



W.P.(MD) No.10383 of 2023

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 18.11.2024

CORAM

THE HON'BLE MR.JUSTICE R.VIJAYAKUMAR

W.P.(MD)No.10383 of 2023

and

W.M.P.(MD).No.9193 of 2023

D.Selvarani

... Petitioner

Vs.

1. The Principal Accountant General (A&E),
O/o.The Principal Accountant General (A&E),
Chennai-600 018.

2. The Block Education Officer,
O/o.the Block Education Officer,
Palayamkottai (Urban),
Tirunelveli.

3. The Secretary & Correspondent,
Rahmania Primary School,
Melapalayam,
Tirunelveli.

... Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India, to issue a writ of Certiorarified Mandamus, to call for the records pertaining to the impugned order in No.AG(A&E) PEN P23/12326712/1/R2326712/267 dated 21.07.2022 on the file of the Respondent No.1 in so far as the Remarks in



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Admissibility Report in PPO No.R2326712 and quash the same as illegal and consequently for a direction, directing the Respondent No.1 to disburse pension by calculating the services rendered by the petitioner from the period between 22.10.1997 to 01.06.2003 in the light of the orders passed in W.P.No.11443 of 2005 dated 22.01.2013 by the Hon'ble Madras High Court.

For Petitioner	: Mr.Aswin Rajasimman for M/s.Lajapathi Roy and associates
For Respondent No.1	: Mr.P.Gunasekaran Standing Counsel
For Respondent No.2	: Mr.N.Satheesh Kumar Additional Government Pleader
For Respondent No.3	: No appearance

ORDER

The instant writ petition has been filed by a retired Secondary Grade Teacher, challenging the order passed by the first respondent herein, wherein, they have excluded the period between 22.10.1997 to 02.06.2003 for calculating the pensionable service.

2. The petitioner herein with her B.Ed., qualification was appointed as Secondary Grade Teacher on 22.10.1997. Since, the petitioner has not cleared the Child Psychology Training, she was directed to undergo such a training. The



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petitioner has completed her training only on 02.06.2003. Thereafter, an order was passed by the Educational Authorities conferring approval for her appointment only from 02.06.2003. This order was put to challenge by the writ petitioner in W.P.No.11443 of 2005. This Court by an order dated 22.01.2013, in a batch of writ petitions had chosen to allow as prayed for and the authorities were directed to approve the appointment of the petitioners and pay the arrears of salary within a period of eight weeks.

3. The Secretary to Government and the Educational Authorities filed Review Application No.136, 137 & 138 of 2014. The said Review Application was dismissed by this Court by an order dated 30.04.2014. The Educational Authorities have chosen to accept the said order and a revised order of approval was issued on 18.06.2014, approving the appointment of the writ petitioner with effect from 22.10.1997, namely the date of initial appointment of the writ petitioner.

4. The petitioner has attained superannuation on 31.05.2022, and her pension proposals were forwarded to the first respondent. The first respondent had chosen to return the said proposals under the impugned order, on the ground



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that Selection Grade and Special Grade have been conferred upon the writ petitioner, taking into consideration, the initial date of appointment namely 22.10.1997 instead of 02.06.2023, when the petitioner has acquired full qualification. This order is put to challenge in the present writ petition.

5. According to the learned Counsel appearing for the writ petitioner, when this Court was pleased to set aside the order and had directed the authorities to approve the appointment of the writ petitioner with effect from the initial date of appointment and not from the date of acquisition of qualification, after retirement the same issue cannot be resurrected by the Authorities. He further contended that the period between 22.10.1997 to 02.06.2003, has to be regularized not only for the purpose of pension but also for conferment of selection grade and special grade.

6. Per contra, the learned Standing Counsel appearing for the first respondent herein had contended that the Hon'ble Division bench of this court in a judgement reported in 2004(2) L.W.591 in Para.8 has categorically held that an order of approval can be granted only from the date of completion of Child Psychology Training. The Hon'ble Division Bench of this Court had further held



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that the past services can be calculated only for a pension. This order was not brought to the notice of the learned Single Judge, when he allowed the writ petition filed by the writ petitioner on 22.01.2013. He further contended that other Division Benches have chosen to follow the judgement of the Hon'ble Division Bench reported in 2004(2) L.W. 591. Since, the learned single judge has passed his order without considering the judgement of the Hon'ble Division Bench. The said judgement should be treated as *per incuriam* and the order of approval granted pursuant to the said judgement is void in the eye of law. Therefore, the conferment of selection grade and special grade, taking into consideration of the date of initial appointment as 22.10.1997 are illegal and therefore he prayed for sustaining the impugned order.

7. I have carefully considered the submissions made on either side and perused the materials available on record.

8. A perusal of the order passed by this Court in W.P.No.11443 of 2005 reveals that the petitioner has specifically challenged G.O.Ms.No.155, dated 03.10.2002 and sought approval of his appointment from the date of his initial appointment and not from the date of acquisition of Child Psychology Training.



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This writ petition has been allowed, the review filed by the Secretary to Government has also been dismissed by the learned Single Judge on 30.04.2014.

It is true that order of the Writ Court and the review order have been passed without taking into consideration of the judgement of Hon'ble Division bench reported in 2004(2) L.W 591. Though, the said order could be treated as *per incuriam*, yet they are binding upon the parties to the proceedings. When the Secretary to the Government has accepted the order of this Court, and the Educational Authorities have proceeded to grant revised approval from the date of initial appointment, it is too late in the day to contend that such judgement is an erroneous judgement and therefore, the approval orders are wrong.

9. In view of the above said facts, the impugned order in this writ petition is set aside and the first respondent is directed to process the pension papers treating the date of appointment of the writ petitioner as 22.10.1997, as a fully qualified Secondary Grade Teacher. This order is being passed only considering the fact that the petitioner has already obtained orders before this Court seeking approval of his appointment from the initial date. However, this judgement would not be applicable to any other case, in view of the judgement of the Hon'ble Division Bench reported in 2004(2) L.W. 591.



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10. With the above said observation, this writ petition is allowed. No costs.

Consequently, connected miscellaneous petition is closed.

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

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R.VIJAYAKUMAR, J.

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To

1. The Principal Accountant General (A&E),
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Chennai-600 018.

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O/o.the Block Education Officer,
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