



W.A.(MD)No.211 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : **18.06.2024**

Pronounced on: 19.07.2024

CORAM :

JUSTICE N.SESHASAYEE

and

JUSTICE L.VICTORIA GOWRI

W.A(MD)No.211 of 2019
and CMP(MD)No.1797 of 2019

1.The Director of Elementary Education,
D.P.I.Campus,
College Road,Nungambakkam,
Chennai – 1.

2. The District Elementary Educational Officer,
Tirunelveli

3.The Assistant Elementary Educational Officer,
Palayamkottai Urban, Tirunelveli

4.The Additional Assistant Elementary
Educational Officer,
Palayamkottai Urban,
Tirunelveli

...Appellants/Respondents 1 to 4

Vs

1.Ursula Suganya Velaidem,
Secondary Grade Teacher (Selection Grade),
Christ Jothi Primary School,
Caussanel Nagar, Konganthanparai Post,
Tirunelveli District

..1st Respondent/Writ Petitioner



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2.Christ Jothi Primary School,
Rep.by its Correspondent,
Caussanel Nagar, Konganthanparai Post,
Tirunelveli District. ...2nd Respondent/5th Respondent

PRAYER: Writ Appeal is filed under Clause 15 of Letter Patent as against the order passed by this Court dated 21.09.2017 in W.P(MD)No. 17970 of 2017.

For Appellants : Mr.D.Sadiq Raja
Additional Government Pleader
For R2 : Mr.M.Saravanan

JUDGMENT

(Judgment was delivered by **N.SESHASAYEE J**)

This Writ Appeal is directed by the respondents in WP(MD) No.17970 of 2017 challenging the order of the learned Single Judge, by which an audit objection of the fourth respondent dated 15.11.2016 vis-a-vis grant of selection grade to the writ petitioner was overruled.

2. For appreciating the facts of this case, it is necessary to introduce the setting as it was in 1980's and 1990's:

- During that period, there was a dearth of Secondary Grade Teachers (whose prescribed qualification was SSLC, a Diploma course in teachers education), as a result of which, the Government was constrained to appoint graduates for the said post. In other



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words, it meant overqualified teachers were underemployed.

However, the Government, vide G.O.Ms.No.559, Education Science and Technology Department, dated 11.07.1995 put a full stop to this practice.

- Agitated by this G.O., those who would be aggrieved by its operation challenged the same in a batch of writ petitions in WP(MD)No.6388 of 1998. It appears that this Court has passed an order of stay of that G.O., following which several appointments of graduate teachers to the post of secondary grade teachers were made. The writ petitioner was thus appointed on 26.02.1998.
- The batch of writ petitions challenging G.O.559 was eventually dismissed and these orders were then challenged in WA.No.991 to 998 of 1998 batch of cases. However, these appeals suffered the same fate as they came to be dismissed vide the order of the Division Bench of this Court dated 29.06.2001. However, the Division Bench appears to have taken note of all the difficulties which the teachers who were appointed in violation of letter and spirit of G.O.Ms.No.559, Education Science and Technology Department, dated 11.07.1995, and tried to evolve a modality to retain them.



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- Accordingly, the Government is stated to have informed the Court that it would retain the teachers after providing them one month course in child psychology. This was also recorded by the Bench in its order.
- Pursuant to the statement or undertaking given on behalf of the Government to this Court in W.A.Nos.991 to 998 of 1998 batch, the Government came out with G.O.Ms.No.155, School Education (D2) Department, dated 03.10.2002. It *interalia* provided for recovery of salary of whose appointees who were appointed contrary to G.O.Ms.No.559, dated 11.07.1995, but pursuant to the order of stay passed by the Court. This came to be challenged before this Court and ultimately landed before the Division Bench of this Court in WA.No.249 of 2002 batch.
- This Court upheld G.O.Ms.No.155, School Education (D2) Department, dated 03.10.2002, but set aside Clause 7 of the GO that relates to recovery of salary already paid.

3. The present case however, does not relate to recovery of salary, but with grant of selection grade to the first respondent/writ petitioner by reckoning the qualifying period for entry into selection grade from the



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date of respondents's original appointment on 26.02.1998. To restate the facts, on 26.02.1998 the writ petitioner, though a graduate, was appointed to the post of secondary grade teacher which was done only during the pendency of challenge to G.O.559. And, she had undergone a training in child psychology as required in G.O.155 and completed it on 11.10.2003. Subsequently on 22.12.2008, she was awarded the selection grade.

