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Writ Petition Nos.39561 & 39673 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 30.01.2025

CORAM

THE HONOURABLE MRS.BHAVANI SUBBAROYAN

Writ Petition Nos.39561 & 39673 of 2024

1. Mrs. Hepzhiba Angela Durairaj
2. P. Saritha
3. R. Baskar
4. Dr. V. Rajendran
5. Dr. P. S. Shenbagaraja

.. Petitioner in
WP No.39561 of 2024

1. S. Meenakshi
2. M. Selvaraj
3. T. Selvakumar
4. T. Thangamani
5. M. Thamailagan
6. K. Rajan

.. Petitioners in
WP No.39673 of 2024

Versus

1. The State of Tamil Nadu,
represented by its Principal Secretary to Government,
Higher Education Department,
Fort St. George
Chennai-600 009.

2. The Commissioner of Technical Education,
Directorate of Technical Education,
No.53, Sardar Patel Road,
Guindy, Chennai-600 025.

... Respondents in both
Writ Petitions



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PRAYER : Writ Petitions filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, to direct the respondents to apply the terms of G.O.Ms.No.419, dated 26.09.2000, G.O.Ms.No.498, dated 29.12.200 and G.O.Ms.No.167, dated 26.08.2022 to the petitioners and fix the pay of the petitioners in the cadre of Lecturer in the Government Polytechnic College from the date of their promotion on 19.08.1989 being date of G.O.Ms.No.1081 as Lecturers and pay all the consequential arrears of pay to the petitioners expeditiously within a time frame to be fixed by this Court.

For Petitioners : Mr.A.Govindaraj

For Respondents : Mr.U.Baranidharan, AGP

COMMON ORDER

Since issue involved in both the Writ Petitions and the reliefs sought for therein as well as the facts, are common, these Writ Petitions are taken up together and being disposed of vide this common order.

2. It would be appropriate first to narrate brief facts of the case of the petitioners in W.P.No.39651 of 2024, which are as follows:

The petitioners herein were originally appointed as Instructors on



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17.02.1988, 01.02.1989, 15.02.1988, 30.08.1989 and 24.08.1989

respectively in Government Polytechnic Colleges. The said posts were sanctioned posts and permanent in nature. They possessed requisite qualification of B.E. Degree in respective subjects. The first respondent, by G.O.Ms.No.1081, dated 19.08.1989, discontinued the recruitment of Instructors in Polytechnic Colleges. It is stated that the existing Instructors shall be promoted as Associate Lecturers as and when they acquired the acquired degree qualification. The petitioners were aggrieved since the 2nd respondent failed to implement G.O.Ms.No.1081 to regularize and promote the petitioners as Associate Lecturers even though they possessed the degree qualification. Therefore, the petitioners approached the Tamil Nadu Administrative Tribunal, which, in turn held that the petitioners should be regularized from the date of their initial appointment and to be redesignated as Associate Lecturers with effect from the date of G.O.Ms.No.1081, i.e. 19.08.1989.

2.1 According to the petitioners, they were regularized in the post of Instructors by way of G.O.Ms.No.334, dated 28.04.1995, i.e. from the date of this G.O., i.e. 28.04.1995. The petitioners' services were regularized as Lecturers by G.O.Ms.No.534, dated 19.11.2004 and their pay in the



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promoted post was fixed only from the date of issuance of the orders. In

G.O.Ms.No.534, dated 19.11.2004, the date of initial appointment of the petitioners was mentioned as 24.08.1995 while their services were regularized by virtue of G.O.Ms.No.334 dated 28.04.1995. However, as per G.O.Ms.No.1081, the services of the petitioners ought to have been regularized from the date of their initial appointment. Therefore, the first respondent passed G.O.Ms.No.244, dated 27.07.2006 and G.O.Ms.No.449 dated 13.11.2008 by rectifying the defects relating to the date of regularization and the date of initial appointment of the petitioners were taken into account. However, their pay scale was fixed only from 19.11.2004 being the date of G.O.Ms.No.534. It is stated that when similarly placed persons approached this Court in various Writ Petitions, this Court granted the relief by holding that the monetary benefits should be given to the Instructors with effect either from 19.08.1989 or from the date of their initial appointment, or from the date of the acquiring the required qualification i.e., B.E., whichever is later. In compliance to the orders passed by this Court, the Government also issued G.O.Ms.419, dated 26.09.2000, G.O.Ms.No.498, dated 29.12.2000 and G.O.Ms.No.167 dated 26.08.2022. Therefore, claiming the same relief, the petitioners have come



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forward with the present Writ Petition.

