



W.P.(MD).No.9781 of 2021

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 25.07.2024

CORAM

THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

W.P.(MD).No.9781 of 2021

and

W.M.P.(MD)No.7511 of 2021

N.Prema

...Petitioner

Vs.

- 1.The State of Tamil Nadu,
Rep. by its Secretary,
Department of School Education,
Fort St. George,
Chennai-600 009.
- 2.The Director of School Education,
College Road,
Chennai-600 006.
- 3.The Joint Director of School
Education (Vocational),
College Road,
Chennai-600 006.
- 4.The Chief Educational Officer,
Madurai District,
Madurai.
- 5.The District Educational Officer,
Madurai District,
Madurai.



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6.The Headmaster,
Velliveethiyar Corporation Girls
Higher Secondary School,
Ponnagaram,
Madurai-625 016.

7.The Commissioner,
Madurai Corporation, Madurai.

8.The District Educational Officer,
Madurai Corporation, Madurai.
Respondents

...

(R7 & R8 are Suo Motu impleaded vide Court order dated
16.04.2024 in W.P.(MD)No.9781 of 2021)

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, to call for the all relevant records pertaining to the Impugned Letter issued by the 2nd respondent herein vide Letter in Na.Ka.No.2108/V1/E3/2020 dated 16.10.2020 quashing the same as illegal, arbitrary, unreasonable and consequently directing the respondents to regularize the services of the petitioner as Vocational Instructor under the 6th respondent School, in terms of G.O.Ms.No.35, Education Department, dated 09.02.2007, granting all attendant benefits, viz., seniority and other monetary benefits.

For Petitioner	: Mr.S.Sivasubramanian
For R-1 to R-5	: Mr.M.Sarangan, Additional Government Pleader
For R-6 to R-8	: Mr.K.K.Kannan, Standing Counsel



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ORDER

The prayer of the writ petition is as follows:

This writ petition has been filed to call for all relevant records pertaining to the Impugned Letter issued by the 2nd respondent herein vide Letter in Na.Ka.No.2108/V1/E3/2020 dated 16.10.2020 quashing the same as illegal, arbitrary, unreasonable and consequently directing the respondents to regularize the services of the petitioner as Vocational Instructor under the 6th respondent School, in terms of G.O.Ms.No.35, School Education Department, dated 09.02.2007, granting all attendant benefits, viz., seniority and other monetary benefits.

2. The facts and circumstances which led to the filing of this writ petition is as follows:

The petitioner was working as a Vocational Instructor for the subject of office management and type writing in Velliveethiyar Corporation Girls Higher Secondary School, Ponnagaram, Madurai District, since 01.07.1999. Two Vocational Instrutors including the petitioners are working in the said school in the vacancies which have arisen as early as in the year 1997 itself. However, the appointment of the petitioner came to be made through the



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Parent Teachers Association of the 6th respondent Corporation School. While so, during 2007, the Government in G.O.Ms.N.35, School Education Department, dated 09.02.2007 issued orders with respect to regularization of part time Vocational Instructors on the basis of seniority working in various Government as well as the Aided Schools. The said Government Order was issued with respect to 622 part time Vocational Instructors who were appointed through the Parent Teachers Association and serving in unapproved posts as on 09.02.2007. Following which, on the basis of a letter in Na.Ka.No.101568/V1/E1/2004 dated 13.03.2009 in the proceedings of the Director of School Education Department, the 2nd respondent, vide proceedings dated 31.03.2009, called for the details of the appointments under Parent Teachers Association, for regularization, among which the petitioner's name was recommended in Serial No.17. However, when the final list of 201 selected candidates were enlisted, the name of the petitioner was dropped. Hence, the petitioner made a representation to include her name and regularize her service. Since the same was not considered, the petitioner had filed W.P.(MD)No.3068 of 2018 before this Court and this Court was pleased to allow the said writ petition, by an order dated 02.12.2019 and directed the respondents to consider the representation of the petitioner dated 15.06.2017, within a period of twelve



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(12) weeks. Since the same was not considered, even after a period of twelve (12) weeks, the petitioner filed a contempt petition in Cont P(MD)No.339 of 2021. Pursuant to the same, the impugned order dated 16.10.2020 came to be passed by the 2nd respondent. Challenging the same, the present writ petition came to be filed.

