
(2014) 10 MAD CK 0029
In the Madras High Court
Case No : W.P. No. 24851 of 2013

K. Mahimaidoss

APPELLANT

Vs

Secretary to Government

RESPONDENT

Date of Decision : 31-10-2014

Acts Referred:

Constitution of India, 1950 — Article 14, 21-A, 30, 30(1)

Citation : (2015) 1 LLJ 41 : (2015) 1 SCT 761

Hon'ble Judges : D. Hari Paranthaman, J

Bench : Single Bench

Advocate : Gilbert C. Pereira, Advocates for the Appellant; R. Ravichandran, Addl. Govt. Pleader for Godson Swaminathan, Advocates for the Respondent

Judgement

D. Hari Paranthaman, J.—The petitioner was appointed as a Watchman by the third respondent Teacher Training Institute at Cuddalore by an order dated 30.10.1980 with effect from 01.11.1980 subject to the approval of the Inspectress of Girls Schools, Cuddalore. The said appointment was approved by the Inspectress of Girls Schools, Cuddalore, on 04.12.1981. The Inspectress fixed the pay for the purpose of staff grant to the petitioner at the rate of Rs. 18 + allowances.

2. At present, the petitioner is being paid a sum of Rs. 8,989/- as total pay per month, while his basic pay is Rs. 20/- and the balance amount are towards other allowances, namely, Dear-ness Allowance, City Compensatory Allowance and House Rent Allowance.

3. The third respondent institute was established in 1934 and has been receiving aid from the Tamil Nadu Government.

4. The petitioner sought for regularization of the service and thereby to give him the time scale of pay applicable to the post of Watchman, from the date of appointment. If his services are not regularized, he would not get pension and other terminal benefits, when he retires shortly. The third respondent also sent

proposals for regularization of the service of the petitioner.

5. In fact, the second respondent made a recommendation in the proceedings in Rc. No. 7151/C3/1999, dated 20.06.2002 to the first respondent for regularising the service of the petitioner. The annexure to the recommendation contains the names of 16 persons (contingent staff), who are working in the Private Aided Teacher Training Institutes like that of the third respondent, and two of them were regularised, as per the list.

6. The petitioner's name is found at Sl. No. 7 in the Annexure to the recommendation dated 20.06.2002. The aforesaid recommendation discloses that various correspondences between the first and second respondents took place relating to the regularization of service of the persons like the petitioner serving in the Private Aided Teacher Training Institutes for so many years.

7. In the meantime, one Gnana Pragasam, working in an Private Aided Teacher Training Institutes in Tirunelveli District as a Gardener, whose name is shown at Sl. No. 11 in the Annexure to the aforesaid recommendation letter dated 20.06.2002 of the second respondent, filed W.P. No. 10364 of 2000 seeking for regularization of the service. This Court by the order dated 26.06.2000 in W.P. No. 10364 of 2000 directed the Director of Teacher Education Research and Training (second respondent herein) to consider the representation of Thiru. Gnana Pragasam dated 27.01.2000 on the basis of G.O. Ms. No. 577, Education Department, dated 01.04.1981 for regularization of service, and pass orders thereon.

8. In these circumstances, the second respondent herein sent a proposal in letter Na. Ka. No. 7151/C3/99, dated 27.01.2006, to the first respondent, requesting to regularise the service of 14 persons, including the said Gnana Pragasam and the petitioner, whose names are given in the Annexure enclosed in the earlier letter dated 20.06.2002. The second respondent also stated that two persons, who were mentioned in the Annexure to the list dated 20.06.2002, were regularised in G.O.(ID). No. 46, School Education Department, dated 08.02.2000. Hence, the second respondent recommended for passing similar order of regularization of 14 other persons, including the petitioner. The second respondent also brought to the notice of the first respondent about the order dated 26.06.2000 made in W.P. No. 10364 of 2000 preferred by one Thiru. Gnana Pragasam, who is one among the said 14 persons.

9. The first respondent passed an order dated 07.03.2007, in Lr. No. 7683/U2/2000-31 rejecting the proposal of the second respondent for regularization of the service of contingent employees in the Private Aided Teacher Training Institutes, including the petitioner.

10. The said Gnana Pragasam filed W.P.(MD) No. 10915 of 2007 questioning the aforesaid order of the first respondent dated 07.03.2007 and also sought for a direction to the Government and the Director of Teacher Education, Research and Training, to regularise his service from the date of his appointment on par with

that of other similarly placed persons as per G.O. Ms. No. 156, School Education (U1) Department, 23.12.1997, G.O.(ID). No. 46, Education Department, dated 08.02.2000 read with G.O. Ms. No. 52, Finance (FR-II) Department, dated 14.01.1997, with all attendant benefits.

11. The said writ petition W.P.(MD) No. 10915 of 2007 was allowed on 03.12.2012 by this Court holding that the act of the first respondent in rejecting the petitioner's claim amounts to discrimination, since the regularization of other similarly placed persons was done in G.O.(1D) No. 46, dated 08.02.2000.

12. While so, the petitioner herein filed W.P. No. 24851 of 2013 seeking a direction to the second respondent to regularise his service as per G.O. Ms. No. 22, P & AR Department, dated 28.02.2006, with effect from the initial date of appointment, i.e., from 01.11.1980 with all monetary benefits.

13. Thereafter, he made an application to amend the prayer and the amended prayer is to quash the impugned Government Letter dated 07.03.2007 rejecting the proposal of the second respondent to regularise the service of the petitioner and for a consequential direction to the first respondent to regularise the service with all consequential benefits from the date of his appointment, i.e., with effect from 01.11.1980. The same Government letter dated 07.03.2007 was also the impugned order in W.P. (MD) No. 10915 of 2007, as stated above.

