



W.P.(MD).No.9190 of 2023

WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 12.03.2024

CORAM

THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

W.P.(MD).No.9190 of 2023

and

W.M.P.(MD)Nos.8297 and 8298 of 2023

M.Paul Retnam

...Petitioner

Vs.

- 1.The State of Tamilnadu
Represented by its Secretary,
Department of School Education,
Fort St. George,
Chennai-600 009.
- 2.The Commissioner of School
Education,
College Road, Chennai-600 006.
- 3.The Chief Educational Officer,
Kanyakumari District at Nagercoil.
- 4.The District Educational Officer
(Secondary),
Nagercoil, Kanyakumari District.



W.P.(MD).No.9190 of 2023

5.The Corporate Manager,
CSI Corporate Schools,
CSI Diocese of Kanyakumari,
No.71 A, Dennis Street,
Nagercoil-629 001.

6.The Correspondent,
LMS Higher Secondary School,
James Town, Kanyakumari District.

7.The Correspondent,
LMS Higher Secondary School,
South Thamaraiikulam,
Kanyakumari District.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, calling for the records relating to the impugned proceedings issued by the 3rd respondent CEO in Na.Ka.No.3412/A4/2022 dated 31.10.2022, quash the same and further direct the respondents 1 to 4 to approve the appointment of the petitioner as Office Assistant from 15.02.2006 to 28.07.2009 in the 7th respondent school namely, LMS Higher Secondary School, South Thamaraiikulam and disburse grant-in-aid towards her salary with all attendant benefits including arrears of salary and allowances, and further direct the respondents to place the petitioner under the Old Pension Scheme.



W.P.(MD).No.9190 of 2023

For Petitioner : Mr.S.Xavier Rajini
For R-1 to R-4 : Mr.M.Sarangan,
Additional Government Pleader
For R-5 : Mr.S.C.Herold Singh,
Standing Counsel
For Ro6 & R-7 : Mr.F.Deepak

ORDER

The present writ petition has been filed seeking to quash the impugned proceedings issued by the 3rd respondent, dated 31.10.2022 and further direct the respondents 1 to 4 to approve the appointment of the petitioner as Office Assistant from 15.02.2006 to 28.07.2009 in the 7th respondent school namely, LMS Higher Secondary School, South Thamaraikulam and disburse grant-in-aid towards her salary with all attendant benefits including arrears of salary and allowances, and further direct the respondents to place the petitioner under the Old Pension Scheme.

2. The brief facts which are necessary for the disposal of this Writ Petition is as follows:-



W.P.(MD).No.9190 of 2023

WEB COPY

(i) The 6th and 7th Respondents Schools are administered by the Church of South India, Diocese of Kanyakumari, and the same are recognized and are aided minority educational institutions. The petitioner was initially appointed as Scavenger (Part Time) in the 6th Respondent School on 01.06.1995 in a vacancy which had arisen due to the resignation of the then incumbent one Thiru. S.Mookan on 13.02.1995. The 4th Respondent DEO duly approved her appointment and disbursed grant-in-aid towards her salary, vide proceedings dated 16.05.1996. The said post of Scavenger (Part Time) was sanctioned to the 6th respondent school even at the time of establishment of the school in the year 1975. While so, one post of Office Assistant fell vacant in the 7th respondent school, namely LMS Higher Secondary School, South Tamaraikulam on 10.07.2005 due to the death of the then incumbent one R. Sathiya Manohar Singh on 09.07.2005. In that vacancy, the petitioner was appointed by way of promotion as Office Assistant, vide proceedings dated 14.02.2006. She was thereafter relieved from the 6th Respondent School on 15.02.2006 and she joined in the 7th Respondent School on 15.02.2006 itself without break in service as Office Assistant. Thereafter, the 7th respondent school had submitted a proposal to the DEO requesting to approve the



W.P.(MD).No.9190 of 2023

petitioner's appointment as Office Assistant with effect from 15.02.2006 and disburse grant-in-aid towards her salary.

