



W.A.(MD)No.272 of 2017

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

WEB COPY

DATED : 04.03.2024

CORAM:

**THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN
AND
THE HONOURABLE MR.JUSTICE K.K.RAMAKRISHNAN**

**W.A.(MD)No.272 of 2017
and
CMP(MD)No.2890 of 2017**

1.The Director of Elementary Education,
D.P.I. Complex, College Road,
Chennai-6.

2.The District Elementary Educational Officer,
Elementary Education,
Thanjavur.

3.The Additional Assistant Elementary Educational Officer,
Ammapettai,
Thanjavur.

.. Appellants/Respondents

Vs.

Saraswathi

.. Respondent/Writ Petitioner

PRAYER: Writ Appeal is filed under Clause 15 of Letters Patent to set aside the order dated 08.12.2016 passed in W.P(MD)No.23799 of 2016.

**For Appellants : Mr.D.Sadiq Raja
Additional Government Pleader**



W.A.(MD)No.272 of 2017

For Respondent : Mr.B.Jameel Arasu

WEB COPY

JUDGMENT

(Judgment of the Court was delivered by **V.BHAVANI SUBBAROYAN, J.**)

This writ appeal has been filed challenging the order dated 08.12.2016 passed in W.P(MD)No.23799 of 2016. The writ petitioner/respondent herein filed the writ petition seeking for issuance of writ of certiorarified mandamus to quash the proceedings dated 18.01.2016 passed by the third respondent in Na.Ka.38/A3/2016 and consequently, direct the respondents to pay all benefits and increments.

2. According to the writ petitioner, she was appointed as Secondary Grade Teacher in Kasimiya Dawood Middle School at Rajagiri on 08.08.1996 and on 14.12.1997, the service of the petitioner has been regularised by the 2nd respondent vide proceedings in Na.Ka.No.110429/A3-97. As per G.O.Ms.No. 155, School Education (D2) Department, dated 03.10.2002, persons whose services were regularised are not entitled to get monitory benefits from the date of their initial appointment. The said G.O was challenged by filing a writ petition in W.P(MD)No.19821 of 2003 before this Court and this Court, by order dated 22.01.2013, allowed the said writ petition holding that the selection grade pay may be granted considering the initial date of appointment as crucial



W.A.(MD)No.272 of 2017

date for considering the period of ten years of service. The grievance of the present writ petitioner is that the 3rd respondent vide proceedings dated 18.03.2014 in Na.Ka.No.280/A1/14 informed that the petitioner is entitled for payment of monetary benefits and other benefits only from 01.01.2006 and not from the date of appointment, ie., 08.08.1996. The learned single Judge was of the view that the writ petitioner is entitled to get the benefits already given to other beneficiaries and that cannot be denied to her and further, as per the earlier decisions of this Court in similar matters, the learned single Judge set aside the impugned order and directed the respondents to extend the same benefits to the petitioner by taking into consideration of the various decisions of this Court and pass appropriate orders within a period of three months. Challenging the same, the respondents/Educational authorities approached this Court.

3. The learned Additional Government Pleader appearing for the appellants stated that as per G.O.Ms.No.559, Education, Science and Technology Department dated 11.07.1995, a ban was imposed for recruiting B.Ed., and other graduates from being appointed as secondary grade teachers. The said G.O was challenged before this Court and finally settled down by a Division Bench of this Court. As per the Division Bench order reported in 2002



