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WA No. 419 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10-03-2025

CORAM

THE HONOURABLE MR JUSTICE R. SURESH KUMAR
AND
THE HONOURABLE DR.JUSTICE A.D.MARIA CLETE

W.A No. 419 of 2023

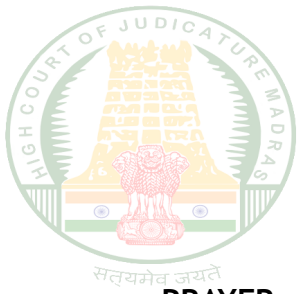
D.Paulraj
S/o.P.Dhasan, No.10/23-1, Singara
Thoppu Street, Koodankulam- 627 106,
Tirunelveli District

... Appellant

Vs

1. State of Tamil Nadu rep by
its Secretary to Government, School
Education Department, Secretariat,
Chennai-600 009
- 2.The Director of School Education,
College Road, Chennai-600 006
- 3.The Joint Director of Higher
School Education (Higher Education)
Directorate of School Education
Campus, College Road, Chennai-600 006
- 4.The Chief Educational Officer
Tirunelveli District, Tirunelveli
- 5.The Correspondent
St.Annes Higher Secondary School,
St.Annes Primary School, Koodankulam
Post, Thirunelveli District- 627 106

... Respondents



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PRAYER
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Writ Appeal under Clause 15 of the Letters Patent to set aside the Order passed by the Honble High Court in W.P.No. 31818 of 2017 dated 28.06.2022 by allowing this writ appeal.

For Appellant : Mr.J.Ram Kumar
For Respondents : Mr.U.M.Ravichandran
Special Government Pleader

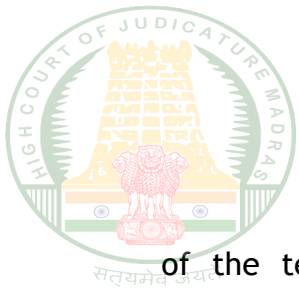
JUDGMENT

(Judgment of the Court was delivered by R.Suresh Kumar J.)

This intra Court appeal has been directed against the order passed by the Writ Court dated 28.06.2022 in W.P.No.31818 of 2017.

2. The appellant is the writ petitioner, who was appointed as Part time Vocational Instructor at the 5th respondent School on 01.08.1997. At the time when such appointment was given, even though the Accountancy Course has been sanctioned, the post has not been sanctioned. Therefore, he was appointed by the School Management by giving salary from out of the funds of the School Management or Parent Teacher Association.

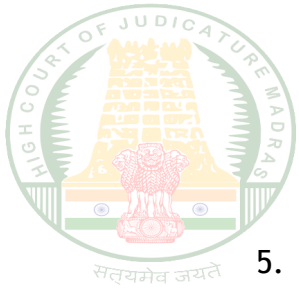
3. However, the Government in 1997 has come out with a Government Order in G.O.No.455, School Education Department T1 dated 29.10.1997, wherein some



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of the teaching posts have been sanctioned to 15 higher secondary schools including the 5th respondent school. Under G.O.No.455, five P.G Teacher posts and one Vocational Instructor post has been sanctioned. Though the P.G Teacher post would carry time scale of pay, insofar as the Part Time Vocation Instructor Post is concerned, it was directed that the appointments could be made only on a consolidated pay of Rs.500/- per month. Therefore, at least from 29.10.1997 the 5th respondent School got sanction of the post of Part Time Vocational Instructor with a consolidated pay of Rs.500/- per month.

4. At this juncture, since the appellant teacher has not been regularized or has been brought under time scale of pay, he approached the writ Court by filing the said writ petition seeking for a writ of Mandamus directing the official respondents to approve the appointment of the appellant teacher as Grade II Vocational Instructor as per G.O.Ms.No.35, School Education Department dated 09.02.2007. The said writ petition was heard and dismissed by the writ Court through the impugned order. The reason stated by the Writ Court for dismissing the said writ petition was that, insofar as the sanctioning of the course to the 5th respondent School in the year 1992-93, there was a condition imposed that no additional teacher posts would be sanctioned and therefore no grant-in-aid will be given by the Government for running such course sanctioned in 1992-93, and when such a condition was imposed, the Government cannot be faulted for refusing to grant the relief as sought for by the petitioner. Therefore, on that ground the writ petition was dismissed.