(ii) However, the 4th respondent DEO approved her appointment as Office Assistant only with effect from 29.07.2009 and disbursed grant-in-aid towards her salary, vide proceedings, dated 13.03.2010. Thereafter, the petitioner met the 4th respondent DEO on several occasions and requested him to approve her appointment as Office Assistant from 15.02.2006 to 28.07.2009 and disburse grant-in-aid towards her salary. However, the DEO did not pass any orders. Hence, the writ petitioner filed W.P(MD) No. 5711 of 2019 seeking to direct the respondents 1 to 4 to approve her appointment as Office Assistant from 15.02.2006 to 28.07.2009 in the 7th respondent school and disburse grant-in-aid towards her salary with all attendant benefits. This Court, by its order dated 12.03.2009 directed the respondents 1 to 4 to consider and pass orders on the representation of the petitioner dated 04.12.2018. Pursuant to the same, the 3rd Respondent considered the petitioner's representation and declined to approve her appointment as Office Assistant from 15.02.2006 to 28.07.2009 indicating that there was a ban on appointment, vide impugned



W.P.(MD).No.9190 of 2023

proceedings dated 31.10.2022. The same was communicated to the school by the DEO, vide proceedings dated 31.01.2023 as signed on 14.02.2023. Challenging the impugned order of the 3rd respondent dated 31.10.2022, this writ petition came to be filed.

3. The learned counsel for the petitioner submitted that the petitioner was appointed by promotion in the 7th respondent school to the post of Office Assistant on 15.02.2006. The ban on appointment was lifted by G.O.Ms.No. 14, dated 07.02.2006 of the Personal and Administrative Reforms (P) Department. Hence, undoubtedly the petitioner's appointment by promotion was made only after the date of lift of the general ban on appointment implemented by the State of Tamil Nadu. In view of the same, the CEO refusing to approve the appointment of the petitioner as Office Assistant in the 7th respondent school is highly arbitrary and patently illegal. He further insisted that the CEO ought to have considered that the 7th respondent school had appointed the petitioner as Office Assistant by way of promotion with effect from 15.02.2006 against a sanctioned vacancy. He further categorically submitted that the CEO ought to have considered that G.O.Ms.No. 14 (Personal and Administrative Reforms (P)



W.P.(MD).No.9190 of 2023

Department) dated 07.02.2006 actually lifted the ban imposed under G.O.Ms. No. 212 of the Personal and Administrative Reforms (P) Department dated 29.11.2001, and the petitioner's appointment was made only after the lifting of the ban that is on 15.02.2006. Therefore, there is no impediment on the part of the CEO to accord approval to the appointment of the petitioner as Office Assistant from 15.02.2006 to 28.07.2009 in the 7th respondent school. On that basis, he pressed for allowing the writ petition.

4. Per contra, the learned Additional Government Pleader appearing for the respondents 1 to 4 have filed a counter affidavit and submitted that the 7th respondent school submitted a proposal seeking to grant approval for the appointment of the writ petitioner with effect from 15.02.2006. But, after considering the fact that there was a ban imposed during the said period and the same was lifted and permission was granted to fill up the post of Junior Assistant and Office Assistant, vide G.O.Ms.No. 189, School Education (D1) Department, dated 29.07.2009 and therefore, the CEO had granted approval from the date of the said G.O, that is, 29.07.2009, vide proceedings dated 13.03.2010 as issued by the 4th respondent. In view of the same, the writ



W.P.(MD).No.9190 of 2023

petitioner cannot maintain the present writ petition without challenging the same. He further reiterated that pursuant to the issuance of G.O.Ms.No. 189, School Education Department, dated 29.07.2009, the proposal submitted by the 7th respondent school management was processed and duly approval was granted, vide proceedings, dated 13.03.2010 with effect from 29.07.2009, that is, from the date of the issuance of G.O.Ms.No. 189 and the same cannot be faulted with. He further submitted that having accepted the same, the writ petitioner has served in the said post and attained her age of superannuation on 30.06.2011. After attaining the age of superannuation as an afterthought the writ petitioner has come up with the representation to approve her service between 15.02.2006 to 28.07.2009 in the post of Office Assistant placing reliance on few government orders and the same is not sustainable and pressed for dismissal of the writ petition.

5. Heard, the learned counsel appearing for the petitioner, the learned Additional Government Pleader appearing for the respondents 1 to 4 and the learned Counsels appearing for the respondents 5, 6 and 7. Carefully perused the available materials on record.