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3. As far as Writ Petition in W.P.No.39673 of 2024 is concerned, the petitioners herein were appointed as Instructors in Government Polytechnic Colleges at Dr.Dharmambal Government Polytechnic College for Women and other places. While they were serving as Instructors, G.O.Ms.No.1081, dated 19.08.1989 was issued, wherein, the post of Instructor in Polytechnic Colleges and Special Diploma Institutions, came to be discontinued and the existing Instructors came to be re-designated as Associate Lecturers as and when they acquire the requisite degree qualification. According to the petitioners, they possessed the required qualification for the post of Associate lecturers even when they were appointed as Instructors in Government Polytechnic Colleges. In the meanwhile, by G.O.Ms.No.85 Education Department dated 19.08.1989, certain persons similarly placed and appointed under Rule 10(a)(1) were regularized from the date of their initial appointment. By way of G.O.Ms.No.723 dated 14.08.1992, those who were in service as Instructors/Associate Lecturers as on 19.08.1989 with Degree qualification were held to be eligible for the appointment of Associate Lecturers and Lecturers irrespective of the class obtained in BE



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Degree for Engineering Departments and Post Graduate Degree for non-Engineering Departments. By G.O.Ms.No.297 Education Department dated 23.03.1993, the Government decided to regularize the service of the Instructors in Government Polytechnic Colleges after they appear before the Teachers Recruitment Board. The petitioners also appeared before the Teachers Recruitment Board which approved their selection. In the meantime, G.O.Ms.No.1170 dated 13.12.1994 came to be issued in and by which, the post of Associate Lecturer cadre was re-designated as Lecturer.

3.1 Similarly placed Instructors whose services were not regularized from the date of their initial appointment, approached this Court and filed a Writ Petition in W.P.No.2661 of 1997 seeking to direct the 1st respondent to implement G.O.Ms.No.1081 dated 19.08.1989 and promote them as Associate Lecturers. This Court, vide order dated 20.11.1998, allowed the the said Writ Petition, holding that there is no escape for the respondents and they have to implement the terms of the G.O. in letter and spirit. Thereafter, the Government issued G.O.Ms.No.119 dated 26.03.1999, directing that those Instructors who were in service as on 19.08.1989 with Bachelor degree/PG Degree qualification irrespective of class obtained, be promoted as Lecturers with retrospective effect from the date of the issue of



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the order. Further, in compliance to the order dated 20.11.1998 in W.P.No.2661 of 1997, the Government issued G.O.Ms.No.306, dated 24.06.1999 by which, 4 Instructors were promoted as Lecturers with effect from 19.08.1989 with consequential monetary benefits by creating required number of posts of Lecturer. Likewise, based on the order, dated 17.04.2000 passed by this Court in W.P.Nos.10663 of 1997, etc., the 1st respondent issued G.O.Ms.No.419 dated 26.09.2000 and G.O.Ms.No.498, Higher Education Department dated 29.12.2000, directing that the monetary benefits should be given to the Instructors with effect from 19.08.1989. Therefore, the petitioners who are similarly placed, claim that they are entitled to the same relief. The grievance of the petitioners is that despite their representation and even as on date, the respondents have not considered their claim and hence, they are constrained to approach this Court by way of the present Writ Petition.

4. Heard the learned counsel appearing for the petitioners and the learned Addl.Govt.Pleader for the respondents and perused the entire materials placed on record.



