



W.P.(MD)Nos.5192 of 2023 & 2006 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 19.06.2024

CORAM

THE HONOURABLE MS JUSTICE R.N.MANJULA

W.P.(MD)Nos.5192 of 2023 and 2006 of 2022
and WMP(MD)Nos.4886, 4887 & 8159 of 2023

J.K.Suriyanath

.. Petitioner in both cases

Vs.

1. The Joint Director (Vocational),
Directorate School Education,
D.P.I.Compound,
College Road,
Chennai 6.

2. The Chief Educational Officer,
Madurai District,
Tallakulam,
Madurai.

3. The District Educational Officer,
Melur Educational District,
Melur,
Madurai.

4. The Correspondent,
Sourashtra Higher Secondary School,
110, Kamarajar Salai,
Madurai 9.

.. Respondents in
both cases



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PRAYER in WP(MD)No.5192 of 2023: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorari to call for the records pertaining to the impugned proceedings in Na.Ka.No.8172/A1/2022 dated 17.02.2023 passed by the 3rd respondent and quash the same as illegal.

PRAYER in WP(MD)No.2006 of 2022: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned proceedings in Na.Ka.No.25543/V1/E32022 dated 21.10.2021 passed by the 1st respondent and quash the same as illegal and consequently direct the 1st respondent to regularize the petitioner's service from the date of his initial appointment ie., on 24.10.2002 and to grant selection grade scale of pay to the petitioner from the date of completion of 10 years of service.

In both cases:

For Petitioner : Mr.M.K.Sachin Rahul
for M/s.C.Arulvadivel Associates

For Respondents : Mr.T.Amjadkhan
Government Advocate for R1 to R3



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ORDER

Since the issue involved in these two writ petitions are one and the same, these writ petitions are disposed of by way of common order.

WP(MD)No.5192 of 2023:

WP(MD)No.5192 of 2023 has been filed seeking a Writ of Certiorari to quash the impugned proceedings in Na.Ka.No. 8172/A1/2022 dated 17.02.2023 passed by the 3rd respondent.

WP(MD)No.2006 of 2022:

WP(MD)No.2006 of 2022 has been filed seeking a Writ of Certiorarified Mandamus, to quash the impugned proceedings in Na.Ka.No.25543/V1/E32022 dated 21.10.2021 passed by the 1st respondent and consequently direct the 1st respondent to regularize the petitioner's service from the date of his initial appointment ie., on 24.10.2002 and to grant selection grade scale of pay to the petitioner from the date of completion of 10 years of service.



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2. Heard Mr.M.K.Sachin Rahul, learned counsel for the petitioner and Mr.T.Amjadkhan, learned Government Advocate for the respondents 1 to 3.

3. The petitioner was appointed as a vocational instructor on 16.10.1996 under consolidated pay. Later when the regular vacancy arose in the post of vocational instructor due to death of one K.S.Balakumar on 16.10.2002, the petitioner has been appointed in the regular post vide the proceedings of the 4th respondent dated 23.10.2002 and he joined in service on 24.10.2002. When the proposal for approval of the said appointment was sent, the same was rejected by the Government pursuant to the impugned order of the first respondent dated 21.10.2021. The reason stated for the rejection in the impugned order is that the appointment has been made without getting proper permission and in violation of the Government Order in G.O.Ms.No.991 dated 16.07.1990. Further, the 3rd respondent vide impugned proceedings dated 17.02.2023 passed an order stopping the grant-in-aid given to the petitioner. Challenging the said impugned orders these writ petitions have been filed.



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4. The learned counsel for the petitioner submitted that the petitioner has been appointed not for a new post but for the post which has been already sanctioned and which fell vacant and hence seeking prior permission before the appointment will not arise.

5. The learned Government Advocate for the official respondents submitted that even though the post was a sanctioned post, by virtue of the Government Order issued in G.O.Ms.No.991 dated 16.07.1990, the post is deemed to have been surrendered and to make any appointment in respect of the said post, previous permission is necessary.

6. Even G.O.Ms.No.991 dated 16.07.1990 would only state that previous permission should be obtained to make any fresh appointment and it does not say that the posts already sanctioned would be presumed to have been surrendered. Hence, it is not proper on the part of the respondents to argue that the then existed vocational instructor post has to be surrendered, though it was a sanctioned post.



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7. The learned counsel for the petitioner submitted that the 4th respondent school is a minority aided school and getting prior permission itself is not applicable to the appointments made by the 4th respondent school.

8. So far as the petitioner's post is concerned he was earlier appointed as a part time vocational instructor. Subsequent to G.O.Ms. 991 Education Department dated 16.07.1990 another Government Order was issued in G.O.Ms.No.1177 Education (HS3) Department dated 01.12.1992 in modification of the earlier G.O.Ms.No.991 dated 16.07.1990. By virtue of the subsequent G.O.Ms.No.1177 dated 01.12.1992, the ban imposed through the earlier Government Order in G.O.Ms.No.991 dated 16.07.1990 for appointment has been lifted and direction has been given to all the Chief Educational Officers to permit to fill up all the sanctioned vacant part-time vocational instructors in the Higher Secondary Schools. However, the appointment shall be subject to certain conditions.