W.P.(MD).No.9190 of 2023

WEB COPY

6. The petitioner who was appointed as Scavenger in the 6th respondent school on 01.06.1995 in a sanctioned vacancy, was thereafter promoted to the post of Office Assistant which had fell vacant in the 7th respondent school due to the death of the then incumbent one R. Sathiya Manohar Singh on 09.07.2005. The petitioner was relieved from the 6th respondent school on 15.02.2006 by way of promotion as Office Assistant, vide proceedings, dated 14.02.2006. On being relieved from the 6th respondent school, she joined in the 7th respondent school on the same day, that is, on 15.02.2006 itself without any break in service. However, when the 7th respondent school submitted a proposal to the DEO requesting to approve the petitioner's appointment as Office Assistant with effect from 15.02.2006 and disburse grant-in-aid towards her salary. The 4th respondent DEO approved her appointment as Office Assistant only with effect from 29.07.2009 and disbursed grant-in-aid towards her salary, vide proceedings dated 13.03.2010. Therefore, she requested to approve her appointment as Office Assistant from 15.02.2006 to 28.07.2009 and disburse grant-in-aid towards her salary. However, her request was not heeded to.



W.P.(MD).No.9190 of 2023

WEB COPY

7. Hence, she made several representations on 07.07.2012, 03.03.2013, 06.06.2014, 08.08.2015, 09.01.2016, 29.02.2017 and last of which was made on 04.12.2018. Even the same were not considered. Hence, she filed a writ petition in W.P(MD) No. 5711 of 2019 seeking to direct the respondents 1 to 4 to approve the appointment of the petitioner as Office Assistant from 15.02.2006 to 28.07.2009 in the 7th respondent school and disburse grant-in-aid towards her salary with all attendant benefits including arrears of salary and allowances. This Court, by its order dated 12.03.2019 directed the respondents 1 to 4 to consider the petitioner's representation and pass appropriate orders within a period of six (6) weeks, in the light of judgment dated 26.02.2014 in W.A(MD)No. 213 of 2014. Pursuant to the same, the 3rd respondent CEO considered the petitioner's representation and passed the impugned order, vide proceedings dated 31.10.2022 declining to approve her appointment as Office Assistant from 15.02.2006 to 28.07.2009. The reason for declining the petitioner's request, vide impugned proceedings is that there existed a ban on the appointment of non-teaching staff under G.O.Ms.No. 212, (Personal and Administrative Reforms (P) Department) dated 29.11.2001.



W.P.(MD).No.9190 of 2023

WEB COPY

8. It is needless to say that vide G.O.Ms.No. 212 dated 29.11.2001, (Personal and Administrative Reforms (P) Department), the Government of Tamil Nadu decided to impose a ban on filling up of vacant posts completely except certain categories of posts such as teachers, doctors and police constabulary which may be identified and declared as essential posts. Subsequently, vide G.O.Ms.No. 14, dated 07.02.2006, (Personal and Administrative Reforms (P) Department), the ban on filling up of vacant posts by direct recruitment except certain categories of posts such as doctors, teachers and police constabulary came to be lifted. It is needless to state that the petitioner was appointed by promotion in the post of Office Assistant in the 7th respondent school with effect from 15.02.2006, after the lifting of ban, vide G.O.Ms.No. 14, dated 07.02.2006. The impugned order of CEO dated 31.10.2022 refusing to sanction the petitioner's appointment by promotion to the post of Office Assistant from 15.02.2006 to 28.07.2009 is based fully on the misconception that the petitioner had been appointed during the subsistence of the ban imposed by the Government of Tamil Nadu. Subsequent to the lifting of ban, vide G.O.Ms.No. 14 dated 07.02.2006, enabling the appointment of non-teaching staff, yet another Government order in G.O.Ms.No. 115, School



W.P.(MD).No.9190 of 2023

Education (D2) Department, dated 30.05.2007 came to be issued directing to fill up certain categories of non-teaching staff by appointment and remaining categories of non-teaching staff to be outsourced. Following the same another Government order in G.O.Ms.No. 189 of School Education (D1) Department, dated 29.07.2009 came to be issued in which the vacancies of Junior Assistant and Office Assistant were directed to be filled up on priority basis.