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5. Assailing the said order passed by the Writ Court, learned counsel appearing for the appellant submits that, even though at the time of appointing the teacher ie., the appellant on 01.08.1997, the post has not been sanctioned, subsequently the post has been sanctioned by G.O.No.455 dated 29.10.1997, of course on a consolidated pay. Thereafter, the Government has come forward to issue a Government Order in G.O.No.35, School Education Department dated 09.02.2007, whereby 201 such Part Time Vocational Instructors who have been appointed and employed on a consolidated pay by the School Management / Parent-Teacher Association, have been directed to be regularized by giving regularization relaxing the age, qualification and seniority in the employment exchange and they should be brought under the time scale of pay of Rs.4500-125-6000. When that being so, such a benefit conferred on them under G.O.No.35 dated 09.02.2007 at least can be extended to the petitioner / appellant from 09.02.2007 onwards, if not from the date of appointment ie., 01.08.1997. Therefore, the approach of the learned Judge in dismissing the writ petition is erroneous one and hence he seeks the indulgence of this Court to set aside the order.

6. On the other hand, Mr.U.M.Ravichandran, learned Special Government Pleader appearing for the respondents would submit that, at the time of sanctioning the course, a condition was imposed that no additional posts would be sanctioned and no grant-in-aid would be given by the Government. Assuming that G.O.No.455 had been issued on 29.10.1997, where one post of Part Time

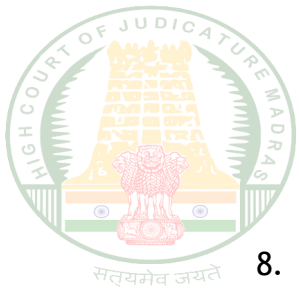


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Vocational Instructor has been sanctioned to the 5th respondent School, that too on a consolidated pay, there is no scope for bringing the teacher concerned under time scale of pay.

7. In this context, the learned Special Government Pleader also submitted that insofar as G.O.No.35 dated 09.02.2007 is concerned, the import of the said Government Order had been gone into by a Division Bench of this Court in the judgment dated 27.04.2021 made in W.A.No.730 of 2019 etc., batch, where the Division Bench has stated as follows:

“ 9. According to the learned Additional Advocate General, in fact, the names of the first respondent in all these appeals, were wrongly included in G.O.Ms.No.35, School Education Department dated 09.02.2007 along with those who are already appointed prior to 01.04.1992. Therefore, the Government had correctly refused to grant the benefit to the first respondent in these cases. In fact, the wrong was subsequently rectified by the Government in Letter No.245, School Education Department, dated 08.12.2008. In this regard, the learned Additional Advocate General relied on the decision of the Supreme Court in the case of State of Rajasthan vs. Daya Lal reported in 2011 (2) SCC 429, wherein, it has been held that the part-time employees are not entitled to seek regularisation, as they are not working in any sanctioned post. Thus, the learned Additional Advocate General submitted that the first respondent in these appeals, are not entitled for any regularisation of their service and thus, he prayed for setting aside the order passed by the learned Single Judge.”



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8. Ultimately, the Division Bench has reversed the judgment of the Single Judge by refusing to give the relief of regularisation and making the teacher of part time into full time teacher with regular time scale of pay. The relevant portion of the Division Bench order reads thus:

“ 21. Thus, it is evident that a Mandamus cannot be normally issued to regularise the service of an employee or to absorb an employee or to continue the service of an employee. A refusal to issue such a relief of Mandamus will not offend the constitutional guarantee contained under Articles 14 and 16 of The Constitution of India. In the present case, the appellants herein have rightly refused to regularise the service of the first respondent in these appeals. While so, we are inclined to interfere with the order passed by the learned single Judge in the writ petitions filed by the first respondent in these writ appeals.”

9. Learned Special Government Pleader also relied upon yet another Division Bench judgment of this Court made in W.A.No.2301 of 2019 dated 29.04.2024, where he relies upon Paragraphs 9 and 10 of the said judgment, which reads thus:

“9. In the present facts of the case, the aforesaid Government Order would have to be looked into. The said Government Order prohibits a school from starting a new vocational course without the permission of the Government. It also further prohibits that no new Vocational Instructor should be appointed either by the School Management or the Parents Teachers Association. In the present case, the sanctioned Vocational



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Instructor is for the subject of Commerce and Accountancy, as it is evidenced from the affidavit filed by the respondent/ Writ Petitioner in the Writ Petition.

10. It is also an admitted case that new vocational instructor had been appointed for Computer Science. When that being so, it is imperative that the respondent School ought to have got permission from the Department to start a new vocational course in Computer Science and then ought to have got the approval of the Department for making an appointment to the said post. That apart, even though, the respondent school claims to have made an appointment of a new teacher in the vocational course as early as on 01.06.2016. It had only forwarded the proposal to the Department in January 2017, that too much after the order directing surrender of the sanctioned post of Vocational Instructor in Commerce and Accountancy. There has been no explanation given by the respondent School as to why there was a delay in sending the proposal, which creates a doubt in the mind of this Court, as to the date on which the new Vocational Instructor had been appointed. These facts have not been analysed by the learned single Judge and he had mechanically followed the judgment passed by this Court and for the foregoing reasons, we are inclined to interfere with the order passed by the learned Single Judge."

