



W.A.(MD) No.258 of 2019

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 14.06.2024

CORAM

JUSTICE N. SESHASAYEE

and

JUSTICE L.VICTORIA GOWRI

W.A.(MD) No.258 of 2019

and

C.M.P.(MD) No.2123 of 2019

- 1.The State of Tamilnadu,
Rep., by its Secretary to Government,
Education Department,
Secretariat, Chennai.
 - 2.The Director of Elementary Education,
College Road, Chennai-6.
 - 3.The District Elementary Educational Officer,
Tirunelveli,
Tirunelveli District.
 - 4.The Assistant Elementary Educational Officer,
Keezhapavoor Range,
Tirunelveli District.
- ... Appellants/
Respondents



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Vs.

1.K.Murugesan

... 1st Respondent/
Writ Petitioner

2.Hindu Middle School,
Sivakami Puram, Keezhapavoor Range,
Tirunelveli District,
Rep., by its Secretary cum Correspondent,
S.Sekar.

... 2nd Respondent/
5th Respondent

Prayer: Appeal filed under Clause 15 of Letters Patent against the order dated 02.04.2018 made in W.P.(MD) No.7072 of 2018.

For Appellants : Mr.D.Sadiq Raja
Additional Government Pleader

For Respondents : No appearance

JUDGMENT

(Judgment of the Court was delivered by N.Seshasayee, J.)

This writ appeal is directed against an order of a learned Single Judge in W.P. (MD) No.7072 of 2018 by which the appellants were directed to approve the appointment of the first respondent as Secondary Grade Teacher in the second respondent school with effect from 09.09.1997 and pay all monetary benefits from 09.09.1997 to 02.06.2003.



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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 words, gives employment to several qualified candidates. 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 GO, those who would be aggrieved by its operation, challenged the same in a batch of writ petitions in W.P.(MD) No.6388 of 1998. It appears that this Court has passed an order of stay of that GO, following which several appointments of graduate teachers to the post of secondary grade teachers were made. The writ petitioner was appointed on 09.09.1997.
- The batch of writ petitions in W.P.No.6388 of 1998 was eventually dismissed and they came to be challenged in a batch of writ appeals in



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W.A.Nos.991 to 998 of 1998 batch, but they also came to be dismissed *vide* order of the Division Bench of this Court dated 29.06.2001. However, the Division Bench appears to have taken note 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, went through and tried to evolve a modality to retain them. This was left to the Government.

- 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.

3. 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 *inter alia* provided for recovery of salary of those whose appointments were approved contrary to G.O.Ms.No.559, Education Science and Technology Department, dated 11.07.1995, but



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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 W.A.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 vii of the GO that relates to recovery of salary already paid.

4. G.O.Ms.No.155, School Education (D2) Department, dated 03.10.2002 reads as below:

“SCHOOL EDUCATION (D-2) DEPARTMENT

G.O. Ms. No: 155

Dated : 3-10.2002 Read :

- 1. G.O.Ms.No: 559 Education dated 11.7.95*
- 2. G.O.Ms.No. 203 Education dated 19.3.96*
- 3. G.O.Ms.No. 394 School Education dated 12.9.97*
- 4. Order in W.P. No. 6388/98 batch judgment of the High Court, dated 19.5.98.*
- 5. Order in W.A. No: 991 to 998/98, etc. Batch Judgment of the Division Bench dated 29.6.2001*
- 6. Proceedings of the Director of Ele. Education issued in letter Na.Ka.21523/EG4/2001 dated 27.7.2001.*



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7. *Proceedings of the Director of School Education, issued in Na.Ka.No. 689/D3/99 dated 10-3-99, 10-9-99 and 9-10-2001.*

ORDER:

In the G.O. first read above orders were issued based on the High Court order that B.Ed teachers shall not be appointed in Secondary Grade vacancies. In the order second cited, permission was granted to approve the appointment made till the issue of G.O.Ms.No.559, Education, dated 11.07.1995 subject to their appointments are otherwise in order and further orders if any by the Court in any pending case. In the G.O. third read above the condition was extended to High School and Higher Secondary Schools also. The writ petitions were filed challenging G.O.Ms.No.559 dated 11.07.1995 and G.O.Ms.No.394 dated 12.09.1997 (W.P.No.6388/93 etc.) and the same was dismissed by the High Court, Madras. Writ Appeals were preferred before Division Bench and final order was passed on 29.06.2001 with following directions :

