



W.A.(MD).No.350 of 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 03.07.2024

PRONOUNCED ON : 01.08.2024

CORAM

**THE HONOURABLE MR.JUSTICE A.D.JAGADISH CHANDIRA  
AND  
THE HONOURABLE MR.JUSTICE K.RAJASEKAR**

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and

C.M.P.(MD).No.2134 of 2018

1.The District Elementary Educational Officer,  
Virudhunagar.

2.The Additional Assistant Elementary  
Educational Officer,  
Srivilliputhur.

... Appellants/Respondents 1 & 2

Vs.

1.K.Saravana Shanthi,  
Secondary Grade Teacher,  
Andal Aided Primary School,  
Srivilliputhur,  
Virudhunagar District.

... 1<sup>st</sup> Respondent/Writ Petitioner

2.The Secretary,  
Andal Aided Primary School,  
Srivilliputhur,  
Virudhunagar District.

... 2<sup>nd</sup> Respondent/3<sup>rd</sup> Respondent



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PRAYER: Writ Appeal filed under Clause 15 of Letters Patent Act, praying to set aside the order dated 01.03.2017 passed in W.P.(MD).No.6097 of 2013.

For Appellants : Mr.D.Sadiq Raja  
Additional Government Pleader  
For R-1 : M/s.M.Benazir Begum  
For R-2 : No appearance

### **JUDGMENT**

**(Judgment of the Court was made by K.RAJASEKAR,J.)**

This intra-Court appeal is filed by the first and second respondents in the Writ Petition challenging the order passed by the learned Single Judge in W.P.(MD).No.6097 of 2013 dated 01.03.2017, wherein, the learned Single Judge has quashed the impugned order passed by the first respondent withdrawing the time scale of pay ordered to the writ petitioner from the date of her appointment, i.e., 06.04.1998.

2. For the sake of convenience, the parties herein are referred to as per their rank and status before the Writ Court.



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3. The case of the writ petitioner is that she was appointed in the post of Secondary Grade Teacher in the third respondent School on 06.04.1998, which is a sanctioned post. Since the third respondent School is a private aided school under the Tamil Nadu Recognised Private Schools (Regulation) Act, 1973, a proposal was forwarded to the District Elementary Educational Officer for approval of appointment. However, he rejected the proposal on the ground that the said vacancy is reserved for a SC candidate and it shall not be filled up by non-SC candidate. Subsequently, the Government passed G.O.Ms.No.46, School Education Department, dated 21.02.2000, which states that no reservation is provided for aided schools for less than 10 posts. The total number of posts in the third respondent School is 2 and the appointment of the writ petitioner is covered by the Government Order. Hence, the third respondent School filed a Writ Petition in W.P.(MD).No.8393 of 2006 challenging the rejection order of the first respondent and seeking direction for approval of appointment of the writ petitioner, wherein, this Court has quashed the rejection order and allowed the Writ Petition vide order dated 29.11.2006. This Court also directed the District Elementary Educational Officer to consider the representation of the



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School taking note of the date of appointment of the writ petitioner as 06.04.1998 and in the light of G.O.Ms.No.46 dated 21.02.2000, within a period of four weeks from the date of receipt of a copy of the order. Accordingly, the representation was considered and the same was rejected as per order dated 30.12.2006. Hence, a Contempt Petition was filed before this Court. Thereafter, the first respondent issued proceedings dated 23.08.2007, wherein, it is stated that the appointment of the writ petitioner as Secondary Grade Teacher will be approved with effect from 06.04.1998 , on the date of completion of one month child psychology training. Based on this submission, the contempt proceedings was closed. However, the first respondent has not arranged for one month child psychology training to the writ petitioner. Subsequently, her appointment was approved with effect from 28.05.2008 instead of 06.04.1998 as per order passed by the first respondent dated 29.05.2008. Since the approval was not made with effect from 06.04.1998, she has filed a Contempt Petition in Cont.P.(MD).No.288 of 2009 before this Court and once again, the first respondent passed an order dated 31.10.2011, withdrawing the time scale of pay ordered to the writ petitioner from the date of appointment, i.e., 06.04.1998 and approval



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was granted with effect from the date of completion of one month child psychology training, i.e., 28.05.2008. Consequently, the Contempt Petition was closed with liberty to the writ petitioner to challenge the order of the first respondent and the same is impugned in the Writ Petition.

