

W.P(MD)No.9447 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 13.12.2024

CORAM:

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

W.P(MD)No.9447 of 2019

Kalavathy

... Petitioner

Vs

1.The Director of School Education,
College Road,
Chennai.

2.The Chief Educational Officer,
Tirunelveli District, Tirunelveli.

3.The District Educational Officer,
Sankarankovil,
Tirunelveli District.

4.The Correspondent,
Nadar Committee High School,
Sivagiri
Tirunelveli Distirct.

...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Mandamus, to disburse the salary and other monetary & service benefits to the petitioner with effect from 10.07.1997 in the light of judgment passed in 2008 4 MLJ 289.



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W.P(MD)No.9447 of 2019

For Petitioner
For R1 to R3

: Mr.S.Chellapandian
: Mr.P.T.Thiraviam
Government Advocate

ORDER

The petitioner was appointed as a B.T.Assistant in Nadar Committee High School, Tiruneveli/the fourth respondent herein, which is an aided Institution. The fourth respondent has availed the services of this petitioner in the Self Financing Course from the year 1997. The petitioner's appointment was later approved based on the proposal made by the fourth respondent on 05.01.2009. The petitioner has now been regularized as a Secondary Grade Teacher and she has been provided the scale of pay as applicable to the Secondary Grade Teacher. The grievance of the petitioner is that the period of service, which has been rendered by her from the year 1997 has to be calculated for payment of salary to this petitioner that she has rendered service in the fourth respondent School from the year 1997 and that too in the approved vacancy. Therefore, the petitioner has approached this Court, seeking a Mandamus, to direct the respondents to disburse the salary to her from the year 1997.



W.P(MD)No.9447 of 2019

WEB COPY

2.Today(13.12.2024), when this writ petition is taken up for hearing, it is reported that this issue has already been settled by the Division Bench of this Court in the case of ***S.Devakadaksham Vs the District Educational Officer, Villupuram***, reported in ***(2006) 4 MLJ 1580*** and the relevant portion is extracted as under:-

“35.Coming to the other contention relating to the Constitutional mandate, it is seen that in Chandigarh Administration and Others v. Ra-ini Vali and Others (supra), the Supreme Court held as follows:

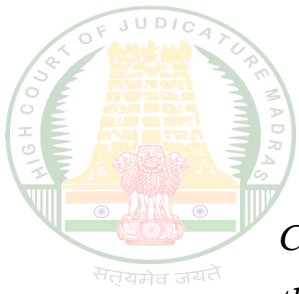
"Imparting primary and secondary education to students is the bounden duty of the State Administration. It is a Constitutional mandate that the State shall ensure proper education to the students on whom the future of the society depends. In line with this principle, the State has enacted Statutes and framed Rules and Regulations to control/regulate establishment and running of private schools at different levels. The State Government provides grant-in-aid to private schools with a view to ensure smooth running of the institution and to ensure that the standard of teaching does not suffer on account of paucity of funds. It needs no emphasis that appointment of qualified and efficient teachers is a sine qua non for maintaining high standard of teaching in any educational institution. Keeping in mind these and other relevant factors this Court in a number of cases has intervened for setting right any discriminatory treatment meted out to teaching and non-teaching staff of a



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particular institution or class of institutions."

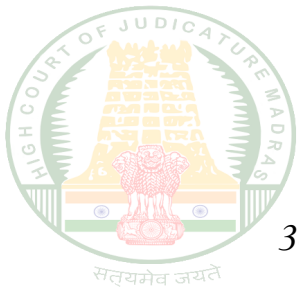
In the said case, a recognized private educational institution receiving grant-in-aid from the Union Territory of Chandigarh Administration, was imparting education only upto Class-X. With the permission of the competent authority, the school started higher secondary course (Plus 2), but the Administration imposed a condition while granting permission that no grant-in-aid will be provided for the additional staff required to take higher secondary classes. The Supreme Court frowned upon the Administration for not providing grant-in-aid upon the upgradation of an aided school and held as extracted above. Though the said case before the Supreme Court appears, on a cursory reading, to be almost similar to the case on hand, it is not actually so. In the case before the Supreme Court, the only reason for the Chandigarh Administration denying grant-in-aid for the additional staff, was that there was lack of sufficient financial resources and that even while granting permission to the school to start higher secondary courses, a condition was imposed that no grant-in-aid will be provided. But in the case on hand, there are statutory provisions contained in The Tamil Nadu Recognized Private Schools (Regulation) Act, 1973 and the Rules framed thereunder, which stipulated various conditions for providing the grant-in-aid. Availability of funds was only one of the criteria for deciding the question of payment of grant. Section 14 of the Act and Rule 11(5) of the Rules extracted (supra), stipulated that the payment of grant depended upon the fulfillment of various conditions such as the level of fees, charges and other payments collected from pupils by the schools and the conditions and norms specified in Grant-in-Aid



W.P(MD)No.9447 of 2019

WEB COPY

Code of the Tamil Nadu Educational Department. As stated earlier, the statutory provisions stipulated three stages viz., (i) stage of permission, (ii) stage of recognition and (iii) stage of payment of grant. While at the stage of grant of permission, the State considered the infrastructural facilities available in the schools, it considered the maintenance of academic standards at the stage of grant of recognition. At the third stage relating to payment of grant, the State considered various aspects such as the fees and other charges collected from the students. In the light of such statutory provisions, the Government sanctioned the payment of grant to the schools in which the appellants were employed, with effect from 1.6.1991/1.6.1994 and sanctioned the posts held by them. On and from the date of sanctioning the grant, the appellants were paid regular time scale of pay, with the minimum on the scale being granted from 1.6.1991/1.6.1994 and increments from future dates. In other words, the Government did not deny the appellants of the benefit of parity of pay. The Government granted permission and recognition first and later sanctioned the payment of grant, after three to four years. Till 1997, the appellants never challenged the Government Orders G.O. Ms. Nos. 340 and 341 dated 1.4.1992 which restricted the benefit of pay fixation on regular time scales of pay only to prospective effect. In the year 1997, the appellants got a windfall, rather an unintended one, when one teacher got a benefit under G.O. Ms. No. 18 dated 9.1.1997. Therefore, the appellants are estopped from questioning the non-extension of the benefit with retrospective effect.



W.P(MD)No.9447 of 2019

WEB COPY

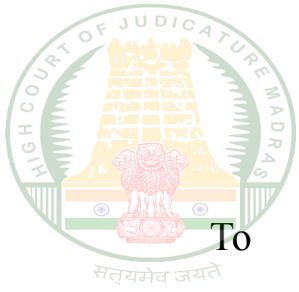
36. It is now well settled that the Government is obliged to sanction grant for payment of salary to a person appointed to a post, only if it is a sanctioned post. The posts held by the appellants got sanctioned by the Government only under G.O. Ms. Nos. 340 and 341 dated 01.04.1992. Therefore, the appellants are not entitled to the benefit of counting past services rendered by them prior to the sanction of their posts.”

3.Since the issue has already been decided by the Honourable Division Bench of this Court as stated supra, the petitioner is not entitled to claim salary from the respondents for the period, which she has rendered service as a teacher in the self financing course.

4.In view of the above, this writ petition is dismissed with liberty to this petitioner to claim the damages, if any, from the fourth respondent School, if she is so advised. No costs.

12.12.2024

NCC:Yes/No
Index:Yes
vrn



W.P(MD)No.9447 of 2019

To

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B.PUGALENDHI, J.

vrn

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