



W.A.No.14 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.02.2025

CORAM

THE HON'BLE MR. JUSTICE S. M. SUBRAMANIAM

AND

THE HON'BLE MR. JUSTICE K. RAJASEKAR

Writ Appeal No.14 of 2024

and

Civil Miscellaneous Petition No.112 of 2024

1. The Government of Tamil Nadu,
Rep. by its Secretary,
School Education Department,
Fort St.George, Chennai – 600 009.
2. The Director of Elementary Education,
College Road, Chennai – 600 006.
3. The District Elementary Educational Officer,
Villupuram, Villupuram District.
4. The Additional Assistant Elementary Educational Officer,
Vanur at Thiruchitrambalam,
Villupuram District.

... Appellants

Vs.

Gandhi Aided Primary / Middle School,
Thiruchitrambalam, Vanur Range, Villupuram District
Rep. by its Secretary R.Babusathiyamoorthy.

... Respondent



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WEB COPY Writ Appeal filed under Clause 15 of Letters Patent Act, against the order dated 24.11.2022 in Rev.Aplw.No.90 of 2022 in W.P.No.25770 of 2003.

For Appellants : Mr.R.Neethi Perumal
Government Advocate

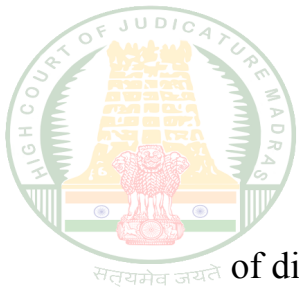
For Respondent : Mr.Balan Haridas

JUDGMENT

(Judgment of the Court was made by S.M.SUBRAMANIAM,J.)

The intra court appeal on hand has been instituted challenging the order dated 24.11.2022 passed in Review Application No.90 of 2022 in W.P.No.25770 of 2003.

2. The facts in nutshell required to be considered are that the respondent management School was established in the year 1948 having standards from 1 to 5 and was upgraded as Middle School in the year 1962. Subsequently, permanent recognition was granted from standards 1 to 8 with Government Aid. The school has 18 sanctioned teaching posts approved by the appellants. There existed three secondary grade teacher vacancies, one each arose out of voluntarily retirement, retirement and the other on account



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of dismissal of a teacher.

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3. The school management initiated action to fill up the vacancies.

During the relevant point of time, an advice was issued by the Director of Elementary Education vide letter dated 26.05.2003 stating that the vacant posts in B.T Assistants, Physical Education Teachers shall not be filled up by the Government Aided School managements, till such time, the Government takes a policy decision, which was pending before the Government, during the relevant point of time. It was only an advice given to the Government Aided management schools.

4. Challenging the said advice, the respondent filed W.P.No.25770 of 2003. The writ petition was disposed of and the relevant portion of the order reads as under:

“8. I have heard Mr.M.Elumalai, learned Government Advocate appearing for the respondents, who would also state that the said order was passed by this Court quashing the very communication dated 26.05.2003 which is impugned herein. The said order was passed on 09.10.2003 in the said batch of cases, after having considering the issue at length, has ultimately concluded as follows:

“Learned counsel appearing for some of the petitioners represented that in some of the cases by virtue of interim order obtained from this Court appointments have been made specifically subject to



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the Government Order that may be passed. Inasmuch as the Government Order No.100 dated 27.06.2003 does not govern the appointments in private aided school, that Government Order is not applicable to them. Hence, those appointments will have to be considered as valid notwithstanding the impugned circulars. In some other cases, some appointments have already been made before 1.6.2003 but approval has not been given in view of the impugned circulars. Inasmuch as the impugned circulars are held invalid in so far as it relates to the writ petitioners and inasmuch as no Government Order has been passed so far relating to the aided private schools the appointments made does not suffer from any illegality; in so far as the appointments made before the issuance of the impugned circular there is no ground to refuse the grant of approval. But it is for the authorities to consider the same and pass orders. Hence, the respondents are directed to consider those cases within four weeks from the date of receipt of copy of this order and pass orders.

13. In result, with the above directions the writ petitions are allowed. No costs. Consequently, connected WPMPs are closed.”

9. Since the very impugned communication of the second respondent in Na.Ka.No.25873/AC-1/2002, dated 26.05.2003 has already been held to be invalid, in the aforesaid order in a batch of cases, this writ petition is covered by the said decision of this Court, as the very same order is challenged herein also.

10. In the result, the impugned order is quashed and the writ petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.”

5. Pertinently, on the date of passing of the order by the writ Court on

14.12.2017, the Government issued several orders and the policy underwent



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many changes. However, the Government of Tamil Nadu filed a Review Petition, challenging the said order in Review Application No.90 of 2022.

The learned Single Judge in the review application passed the following orders:

“21. Therefore, insofar as these appointments are concerned, the order of regularization given by the respondent with effect from 01.06.2006 may not be justifiable. Therefore, insofar as these two appointments are concerned, the review petitioner should come forward to regularize their services with effect from the date of their appointments i.e., from 05.11.2003 in the regular time scale of pay accordingly and their service benefits be calculated and extended to them.

22. In that view of the matter, this Court is inclined to pass the following orders in this review application:

(i) That the review petitioner is hereby directed to regularize the services of the two appointees made in the respondent school viz., N.Ramasamy and J.Gajalakshmy as Physical Education Teacher and Secondary Grade Teacher respectively on 05.11.2003 from the said date as regular appointments with time scale of pay and accordingly, their service as well as their pecuniary benefits shall be calculated and be extended to them within a period of eight weeks from the date of receipt of a copy of this order.