4. The respondents filed a counter and contested the Writ Petition. It was contended that the sanctioned post is exclusively reserved for SC/ST candidates, but the writ petitioner belongs to Backward Class with higher qualification. The procedure adopted in appointment of the writ petitioner is based on violation of Rules and the writ petitioner was appointed without getting any list of candidates from Backward Classes from the concerned Employment Exchange. In the year 2002, the Government has issued G.O.Ms.No.155, which bans filling up of posts of B.T. Assistants from the persons, who are having higher qualification. Subsequently, G.O.Ms.No. 109 dated 16.08.2004 and G.O.Ms.No.36 dated 23.02.2005 were issued and it is prescribed that the writ petitioner has to complete the one month child psychology training and only thereafter, she will be eligible for time scale of pay. Since she has completed one month child psychology training from



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28.04.2008 to 28.05.2008, her appointment has been approved with effect from 28.05.2008 and the request for granting approval of appointment from 06.04.1998 has been rightly rejected by the authorities. Hence, there is no error in the impugned order and prayed to dismiss the Writ Petition.

5. The learned Single Judge, after considering the submissions and perusing the records, has held that during the pendency of W.P.(MD).No.10122 of 2007, the first respondent, who is the competent authority to approve the appointment of the writ petitioner, has passed an order dated 23.08.2007 and approval was made with effect from 06.04.1998. Since they have already issued the approval and the order has been acted upon, the subsequent impugned order, which prescribes that the writ petitioner is entitled to time scale of pay from 28.05.2008 is totally against the earlier order passed by the very same authority. Accordingly, the learned Single Judge quashed the impugned order and directed the disbursement of salary and other benefits to the writ petitioner from her original date of appointment, i.e., from 06.04.1998.



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6. Aggrieved over the order passed by the learned Single Judge, this Writ Appeal has been filed by the Education Department.

7. The learned Additional Government Pleader appearing for the appellants would submit that the appointment relating to B.T. Assistant in the private aided schools has a long history. As far as the the writ petitioner is concerned, she was appointed in the year 1998 by violating the appointment rules. Admittedly, she has been appointed in the post reserved for SC/ST candidates only. When the records were placed before the first respondent for approval of appointment, it was intimated to the writ petitioner that she could not be appointed in the reserved post. She was not appointed by following proper procedure. She was not qualified to be appointed as Secondary Grade Teacher and she had attained requisite qualification only from the date of completion of one month training under Child Psychology, i.e., on 28.05.2008. The fixation of time scale of pay from 28.05.2008 is proper and to strengthen his contention, the learned Additional Government Pleader relied on the judgment of this Court in ***The State of Tamil Nadu Vs. Pallivasal Primary School*** reported in **2004-2-L.W.591**.



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8.1. The learned counsel for the writ petitioner would submit that the writ petitioner was appointed in the vacant sanctioned post of Secondary Grade Teacher on 06.04.1998 and in order to enforce her legal right, she was forced to approach the Hon'ble High Court on each and every occasion from the year 2006 onwards. The writ petitioner was appointed on 06.04.1998 and immediately, approval was sought from the authorities and it was not considered by the authorities and only belatedly, the order rejecting the approval of the writ petitioner's appointment was passed, which was challenged in W.P.(MD).No.8393 of 2006, wherein, the learned Single Judge of this Court has held that the communal roster is not applicable to the post in which the writ petitioner was appointed and accordingly, directed the authorities to consider the representation of the writ petitioner dated 30.11.2005. The said representation was not considered and thereby, contempt proceedings was initiated. During the pendency of the contempt proceedings on 23.08.2007, approval was granted by the authorities. Thereafter, Writ Petition was filed in W.P.(MD).No. 10122 of 2007 seeking to grant benefits with effect from 06.04.1998 and it was reported before the Court that approval was granted with effect from



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06.04.1998 and the authorities were also directed to disburse all the benefits within a period of one month. However, the authorities have not passed any order, whereby, once again the writ petitioner has initiated the contempt proceedings and direction was given to the authorities to provide one month training under child psychology. Even after completion of the Child Psychology training, her pay fixation was not done with effect from 06.04.1998. Hence, she has made a representation to the authorities and only on 31.10.2011, the impugned order herein was passed stating that she is eligible to time scale of pay only from the date of completion of the training period, which is totally against the earlier order passed on 23.08.2007. It is further submitted that the Single Judges of this Court have granted the similar relief of extending the monetary benefits from the date of original appointment of the teachers even though their approval was taken place subsequently.