3. The learned counsel appearing for the petitioner, Mr.Siva Subramanian, submitted that, the impugned order came to be passed by the 2nd respondent for three reasons, namely,

(i) That the petitioner had availed leave during the period of 1999 and rejoined only in 2000, as such there had been a break in service which had resulted in disqualifying in accommodating her name in the aforesaid list of 201 candidates,

(ii) Since the petitioner has been appointed through the Parent Teachers Association, she cannot be regularized,

(iii) The other reason is that the jurisdictional Corporation under which the 6th respondent School functions has not forwarded her name for consideration.



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4. On these three grounds, the petitioner's representation came to be rejected by the 2nd respondent which is not legally sustainable and the same has to be necessarily interfered with. The 2nd respondent before passing the impugned order ought to have verified all the necessary details as to the attendance of the petitioner way back from 01.07.1999 till date and having not done the said exercise, without any basis, the 2nd respondent has concluded that there had been a break in service when there had never been a break in service and the petitioner could very well substantiate the same before this Court. Having decided by issuance of G.O.Ms.No.35, School Education Department, 09.02.2007 to regularize 201 candidates of the total 622 part time Vocational Instructors, because of dereliction in duty of verifying the necessary documents for considering the cases of various candidates for regularization in terms of proceedings of the 2nd respondent in Na.Ka.No.101568/V1/E1/2004, dated 13.03.2009, without proper verification, the petitioner's case has been rejected. The learned counsel for the petitioner further circulating the proceedings of the 3rd respondent in Na.Ka.No.54146/ tp1/,1/2016 dated 09.05.2017 submitted that, the various similarly placed Vocational Instructors who are serving in Government Schools and Corporation Schools came to be regularized extending the benefits of G.O.Ms.No.35, dated 09.02.2007 and claimed that



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the petitioner need to be treated at par with those persons, since she is similarly placed as that of those persons who were regularized and on that basis relying upon the judgment passed by this Court in the case of ***The State of Tamil Nadu Rep. by its Secretary to Government and Others .vs. K. Venkateshwaran and Another reported in 2019 SCC Online Mad 5904***, the learned counsel for the petitioner pressed for quashing the impugned order and allowing the writ petition.

5. Per contra relying upon the counter affidavit filed by the 4th respondent, the learned Additional Government Pleader submitted that, the petitioner was not serving in an approved post. She was appointed through the Parent Teachers Association without prior permission of the competent authority. Though the petitioner joined as early as in the year 1999, the 6th respondent Corporation School had received the approval of the Government only in the year 2016 without following the communal roaster, the appointment of the petitioner came to be made by the Headmaster of the 6th respondent School by-passing the entire rule of appointment as mandated for the School Education Department. For which, further relying upon the judgment passed by this Court in W.A.(MD)No.1394 of 2014 dated 10.8.2017, W.A.(MD)Nos.730 of 2021 batch., dated 27.04.2021 and W.A.



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(MD)No.284 of 2018 dated 02.07.2024, he categorically submitted that, in those cases, the Hon'ble Division Bench of this Court had considered the cases of similarly placed persons and have negated their claim to be regularized in the post of Vocational Instructors and on that basis taking cue from those three judgments, the learned Additional Government Pleader pressed for dismissal of the writ petition.

6. Mr.K.K.Kannan, the learned counsel apperaing for the respondents 6 to 8, did not deny the fact that the petitioner is serving in the 6th respondent School from 1999 till date. He further submitted that, the petitioner was appointed through the Parent Teachers Association of the 6th respondent School and if she is entitled to extension of the benefit of G.O.Ms.No.35, dated 09.02.2007, the Corporation has no objection in it and in case of direction by this Court, the Corporation will forward the necessary documents before the competent authority.