14. The second respondent filed a counter-affidavit stating that a detailed proposal was sent to the first respondent for regularization of the service of the petitioner in his letter in Rc. No. 7151/C3/1999, dated 20.06.2002. The said proposal contains names of 16 contingent staff, including the petitioner. The proposal sent by the second respondent was rejected by the Government in its letter dated 07.03.2007. The said counter-affidavit was filed in November 2013. In these circumstances, the petitioner sought to amend the prayer, as stated above.

15. The first respondent filed a separate counter-affidavit seeking to dismiss the writ petition stating that G.O. Ms. No. 22, P & AR Department, dated 28.02.2000 is not applicable to the employees working in the Private Aided Teacher Training Institutions and the same is applicable only to the Government employees. It is also averred that as per G.O. Ms. No. 52, Finance Department, dated 14.01.1977, orders were issued to send proposals for creation of adequate number of contingent workers, who have already completed five years of service as on 01.01.1977. It is also averred that the Contingent staff shall be abolished forthwith and that after 01.01.1977, there should be no further recruitment on contingent basis. Hence, the appointment of the petitioner as a contingent Watchman on 01.11.1980 after the said G.O. No. 52 is illegal one. The first respondent in the counter-affidavit also relies on the judgment of the Apex Court State of Tamil Nadu v. R. Govindasamy and Others dated 21.02.2014 in C.A. Nos. 2726-2729 of 2014.

16. The third respondent filed a counter-affidavit. It is stated that the third

respondent is a minority educational institution established under Article 30(1) of the Constitution and has been receiving aid. It is stated that the Institute is a partially aided one and three full time teaching staff posts are partially aided and three full time non-teaching posts, including the contingent post of Watchman held by the petitioner, are partially aided. It is stated that the petitioner has been working as a contingent watchman on full time basis from 01.11.1980 and his appointment was approved as a basic servant by the Inspectress of Girls Schools, Cuddalore. It is also stated that he is drawing a pay of Rs. 8989/- with basic pay of Rs. 20/- + Dearness Allowance (D.A.) Rs. 8303 + Rs. 277 + Rs. 167 + City Compensatory Allowance (CCA.) Rs. 120 + House Rent Allowance (H.R.A.) Rs. 30 + Special Allowance (S.A.) Rs. 100 after a deduction of Rs. 30 for Family Benefit Fund (F.B.F.) as of May 2014. The Government reimburses 2/3 of the expenditure incurred towards basic pay and half of the expenditure towards Dearness Allowance, City Compensatory Allowance and House Rent Allowance on staff grant, including the petitioner.

17. Heard both sides.

18.0. The learned counsel for the petitioner submitted that the petitioner has been working for the past 34 years without being regularized in service against the sanctioned/approved post. He took me through the appointment order issued by the third respondent institute and the order of the Inspectress of Girls Schools, Cuddalore, approving the appointment for the purpose of staff grant.

18.1. It is submitted that the grievance of the petitioner is that he is not given the proper time scale of pay applicable to the post of Watchman and he is paid only Rs. 20/- towards basic pay, while he is paid Dearness Allowance (D.A.) Rs. 8303 + Rs. 277 + Rs. 167 + City Compensatory Allowance (CCA.) Rs. 120 + House Rent Allowance (H.R.A.) Rs. 30 + Special Allowance (S.A.) Rs. 100. According to him, the Watchmen in Government Teacher Training Institutes, who are discharging similar duties like the petitioner, are paid Rs. 4800-10000 pay with Grade Pay of Rs. 1400/- and allowances.

18.2. He also submitted that the second respondent recommended for regularization of the service of the petitioner and 13 others, who are employed as contingent employees in the Private Aided Teachers Training Institutes. But the first respondent passed the impugned order dated 07.03.2007 refusing to regularize the service of the contingent employees, as per the recommendation of the second respondent, without any reasons.

18.3. He submitted that employing the petitioner for 34 years on contingent basis against the approved post is highly arbitrary and violative of Article 14 of the Constitution.

18.4. He heavily relied on the recommendations made by the second respondent for regularization of the service of the petitioner. In this regard, he referred to the counter-affidavit filed by the second respondent admitting the recommendation made by him for regularization of the service. He also brought

to my notice that two contingent employees were regularized, as found in the recommendation of the second respondent in Na. Ka. No. 7151/C3/99, dated 27.01.2006. Those two persons are shown at Sl. Nos. 12 and 13 in the Annexure to the recommendation dated 20.06.2002 and both of them are employed as Gardeners in two Private Aided Teacher Training Institutes, while the name of the petitioner is shown at Sl. No. 7. The same treatment shall be given to the petitioner also.

18.5. He relied on the judgment of this Court *P. Gnana Pragasam v. State of Tamil Nadu and Others* dated 03.12.2012 in W.P. (MD) No. 10915 of 2007. He pointed out that while the said Gnana Pragasam stands at Sl. No. 11 in the Annexure to the recommendation dated 20.06.2002, the name of the petitioner is found at Sl. No. 7. Hence, the judgment squarely applies to him and he is also similarly situated like Gnana Pragasam.

18.6. He also relied on the judgment of this Court in *V. Lingam Vs. State of Tamil Nadu and The Valliammal Girls' Teacher Training School* .