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5. It is not in dispute that the petitioners were originally appointed as Instructors in Government Polytechnic Colleges during 1988 and 1989 and they had also possessed required qualification of B.E. in respective subjects. Earlier, the recruitment for the post of Instructor was to be made both by Promotion and by Direct Recruitment. Later, the Government identified 7 categories of Post as Feeder posts for promotion as “Instructor”. Immediately thereafter the Government passed a Government Order in G.O.Ms.No.1081 dated 19.08.1989 revising the scale of pay for various posts and in such process of revision of pay scale stated that the post of Instructor would be discontinued but with a rider that those who were already holding the post of Instructor would be promoted as Associate Lecturers as and when they acquired the Degree Qualification. However, since the respondents have not implemented the said G.O.Ms.No.1081, dated 19.08.1989 in letter and spirit, several aggrieved persons have approached the Tribunal and this Court and obtained various orders. One P.Periyasamy and two others have approached this Court by way of a Writ Petition in W.P.No.34761 of 2005 seeking a direction to the respondents to follow the terms of G.O.Ms.No.419 dated 26.09.2000 and G.O.Ms.No.498, dated 29.12.2000 and to fix the petitioners' pay in the cadre of Lecturer in



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the Government Polytechnic Colleges for Women from the date of their promotion on 19.08.1989 as Lecturers and pay all consequential arrears of pay to the petitioners. This Court, vide order dated 06.12.2006, allowed the Writ Petition and the relevant portion of the order as found in paragraphs 6 to 9, is extracted hereunder:

“6. The learned counsel for the petitioner has produced two judgment of this Court on an identical issue..

(i) In W.P.No.10663 of 1997 etc., batch in paragraph 5, it is clearly stated that there will be a direction to the respondents to re-designate the petitioners as Associate Lecturers in view of the G.O.Ms.No.1081 dated 19.08.1989 and the Government is directed subsequently in the said cadre. to fix their pay.

(ii) While in W.P.No. 2661 of 1997, there is a specific observation basing on the judgment of the Supreme Court of India and after perusing the relevant G.Os. by this Court, in paragraph-d, it is held as follows:

"The respondent had unequivocally in G.O.Ms.No.1081. Education Department dated 19.8.1989 as stated that once instructors obtained degree qualification automatically promoted as Associate Lecturer. The object was to do away with the designation of instructor and keeping that in view, recruitment to the post of instructor had been discontinued. It is in the nature of a solemn undertaking and it is not open to the Government to say that they are in the nature of executive Instructions and unless the consequential amendment of statutory service rules is effected, the Government cannot be called upon to act as per the said G.O. It is indeed strange that something that had been promised in 1989 is yet to be



implemented. There is no escape for the respondents and they have got to implement the terms of the G.O. in letter and spirit, their excuse that it would involve huge financial commitment had been found to be not correct, In these circumstances, I am clearly of the view that the Writ Petitions are entitled to succeed and the Writ Petition will stand allowed.”

7. Thus this Court has clearly observed that a solemn undertaking in given by the Government through G.O.Ms.No.1081 by the Education Department (referred supra) to promote all the persons as Lecturers and pay the salary as provided as Associate Lecturers and it is not open to the Government in the nature of executive instructions. Therefore, a direction is given despite of any financial commitment.

8. Perused the impugned Government Orders issued on 06.06.2003 and 09.06.2004.

9.G.O.Ms.No.210, dated 06.06.2003 is issued with regard to implementation of the direction in O.A.No.5109 of 2002 regularising the services of those applicants from the initial date of appointment. The names of the petitioners are shown at S.Nos.3,4 and 5 at page No.3 of the G.O. and it is clearly stated that the above persons fulfilled the qualification for Instructor as on the initial date of appointment itself. Therefore, their services are to be regularised from the date of initial appointment.”

6. The above said order has been challenged by the Government in W.A.No.728 of 2022 and a Division Bench of this Court, vide judgment dated 08.08.2022, dismissed the appeal, having made the following observation:



“3. Having heard learned Additional Advocate General for the State and having considered the material on record this Court finds as under:~

3.1 The order under challenge is dated 06.12.2006. The matter is being examined as fresh writ appeal by this Court today. We find that, after these many years, that too when one of the writ petitioners is indicated to have died, it would not be just and proper to interfere in the order of learned single Judge. This appeal therefore needs to be dismissed firstly on that count.

3.2 Having noted above, we further find that, even on merits, no interference is required in the order of learned single Judge.