(ii) Insofar as the other two appointments viz., R.Indumathi and K.P.Balaji are concerned, since they have been appointed as B.T. Assistant Mathematics and B.T. Assistant Science respectively on 29.12.2003 and 04.02.2004 at the respondent School, their appointment should be regularized from 01.06.2006, by implemented the import of G.O.Ms.No.125, which the respondent has



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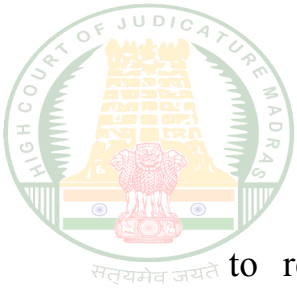
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already done, therefore, to that extent, the action taken by the respondent is to be approved, accordingly, is hereby approved.

23. Therefore, this review application is ordered partly to the extent indicated above. However, there will be no order as to costs. Consequently, the connected miscellaneous petitions in C.M.P.Nos.14026 & 14027 of 2022 are also closed.”

6. The learned Government Advocate appearing on behalf of the appellants would mainly contend that the benefits granted from the date of appointment to the teachers are not taken away. However, in the impugned review order, the Court has granted retrospective benefit from the date of issuance of the advice dated 26.05.2003 that resulted in filing of the present writ appeal. Further the services of these teachers appointed by the respondent School were regularized under the provisions of the Act, with effect from 01.06.2006 and the salary as admissible are being disbursed to these teachers. Therefore, grant of retrospective benefit from the date of advice dated 26.05.2003 would result in financial loss to the Government.

7. Mr.Balan Haridas, learned counsel for the respondent would submit that the advice dated 26.05.2003 was set aside by the writ Court. The Government preferred a review petition. The review Court granted direction



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to regularize the services and grant benefit with retrospective effect.

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Therefore, the relief was granted based on the services already rendered and thus, writ appeal is to be rejected.

8. Considered the rival submissions made on behalf of the parties to the *lis*.

9. Perusal of the proceedings dated 26.05.2003 reveals it is only an advice circulated to the Government Aided Elementary and Middle Schools across the state to ensure that the post of B.T Assistants are not filled up, till such time, the Government decide the policy for down grading of the posts to avoid financial constrains. The said circular was challenged before the writ Court in the year 2003. The writ petition was disposed on 14.12.2017 and the said advice was set aside. Meanwhile, the policy underwent many changes and the Government took a policy decision to regularize the services of the consolidated pay teachers. In the present case, the teachers working in the respondent School were regularized with effect from 01.06.2006 and it is not in dispute that the teachers are receiving salary from their respective date of actual regularisation of service in accordance with the Act and Rules.



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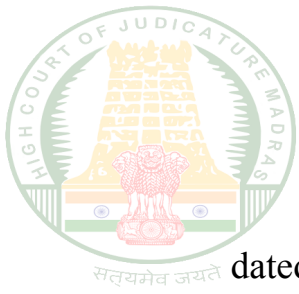
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10. The question arises, whether any additional or further relief can be granted to the respondents in the review application which was not granted by the writ Court in the order passed in the writ petition.

11. Scope of Order 47 Rule 1 read with Section 114 of CPC cannot be expanded for the purpose of granting new relief which was not otherwise granted in a writ order. The Power of review can be exercised only in the event of an error apparent on record and grant of new relief more specifically, to the respondents would not arise at all.

12. The review petition has been filed by the Government to review the order passed in the writ petition on 14.12.2017. But the learned Single Judge granted further relief in the review proceedings to the respondent management School and the teachers working in the School. Therefore, this Court is of the considered opinion that the learned Single Judge has exceeded the review powers by granting additional relief which was not granted in the writ order dated 14.12.2017 in W.P.No.25770 of 2003.

13. The relief sought for in the writ petition in W.P.No.25770 of 2003 is to set aside the advice issued by the Director of Elementary Education



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dated 26.05.2003 and to direct the respondents to approve the appointment made in the vacant posts of secondary grade teachers and physical education teachers from the date of appointment. However, the writ Court has not granted such relief specifically, except setting aside the advice issued by the Director of Elementary Education on 26.05.2003. The writ petitioners have not filed any appeal.

14. The case of the respondent herein before the writ Court was that they had taken steps to fill up the vacancies and all of a sudden, the advice dated 26.05.2003 was issued by the Director of Elementary Education. Nowhere they had stated that some teachers were appointed during the relevant point of time. Therefore, now the relief granted in the impugned review order that the teachers subsequently appointed are to be regularized with retrospective effect from the date of issuance of the advice dated 26.05.2003 is running beyond the scope of the writ prayer sought for and the contentions raised by the respondents in the writ proceedings.

15. In any angle, this Court is unable to reconcile the directions issued in the review order, which is running counter to the writ prayer and beyond the scope of the writ proceedings. Thus, we are inclined to interfere.



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Accordingly, the impugned review order dated 24.11.2022 in Review

Application No.90 of 2022 is set aside and the writ appeal stands allowed.

There shall be no order as to costs. Consequently, the connected miscellaneous petition is also stands closed.

(S.M.S., J.) (K.R.S., J.)
17.02.2025

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Index: Yes/No
Speaking Order: Yes/No
Neutral Citation Case : Yes/No

S.M.SUBRAMANIAM., J.
AND
K. RAJASEKAR., J.

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