18.7. He relied on G.O. Ms. No. 62, Employment Service Department, dated 20.03.1987, that is referred to in the judgment reported in *V. Lingam v. State of Tamil Nadu and Others* (supra) at para 4. Therefore, G.O. 52, Finance (FR-II) Department, dated 14.01.1977 is not the last Government Order regularising the service of the contingent staff, as stated in the counter-affidavit of the first respondent and the Government also issued G.O. Ms. No. 62, Employment Service Department, dated 20.03.1987 as found in the judgment reported in *V. Lingam v. State of Tamil Nadu and Others* (supra). In fact, the Government took a plea in the said judgment in *V. Lingam v. State of Tamil Nadu and Others* (supra) that the petitioner therein was employed by the management on its own and he was not employed on approved contingent service. The said contention of the Government was rejected based on the recommendations of the Inspectress of Girls Schools, Tuticorin, who was arraigned as third respondent therein, besides an averment made by the concerned Teacher Training Institute that the petitioner therein was employed on contingent basis and not as a management staff. He submitted that once the petitioner was employed as a contingent employee, as per the decision in *V. Lingam v. State of Tamil Nadu and Others* (supra), he is entitled to be regularized as per the plea taken therein by the Government. Hence, the learned counsel for the petitioner prayed for regularization of the service of the petitioner from the date of his appointment, as per the decision of this Court reported in *V. Lingam v. State of Tamil Nadu and Others* (supra).

19. The learned Government Advocate made his submissions mainly basing on the judgment of the Apex Court *State of Tamil Nadu v. R. Govindasamy and Others* dated 21.02.2014 in C.A. Nos. 2726-2729 of 2014 and more particularly two passages of that judgment that are extracted in the counter-affidavit. In view of the said judgment, he sought for dismissal of the writ petition.

20.0. The learned counsel for the third respondent supported the case of the petitioner on factual aspects. He took me through various provisions of the Tamil Nadu Recognized Private Schools (Regulation) Act, 1973 (shortly "the Private Schools Act"), the Tamil Nadu Recognized Private Schools (Regulation) Rules, 1974 (shortly "the Private Schools Rules") and the Grant-in-Aid Code.

20.1. He submitted that the third respondent - Private Aided Teacher Training Institute is a "private school" as defined under Section 2(7) of the Private Schools Act and a "minority school" as defined under Section 2(6) of the Private Schools Act.

20.2. He submitted that as per Section 9 of the Private Schools Act, the minority schools could be established without permission and under Section 10 of the Private Schools Act, the minority schools are only required to send the statement containing certain particulars specified in Section 5(2)(c) of the Private Schools Act read with Rule 8 of the Private Schools Rules.

20.3. He further submitted that the third respondent minority school is a recognized private school under Section 11(1)(b) of the Private Schools Act read with Rule 9 of the Private Schools Rules.

20.4. He further submitted that the third respondent school gets grant, as provided under Section 14 of the Private Schools Act read with Rule 11 and Annexure I of the Private Schools Rules and more particularly, he relied on, clause (3) of Annexure I relating to Payment of Grant that deals with the grant to teacher training institutes. According to this Clause (3) of Annexure I to the Private Schools Rules, the teacher training institutes shall be paid 2/3 of the net approved expenditure on pay to the staff, rent, taxes, repair and contingencies and 1/2 of the expenditure of Dearness Allowance, City Compensatory Allowance and House Rent Allowance. He submitted that as per the aforesaid clause, the third respondent receives grant from the Government towards the salary of the petitioner. While the Government grants 2/3 of the pay and half of the Dearness Allowance, City Compensatory Allowance and House Rent Allowance, the balance is paid by the third respondent institute to the petitioner and other approved staff. According to him, while the other approved full time teaching and non-teaching staff are paid the appropriate scale of pay and the expenditure incurred by the third respondent towards their salary are reimbursed from the State as per Clause 3 of Annexure I of the Private Schools Rules, the petitioner is not paid the appropriate time scale of pay, which he is entitled to get and he is paid a meager amount of Rs. 20 towards basic pay and Dearness Allowance (D.A.) Rs. 8303 + Rs. 277 + Rs. 167 + City Compensatory Allowance (C.C.A.) Rs. 120 + House Rent Allowance (H.R.A.) Rs. 30 + Special Allowance (S.A.) Rs. 100 and those amounts paid to the petitioner are reimbursed as prescribed in Clause (3) of the Annexure I to the Private Schools Rules.

20.5. He also submitted that the pay and allowances of teachers and other persons employed in the third respondent private school are paid as per Section

27 of the Private Schools Act read with Rule 19 and Annexure III to the Private Schools Rules. Clause (3) to the Annexure III to the Private Schools Rules deals with teacher training institutes. As per clause (3) to Annexure III, the grant is sanctioned once in a year to the teacher training institutes. He pointed out that while the Pre-Primary, Primary, Middle, High School and Higher Secondary Schools are paid grant monthly, as per Annexure III to the Private Schools Rules, the teacher training institutes are sanctioned grant once in a year. Further, he pointed out that while the aforesaid categories of schools are getting full reimbursement towards the salary paid to the staff, the teacher training institutes are granted only at the rate, as prescribed in Annexure I, which is stated above.

20.6. He submitted that unless the petitioner is regularized and brought to time scale of pay, he would not get pension and other terminal benefits, though he rendered 34 years of service as of now.

20.7. He relied on the Division Bench judgment of this Court in G. Sahadevan Nair, Manager and Correspondent, Aided Primary School Vs. The Government of Tamil Nadu and took me through various paragraphs, more particularly, paragraph 29 (v) of that judgment. He submitted that the claim of the petitioner for regularization and appropriate time scale of pay is fully justified.

21. I have carefully considered the submissions made by either side.

22. The third respondent institute was established in the year 1934, as per para 4 of its counter-affidavit and has been receiving aid.