"We appreciate the stand taken by the learned Additional Advocate General, which is a pragmatic stand and has an



unshakable base of experience. In order to avoid an undue hardship to these teachers who have been serving for years together in the lower classes even after studying for a graduation degree that too on meager salaries, it will be better if an exercise is taken for the confirmation of these teachers. The modalities of which may be decided by the State Government. The State Government may decide to give the practical training or may even choose to individually examine each case on its own merits. There may be individual cases where the Management was absolutely justified in employing a graduate teacher and there could be others where there was no such justification. We do not wish to draw the details and leave it to the State Government. However, the State Government shall take up this exercise as we have indicated above providing relief to at least such teachers who have been inducted prior to the dismissal of the Writ Petitions before the learned single Judge. We direct accordingly while dismissing the appeals and the writ petitions. No costs."

2. In compliance with the Division Bench Order dated 29.6.2001 reports were received from the Director of School Education and the Director of Elementary



Education for approving the B.Ed.. and Tamil Pandits appointed in Secondary Grade vacancies.

3. After careful consideration of the same by the Government following order is passed :

i) B.Ed. Graduates and Tamil Pandits appointed in sanctioned regular posts from 11-7-95 to 19-5-98 in Minority and non-minority primary, middle, High and Higher Secondary Schools are given permission to grant approval.

ii) B.Ed. Graduates and qualified Tamil Pandits who are appointed in Secondary Grade Vacancies, shall undergo one month child Psychology through D.I.E.T in their own expenses and the Director of School Education shall take necessary steps. The Director of Teacher Education shall make arrangements for training through the Principal, D.I.E.T. and issue completion certificate for the short term course.

iii) The above appointments being made contrary to the Government Orders and the challenge made before the High Court being dismissed and the Writ Appeals also being dismissed, the salary for the above period could not be granted. Hence salary will be paid form the date of completion for training after approving the appointments



of the said Secondary Grade Teachers.

iv) Before imparting training to the said teachers as stated above who are appointed in non-minority Primary, Middle, High and Higher Secondary Schools, the concerned approving officers should verify whether such appointments made are through employment Exchanges, and Rule of Reservation, age eligibility and other Rules are followed while appointing the said Secondary Grade teachers in the said Second Grade Posts and they should have undergone child Psychology training. Only after fulfilling the above requirements the concerned approving officers shall take steps to impart such training to the said teachers and they are fully responsible for the same.

v) For the Minority Schools, the Rule of Reservation, Rule of appointing through Employment Exchanges are not applicable. The B.Ed. Graduates / Tamil Pandits appointed as Secondary Grade Teachers in Secondary Grade posts in Minority Schools following the other eligibility Rules such as completion of child Psychology training etc. The concerned approving officers shall take steps to impart training to the said teachers and they are fully responsible for the same.



vi) *The Secondary Grade Teachers who are now ordered to grant approval are given relaxation for not possessing teachers training certificate and relaxation is issued as per Rule 15(6) VI (3) of Tamil Nadu Private Schools (Regulation) rules, 1974.*

vii) *Those teachers who are receiving salary in view of Court Stay orders and their appointments are all made contrary to the Government Orders, the several writ petitions filed by the B.Ed. Graduate teachers who are appointed in the Secondary Grade Posts were dismissed by the Hon'ble Division Bench of the High Court, Madras by order dated 29.6.2001. Hence the payment of salary is ordered to be stopped to the teachers who are receiving salary in view of stay orders. The Director of School Education and the Director of Elementary Education are hereby required to send detailed reports for initiating proceedings for recovery of salary which was paid already to the above said teachers as stated above.*

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.*

ix) *The B.Ed. Graduates / Tamil Pandits who are*



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appointed in the Secondary Grade posts, salary shall be paid only in the scale of Secondary Grade Teachers and Special incentives will not be granted. During their tenure as Secondary Grade Teachers they are not eligible for Special pay and incentives for acquiring Higher Qualification and Declaration to that effect should be obtained from the respective teachers.

x) The Director of Elementary Education and the Director of School Education are requested to implement the above conditions strictly without making any additional expenses to the Government.

xi) The appointments of B.Ed. Graduates in the Secondary Grade posts made after 19-5-98 will not be accepted.