7. Heard the learned counsels on either sides and carefully perused the materials available on record.



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8. No doubt the petitioner was appointed on 01.07.1999 in one of the two available vacancies in the 6th respondent School that remains unfilled. Though the learned Standing Counsel for the Corporation submitted that, the petitioner was appointed in an unsanctioned post, the learned Additional Government Pleader clarified that vide G.O.Ms.No.135, School Education SE2(2) Department, dated 20.07.2016, a post of Vocational Instructor for the subject of office management and type writing was sanctioned with respect to the 6th respondent School. However, the petitioner has claimed the benefit of G.O.Ms.No.35, dated 09.02.2007, to be extended to her on the premises that her name was shortlisted and placed in Serial No.17 among the 622 candidates who were originally shortlisted by the Government in implementation of the mandates of the said G.O.Ms.No. 35, dated 09.02.2007. Though her name was accommodated at the first instance, later after verification, 201 candidates were selected for the purpose of regularization and her name was dropped out. As a result of which, the petitioner was constrained to file W.P.(MD)No.3608 of 2018, which was allowed in favour of the petitioner and directed the respondents to consider her case for regularization within twelve (12) weeks. Since the same was not considered, she was further forced to file a contempt petition. During the pendency of the said contempt petition, the impugned order



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came to be passed by the 2nd respondent, dated 16.10.2020, negating the petitioner's claim. Pursuant to the same, the contempt petition was closed by giving liberty to the petitioner to challenge the same. Taking cue from the said liberty, the petitioner is before me now.

9. In the case of ***The State of Tamil Nadu Rep. by its Secretary to Government and Others .vs. K. Venkateshwaran and Another reported in 2019 SCC Online Mad 5904*** the Hon'ble Division Bench has dealt with a similar case and had passed favourable orders to the writ petitioner therein, thereby directing the appellants to extend the benefits of G.O.Ms.No.35, dated 09.02.2007 to them and the relevant portion of the same is extracted as follows:

“7. A learned Single Judge, by order, dated 1/8/2017, in W.P. No. 11668 of 2013, allowed the writ petition, by directing the respondents therein, to pass orders, approving the appointment of the first respondent as Vocational Instructor as provided under G.O.Ms. No. 35, dated 9/2/2007, and to grant all attendant benefits, viz., seniority and other monetary benefits, within a a period of eight weeks from the date of receipt of the order made in W.P. No. 11668 of 2013.

13. We perused the material on record. The writ petitioner/first respondent has been working as a Vocational Instructor (Teacher), right



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from 1996. For no fault of his, the School did not pursue the approval. The first respondent was fully qualified and hence his appointment as a Vocational Instructor has to be approved. The first respondent cannot be made to suffer for the inaction part of the school. Service of his juniors have been approved. Petitioner is similarly placed as that of others quoted and is therefore, entitled to similar benefits. We deem it fit to consider few decisions.

(i) In *Prem Chand Somchand Shah v. Union of India* reported in [\(1991\) 2 SCC 48](#), the Hon'ble Supreme Court in paragraph 8 held thus,

“8. As regards the right to equality guaranteed under Article 14 the position is well settled that the said right ensures equality amongst equals and its aim is to protect persons similarly placed against discriminatory treatment. It means that all persons similarly circumstanced shall be treated alike both in privileges conferred and liabilities imposed. Conversely discrimination may result if persons dissimilarly situate are treated equally. Even amongst persons similarly situate differential treatment would be permissible between one class and the other. In that event it is necessary that the differential treatment should be founded on an intelligible differentia which distinguishes persons or things that are grouped together from others left out of the group and that differentia must have a rational relation to the object sought to be achieved by the statute in question.”

(ii) In *Govind Ram Purohit v. Jagjiwan Chandra* reported in 1999 SCC (L&S) 788, at paragraph 3, the Hon'ble Supreme Court held thus:

“3. It was lastly contended by the learned counsel for the appellants that whereas the petition had been filed by only Respondent 1, the High Court while finally concluding the matter has given a direction to promote all those who were senior to the appellants even though they were not parties to the petition. Once the High Court had placed a particular interpretation on the Rules, the benefit of that interpretation had to go to all those who qualified under the seniority-cum-merit rule. There was no point in waiting for each and every person to file a petition. Therefore, we do not see any reason



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why we should entertain such a technical plea when the High Court has done substantial justice to all concerned.”