23. The third respondent issued the appointment order dated 30.10.1980 to the petitioner, who studied upto 9th standard, appointing him as Watchman subject to the approval by the Inspectress of Girls Schools, Cuddalore. The said appointment order is extracted hereunder:

"30.10.1980

From

The Correspondent, Sacred Heart Teacher Training Institute, Cuddalore -1.

You are hereby appointed as a Watchman in the Sacred Heart Teacher Training Institute, Cuddalore, with effect from the F/N of 1.11.80 subject to the condition that the same is approved by Inspectress of Girls Schools, Cuddalore.

Sd/- Principal & Correspondent, Sacred Heart Teacher Training Institute, Cuddalore-607 001.

To

K Mahimaiddoss Copy submitted to he Inspectress of Girls Schools, Cuddalore-1."

24. The Inspectress of Girls Schools, Cuddalore, issued the order in L. Dis. 1125/C/81, dated 04.12.1981 approving the appointment of the petitioner as

Watchman and his pay was fixed by the Inspectress of Girls Schools, Cuddalore, for the purpose of staff grant at the rate of Rs. 18 plus allowances. The said order dated 04.12.1981 of the Inspectress of Girls School, Cuddalore:

"Office of the Inspectress of Girls School, Cuddalore -1

L. Dis. 1125/C/81 Dt: 4.12.81

Sub : Fr. Sec. Edn., -Appointment of Teaching/Non Teaching staff in the St. Heart Teaching Training Institute (Women) Cuddalore

Ref.: Lr. Dated 26.1.81 of the Correspondent

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The Inspectress of Girls School, Cuddalore, is pleased to approve the appointment made by the Correspondent/St. Heart Teacher Training Institute (Women) Cuddalore - 1.

The certificates and the service books of the incumbent are returned herewith

/t.c.f.b.o./ Sd/- Superintendent S. Jayakanthan Inspectress of Girls School Cuddalore

Encl.: Service Books and Certificates

To The Correspondent Sacred Heart Teacher Training Institutes Cuddalore- 1..."

25. As per the aforesaid appointment order and the order approving the appointment, the petitioner is an approved full time contingent staff for the past 34 years and he has been appointed in the approved post. The second respondent/Director of Teachers Education, Research and Training in the letters in Rc. No. 7151/C3/1999, dated 20.06.2002 and in Na. Ka. No. 7151/C3/99, dated 27.01.2006 recommended to the first respondent for regularization of the services of 14 contingent staff in the Private Aided Teacher Training Institutes, including the petitioner, since they are holding full time posts and if those contingent employees are not employed in full time posts, the second respondent could not have recommended for regularization. It is a different matter, if the person is not employed in full time post. The petitioner, being watchman, employed on full time basis. But the first respondent passed the impugned order dated 07.03.2007 rejecting the proposal of the second respondent for regularization of the services of the contingent employees in the Private Aided Teacher Training Institutes, including the petitioner.

26. The impugned order of the first respondent dated 07.03.2007, which does not contain any reason, is on the face of it highly arbitrary. The impugned order of the first respondent, dated 07.03.2007, is extracted hereunder:

"Vernacular matter omitted."

The impugned order makes it clear that it does not contain any reason for

refusing to regularise the service of the petitioner and other similarly placed persons and to grant time scale of pay.

27. It is now well-settled by the Apex Court in a catena of decisions that every administrative order of the authorities should contain reasons. The Apex Court in *Kranti Associates Pvt. Ltd. and Another Vs. Sh. Masood Ahmed Khan and Others*, , held that the judicial trend has always been to record reasons, even in administrative decisions, if such decisions affect anyone prejudicially and has formulated certain principles in paragraph 47 of its judgment, which are extracted hereunder:

"47. Summarizing the above discussion, this Court holds:

- a. In India the judicial trend has always been to record reasons, even in administrative decisions, if such decisions affect anyone prejudicially.
- b. A quasi-judicial authority must record reasons in support of its conclusions.
- c. Insistence on recording of reasons is meant to serve the wider principle of justice that justice must not only be done it must also appear to be done as well.
- d. Recording of reasons also operates as a valid restraint on any possible arbitrary exercise of judicial and quasi-judicial or even administrative power.
- e. Reasons reassure that discretion has been exercised by the decision maker on relevant grounds and by disregarding extraneous considerations.
- f. Reasons have virtually become as indispensable a component of a decision making process as observing principles of natural justice by judicial, quasi-judicial and even by administrative bodies.
- g. Reasons facilitate the process of judicial review by superior Courts.
- h. The ongoing judicial trend in all countries committed to rule of law and constitutional governance is in favour of reasoned decisions based on relevant facts. This is virtually the life blood of judicial decision making justifying the principle that reason is the soul of justice.
- i. Judicial or even quasi-judicial opinions these days can be as different as the judges and authorities who deliver them. All these decisions serve one common purpose which is to demonstrate by reason that the relevant factors have been objectively considered. This is important for sustaining the litigants' faith in the justice delivery system.
- j. Insistence on reason is a requirement for both judicial accountability and transparency.
- k. If a Judge or a quasi-judicial authority is not candid enough about his/her decision making process then it is impossible to know whether the person deciding is faithful to the doctrine of precedent or to principles of incrementalism.

l. Reasons in support of decisions must be cogent, clear and succinct. A pretence of reasons or "rubber-stamp reasons" is not to be equated with a valid decision making process.

m. It cannot be doubted that transparency is the sine qua non of restraint on abuse of judicial powers. Transparency in decision making not only makes the judges and decision makers less prone to errors but also makes them subject to broader scrutiny. (See David Shapiro in Defence of Judicial Candor (1987) 100 Harward Law Review 731-737).

n. Since the requirement to record reasons emanates from the broad doctrine of fairness in decision making, the said requirement is now virtually a component of human rights and was considered part of Strasbourg Jurisprudence. See (1994) 19 EHRR 553, at 562 para 29 and Anya v. University of Oxford, 2001 EWCA Civ 405, wherein the Court referred to Article 6 of European Convention of Human Rights which requires, "adequate and intelligent reasons must be given for judicial decisions".

o. In all common law jurisdictions judgments play a vital role in setting up precedents for the future. Therefore, for development of law, requirement of giving reasons for the decision is of the essence and is virtually a part of "Due Process".