3. This order is issued with the concurrence of the Finance Department in A.Sa.Ku. No. 1983/FS/P/2002 dated 21-6-2002.

(By Order of the Governor)"

5. In terms of the same, the first respondent herein had undergone one month Child Psychology Programme and completed it on 02.06.2003, and he came to be regularised following the same. The writ petitioner/the first respondent



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would now approach the authorities to regularise his services from the date of his original appointment on 09.09.1997.

6. When the matter came up before the learned Single Judge, it was argued on behalf of the appellants that the issue raised since pertains to G.O.Ms.No.155, School Education (D2) Department, dated 03.10.2002, especially Clauses (iii) and (viii) thereon, a set of direction given at paragraph 29 in ***S.Singarayar Vs. State of Tamil Nadu*** [W.P.(MD) No.19821 of 2003 etc., dated 22.01.2013] can be applied to this case also. It reads as below:

“29. For the aforesaid reasons, we allow the various writ petitions by giving the following directions:-

(i) The State of Tamil Nadu and the other authorities concerned shall consider the application of each of the Institution for grant-in-aid within a period of 16 weeks without being influenced by the fact that such institutions had been established without obtaining any prior permission and also by the fact that such institutions had given letter in writing indicating that after obtaining recognition they will not claim any grant-in-aid. However, while considering such



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application, the relevant facts such as the existence of necessary infrastructure, teacher-student ratio and the eligibility of the concerned teacher to hold the post should be considered.

(ii) If it is found that any particular institution is entitled to receive any aid, decision should be taken with regard to eligibility within a period of four months and should be communicated to the concerned institution.

(iii) If any institution is found eligible to receive such aid, necessary payment shall be made within a further period of four months from the date of such sanction.

(iv) The continued right of any institution to receive any aid is to be considered keeping in view the relevant G.O., applicable from time to time.

(v) Similarly, in respect of minority institutions, which were receiving aid in respect of some of the posts and were seeking for approval and payment of



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aid for any additional post, such question is required to be considered within a period of four months by keeping in view the teacher- pupil ratio applicable during any particular period.

(vi) If, on the other hand, any school or any post is found ineligible for sanction of grant, such decision should be communicated to the concerned institution by giving brief reasons within a period of three weeks from the date of order of refusal."

7. Heard the learned Additional Government Pleader for the appellants. The respondents were served, but they did not choose to appear. He narrated the facts and circumstances that led to the passing of G.O.Ms.No.155, School Education (D2) Department, dated 03.10.2002, which have already been stated hereinabove. He added, but for the Division Bench of this Court coming to the rescue of those graduate teachers in W.A.Nos.991 to 998 of 1998 batch, even though they were wrongly posted as secondary grade teachers without training in child psychology and the Government positively responding to the sentiments expressed by the Court through G.O.Ms.No.



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155, School Education (D2) Department, dated 03.10.2002, the petitioner would not even have any legitimacy to continue in service. Therefore, to seek for regularisation of his service from the date of his original appointment which to repeat is beyond the rules, is seeking to enforce and sustain an illegality. He added, while the learned Single Judge had come very near, the point herein canvassed, but somewhere towards the end, the order takes a slightly different course.

8. This Court carefully weighed the submissions of the learned Additional Government Pleader and also perused the papers and finds considerable merit in the same. As rightly argued, but for G.O.Ms.No.155, School Education (D2) Department, dated 03.10.2002, the writ petitioner would have been shown the exit door to his employment. Therefore, he can trace his right to stay in service only to G.O.Ms.No.155, School Education (D2) Department, dated 03.10.2002 and therefore, all his rights flow only there from.

9. Turning to the prayer, if G.O.Ms.No.155, School Education (D2) Department, dated 03.10.2002 had to go, then the writ petitioner should also



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have to go, and he might have to loose his employment. The writ petitioner's strategy is not just over ambitious, but is also misconceived. In other words, his strategy is likely to boomerang against him to kill whatever right that he had obtained under G.O.Ms.No.155, School Education (D2) Department, dated 03.10.2002. This Court agrees with the learned Additional Government Pleader that granting regularisation from the date of original employment will only enable reinstatement of an illegally made appointment and that would go contrary to the dictum of this Court in the cases earlier mentioned.

10. To conclude, this Writ Appeal is allowed and the order dated 02.04.2018 made in W.P.(MD) No.7072 of 2018 is set aside. No costs. Consequently, connected miscellaneous petition is closed.

(N.S.S., J.) (L.V.G., J.)
14.06.2024

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

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