



WP(MD) No.8355 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **16.04.2024**

CORAM:

THE HONOURABLE MS.JUSTICE R.N.MANJULA

W.P.(MD) No.8355 of 2024

and

W.M.P(MD)No.7566 of 2024

Association of B.T and PGT IEDSS Special Teachers,
For the Differently Abled Children (Regd. No.1312014),
Rep. by its State President,
G.Manimekalai,
No.67/61, Rice Mill Street,
Periyakulam Road,
Theni District.

... Petitioner

Vs.

1.The State of Tamil Nadu
Rep. by its Principal Secretary,
Department of School Education,
Fort. St. George,
Chennai - 9.



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2.The State Project Director

Samagra Shiksha,

DPI Compound, College Road,

Chennai - 600 006.

3.The Director of School Education,

DPI Complex, College Road,

Chennai - 600 006.

4.The Chief Educational Officer

O/o.The Chief Educational Officer,

Theni,

Theni District - 625 531.

5.The Chief Educational Officer

O/o.The Chief Educational Officer,

Kanniyakumari,

Kanniyakumari District - 629 001.

6.The Chief Educational Officer

O/o.The Chief Educational Officer,

Tirunelveli,

Tirunelveli District - 627 001.



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7.The Chief Educational Officer

O/o.The Chief Educational Officer,
Tenkasi, Tenkasi District - 627 811.

8.The Chief Educational Officer

O/o.The Chief Educational Officer,
Thoothukudi,
Thoothukudi District - 628 003.

9.The Chief Educational Officer

O/o.The Chief Educational Officer,
Madurai,
Madurai District 625 002.

10.The Chief Educational Officer

O/o.The Chief Educational Officer,
Dindigul,
Dindigul District 624 001.

11.The Chief Educational Officer

O/o.The Chief Educational Officer,
Ramanathapuram,
Ramanathapuram District - 623 501.



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12.The Chief Educational Officer

O/o.The Chief Educational Officer,
Virudhunagar,
Virudhunagar District 626 001.

13.The Chief Educational Officer

O/o.The Chief Educational Officer,
Sivagangai, Sivagangai District 630 562.

14.The Chief Educational Officer

O/o.The Chief Educational Officer,
Pudukkottai,
Pudukkottai District 622 001.

15.The Chief Educational Officer

O/o.The Chief Educational Officer,
Thanjavur,
Thanjavur District - 613 001.

16.The Chief Educational Officer

O/o.The Chief Educational Officer,
Tiruchirappalli,
Tiruchirappalli District - 620 004.



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17.The Chief Educational Officer

O/o.The Chief Educational Officer,

Karur,

Karur District - 639 007.

...Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Mandamus, forbearing the respondents No.2 to 17 from filling of the vacant post of Graduate Teachers “IEDSS” by way of promotion to the Second Grade Teachers, Art Teachers, Craft Teachers and Physical Education Teachers and others possessing Special B.Ed., Degree qualification.

For Petitioner : Mr.S.Louis

For Respondents : Mr.M.Siddharthan

Additional Government Pleader

ORDER

The present writ petition has been filed seeking a Writ of Mandamus to forbear the respondents No.2 to 17 from filling of



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the vacant post of Graduate Teachers “IEDSS” by way of promotion to the Second Grade Teachers, Art Teachers, Craft Teachers and Physical Education Teachers and others possessing Special B.Ed., Degree qualification.

2. Heard Mr.S.Louis, learned counsel for the petitioner and Mr.M.Siddharthan, learned Additional Government Pleader appearing for the respondents.

3. The learned counsel for the petitioner submitted that the petitioner is qualified with M.A., B.Ed., in Special Education and appointed in the Scheme of Integrated Education and Disabled Children at Secondary Stage in the year 2011 and till date, he is serving without any break in the Government Girls Higher Secondary Schools, Cumbam, Theni. As per the norms, the Special Educators, who have done D.Ed., (Special Education) and B.Ed., (Special Education) are alone eligible to impart education to the



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differently abled students. The members of the Association are working in the inclusive education under Samagra Shiksha Scheme despite receiving a meager amount as salary. The petitioner has also given a detailed representation dated 27.01.2024. The petitioner Association has also filed a Writ Petition in W.P(MD)No.3828 of 2024 challenging the proceedings dated 28.12.2022 on the file of the second respondent and the same is pending till date.