Thus, the impugned order of the first respondent is in violation of and contrary to the law laid down by the Apex Court in Kranti Associates Pvt. Ltd. and Another v. Sh. Masood Ahmed Khan and Others (supra).

28. Taking into account all these facts, this Court in the case of one Gnana Pragasam, who is also a contingent employee in a Private Aided Teacher Training Institute and whose name is also found in the recommendation made by the second respondent in Na. Ka. No. 7151/C2/99, dated 20.06.2002, issued direction on 03.12.2012 in W.P.(MD) No. 10915 of 2007 to the respondents therein to regularise his service.

29. As rightly pointed out by the learned counsel for the petitioner, the first respondent issued G.O.(1D) No. 46, Education Department, dated 08.02.2000, regularizing the service of two contingent employees in Private Aided Teacher Training Institutes, who are similarly situated, like the petitioner. This G.O. (1D) No. 46 refers to G.O. Ms. No. 52, Finance Department, dated 14.01.1977. Hence, the petitioner cannot be discriminated, particularly, when the second respondent made recommendation for regularisation of service of the contingent employees, including the petitioner.

30. At this juncture, it is relevant to take note that pursuant to the order of this Court dated 04.08.2014 in this writ petition directing the second respondent to furnish reply to certain queries, the second respondent, by way of reply, furnished the details as hereunder:

31. As per the details provided by the second respondent, there are 42 aided

teacher training institutes in Tamil Nadu including the third respondent. The details also reveal that the third respondent is sanctioned with three regular teaching posts (1 Principal and 2 Graduate Assistants) and four non-teaching posts. Out of those four non-teaching posts, two posts, namely, one Junior Assistant post, one Office Assistant post are regular posts and the post of Watchman is a contingent post and the post of Scavenger is a part time post. The counter of the third respondent is silent about the approved part time post of Scavenger. Thus, the petitioner is appointed against one full time contingent post of Watchman sanctioned by the concerned competent authority. That is, in total there are seven staff including teaching and non-teaching staff, who are granted aid by the State. Barring the Scavenger, who is a part time employee, others are full time staff, both teaching and non-teaching.

32. The second respondent has also produced the relevant records relating to the recommendation dated 20.06.2002 and 27.01.2006. The third respondent also employ 8 other persons on its own, as per the records produced by the second respondent/Director. Out of the said eight management staff, four are teaching staff and three are non-teaching staff and one is a Librarian. Those three non-teaching staff are Lab Assistant, Water Carrier and Sweeper and those eight staff are fully paid by the management. No grant is granted by the Government in respect of those persons.

33. The petitioner was appointed in the vacancy caused due to the resignation of one P. Arumugam. As per the records produced by the second respondent, P. Arumugam was relieved from his duties on 30.10.1980 and in his place, the petitioner was appointed and his appointment was also approved from 01.11.1980. The petitioner has been working as contingent Watchman and his initial basic pay was fixed at Rs. 18/- and now he is receiving the basic pay of Rs. 20/-. While the petitioner is paid meager basic pay of Rs. 20/-, he is paid Rs. 8947/- towards Dearness Allowance Rs. 120/- towards City Compensatory Allowance and Rs. 30 towards House Rent Allowance respectively. Thus, the grievance of the petitioner is that he should be accorded time scale of pay applicable to the post of Watchman.

34. It is admitted by the second respondent in the details furnished to this Court pursuant to the order of this Court dated 04.08.2014 that in the Government Teacher Training institutes, Watchmen are employed on regular basis and those Watchmen are paid the time scale of pay.

35. Further, apart from paying time scale of pay to Watchmen employed in the Government Teacher Training Institutes, two contingent employees like that of the petitioner, were regularized by the Government as per G.O.(1D) No. 46, School Education Department, dated 08.02.2000 by applying G.O. Ms. No. 52, Finance Department, dated 14.01.1977. The aforesaid fact of regularization of the service of two contingent employees in the Private Aided Teacher Training Institutes and granting them time scale of pay is found in the recommendation letter in Rc. No. 7151/C3/1999, dated 20.06.2002 and in Na. Ka. No. 7151/

C3/99, dated 27.01.2006 of the second respondent/Director of Teachers Education, Research and Training to the first respondent. Thus, the Watchmen employed in the Government Teacher Training Institutes and two other contingent employees in the Private Aided Teacher Training Institutes are admittedly regularized and given time scale of pay. Therefore, the petitioner and other 13 contingent full time employees, who are also similarly placed, have been discriminated.

36. At this juncture, it is relevant to refer certain provisions from the Private Schools Act and the Rules framed thereunder.

It is not in dispute that the third respondent is a "minority private school" as defined under Sections 2(6) and 2(7) of the Private Schools Act. It is relevant to extract Sections 2(7) and 2(6) of the Private Schools Act as hereunder:

"2. Definitions:

.....