8.2. The learned counsel further submits that even after approval of appointment was granted with effect from 06.04.1998, the respondents have not taken any steps to provide the one month mandatory training for the purpose of awarding time scale of pay. Since the authorities have delayed



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and failed to provide training immediately, the writ petitioner cannot be denied the time scale of pay on that ground. Hence, the learned Single Judge has rightly considered the same and allowed the Writ Petition and the learned counsel prays to confirm the same.

9. The issue of appointment of teachers for Secondary Grade vacancies, is having chequered history. In the year 1995, the Government had issued G.O.Ms.No.559 Education Department dated 11.07.1995, wherein, it provides that no B.Ed teachers shall be appointed in the secondary grade vacancies. This G.O. was challenged in a batch of Writ Appeals and the Division Bench of this Court in ***Secretary and Correspondent Uswathun Hasana Oriental (Arabic) Girls Higher Secondary School, Pallapatti, Karur District Vs. The State of Tamil Nadu and others*** reported in ***2002 Writ L.R. 173***, has held that the said G.O. is valid. While dismissing the Writ Appeals, in paragraph 27, the Division Bench has observed that the State Government may decide to give the practical training or may even choose to individually examine each case of its own merits. There may be individual cases where the Management was



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absolutely justified in employing a graduate teacher and there could be others where there was no such justification. However, the Government may consider giving relief to the teachers, who have been inducted prior to the dismissal of the Writ Petitions before the learned Single Judge. The relevant portion of the judgment reads as follows:

*"27. 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 meagre 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*



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*dismissal of the writ petitions before the learned single Judge.  
We direct accordingly while dismissing the appeals and the writ  
petitions. No costs."*

10. Based on the above observations, the Government has issued G.O.Ms.No.155 dated 03.10.2002, which provided for imparting one month child psychology training for all those teachers, who possessed B.Ed qualification and appointed in secondary grade vacancies, which appointment was held to be not sustainable by the Division Bench. As the teachers do not possess the requisite qualification, the Government has imposed a condition that they would be entitled to get salary from the date of completion of training. Since the date of appointment has to be calculated from the date of completion of training, a batch of Writ Petitions have been filed challenging the validity of G.O.Ms.No.155 dated 03.10.2002. This issue was considered by the Division Bench in ***The State of Tamil Nadu Vs. Pallivasal Primary School*** cited supra and the Division Bench has observed in paragraphs 7 and 8 as follows:

*"7. So far as the approvals/confirmation is concerned,  
Government was not under any duty to approve or confirm the*



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*appointment of appellants/petitioners who did not possess the qualifications prescribed when, they were improperly appointed to the posts. Their position cannot be equated to that of those who possess the qualification and had been duly appointed. Their remaining in their post was only by reason of a sympathetic view taken by the Division Bench which had upheld the Government Order which had directed that persons with B.Ed. Qualification are not to be appointed in Secondary Grade vacancies.*

*8. Their right to be regarded as persons eligible for confirmation/approval can be said to arise only after they acquired, after their training, a minimum prescribed qualification. The Government here has shown great concession to them by allowing them to retain their position even without obtaining the requisite diploma or certificate in child psychology by giving to them training in child psychology. We see nothing wrong in the Government directing that their approval/confirmation can only be on and after the date they complete the training. Their past service however shall count for pension.”*

11. Further, it was argued before the Division Bench that there was a delay in providing training, which results in causing huge delay in getting



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the benefits granted to them as per G.O.Ms.No.155. Adverting to the above submission, it is observed by the Division Bench in paragraph 9 as follows:

*“9. It was submitted by some of the counsel for the appellants/petitioners that there was delay in providing training. Complaint of this nature cannot be made by such of these persons. Even according to them over 1000 persons have been appointed contrary to the G.O.Ms. No:559. The fact that Government took some time to formulate a scheme and provide training to them in batches cannot be a matter for complaint especially as the continued functioning of these persons as teachers was not disturbed on account of the time required by the Government for providing training.”*