9. A critical perusal of the impugned order would reveal that in terms of the said G.O. bearing G.O.Ms.No. 189 dated 29.07.2009, the proposal submitted by the 7th respondent school was processed and approval was granted, vide proceedings dated 13.03.2010 with effect from 29.07.2009, that is, from the date of issuance of the said GO. The Honourable Division Bench of this Court has dealt with a similar case in W.A(MD)No. 609 of 2009 dated 25.11.2009 and the relevant portion of the same which is applicable to the facts and circumstances of this case is extracted as follows:

“5. In so far as the first contention of the learned Special Government Pleader is concerned, G.O.Ms.No.115 relates to School Education Department, which was passed on 30.05.2007. The said



W.P.(MD).No.9190 of 2023

Government Order would be only prospective in operation, meaning hereby, that it could be made applicable only to such of those appointments which are made after the said G.O. had come into force and not otherwise. Factually, the Record Clerk in question was appointed on 09.08.2005 and the proposal was also forwarded much prior to the issuance of the said G.O. Hence, the finding of the learned Single Judge that G.O.Ms.No.115, School Education (D2) Department, dated 30.05.2007, cannot be made applicable to the facts of this case needs no interference.”

10. Fully fortified by the said judgment of the Honourable Division Bench of this Court, I have no hesitation to observe that both G.O.Ms.No. 115 dated 30.05.2007 and the subsequent G.O.Ms.No. 189 dated 29.07.2009 could be made applicable only to those appointments which are made after the said GOs had come into force and not otherwise. Since the said government order should only be prospective in operation, the appointment of the petitioner by promotion to the post of Office Assistant with effect from 15.02.2006 will not be affected in any way by the issuance of the aforesaid two government orders. That apart, it is pertinent to mention at this point that the petitioner's appointment by promotion came to be made by the 7th respondent school



W.P.(MD).No.9190 of 2023

immediately within a week after the lift of ban on appointment, vide G.O.Ms.No. 14 dated 07.02.2006.

11. This Court has dealt with the case of appointment made during the period of ban on appointment in W.P.No. 1863 of 2004 dated 13.10.2008 in the case of Thiruvalluvar Higher Secondary School, Palamaner Road, Gudiyattam, Vellor District represented by the Secretary, School Committee, K.M. Govindarajan .vs. the Government of Tamil Nadu and others reported in 2008(05) CTC 648 and the relevant portion of which is extracted as follows:

"4. Similar issue as to whether after lifting of the ban, approval of appointment of a person appointed in a non-teaching post in an aided school can be kept pending and whether the said person is entitled to get salary at least from the date on which the ban order was lifted, was considered by me in W.P. (MD) No.484 of 2007 by order dated 30.10.2007 and I have allowed the Writ Petition and in paragraphs 19 and 20, held as follows:

"19. Similar ban order issued by the Department on the ground that new norms are contemplated and pending the same no appointment in aided schools are to be made was set aside by this Court in W.P. No.10237 of 1994 by order dated 16.08.1999. Since the petitioner was appointed from 05.06.2002 and he is continuously working in the sanctioned post,



W.P.(MD).No.9190 of 2023

WEB COPY

the respondents may be justified in not approving the appointment of the petitioner from 05.06.2002 to 06.02.2006. The petitioner has got a right to get his appointment approved, once the ban order is lifted. Admittedly, the ban order imposed, not to fill up the posts, was lifted on 07.02.2006. Hence, the petitioner has got every right to get his post approved with salary and other benefits with effect from 07.02.2006. Once the ban order is lifted, the provisions contained in Rule 15(1) and (3) of the Tamil Nadu Recognized Schools (Regulation) Act, 1973, comes into operation and the petitioner is deemed to be appointed on regular basis, as he was appointed within the sanctioned post in the fourth respondent school.

20. For all the reasons stated above, the impugned orders are set aside with a direction to the respondents to approve the appointment of the petitioner as Lab Assistant with effect from 07.02.2006. The third respondent is directed to pass orders approving the appointment of the petitioner with effect from 07.02.2006 and pay arrears of salary from 07.02.2006 within a period of four weeks from the date of receipt of copy of this order."