(6) "minority school" means a private school of its choice established and administered by any such minority whether based on religion or language as has the right to do so under clause (1) of Article 30 of the Constitution.

(7) "private school" means a pre-primary, primary, middle or high school or higher secondary school or teacher training institution imparting education or training, whether receiving grant from the Government or not, established and administered or maintained by any person or body of persons and recognized by the competent authority under this Act but does not include a school or an institution."

37. It is also not disputed by the respondent authorities that the third respondent is a recognized minority private school under Section 11(1)(b) of the Private Schools Act read with Rule 9 of the Private Schools Rules. The said provision, namely, Section 11(1)(b) of the Private Schools Act is extracted hereunder:

"11. Recognition of private school- (1) On receipt of an application by -

(a).....

(b) any minority school; the competent authority may, after satisfying itself, that proper arrangements have been made for the maintenance of academic standard in the school, that the provisions of this Act are complied with and that the prescribed conditions have been satisfied, grant a certificate recognizing the private school for the purposes of this Act."

38. It is also an admitted fact that the third respondent has been receiving aid as private school under Section 14 of the Private Schools Act read with Rule 11 and Clause (3) to Annexure I of the Private Schools Rules. In fact, aid is paid by the Government towards the salary of the petitioner also as per the aforesaid

provisions. Section 14 read with Rule 11 and Clause (3) to Annexure I of the Private Schools Rules are extracted hereunder:

"Section 14. Payment of grant - Subject to such Rules as may be prescribed, the Government may continue to pay grant to the private school receiving grant from the Government, before the date of commencement of the academic year 1991-1992 at such rate and for such purpose as may be prescribed.

.....

Rule 11. Payments of Grants -.....

Annexure -1

Recognised Private Schools may be paid grants from State Funds on the basis of orders issued, from time to time.

The grant payable to recognised private schools are the following, namely:

(1).....

(2).....

(3) Training Institutes: The Training Institutes may be paid Teaching Grant. Such Grant shall be assessed on the basis of 2/3 of the net approved expenditure on pay to the staff, rent, taxes, repair and contingencies and 1/2 of the expenditure on Dearness Allowance, City Compensatory Allowance and House Rent Allowance.

(4)....."

39. That is, as per Clause (3) to Annexure I of the Private Schools Rules, the Government aid 2/3 of the net approved expenditure on pay to the staff including the petitioner and half of the expenditure on other allowances. Therefore, it is not a case like the one in the judgment reported in V. Lingam v. State of Tamil Nadu and Others (supra), wherein, the petitioner therein was not in receipt of aid in the full time post, which he was holding. In that case, it was the stand of the State that the petitioner therein was not approved contingent staff, but was employed by the management on its own. It was found, on facts, by this Court in the judgment reported in V. Lingam v. State of Tamil Nadu and Others (supra) that the petitioner therein was a contingent staff and not management staff.

40. As rightly contended by the learned counsel for the petitioner, the Government took a plea in the case reported in V. Lingam v. State of Tamil Nadu and Others (supra) that the petitioner therein was not regularized and given time scale of pay, since he was not approved contingent employee. It was the plea of the Government that the petitioner therein was employed by the management on its own. Based on the plea of the Government in V. Lingam v. State of Tamil Nadu and Others (supra) that the contingent employees are entitled for regularization, the petitioner, being a contingent employee from 1980 onwards, is entitled for regularization.

41. After inserting Article 21-A in the Constitution declaring that right to education upto primary and middle school level is the fundamental right and after the enactment of the Right of Children to Free and Compulsory Education Act,, 2009 (Act 35 of 2009) (for short "RTE Act"), the State should make the teachers available to achieve the object under the aforesaid Article and the RTE Act.

42. The third respondent institute, which is receiving aid from the State, is imparting teaching skills to its students thereby creating teachers to teach classes upto primary and middle school level. Therefore, the issue has to be looked into from the angle of Article 21-A of the Constitution.

43. At this juncture, it is also relevant to take note of the statutory intention, as declared in Clause 10 of the Fifth Schedule of the Industrial Disputes Act, 1947 (for short "the Act"). Clause 10 of the Fifth Schedule of the Act states that keeping an employee in different nomenclature such as, badlis, casuals or temporaries, so as to deny the benefits of regular employee amounts to unfair labour practice. Clause 10 of the Fifth Schedule of the Act is extracted hereunder:

"10. To employ workmen as "badlis", casuals or temporaries and to continue them as such for years, with the object of depriving them of the status and privileges of permanent workmen."

The third respondent educational institution is an "industry" under Section 2(j) of the Act, as held by the Seven Judge Bench of the Apex Court in Bangalore Water Supply and Sewerage Board Vs. A. Rajappa and Others, . If the petitioner is a teaching staff, he is excluded from the purview of the Act, as the teacher is not workman as defined under Section 2(s) of the Act. But, the petitioner, being a Watchman, is "workman" as defined under Section 2(s) of the Act. In spite of the proposal of the third respondent and the recommendation of the second respondent for regularization of the service of the petitioner, the first respondent passed the impugned order dated 07.03.2007 refusing to regularise the service of the petitioner. Thus, the action of the first respondent in denying regularisation to the petitioner is unfair labour practice under Section 2(ra) of the Act and the same is prohibited under Section 25-T of the Act and punishable under Section 25-U of the Act.