12. The judgment of the Division Bench in *Pallivasal Primary School's* case cited supra was followed subsequently by another Division Bench of this Court in ***The Director of Elementary Education, College Road, Chennai Vs. Sundaravel Raj*** passed in ***W.A.(MD).Nos.74 of 2015 and 957 of 2016*** dated ***21.03.2018***, wherein, the question of entitlement of salary from the date of first appointment was considered in paragraph 7, which reads as follows:



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*"7.Pursuant to which, G.O.Ms.No.155 dated 3.10.2002 was issued. The said Government Order provided for imparting one month child psychology training for all those Teachers, who possessed B.Ed qualification and appointed in Secondary Grade vacancies, which appointment was held to be not sustainable by the Division Bench. As the Teachers does not possess the requisite qualification, the Government, while granting such concession imposed a condition, which appears to have been unequivocally accepted by the Teachers. Otherwise they would have lost the chance of getting absorbed into service. The question would be as to whether the Teachers would be entitled to get salary from the date of first appointment, I.e. the order of irregular appointment and as to whether they would be entitled for salary in the Secondary Grade scale from the date of completion of child psychology training. There can be no controversy on the aspect as the Government order clearly stipulates as to from what date the Secondary Grade scale of pay is liable to be paid to those Teachers including the respondents. This is contained in Clause 3(iii) of G.O.Ms.No.155 dated 03.10.2002, which reads as follows:*

*“(iii) மேற்கண்ட நியமனங்கள் அரசணைக்குப் புறம்பாக செய்யப்பட்டுள்ளதாலும், இந்நியமனதாரர்களால் தொடரப் பட்ட ரிட் மனுக்கள் மற்றும் அதனை எதிர்த்து தள்ளுபடி செய்யப்பட்டுள்ளதாலும் மேற்கண்ட நியமனங்களுக்கு நியமன முதல் ஒப்புதல் வழங்கி, அந்நாள் முதல் ஊதியம் வழங்க இயலாது. எனவே,*



மேற்கண்ட பயிற்சியை முடித்த நாளிலிருந்து இவர்களுக்கு முறையான இடைநிலை ஆசிரியர்களாக நியமன ஒப்புதல் அளித்து, அந்த நாளிலிருந்து மட்டுமே இடைநிலை ஆசிரியர் ஊதியம் வழங்க வேண்டும் என்று ஆணையிடப்படுகிறது.” "

While answering the question, it is observed as follows:

*“9.The management of various Schools, which had appointed Teachers like the respondents had challenged the validity of G.O.Ms.No155 dated 03.10.2002 and the matter travelled upto the Division Bench and the Division Bench in the case of **The State of Tamil Nadu and others v. Pallivasal Primary School reported in 2004-2-L.W. 591** upheld G.O.Ms.No.155 dated 03.10.2002. The only relief granted to the Teachers, who were appointed in Secondary Grade vacancies, is the grant of salaries, were by restraining the department from effecting any recovery. Therefore, paragraph No.3(7) of G.O.Ms.No.155 alone was set aside and rest of the Government Order was upheld in the said decision. It was subsequently ordered that approval/confirmation of the appointment can be only after the date of completion of the child psychology training. Further the Division Bench observed that the past service I.e prior service child psychology training shall count. After the decision rendered in the case of Pallivasal has attained finality, the respondent/writ petitioners seek for salary for the earlier period as well as for other monitory benefits such as*



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*increment, selection grade and special grade, etc. We have given our careful consideration. We find in paragraph No.7 of its judgment, the Hon'ble Division Bench has noted the various condition in G.O.Ms.No.155 and held that the respondent therein would be entitled to relief as granted to similarly placed teachers. If that is so, the ultimate conclusion would have been to grant benefit from the date of completion of the child psychology training. However in the penultimate portion of the order her salary has also been included. In our considered view, the direction to pay salary does not corroborate with the observation made by the Division Bench. In, the decision in the case Suganthi Victoria. The Government had admitted that at best it can be taken as a decision pertaining to the said case on its factual matrix and that cannot be taken as a precedent. In the case of Government of Tamil Nadu v. Sri Rao Bahadur AKD Dharmaraja Girls Higher Secondary School in W.A.(MD)No.3442 of 2002 dated 08.09.2006, the Division Bench, relying on the decision of the case reported in 2002 Writ I.r. 173, held that the salary can be paid only after completion of the child psychology training and accordingly, allowed the Government appeal.*

