yes / No
Speaking Order / Non Speaking Order
ssd
To
1. Government of Tamilnadu
rep. By its Secretary to Government,
School Education Department
Fort St. George, Chennai – 600 009

2. The Director of School Education,
Directorate of School Education,
DPI Complex, College Road,
Chennai – 600 006

3. The Accountant General (A&E)
O/o the accountant general
361, Anna Salai, Teynampet,
Chennai – 600 018

4. The Block Educational Officer – 2
The Block Educational office,
Tirupattur Union,
Tirupattur District – 635 601

5. The Correspondent,
RCM Aided Middle School,



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Koviloor Road, Pudukottai Post,
Tirupattur District – 635 602



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V.BHAVANI SUBBAROYAN, J.

ssd

W.P.No.27047 of 2024

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