44. The Apex Court in Gujarat Agricultural University Vs. Rathod Labhu Bechar and Others, , had an occasion to deal with the issue relating to regularization of daily-rated labourers employed by the Gujarat Agricultural University and the Apex Court held that the action of the University in refusing to regularise the service of the daily rated labourers amounts to unfair labour practice. In this regard, the following passages in paragraphs 17 and 19 of the judgment are extracted hereunder:

"17..... It is also well settled, if work is taken by the employer continuously from daily wage workers for a long number of years without considering their regularisation for its financial gain as against employees legitimate claim, has

been held by this Court repeatedly as an unfair labour practice.....

19.....But at this juncture we would like to express our note of caution, that this does not give largess to an institution to engage larger number of daily wage workers for long number of years without absorbing them or creating posts which constitutes an unfair labour practice. If finances are short, engagement of such daily wage workers could only be for a short limited period and if continuous work is required it could only do so by creating permanent post. If finances are not available, take such work which is within financial means. Why take advantage out of it at the cost of workers....."

Thus, the Apex Court held that extracting work from the daily wage workers by the University continuously for a long number of years without regularisation of their service for its financial gain amounts to unfair labour practice. The said judgment squarely applies to this case.

45. The first respondent claimed that after G.O. Ms. No. 52, Finance Department, dated 14.01.1977, no contingent employee shall be employed and the employment of the petitioner as contingent employee after the aforesaid date is illegal. Firstly, no such reason is given in the impugned order. Secondly, such a plea is also factually not correct, in view of the judgment of this Court in V. Lingam v. State of Tamil Nadu and Others (supra), wherein, it is stated that the Government issued G.O. Ms. No. 62, Employment Service Department, dated 20.03.1987, for regularisation of the service of the contingent employee. In this regard, paragraph 4 of the judgment in V. Lingam v. State of Tamil Nadu and Others (supra) is extracted hereunder:

"4. There was a subsequent G.O. in G.O. Ms. No. 62, Employment Service Department dated 20.3.1987. In paragraph 3 of the said G.O., the Government took a decision to the following effect

".... That being the case it has now been decided to regularise the services employees of the contingent staff who have been appointed without consulting Employment Exchange also from the date of issue of order and not from the date which the individuals completes five years of service....."

46. The aforesaid paragraph of the judgment in V. Lingam v. State of Tamil Nadu and Others (supra) makes it clear that the Government issued G.O. Ms. No. 62, Employment Service Department, dated 20.03.1987 for regularization of contingent employees subsequent to G.O. Ms. No. 52, Finance Department, dated 14.01.1977. Without taking note of this fact, the first respondent stated that the appointment of the petitioner was an illegal one.

47. Further, the plea of the Government that the engagement of the petitioner as a contingent employee after 14.01.1977 is illegal has to be rejected, since the appointment order issued to the petitioner by the third respondent was approved by the Inspectress of Girls Schools, Cuddalore, and the petitioner appointed in the vacancy that was caused due to the resignation of the Watchman Mr.

Arumugam.

48. The learned Additional Government Pleader relied on the counter-affidavit of the first respondent and sought to reject the plea of the petitioner based on the reliance placed by the petitioner in the affidavit on G.O. Ms. No. 22, P & AR Department, dated 28.02.2006. The learned Additional Government Pleader submitted that G.O. Ms. No. 22, dated 28.02.2006, is applicable only to the Government servants including the employees in the Government teacher training institutes, and if the petitioner is a contingent watchman employed on full time basis in Government teacher training institute, as per G.O. Ms. No. 22, dated 28.02.2006, he is eligible for regularization and he cannot seek regularization based on G.O. Ms. No. 22, dated 28.02.2006, as if a Government servant. This argument of the learned Additional Government Pleader deserves to be rejected, since G.O. Ms. No. 156, School Education Department, dated 23.12.1997 and G.O.(1D) No. 46, School Education Department, dated 08.02.2000 were issued regularising the services of contingent employees like the petitioner in Private Aided Teacher Training Institutes applying G.O. Ms. No. 52, Finance Department, dated 14.01.1977. Further, as noted above, even the Government accepted before this Court in the judgment reported in V. Lingam v. State of Tamil Nadu and Others (supra) that the contingent employees in the Private Aided Teacher Training Institutes are entitled to regularization based on G.O. Ms. No. 62, Employment Service Department, dated 20.03.1987. Applying the same, G.O. Ms. No. 22, P & AR Department, dated 28.02.2006, could also be applied to the contingent employees of the Private Aided Teacher Training Institutes.

49. In fact, the very G.O. Ms. No. 22, P & AR Department, dated 28.02.2006, makes it also clear that the contingent employees were employed even after 14.01.1977 and they were granted the benefit of regularization in the G.O. Ms. No. 22, if they rendered 10 years of service as on 01.01.2006. That is, the plea of the first respondent that the contingent employment after 14.01.1977, as per G.O. Ms. No. 52, is illegal has to be rejected.

50. The learned Additional Government Pleader heavily relied on the judgment of the Apex Court dated 21.02.2014 in C.A. Nos. 2726-2729 of 2014 to sustain the impugned order and to deny regularization and time scale of pay to the petitioner, more particularly, the following passages in the aforesaid judgment of the Apex Court, which is extracted in the counter-affidavit of the first respondent, in support of his contention:

"(iii) Even where a scheme is formulated for regularization with a cut-off date (that is scheme providing that persons who had put in a specified number of years of service and continuing in employment as on the cut-off date), it is not possible to others who were appointed subsequent to the cutoff date, to claim or contend that the scheme should be applied to them by extending the cut-off date or seek a direction for framing of fresh schemes providing for successive cut-off dates.

(iv) Part-time employees are not entitled to seek regularization as they are not working against any sanctioned posts. There cannot be a direction for absorption, regularization or permanent continuance of part-time temporary employees."