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9. Some of the conditions stipulated in the above Government Order are that there should not be any extra financial commitment to the Government and the total number of sanctioned post of part-time vocational instructors should not exceed the permission already granted. It is also stated that the permission granted will not cover conversion of a single part time instructors, after 23.10.1989, the date on which the earlier ban was imposed. Since the petitioner's appointment has been made on 24.10.2022 much later and subsequent to G.O.Ms. 1177 dated 01.12.1992 was issued, there is the question of getting prior permission for appointment as against the sanctioned vacancy will not arise. G.O.Ms.No.1177 speaks about the part time vocational instructors and not posts having regular time scale of pay. In such case, the position of the petitioner is still better because the post which fell vacant was a regular post and not a part time post.

10. In fact in the impugned order it is stated that once vocational instructors retire, the posts occupied by them should be presumed to have got surrendered. It is reiterated that G.O.Ms.No.991 dated 16.07.1990 itself does not contemplate the situation of presumed surrendering of



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the post as stated in the impugned order. Hence, the above order has been passed unmindful of the subsequent Government Order issued in G.O.Ms.No.1177 dated 01.12.1992.

11. In fact by issuance of the subsequent Government Orders in G.O.No.49 dated 04.03.2008 the Chief Educational Officers were given power to regularise the vocational instructors in Higher Secondary Schools after their satisfactory completion of probation. In fact an issue as to surrendering the post of vocational instructor as surplus has been dealt in a case filed before the Court in WP(MD)No.13965 of 2015. Since the writ petition was allowed vide order dated 29.09.2016, the Government has challenged it and filed an appeal in W.A(MD)No.1494 of 2017. In the appeal, the Division Bench, vide order dated 01.03.2018 has settled the position of law by holding as follows:

“7.After elaborate and careful perusal of the materials on record, we find from the staff fixation year 2013-14 dated 29.10.2017 as on 01.08.2013 there was one post of Vocational Instructor for the subject General Machinist and on the date when Thiru. R.Kannan was appointed, I.e., 10.06.2013, the school had one post of Vocational Instructor and therefore, to state that the appointment itself is not sustainable is a stand



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which has to be rejected.

8.Next we come to staff fixation done by the Department for the year 2014 vide order dated 07.11.2014. It is interesting to note that in the said order the appellant department records the fact that there are 46 students in the 11th standard and 39 students in the 12th standard in spite of the same stated in the fixation order that one post is surplus. In our considered view, the Department cannot take such a technical plea. When it is admitted fact that there exists sufficient students strength, the course has to continue. Thus the order of the fifth respondent showing one post of Vocational Instructor as surplus, he has virtually closed down the said course as there would be no teacher. We cannot lose sight of the fact when there is full students strength and course is in demand, the Department cannot take such a stand and render one post as surplus. In the Government order in G.O.Ms.No.525 School Education (D1) Department dated 29.12.1997, in Paragraph No.IV, the number of post eligible for Higher secondary School is mentioned in the clause (d) of the said order which states that for vocational stream, 2 posts of teachers (full time) will be sanctioned irrespective of the number of courses. Therefore, even while passing the order dated 29.10.2013 and fixing the staff strength for the year 2013-14, the respondent/Management was entitled to two post of Vocational Instructor. Thus, we find the reason for rejection of approval of the Vocational Instructor, Thiru.R.Kannan as well as staff fixation for the year 2014-2015 is completely flawed.”



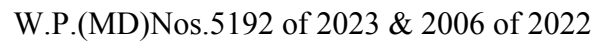
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12. In the above said order, it is upheld that so long as there were full student strength and the course is in demand, the department cannot take a stand that such a post had become surplus post. But in the instant case, the post has not even declared as surplus and it became vacant due to the death of the then regular vocational instructor. The petitioner has been appointed in the vacancy thus arose.

13. However, the learned Government Advocate submitted that the order passed in WA.(MD)No.1494 of 2017 has been challenged by preferring an appeal before the Hon'ble Supreme Court in SLP.No.2969 of 2019 and the same is pending. In the impugned order, there is no reference about the SLP.2969 of 2019. In fact the SLPs are with regard to the regularisation of those Teachers who have been appointed without permission in the post of vocational instructors.

14. The issue as to regularization of the vocational instructor would relate to such kind of part time instructors appointed by the Parent Teachers Association, as those are not in place after the computer science was introduced in Higher Secondary classes. So the whole issue



15. The issue involved in WA.(MD)No.1494 of 2017 is with
d to the existing post, but surplus. The issue involved in this case is
presumed surrender. So the pending SLP has nothing to do with
tuation that has arisen in this case and in all probabilities and
ss the post already held by one K.S.Balakumar and on whose death
petitioner has been appointed, cannot be presumed as a surrendered
on the death of the said individual. Since the impugned order has
passed unmindful of the subsequent G.O.Ms.No.1177 dated
.1992 and also the relevant Judicial pronouncements made in this
d it is liable to be set aside.



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16. In the result, these writ petitions are **allowed** and the impugned orders are set aside. The 1st respondent is directed to grant order of approval to the post of vocational instructor and to regularize the petitioner's service from the date of his initial appointment ie., on 24.10.2002, with all attendant monetary benefits within a period of four weeks from the date of receipt of a copy of this order, however, subject to the outcome of the pending SLP, if any, in this regard. No Costs. Consequently, connected miscellaneous petitions are closed.

19.06.2024

NCC :yes/no
Index :yes/no
Internet: yes/no
PJJ

To
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2. The Chief Educational Officer,
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3. The District Educational Officer,
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R.N.MANJULA, J.

PJL

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