3.3 So far the reliance on the decision of the Division Bench of this Court dated 21.06.2018 recorded on Review Application No.168 of 2018 in W.A. No.1391 of 2014 is concerned, we find that, the sustainability of the order passed by learned single Judge in the year 2006 can not be tested on the basis of some view expressed by the Division Bench after about a decade.

3.4 We further find that, while allowing the writ petition, learned single Judge has also taken into consideration the fact that, persons similarly situated to the writ petitioners were already granted relief and the same relief was directed to be extended to these writ petitioners on regularisation of their service from the date of initial appointment.



3.5 Though learned Additional Advocate General has submitted that, whether arrears should be paid to the writ petitioners or not was within the discretion of the State, we find that, without questioning the powers of the State to exercise discretion in one way or another, when this Court exercised discretionary powers under Article 226 of the Constitution of India has found that, refusal to exercise discretion by the State, in the facts of the case, was arbitrary and discriminatory, that error can not be said to be an error apparent on face of record, which may call for any interference under Clause 15 of Letters Patent. The appeal therefore needs to be dismissed on that count also.

3.6 There is one more factor against the State. This appeal was initially filed in the year 2008 with less satisfactory explanation for delay. The Division Bench of this Court therefore dismissed the writ appeal at S.R. stage. Since the delay was not condoned, it was challenged before the Supreme Court and the Honourable Supreme Court, as back as on 13.09.2010 allowed the S.L.P. recording that the delay ought to have been condoned in the matter and the appeal is required to be heard on merits. It is that order of the Supreme Court on 13.09.2010, which is never attempted to be implemented by the State by getting the appeal, which was filed in the year 2008, circulated. It is at this stage, this appeal is heard by this Court and we find that, on merits, so also the time which has elapsed by this time, any interference in the order of learned single Judge, which we even otherwise found to be just and proper,



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would only result in miscarriage of justice and therefore the same need not be done.

4. For the above reasons, the writ appeal is dismissed.

No costs. Connected miscellaneous petition would not survive.”

7. Therefore, in view of the orders passed by this Court in similar various Writ Petition, viz., W.P.Nos.2661 of 1997 & 15181 of 1998, dated 2011.1998, W.P.Nos.10663 & 10664 of 1997, etc., dated 17.04.2000 and W.P.No.34761 of 2005, dated 06.12.2006 and also in view of the dismissal of the Writ Appeal preferred by the Government, the issue involved in the present Writ Petitions, is no longer *res integra*. In the present case, admittedly, even on the date of their appointment as Instructors, the petitioners were possessing B.E. qualification in respective subjects and hence, the petitioners are entitled for regularisation from the date of initial appointment and consequently, they are also entitled to get all the benefits from the date of their promotion. As already mentioned supra, in W.P.No.34761 of 2005, this Court has quashed the observation made by the 1st respondent relying upon G.O.Ms.No.347 dated 09.06.2004 to the effect that the regularization of the services is with effect from the date of issuance



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of the G.O. and directed the Government to issue necessary orders, regularising the services of the petitioners therein, with effect from the date of their initial appointment and disburse all the arrears to them. This order has been upheld by a Division Bench of this Court in W.A.No.728 of 2022. Therefore, this Court is of the view that since the petitioners are also similarly placed, they cannot be treated differently and accordingly, they are entitled to the relief as sought for in the Writ Petitions.

8. In the result, the Writ Petitions are allowed and the respondents are directed to issue necessary orders fixing the pay of the petitioners in the cadre of Lecturer in the Government Polytechnic Colleges from the date of their promotion on 19.08.1989 and pay all the consequential arrears of pay to the petitioners as expeditiously as possible preferably within a period of thirty (30) days from the date of receipt of a copy of this order since the petitioners are at the verge of the retirement. No costs.

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Index: Yes/No
Internet: Yes/No

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To

1.Principal Secretary to Government,
The State of Tamil Nadu,
Higher Education Department,
Fort St.George
Chennai-600 009.

2. The Commissioner of Technical Education,
Directorate of Technical Education,
No.53, Sardar Patel Road,
Guindy, Chennai-600 025.



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V.BHAVANI SUBBAROYAN, J.

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