4.1 Selection grade is awardable to those teachers who have completed 10 years of continuous service, but without any avenue for promotion. If the date of appointment of the petitioner were to be reckoned from the date of original appointment on 26.02.1998, then the writ petitioner had completed 10 years of service, and in the absence of any avenue for promotion, she was entitled to be awarded selection grade in 2008. This was indeed given on 22.12.2008.

4.2 While so, the 3rd appellant came forward with a proceedings dated 15.11.2016 informing the first respondent/writ-petitioner that there has been an audit objection as per which she should have been granted selection grade only from the date on which she completed the course in child psychology and not from the original date of appointment in 1998,



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and sought recovery of the differential emoluments wrongly given due to the wrongly awarded selection grade earlier than when it became due.

5. This order of the 3rd appellant was challenged by the first respondent before the learned Single Judge in W.P.17970 of 2017. And it came to be allowed by the learned Judge vide his order dated 21.09.2017 based on an earlier view of another Single Judge which later came to be confirmed by a Division Bench in W.A.1065 of 2014. This order of the learned Single Judge is now under challenge.

6. The issue is whether the ten years of continuous service which is the eligibility criterion prescribed for conferring selection grade must be reckoned from the date of original appointment or from the date on which the first respondent had completed the child psychology.

7.1 Heard both sides. Placing reliance on *the State of Tamil nadu, rep. by its Secretary, Education Department and Others vs. Pallivasal Primary School* [2009 (2) LW 591], the learned Special Government Pleader submitted that when this Court allowed G.O.Ms.No.155, School Education (D2) Department, dated 03.10.2002, it only directed the



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Government not to recover the salary for the period already served by the teachers. This is understandable since those teachers who were appointed when G.O.559 was stayed by this court cannot be considered to have been appointed illegally. But, so far as the issue before the Court is concerned, the said authority is silent.

7.2 Developing his arguments, the learned Additional Government Pleader submitted that the judgment of this Court in *the State of Tamil nadu, rep. by its Secretary, Education Department and Others vs. Pallivasal Primary School* [2009 (2) LW 591] was considered by another Division Bench of this Court in the *Director of Elementary Education, Chennai and others Vs Sundaravel Raj* [W.A.(MD)Nos.74 of 2015 and 957 of 2016, dated 21.03.2018]. In that case, the Court took note of Clause-3(iii) and reading it with along side Clause 3 (viii) of G.O.Ms.No.155, dated 03.10.2002, wherein, the Government have underscored the fact that no salary could be paid to any appointees, whose appointments were made prior to the dismissal of the writ petitions, if they did not possess requisite qualification. It proceeded to hold that no appointees, who did not possess requisite qualification, but place their appointment to G.O.Ms.No.155, School Education (D2)



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Department, dated 03.10.2002 cannot seek salary for the earlier period as well as other monetary benefits, such as, increment, selection grade and special grade. This view taken in ***Sundaravel Raj's case*** was followed by two other learned single Judges of this Court in W.P(MD)No.18672 of 2020 dated 26.03.2024 and W.P(MD)No.16 of 2015 dated 25.11.2018.

8. The learned counsel appearing for the respondent/writ petitioner placed reliance on a judgment of this Court in WA(MD)No.1085 of 2014 batch, dated 12.07.2017 to support his case. The learned counsel added that the judgment in ***Sundaravel Raj's case*** was challenged in S.L.P. (Civil No.2688 of 2020), wherein, the Hon'ble Supreme Court had ordered notice after condoning the delay. He submitted that inasmuch as the matter is under consideration before the Hon'ble Supreme Court and since the decision of the Division Bench in ***Sundaravel Raj's case*** had not attained finality, this Court may not place reliance on the same. He proceeded to submit that notwithstanding the same, neither the seniority of the respondent/writ petitioner was re-fixed nor any increment was paid, yet anxiety is shown to recover the excess salary paid to her owing to the conferment of selection grade. That judgment however, does not appear to deal with the effect and impact of G.O.Ms.No.155, School



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Education (D2) Department, dated 03.10.2002.

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9. For considering the case of the respondent and the sustainability of the order of the learned Single Judge, it is relevant to reproduce Clause 3(viii) of the G.O.Ms.No.155, School Education (D2) Department, dated 03.10.2002 hereunder:-

“3(viii) In recognised Private Schools, for promotions, for fixing salary and for pensionary benefits, the period during which the above said teachers who worked without approval will not be taken into account.”