*10.The learned counsel for the respondents/writ petitioners relied on certain other orders passed by various single Benches including one of us (TSSJ) and on perusal of the same, we find that in none of those decisions, the full affect of*



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*G.O.Ms.No.155 and the conditions therein have been thoroughly examined. Apart from that, the decision in the case of Pallivasal Primary School has not been specifically noted. Therefore, we are of the considered view, that those decisions cannot be referred to advance the case of the respondents/writ petitioners, though some of them have attained finality. Needless to state that if there has been a wrong decision, it cannot be treated as precedent.*

*11.In the light of the above reasoning, we are of the considered view that the order passed by the Writ Court directing disbursement of salary from the date of original appointment, cannot be sustained, in the light of explicit condition imposed in G.O.Ms.No.155, which was upheld by the Division Bench in a Public Interest Litigation. Thus, for the above reasons, the writ appeals filed by the department has to be allowed.”*

13. In the case in hand, admittedly, the writ petitioner was appointed as a Secondary Grade Teacher prior to the issuance of G.O.Ms.No.155 dated 03.10.2002 and after issuance of G.O.Ms.No.559 dated 11.07.1995. Both the Government Orders are squarely applicable to her. Admittedly, she has undergone training between 28.04.2008 and 28.05.2008. In G.O.Ms.No.155 dated 03.10.2002, it has been categorically stated that the teachers, who



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possessed B.Ed qualification and appointed in Secondary Grade vacancies are not entitled to get regular time scale of pay and only after completion of the training period, they are entitled for time scale of pay, that too, after satisfaction of the other conditions, i.e., the qualification and completion of proper appointment procedures. The issue of delay in referring the writ petitioner for training was also considered by the Division Bench in *Pallivasal Primary School's* case cited supra and in paragraph 9, it has been held that since the persons, who have to undergo training, are very large in number, it is not possible for the Government to formulate a scheme and provide training within a short span of time and sufficient time is required for the Government for providing training. The Division bench in the *Sundaravel Raja's* case cited supra has considered the question of entitlement of salary from the original date of appointment and answered that only after training, salary can be paid to the persons appointed and directing the disbursement of salary from the date of original appointment is not permissible in the light of explicit conditions imposed in G.O.Ms.No. 155, which was already upheld by the Division Bench.



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14. In this case, admittedly, the writ petitioner has completed training in the year 2008 and she can only claim salary and other benefits only from the date of appointment in the year 2008 and she is not entitled to claim salary and other benefits from the date of original appointment. The learned counsel for the writ petitioner relied on several orders passed by the learned Single Judges of this Court. We have carefully considered the said orders and found that in all those orders, no reference was made about the judgments passed by the Division Benches in *Pallivasal Primary School's* case and *Sundaravel's* case cited supra and the conditions stipulated in G.O.Ms.No.155 dated 03.10.2002. Hence, the orders relied on by the learned counsel for the writ petitioner are not relevant for consideration of this appeal. However, in paragraph 8 of the judgment passed in *Pallivasal Primary School's* case, the Division Bench has clarified that the past service of the teachers shall count for pension, which was followed by the Division Benches of this Court in *The State of Tamil Nadu Vs. R.Chitradevi [W.A.Nos.1573, 1574 and 1577 of 2021 dated 30.06.2022]* and *The State of Tamil nadu and others Vs. K.Sulochana and others [W.A.(MD).Nos. 348 and 349 of 2021 dated 04.01.2023]*.



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15. Accordingly, the prayer of the writ petitioner seeking direction to the respondents to approve her appointment as a Secondary Grade Teacher with effect from 06.04.1998 with all consequential benefits fails and the order of the learned Single Judge passed in W.P.(MD).No.6097 of 2013 dated 01.03.2017 is set aside. The Writ Appeal stands allowed. There shall be no order as to costs. Consequently, connected miscellaneous petition stands closed.

**(A.D.J.C.,J.) (K.R.S.,J.)**  
**01.08.2024**

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