10. Relying upon this decision, the learned Special Government Pleader would contend that the import of G.O.No.35 dated 09.02.2007 which has been considered by the Division Bench in the judgment first cited above, wherein it has



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been held that the names of 201 teachers who have been appointed by the Parent-Teacher Association without the sanction of the School Education Department could not have been included in the list of teachers to be extended the benefit of regularisation as has been stated in G.O.No.35 dated 09.02.2007. That position has also been rectified subsequently by a Government Letter dated 08.12.2008, which has been taken note of by the Division Bench. Ultimately, in the said batch of writ appeals in W.A.No.730 of 2019 etc., the relief sought for to extend the benefit as provided in G.O.No.35 dated 09.02.2007 has been refused and that position still holds good. Therefore, the contention of the learned counsel for the appellant herein that G.O.No.35 dated 09.02.2007 would be applicable to the appellant herein also, may not be justifiable and therefore such a relief could not be given and in fact it has been rightly considered and rejected by the Writ Court. Therefore, the learned Special Government Pleader wants to sustain the order passed by the writ Court.

11. We have given our anxious consideration to the rival contentions made by both sides and have perused the materials placed on record.

12. We have gone through the two Division Bench judgments cited on the side of the respondents. In the first Division Bench judgment date 27.04.2021 in W.A.No.730 of 201 etc., batch, the import of G.O.No.35 has been considered, where it was found that in the said G.O., the names of 201 vocational instructors ought not to have been included because those Part Time teachers have not been



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appointed in sanctioned posts. Therefore, the relief sought for by the teachers concerned by citing G.O.No.35 has been rejected or refused by the Division Bench.

13. In the second judgment dated 29.04.2024, it has been made clear by the Division Bench in W.A.No.2301 of 2019 that the School has not got any sanction and when it was an admitted case of the school concerned or teacher concerned that new vocational instructor had been appointed for Computer Science, it is imperative that the school ought to have got permission from the Department to start a new vocational course in Computer Science and ought to have got the approval of the Department for making an appointment to the said post.

14. Therefore, the factual matrix insofar as the said case as has been dealt with by the Division Bench in its order dated 29.04.2024 is that the School has not got sanction for the new course started. When that being so, such a benefit which was sought to be extended for the teacher who has been appointed without any sanction from the Government was refused by the Division Bench.

15. We have absolutely no different view than the view taken by the two Division Bench judgments. However, on the factual matrix the facts that has been dealt with by the two Division Benches are not similar to that of the present writ appeal. The reason being that, in the present case initially the teacher was appointed on 01.08.1997, of course without any sanction of the post, but with sanction of the course, as admittedly the course was sanctioned in 1992-93.



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However, subsequently by G.O.No.455 dated 29.10.1997 the post has been sanctioned by which, five P.G teacher posts and one Part Time Vocational Instructor post has been sanctioned to the 5th respondent School.

16. Insofar as the Part Time Vocational Instructor post is concerned, it was sanctioned with consolidated pay. Therefore, at least from 29.10.1997 the appellant teacher would be entitled to seek consolidated pay of Rs.500/- per month. Till which time such position has to continue, whether the teacher has to survive with the meagre sum of Rs.500/- per month as consolidated pay has been answered by the issuance of G.O.No.35 School Education Department dated 09.02.2007.

17. If we look at the import of G.O.No.35, it could be found that at least 201 such Part Time Vocational Instructors who have been appointed by the Parent-Teacher Association at various schools had been directed to be brought under regular time scale of pay of Rs.4500-125-6000 by giving relaxation of age, seniority in employment exchange and method of appointment.

18. Even though the Division Bench judgment dated 27.04.2021 has found out that by subsequent letter of the Government, the wrong committed by the Government in issuing G.O.No.35 dated 09.02.2007 by including the names of 201 teachers were found out and that has been in fact rectified / clarified that the 201 names found in G.O.No.35 have been wrongly included, such a conclusion has been



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arrived at by the Government, has been approved by the Division Bench in its judgment dated 27.04.2021 only because those Part Time Vocational Instructors were appointed admittedly in non-sanctioned posts by the Parent-Teacher Association. Whereas, in the present case the appointment has been made even though on 01.08.1997, the post has been sanctioned on 29.10.1997. Therefore, if at all the petitioner/appellant is not entitled to get any salary benefit by way of grant-in-aid by the Government from 01.08.1997, certainly from 29.10.1997 the teacher would be entitled to get salary by way of consolidated pay at Rs.500/- per month.

19. Now, coming to the point as to whether the appellant teacher would be entitled to get time scale of pay, the answer is there in G.O.No.35 dated 09.02.2007. The earlier decision taken by the Government has been mentioned in the very first para of the said Government Order, where it is stated that at the time of budgetary debate in the Assembly of the year 2006 and 2007, this policy decision has been announced, whereby the Part Time Vocational Instructors can be brought under regular time scale of pay.