5. The learned counsel for the petitioner submits that the above order was challenged by the respondent Education Department in W.A(MD)No. 308 of 2008 and the said writ Appeal was dismissed by a Division Bench of Madurai Bench on 4.8.2008. The Division Bench dismissed the Writ Appeal by observing as follows:



W.P.(MD).No.9190 of 2023

WEB COPY

"4. After considering the rival submissions made on either side, following the judgment of the Supreme Court and order of this Court, learned Single Judge set aside the orders of the appellants with a direction to approve the appointment of the respondent/petitioner as Lab Assistant with effect from 07.02.2006 and the third appellant was directed to pass orders approving the appointment of the first respondent with effect from 7.2.2006 within a period of four weeks receipt of copy of the order. with

5. We find no infirmity or illegality in the order of the learned Judge dated 30.10.2007 passed in W.P. (MD) No. 484 of 2007. Therefore, the Writ Appeal fails and the same is dismissed."

The learned counsel for the petitioner further submitted that the first respondent in W. A. (MD) No.308 of 2008 filed separate Appeal in W.A. (MD) No. 456 of 2008 and challenged the order not giving direction to approve the appointment from the date of appointment till the date of lifting of the ban and the said Writ Appeal was also allowed by the Madurai Bench of this Court on 4.8.2008 by observing as follows:

"2. Heard the learned counsel for the appellant and the learned Special Government Pleader appearing for the respondents 1 to 3.

3. The learned counsel for the appellant submits that the appointment of the appellant from the date of appointment should have been approved by the learned Single Judge instead of restricting the prayer.



W.P.(MD).No.9190 of 2023

WEB COPY

4. *It has been brought to our notice that in similar circumstances the Government has issued orders in respect of similar employees approving their services from the date of their initial appointment. When once the ban is revoked, the Government should have considered and approved the appointment of the petitioner from the date of his initial appointment. Therefore, the orders of the learned Single Judge need to be modified to this extent. Accordingly, the Writ Appeal is allowed modifying the order of the learned Single Judge dated 30.10.2007 made in W.P. (MD) No. 484 of 2007 and directing the respondents to approve the appointment of the petitioner from the date of initial appointment.*

6. *In the light of the above referred judgments of the Division Bench, the impugned order dated 06.03.2003 is set aside with a direction to the fourth respondent to approve the appointment of S.K. Rajasekar working in the petitioner School as Junior Assistant, with effect from 01.07.2002 with all monetary benefits. Necessary orders to that effect is directed to be passed by the fourth respondent within a period of two weeks from the date of receipt of copy of this order and the arrears of salary payable to the said S.K.Rajasekar is directed to be paid within four weeks therefrom.”*

Even the appointment made during the period of ban was directed by this Court to be approved forthwith.



W.P.(MD).No.9190 of 2023

WEB COPY

12. However, in the instant case in hand the appointment of the petitioner by promotion came to be made after the lifting of ban that is on 15.02.2006. Hence, there can't be any impediment for the respondent / CEO to approve the appointment by promotion of the petitioner in the post of Office Assistant in the 7th respondent school 15.02.2006 to 28.07.2009 and disburse grant-in-aid towards her salary with all attendant benefits. In view of the same, the impugned order is hereby quashed and consequently, I direct the respondents 1 to 4 to approve the appointment of the petitioner as Office Assistant from 15.02.2006 to 28.07.2009 in the 7th respondent school and disburse the grant-in-aid towards her salary with all attendant benefits including arrears of salary and allowances.

13. Accordingly, this Writ Petition stands allowed in the above terms. No costs. Consequently, connected miscellaneous petitions are closed.

12.03.2024

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



W.P.(MD).No.9190 of 2023

WEB COPY

To

- 1.The State of Tamilnadu
Represented by its Secretary,
Department of School Education,
Fort St. George,
Chennai-600 009.
- 2.The Commissioner of School
Education,
College Road, Chennai-600 006.
- 3.The Chief Educational Officer,
Kanyakumari District at Nagercoil.
- 4.The District Educational Officer
(Secondary),
Nagercoil, Kanyakumari District.



WEB COPY



W.P.(MD).No.9190 of 2023

L.VICTORIA GOWRI, J.

Sml

W.P.(MD).No.9190 of 2023

12.03.2024