This clause would show that for promotion, the period during which the teachers had worked without approval should not be reckoned and in paragraph 3(viii) of the G.O.Ms.No.155, stipulates that such period however can be reckoned only for the purpose of granting pension and no more.

10.1 If Clause 3(viii) of the G.O.Ms.No.155 is further distilled in the ongoing forensic scrutiny, it would show that period before the teachers who were appointed contrary to G.O.Ms.No.559, Education Science and



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Technology Department, dated 11.07.1995 themselves become eligible for approval, only after they completed the one month programme in Child Psychology. Therefore, it is possible to deduce from this that this qualification for their appointment itself commenced for the petitioner from 11.10.2003. To state it differently, but for the completion of the one month programme in child psychology, the first respondent could have even continued in the service even though she was appointed in 1998. It now follows, if she had not completed the programme in child psychology her appointment would have become liable for termination. It could now be derived that the petitioner might legitimately feel aggrieved about lack of promotional avenues only when she qualified herself to be appointed as a secondary grade teacher after she completed the course in child psychology and not at any time earlier to that.

10.2 Selection grade is not a gift handed over, but it is an incentive to keep alive the motivation of those who suffered from want of promotional avenues. It now follows that the petitioner is fully aggrieved for want of promotion only in October, 2013, based on her qualification to reckon the period that she had served earlier to acquire requisite eligibility graduation of qualification would run counter to the tenor of



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G.O.Ms.No.155, School Education (D2) Department, dated 03.10.2002.

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11. This Court considers that the judgment of the Division Bench of this Court in *Sundaravel Raj's case* has correctly captured the legal position. This Court does not find any reasons to differ from the ratio of *Sundaravel Raj's case*. On the contrary, this Court does not find that the order in W.A.1085 of 2014 which the learned Single Judge had relied on pointedly considered the effect of G.O.155 on the issue dealt with thereunder. At the risk of repetition it is emphasised that but for G.O. (Ms.)No.155, School Education (D2) Department, dated 03.10.2002, the respondent could not have even continued in her post as a secondary grade teacher and would have been shown the exit door to the employment right when the writ petitions were dismissed by the Division Bench. Now having secured her services, she is now aiming for a double benefit.

12. The sympathy extended by the Government, to protect the interest of those who had been appointed either by the school or on its own or pursuant to the interim stay order passed by this Court, cannot be exploited infinitely. It could be gathered from the earlier orders that the



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tenure of G.O.Ms.No.155, School Education (D2) Department, dated 03.10.2002 that the course in child psychology is *sine que non* for being appointed as a Secondary Grade Teacher. Therefore, the decision of the authority to recall her selection grade pursuant to a mistake committed on 22.12.2008 is well in order.

13. The foregoing discussion would only indicate that the respondent cannot sustain her cause of action. Necessarily, this appeal has to be allowed. Having stated thus, this Court directs that whatever higher remuneration that was paid to her in view of this mistake cannot be recovered from the respondent. This Court further directs the appellants be conferred the selection grade as and when she became eligible to be conferred with it based on the date when she completed her child psychology programme and to re-fix her seniority and to grant all benefits in terms of service conditions including grant of yearly increment, promotion etc, and further directs that it be done within a period of eight weeks from the date on which this order copy is posted in the official web-site.



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14. In fine, subject to what is hereinabove stated in the previous paragraph this appeal is allowed and the order of the learned single Judge dated 21.09.2017 in W.P(MD)No.17970 of 2017 is set aside. No costs. Consequently, connected miscellaneous petition is closed.

(N.S.S., J.) (L.V.G., J.)
19.07.2024

Index : Yes / No
Neutral Citation : Yes / No
Sm/CM

To,
1.The Director of Elementary Education,
D.P.I.Compound,
College Road,
Nungambakkam,
Chennai – 1.

2. The District Elementary Educational Officer,
Tirunelveli

3.The Assistant Elementary Educational Officer,
Palayamkottai Urban, Tirunelveli

4.The Additional Assistant Elementary
Educational Officer,
Palayamkottai Urban,
Tirunelveli

5. The Section Officer,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai.



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N.SESHASAYEE, J.
and
L.VICTORIA GOWRI, J.

CM

Pre-delivery Judgment made in
W.A(MD)No.211 of 2019
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