4. Similarly placed persons have already filed various Writ Petitions and in W.P.No.2937 of 2021, the following directions and observations have been given vide order dated 10.10.2023:

"5. From 17.04.2012, onwards, as per R.C.No. 20201/PG2/ IEDSS/2012, the Resource Teachers were absorbed by the second respondent from such NGOs. The petitioners are imparting education to the physically challenged children with sincerity and passion. Even prior to 01.04.2012, the petitioners were working under NGO who are tasked to implement the scheme and they were paid monthly salary of B.T Scale. Later, they were



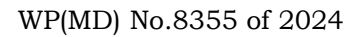
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taken up under the direct control of respondents 2 to 4 as per the proceedings of the Director of School Education vide R.C.20281/PD2/IEDSS/2012 dated 17.04.2013. The petitioners were paid BT Scale of pay to their bank account by ECS directly.

6. After considering the various representations from the Special Teachers across the State seeking absorption and pay regularization, the State of Tamil Nadu has issued a G.O.(Ms).No.28 School Education Department, dated 30.01.2015 for creation of 202 approved posts of special teachers for 2178 special children. The number of posts were identified as per the existing Special Teachers like petitioners under IEDSS Scheme and the number of children were identified as per the number of children beneficiaries as on that date. However, the said G.O.No.28 was not given effect for a long time and the petitioners were not absorbed or regularized. Further respondents 2 to 4 started fresh recruitment process through the Teachers Recruitment Board (TRB) instead of absorbing the services of the petitioners.

7. In similar such circumstances, during 2016, similarly placed 433 Special Teachers approached the



?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 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



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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 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 regularisation of the services of the employees already rendering services, that rankles with the



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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 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 categoric 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.



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18. In fine, a direction is issued to the State to frame Rules as envisaged in the above Government 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 petitioner is also similarly placed and hence, this Writ Petition can also be disposed of, in the line of the earlier order passed in the above writ petition.

5. However, the learned Additional Government Pleader for the respondents submitted that positive direction given in W.P. (MD)No.15878 of 2018 was put to challenge by way of filing a W.A.(MD)No.360 of 2023. However, the Writ Appeal has been



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disposed of, not by touching upon the merits of the order of the learned Single Judge. It was just disposed of with a direction to consider the representation submitted by the first respondent therein. As the order of the learned Single Judge has not been set aside in W.A.(MD)No.360 of 2023 and a direction has been given to consider the representation while disposing the Writ Appeal, that can only be done only on the basis of the appreciation and direction given by the learned Single Judge by allowing the claim of the petitioner.

6. It is further submitted by the learned Additional Government Pleader that another Writ Appeal in W.A.(MD)No.435 of 2024 has been filed challenging a same similar such order passed in W.P.(MD) No.24299 of 2018, wherein, an observation has been made that the appellant has been taken a decision for framing of Rules.



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7. Even in the order referred in W.A.(MD)No.435 of 2024, there is an observation made that it is for the Government to frame Rules. Instead of construing the earlier orders of the Court in true letter and spirit, the third respondent is reasserting an indifferent attitude and he had chosen to reject the petitioner's representations without framing the Rules, in compliance of the directions of this Court.

8. Since the protective order has already been given by this Court in respect of the similarly placed persons like the petitioners, the petitioner-Association represented by the other similarly placed person can be allowed to enjoy the same benefit. It is unfair on the part of the respondents to fill up the vacant post unmindful of services rendered by the petitioner, especially, to train physically challenged children. If rejection order is passed continuously, without obeying the earlier orders of this Court, the affected individuals are liberty to file contempt petition alone.



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9. In view of the above stated reasons, the respondents are directed to frame the Rules within a period of eight weeks from the date of receipt of a copy of this order, without filling up the vacant post by way of promotion from the Secondary Grade Teachers, Art Teachers, Craft Teachers and Physical Education Teachers, etc.

10. With the above direction and observation, this Writ Petition is **disposed of**. No costs. Consequently, connected miscellaneous petition is closed.

16.04.2024

Index : Yes / No
Internet : Yes / No
NCC : Yes / No

RM



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R.N.MANJULA, J.

RM

Order made in
W.P.(MD)No.8355 of 2024

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