



W.A(MD)No.254 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 06.06.2025

CORAM

**THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN
and
THE HONOURABLE MR.JUSTICE K.RAJASEKAR**

W.A(MD)No.254 of 2023

D.Sekar Franklin

... Appellant /
Petitioner

Vs.

- 1.The State represented by
The Secretary to Government,
Education Department,
Fort St.George,
Chennai – 600 009.
- 2.The Director of School Education,
College Road,
Chennai – 600 006.
- 3.The District Educational Officer,
O/o.District Education,
Tirunelveli District – 627 009.
- 4.The Correspondent,
The Christuraja Higher Secondary School,
No.9H, North High Ground Road,
Palayamkottai,
Tirunelveli District.

... Respondents /
Respondents



W.A(MD)No.254 of 2023

Prayer: Writ Appeal filed under Clause 15 of the Letters Patent to set aside the order dated 07.12.2022 in W.P(MD)No.1774 of 2020 on the file of this Court.

For Appellant : Ms.A.Amala

For Respondents : Mr.C.Venkatesh Kumar
Special Government Pleader
for R.1 to R.3

No Appearance for R.4

JUDGMENT

(Judgment of the Court was made by **G.R.Swaminathan J.**)

This Writ Appeal is directed against the order dated 07.12.2022 passed by the learned single Judge dismissing W.P(MD)No.1774 of 2020 filed by the appellant herein. The case of the appellant is that he was appointed as Secondary Grade Teacher in the fourth respondent school on 02.06.1997. His appointment was approved by the District Educational Officer, Tirunelveli on 18.08.1997. His scale of pay was also appropriately fixed and he was promoted as BT Assistant in the year 2009. The appellant also completed Child Psychology Training from 02.05.2003 to 31.05.2003. The case of the appellant is that his service in the post of Secondary Grade Teacher with effect from 02.06.1997 should be taken into account for grant of selection grade. Since his request was rejected by the third respondent vide proceedings dated 17.12.2019, W.P(MD)No.1774 of 2020 came to be filed. The learned single



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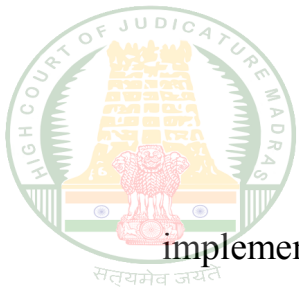
Judge relying on the Hon'ble Division Bench decision reported in **2004-2-LW-**

591 and the decision rendered in W.A(MD)No.74 of 2015 and 957 of 2016 dated 21.03.2018 dismissed the Writ Petition. Challenging the same, this Writ Appeal came to be filed.

2.The learned counsel appearing for the appellant reiterated all the contentions set out in the grounds of Appeal. She drew our attention to the order dated 12.07.2017 made in W.A(MD)No.1085 of 2014 etc batch. She pointed out that the said order which is in favour of the appellant was authored by one of us (GRSJ). She also relied on a subsequent Division Bench decision rendered in W.A(MD)No.1474 of 2017 dated 17.09.2021 which is also on the same lines.

3.The sum and substance of the contention of the learned counsel for the appellant is that the fact that the Child Psychology Training course was subsequently undergone by the appellant cannot be the reckoning date. According to her, the reckoning date will be the date of the original appointment. This is so because it was approved by the department itself.

4.No doubt, there are a number of judgments that too passed by various Division Benches in favour of the appellant. The Department had also



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implemented almost all of them. But the basic fact cannot be lost sight of. The

Government had issued G.O(Ms)No.559 dated 11.07.1995 holding that persons having higher qualification cannot be appointed in secondary grade vacancies. In other words, only those candidates who possess the requisite qualification alone should be appointed as secondary grade teacher. That was the purport of G.O(Ms)No.559 dated 11.07.1995. The validity of the GO was put to challenge in a batch of Writ Petitions. Interim stay was granted. When the interim stay was in operation, the appellant herein came to be appointed. Since interim stay was in force, approval could not have been denied for the appellant. But ultimately the entire batch of writ petitions came to be dismissed on 12.09.1997 and the Hon'ble Division Bench also confirmed the same in the year 1998. Thereafter, Government issued G.O(Ms)No.155 dated 03.10.2002 for recovery of the salary already paid. This again was put to challenge in a batch of Writ Petitions and the issue was eventually resolved by the Hon'ble Division Bench in ***W.A(MD)Nos.249 of 2002*** on 02.04.2004 (***State of Tamil Nadu Vs Pallivasal Primary School, Represented by its Correspondent, Mudukulathur***). Paragraphs 6, 7 and 8 of the said order read as follows:

“6. The Government Order No: 155 directs recovery of salary paid to the appellants/ petitioners on the ground that prior to their completing the training, they could not have held the posts that were held by them. There is no dispute



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about the fact that these persons had actually worked. Salary paid to persons who had actually rendered service cannot be regarded as amount paid as gratis. More over the Division Bench had noticed the fact that these persons had been working and had indicated that it would be equitable to allow them to remain in employment. It was left to the Government to device a scheme by which these persons could acquire qualifications which were essential for holding the post to which they had been appointed at a time when they did not possess the qualification. The salary that had been paid to them during that period when they were actually teaching, even though without the requisite qualifications, in our view, is not an amount which they should be called upon to repay. It has been noticed by the Division Bench which upheld the G.O. Ms. No: 559 that most of these teachers came from a poor background, that it was after a great deal of effort before that they could equip themselves to a limited extent and thereafter had been working in the schools for meager salaries. Directing such persons to repay huge amounts, huge amounts because the entire salary paid over a period of nearly nine years would amount to inasmuch as over five lakhs of rupees per person, would cause untold hardship to such teachers. We, therefore, set aside that part of the Government Order namely sub-para (vii) of Para 3 which directs recovery from these teachers.



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

The effect of the **Pallivasal** judgment is that the appointment already made in breach of G.O(Ms)No.559 dated 11.07.1995 need not be disturbed. It was further directed that salary already paid also need not be recovered. But then,

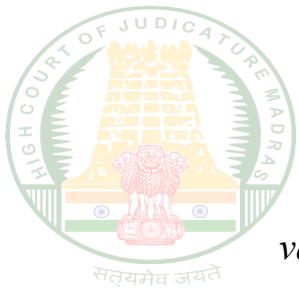


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approval of the appointment will commence only from the date when the appointees completed the child Psychology training. The earlier service put in by them would count for the purpose of pension. This decision unfortunately was not properly considered or given effect to in several subsequent Division Benches decisions. This was high-lighted by the Division Bench in W.A(MD)Nos.74 of 2015 and 957 of 2016 dated 21.03.2018 (The Director of Elementary Education, College Road, Chennai Vs Sundaravel Raj). The said decision was subsequently followed by another Hon'ble Division Bench in W.A(MD)No.350 of 2018 (The District Elementary Education Officer, Virudhunagar Vs K.Saravanan Shanthi & Another) dated 01.08.2024. Paragraph 12 of the order reads as follows:

“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:

"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



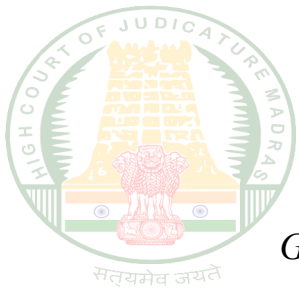
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vacancies, which appointment was held to be not sustainable by the Division Bench. As the Teachers does not possess the requisite qualification, the Government, while granting such concession imposed a condition, which appears to have been unequivocally 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 அரசனைக்குப் 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.”

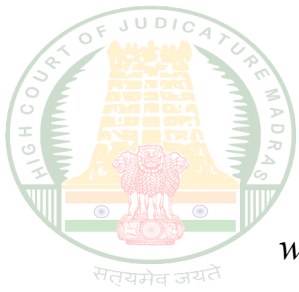
While answering the question, it is observed as follows: “9.The management of various Schools, which had appointed Teachers like the respondents had challenged the validity of



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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 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



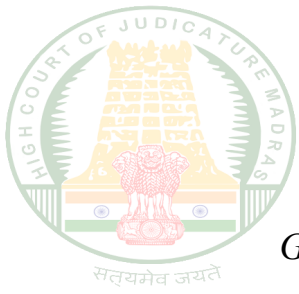
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with the observation made by the Division Bench. In, the decision in the case Suganthi Victoria. The Government had admitted that at best it can be taken as a decision pertaining to the said case on its factual matrix and that cannot be taken as a 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 l.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 effect of 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



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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.”

5.We are therefore of the view that the learned single Judge was right in negating the appellant's request. The appellant was appointed after issuance of G.O(Ms)No.559 dated 11.07.1995. Therefore, the case of the appellant will have to be determined only with reference to the parameters and norms laid down in ***Pallivasal*** judgment. In the order dated 12.07.2017 in W.A(MD)No. 1085 of 2014 etc batch, ***Pallivasal*** judgment was not considered or referred to. We are of the view that interference with the impugned order is not called for.

6.This Writ Appeal stands dismissed. There shall be no order as to costs.

[G.R.S., J.] [K.R.S., J.]

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G.R.SWAMINATHAN, J

and

K.RAJASEKAR, J.

MGA

To

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