51. The aforesaid proposition makes it clear that part-time employees cannot seek regularization and the time scale of pay applicable to full time posts. In this case, the petitioner is not a part time employee. In fact, the impugned order nowhere states that the claim of the petitioner is rejected on the ground that he is a part-time employee. The second respondent made recommendations for regularization of service of the petitioner and others, who are contingent employees and these contingent employees are full time employees and they were not paid time scale of pay. The recommendations of the second respondent dated 20.06.2002 and 27.01.2006 make it clear that the petitioner was employed as a contingent full time employee and not as a part time employee. The appointment order issued to the petitioner as well as the approval to the said appointment order of the petitioner by the Inspectress of Girls Schools, Cuddalore also, that are extracted above in paragraphs 24 and 25 respectively make it clear that the petitioner is not a part time employee, but a full time employee. In the case of Sweepers, there can be part time employee, but the Watchman post shall be a full time post. Further, in paragraph 5 of the counter-affidavit, the third respondent has categorically stated as hereunder:

"5. I state that there are 5 teaching staff (Principal + 4 teachers) working in the Institute out of which 3 posts (Principal + 2 teachers) are partially aided. 3 non-teaching staff working in the school out of which 2 posts (Junior Assistant and Office Assistant) are partially aided full time posts. The petitioner is working in the 3rd post which is a partially aided contingency post on full time."

52. Further, the most important and crucial fact is that the petitioner has been in employment for the past 34 years as full time contingent employee. The second respondent, the highest authority in the educational department, recommended for regularization of the service of the petitioner to the Government. Thus, the judgment of the Apex Court in C.A. Nos. 2726-2729 of 2014 dated 21.02.2014 is of no use to the first respondent.

53. At this juncture, as rightly contended by the learned counsel for the third respondent, it is relevant to extract paragraphs 28 and 29 of the judgment of the Division Bench of this Court in G Sahadevan Nair v. Govt. of Tamil Nadu (supra) that deals with aid by the State to minority educational institutions as hereunder:

"28. It was also submitted that in view of the provisions contained in Section 14(1) of the Act, no school, whether minority or non-minority is entitled to claim grant-in-aid merely on account of the fact that such institution has been subsequently recognised or affiliated.

This provision merely emphasise the well accepted concept that the institutions whether minority or otherwise can seek grant-in-aid only if there is specific provision to that effect. The question in the present case is not that there is no

provision relating to grant aid, but the question is inspite of the existence of provision relating to grant-in-aid, whether the denial of such grant-in-aid to the minority institutions is justified. It is not the claim of the institution that merely because it has been recognised it is entitled to receive aid. The claim of the institution is to the effect that since there is provision for grant-in-aid, the concerned institution should not be discriminated against in the matter of sanction of such grant-in-aid.

29. For the aforesaid reasons, we allow the various writ petitions by giving the following directions:

(i) The State of Tamil Nadu and the other authorities concerned shall consider the application of each of the Institution for grant-in-aid within a period of 16 weeks without being influenced by the fact that such institutions had been established without obtaining any prior permission and also by the fact that such institutions had given letter in writing indicating that after obtaining recognition they will not claim any grant-in-aid. However, while considering such application, the relevant facts such as the existence of necessary infrastructure, teacher-student ratio and the eligibility of the concerned teacher to hold the post should be considered.

(ii) If it is found that any particular institution is entitled to receive any aid, decision should be taken with regard to eligibility within a period of four months and should be communicated to the concerned institution.

(iii) If any institution is found eligible to receive such aid, necessary payment shall be made within a further period of four months from the date of such sanction.

(iv) The continued right of any institution to receive any aid is to be considered keeping in view the relevant G.O., applicable from time to time.

(v) Similarly, in respect of minority institutions, which were receiving aid in respect of some of the posts and were seeking for approval and payment of aid for any additional post, such question is required to be considered within a period of four months by keeping in view the teacher pupil ratio applicable during any particular period.

(vi) If, on the other hand, any school or any post is found ineligible for sanction of grant, such decision should be communicated to the concerned institution by giving brief reasons within a period of three weeks from the date of order of refusal."

In view of the said Division Bench Judgment in *G. Sahadevan Nair v. Government of Tamilnadu and Others* (supra), the first respondent shall regularise the service of the petitioner and shall pay grant to the regular post of Watchman.

54. For all the aforesaid reasons, the impugned order is liable to be quashed, as per the Private Schools Act and the Private Schools Rules that provide for partial

aid to teacher training institutes like that of the third respondent.

55. The second respondent has stated in the recommendation that if the petitioner is regularized from the date of his appointment, i.e., from 1980, the liability of the State till the date of recommendation, i.e., as on 20.06.2002, is only Rs. 137028/-. In toto there are only 14 contingent employees in the Private Aided Teacher Training Institutes, including the petitioner. The total amount of liability, pursuant to their regularization is not a big one, particularly, since these contingent employees are now paid by the State for their employment, but not granted time scale of pay and the consequential increase in allowances. Taking into account these facts and also other reasons stated supra, while quashing the impugned order, I am inclined to issue a direction to the first respondent to regularise the service of the petitioner from the date of appointment as Watchman with all monetary benefits.

56. In the result, while quashing the order of the first respondent in Lr. No. 7683/U2/2000-31, dated 07.03.2007, a direction is issued to the first respondent to regularise the service of the petitioner from the date of his appointment, i.e., from 01.11.1980 as Watchman, and to grant the time scale of pay applicable to the post with all monetary benefits within a period of eight weeks from the date of receipt of a copy of this order. This writ petition is allowed. However, there will be no order as to costs.