(iii) InState of Karnataka v.N. Parameshwarappa reported in [\(2003\) 12 SCC 192](#), the Hon'ble Supreme Court, at paragraph 8, held thus:

“8..... we do not find any reasonable justification to confine the relief to only such of the teachers who approached the court and having regard to the fact that relief related to the revision of scales of pay, every one of that class of teachers who approached would be entitled to the benefit, notwithstanding that they have not approached the court. We are in equal agreement with the Division Bench in denying the payment of interest at compounded rates which, in our view, cannot be justified at all on the facts and circumstances of the case wherein a serious and genuine doubt existed about the applicability of the government order dated 30-3-1990, as raised in the proceedings.”

(iv) InState of U.P. v. Dayanand Chakrawarty reported in 2013 (8) Scale 74: [\(2013\) 7 SCC 595](#), the Hon'ble Supreme Court held that there cannot be any discrimination in treating equally placed persons on same footing, for all purposes.

(v) The Hon'ble Supreme Court inState of Uttar Pradesh v. Arvind Kumar Srivastava reported in [\(2015\) 1 SCC 347](#), wherein, the Apex Court dealt with the issue as to the entitlement of benefit of judgment in rem with an intention to benefit all similarly situated persons irrespective of whether they had approached the Court or not. It is held therein that when a particular set of employees is given relief by Court, all other identically situated persons should be treated alike by extending the same benefit, since not doing so would amount to discrimination and be violative of Article 14 of the Constitution of India.

14. *Therefore, the first respondent is eligible to get time scale of pay from 09.02.2007, that is from the date of issuance of G.O.Ms. No. 35.”*



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10. The learned Additional Government Pleader interfered by submitting three Division Bench Judgments of this Court where the claim of the similarly placed persons were rejected, however, as far as W.A.(MD)No. 1394 of 2014 is concerned, the said case is pertaining to a Vocational Instructor who claim the benefit of G.O.Ms.No.834 dated 29.09.1994 which has nothing to do with this case. As far as W.A.((MD)No.730 of 2019 batch is concerned, this Court though has dealt with an appointment of a Vocational Instructor who sought for extension of benefit of G.O.Ms.No.35, dated 09.02.2007, the Hon'ble Division Bench of this Court negated their claim on the basis of the fact that all those part time Vocational Instructors were working in Private Aided Schools in a posts which were created after 01.04.1992 and as such as per Section 14(A) of the Tamil Nadu Private School Recognition (Regulation) Act, 1973, those 34 Vocational Instructors cannot be regularized into service, since there is no grant for those posts. However, in the instant lis, the petitioner is working in a Government Corporation School and hence, the said judgement will not be applicable to the facts and circumstances of this case.

11. As far as the judgment in W.A.(MD)No.284 of 2018, the writ petitioner therein those who were appointed only in the year 2004. However,



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in the instant case, the petitioner is working as early as from the year 1999 without any break in service till date as acknowledged by the 6th respondent Corporation School by the learned Standing Counsel.

12. In view of the same, fully fortified by the judgment passed by the Hon'ble Division Bench of this Court in The State of Tamil Nadu Rep. by its Secretary to Government and Others .vs. K. Venkateshwaran and Another reported in 2019 SCC Online Mad 5904, I am of the considered view that the benefit which is claimed by the petitioner to be extended in her favour by the strength of G.O.Ms.No.35, dated 09.02.2007 is only on the basis of the benefits given to similarly placed persons. To add more strength to this case, the learned counsel for the petitioner relied upon the proceedings of the 3rd respondent dated 09.05.2017 wherein 7 similarly placed persons came to be regularized extending the benefit of G.O.Ms.No.35, dated 09.02.2007 and the same is extracted as follows:



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சமீபகால தீர்மானங்கள் 20, பன்முகப்பணிப் பிழித்தலுக்குப் பின் 09.02.2007-ல் உடனடி மேல்முயற்சி எடுத்த பன்முகப்பணிப் பிழித்தலுக்குப் பின் மேல்முயற்சி இல்லாத இயக்குநர் (பிழித்தலுக்குப் பின்) அலுவலர் பதவிகள், 541456/பிழித்தலுக்குப் பின், 09.05.2017				
க.எ.எண்	தொழிலாளர் ஆர்விர்ப்பு (பிழித்தலுக்குப் பின்)	பதவி	பிழித்தலுக்குப் பின் மேல்முயற்சி	பிழித்தலுக்குப் பின் மேல்முயற்சி
1	2	3	4	5
1	த.க.சு.பி.பி. அ.க. மேல்முயற்சிப் பிழித்தலுக்குப் பின் மேல்முயற்சி 025402.	அலுவலர் மேல்முயற்சிப் பிழித்தலுக்குப் பின்	01/12/1996	09.02.2007 முற்பகல்
2	த.க.சு.பி.பி. அ.க. மேல்முயற்சிப் பிழித்தலுக்குப் பின் மேல்முயற்சி 025402.	அ.க.சு.	03/10/1997	09.02.2007 முற்பகல்
3	த.க.சு.பி.பி. அ.க. மேல்முயற்சிப் பிழித்தலுக்குப் பின் மேல்முயற்சி 025402.	அலுவலர் மேல்முயற்சிப் பிழித்தலுக்குப் பின்	01/12/1996	09.02.2007 முற்பகல்
4	த.க.சு.பி.பி. அ.க. மேல்முயற்சிப் பிழித்தலுக்குப் பின் மேல்முயற்சி 025402.	த.க.சு.பி.பி. அ.க. மேல்முயற்சிப் பிழித்தலுக்குப் பின்	01/05/1998	09.02.2007 முற்பகல்
5	த.க.சு.பி.பி. அ.க. மேல்முயற்சிப் பிழித்தலுக்குப் பின் மேல்முயற்சி 025402.	த.க.சு.பி.பி. அ.க. மேல்முயற்சிப் பிழித்தலுக்குப் பின்	03/11/1999	09.02.2007 முற்பகல்
6	த.க.சு.பி.பி. அ.க. மேல்முயற்சிப் பிழித்தலுக்குப் பின் மேல்முயற்சி 025402.	த.க.சு.பி.பி. அ.க. மேல்முயற்சிப் பிழித்தலுக்குப் பின்	04/09/1997	09.02.2007 முற்பகல்
7	த.க.சு.பி.பி. அ.க. மேல்முயற்சிப் பிழித்தலுக்குப் பின் மேல்முயற்சி 025402.	த.க.சு.பி.பி. அ.க. மேல்முயற்சிப் பிழித்தலுக்குப் பின்	01/10/1997	09.02.2007 முற்பகல்

ஒம்./-இரா.ப.சு.க.சேதுபதி
இலாப இயக்குநர் (தொழிற்சாலை)



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13. When a particular set of employees are given relief by the respondents by extending the benefit of G.O.Ms.No.35, dated 09.02.2007, obviously the same benefit should be extended to the petitioner for the reason that her name was already included in Serial No.7 in the firstlist of 622 candidates shortlisted by the Government for the purpose of implementation of mandates of G.O.Ms.No.35. However, only later, during the verification process of the candidature of the various claimants in terms of proceedings of the 2nd respondent dated 13.03.2009, it could be understood that the impugned order for want of certain documents, her name has been left out. Precisely, the impugned order will throw light on the fact that the petitioner's attendance without break in service from 1999 till date has not been placed before the competent authority for consideration. However, the same has been clearly and fully placed before me by the learned counsel for the petitioner.

14. In view of the same, the impugned order is hereby quashed. The 4th respondent is directed to call for the necessary documents from the School where the petitioner is serving and thereafter pass appropriate orders by extending the benefits of G.O.Ms.No.35 dated 09.02.2007. This Court make it clear that the petitioner is eligible to get time scale of pay from



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09.02.2007, that is, the date of issuance of G.O. and the consequential service benefits. The 2nd respondent is directed to pass appropriate order within a period of eight (8) weeks from the date of receipt of a copy of this order.

15. Accordingly, this writ petition stands allowed. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

25.07.2024

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

- 1.The State of Tamil Nadu,
Rep. by its Secretary,
Department of School Education,
Fort St. George,
Chennai-600 009.
- 2.The Director of School Education,
College Road,
Chennai-600 006.
- 3.The Joint Director of School
Education (Vocational),
College Road,
Chennai-600 006.
- 4.The Chief Educational Officer,
Madurai District,
Madurai.
- 5.The District Educational Officer,
Madurai District,
Madurai.



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L.VICTORIA GOWRI, J.

Sml

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