W.A.(MD)No.272 of 2017

WLR 173 [*Secretary & Correspondent, Uswathun Hasana Oriental (Arabic)*

Girls Higher Secondary School -vs- State of Tamil Nadu] an undertaking was given by the Additional Advocate General that such graduates who were appointed between 11.07.1995 and 19.05.1998 contrary to the ban in G.O.Ms.No.559, would be regularised after giving a practical training and the same was recorded. Accordingly, G.O.Ms.No.155, School Education (D2) Department was passed, which provides that such teachers would be sent to child psychology training and on completion of such training, they would be approved and that they would not be entitled to any benefits whatsoever for service prior to such approval on completion of training. The said G.O.Ms.No. 155 was again challenged and was upheld by the Division Bench in the judgment reported in 2004(2)LW591 (*State of Tamil Nadu v. Pallivasal Primary School*), wherein the Division Bench made it clear that the service prior to approval on completion of child psychology training shall be counted only for pension and not otherwise. Further when a claim for salary from the date of appointment was made, another Division Bench negated the claim by order dated 08.09.2006 in W.A.No.3442 of 2002. But the learned single Judge, without considering the fact that the entire G.O.Ms.No.155 dated 03.10.2002 has already been upheld by a Division Bench, allowed the writ petition and quashed the Clause (iii) and (viii) of G.O.Ms.No.155 dated 03.10.2002 by



W.A.(MD)No.272 of 2017

judgment dated 22.01.2013. Various appeals were filed by the Department and in few appeals, stay has been granted and the said appeals are all pending. In such circumstances, the writ petitioner herein was entitled to approval from the date of undergoing child psychology training ie., on 02.03.2006. Per contrs, considering her service from 08.08.1996, she was granted selection grade from 08.08.1996 and the said selection grade was cancelled by proceedings of 3rd appellant dated 18.01.2016. The said proceedings was challenged in W.P(MD)No.23799 of 2016 and said writ petition was allowed on 08.12.2016 during admission. Challenging the same, the Department filed this appeal.

4. The learned counsel for the appellants would submit that the writ petitioner filed a writ petition in W.P(MD)No.19283 of 2019 challenging the impugned order dated 31.07.2019, wherein the respondents had ordered for recovery of the excess salaries paid between the period 08.08.1996 to 31.07.2019. The learned single Judge vide order dated 07.01.2010, set aside the impugned order and issued a further direction to the third respondent to refund the excess salary deducted from the petitioner's remunerations between the period commencing from 05.09.2019 to the date of filing of the said writ petition and such payment should be made within a period of four weeks. The same was challenged by the Department in W.A(MD)No.429 of 2020 and the



W.A.(MD)No.272 of 2017

same is pending before another Division Bench.

WEB COPY

5. Heard the learned counsel appearing on both sides and perused the materials placed on record.

6. Hence, this Court is not inclined to deal with the said subject and it is left open to the appellants to approach the said Bench and further it is seen that it is well settled principle that recovery made from the employees belonging to Class III and Class IV service would be impermissible in law, for which, the petitioner relied on the judgment reported in 2015(4)SCC334 [*State of Punjab and others v. Rafiq Masih (white Washer) and others*] and the same has not been considered by this Court in the said writ appeal. Here in the case on hand, the learned single Judge set aside the impugned order and directed the respondents to extend the same benefits to the petitioner by taking into consideration of the various decisions of this Court and pass appropriate orders within a period of three months. Hence, the sole question arises in this appeal is whether the writ petitioner is entitled to extend the benefit from the date of appointment or from the date of completion of child psychology training.

7. Considering the above facts and circumstances, this Court hereby



W.A.(MD)No.272 of 2017

directs the appellants herein to consider the case of the writ petitioner/respondent herein and pass appropriate orders as to whether the writ petitioner is entitled for payment of monetary benefits and other benefits from the date of appointment or from the date of completion of child psychology training, within a period of sixteen(16) weeks from the date of receipt of a copy of this order, after giving her appropriate opportunity of hearing and as per the settled principles of law.

8. With the above direction, this writ appeal stands disposed of. No Costs. Consequently, connected miscellaneous petition is closed.

[V.B.S.,J.] [K.K.R.K.,J.]
04.03.2024

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

PJL



WEB COPY



W.A.(MD)No.272 of 2017

V.BHAVANI SUBBAROYAN, J.

and

K.K.RAMAKRISHNAN, J.

PJL

W.A.(MD)No.272 of 2017
and
CMP(MD)No.2890 of 2017

04.03.2024