20. Therefore, one cannot find fault with the policy decision taken by the Government and even the Division Bench judgment has not found out anything wrong in such a policy decision. The only issue is whether the 201 people whose names have been included pursuant to G.O.No.35 dated 09.02.2007 may not be entitled to get the benefit because they were not appointed in sanctioned posts.



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The result is if at all the said benefit of G.O.No.35 is extended, whether they can be brought under time scale of pay by virtue of G.O.No.35. That exactly is the factual position in the present case, where, the appellant teacher has been appointed in a sanctioned post, as the sanction has been made on 29.10.1997 on a consolidated pay and those people who have been working with such sanction certainly would get the benefit of getting the time scale of pay at least from 09.02.2007 ie., the date when G.O.No.35, School Education Department was issued.

21. When that being the factual matrix, the two Division Bench judgments cited by the learned Special Government Pleader would not advance the case of the respondents. In fact, the said proposition no way would apply to the facts of the present case. In that view of the matter, we have no hesitation to hold that the appellant is entitled to get the benefit of regularisation and bringing him under regular time scale of pay at least with effect from 09.02.2007 as per the import of G.O.No.35 School Education Department dated 09.02.2007. In that view of the matter, we are of the view that the order impugned passed by the Writ Court cannot be sustained.

22. Resultantly, the Writ Appeal is allowed and the following orders are passed:

- (a) The order impugned passed by the Writ Court dated 28.06.2022 in W.P.No.31818 of 2017 is set aside.



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- (b) As a sequel, there shall be a direction to the respondents to regularize the services of the appellant teacher with effect from 09.02.2007 in the pay scale of Rs.4500-125-6000.
- (c) It is made clear that from 29.10.1997 till 09.02.2007 the appellant would be entitled to get consolidated pay of Rs.500/- per month.
- (d) It is open to the appellant teacher to claim the remaining salary from the Management of the 5th respondent School, as the salary to be fixed for the teacher during the said period between 29.10.1997 till 09.02.2007 must be based on mutual negotiation between the appellant teacher and the 5th respondent School concerned.
- (e) Insofar as the further benefits to be conferred on the appellant teacher is concerned, after conferring these benefits of bringing him under regular time scale of pay as per G.O.No.35 dated 09.02.2007, the further benefits, if any, under the relevant service rules for which the appellant is entitled to, can also be looked into and extended.



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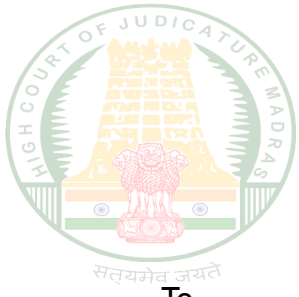
(f) The arrears of pay as per the above calculation shall be calculated and paid to the appellant teacher within a period of three months from the date of receipt of a copy of this order.

(g) It is brought to our notice that the appellant teacher has retired from service in July 2024. Therefore, till his superannuation, the aforesaid pay and other benefits shall be calculated and be paid to the teacher concerned.

23. With the above directions, the Writ Appeal is allowed. No costs.

(R.SURESH KUMAR J.) (A.D.MARIA CLETE J.)
10-03-2025

Index:Yes
Speaking Order
Internet:Yes
Neutral Citation:Yes
KST



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To
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- 1.The Secretary to Government, School Education Department, Secretariat, Chennai-600 009
- 2.The Director of School Education College Road, Chennai-600 006
- 3.The Joint Director of Higher School Education (Higher Education) Directorate of School Education Campus, College Road, Chennai-600 006
- 4.The Chief Educational Officer Thirunelveli District, Thirunelveli
- 5.The Correspondent St.Annes Higher Secondary School, St.Annes Primary School, Koodankulam Post, Thirunelveli District- 627 106



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R.SURESH KUMAR, J.
AND
Dr. A.D.MARIA CLETE, J.

[Order of the Court was made by R. SURESH KUMAR, J.]

This matter is taken up today under the caption “for being mentioned” at the instance of learned counsel appearing for both sides.

2. Both side learned counsel would submit that in paragraph 22 (g) of our order dated 10.03.2025, in the second line, instead of “April, 2024”, it has been wrongly typed as “July, 2024”, therefore, they seek correction.

3. As the date of superannuation of the appellant was only 30.04.2024, this correction is required, hence, in the second line of paragraph 22(g) of the order dated 10.03.2025, instead of “July, 2024”, “April, 2024” shall be replaced and the corrected order copy be issued to the parties by the Registry.

(R.S.K., J) (A.D.M.C., J)
04.09.2025

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R.SURESH KUMAR, J.
AND
Dr. A.D.MARIA CLETE, J.

(drm)

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04.09.2025