IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.09.2017

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THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.17296 of 2015

1.P.Kalarani
2.P.Jesu Sherli Roy
3.A.Parvatham
4.S.Bhuvanewari
5.G.Thenmozhi ...Petitioner

Vs.

Government of Tamil Nadu,
Rep.by its Secretary,
School Education Department,
Fort St.George,
Chennai - 600 009. ... Respondent

Writ Petition is filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, calling for the entire records which culminated in issuing the order in Letter No.37463/C.C.1(3)/2014-2, dated 05.01.2015 on the file of the respondent, quash the same in respect of the petitioner alone and consequently direct the respondent to extend the benefit of G.O.(1D).No.327, Education Department, dated 18.11.2013 in favour of the petitioners, fix their scale of pay at Rs.2000-3500 or the corresponding pay of Rs.6500-11000 as per the subsequent VI Pay Commission from the date of regularisation of their service in the cadre of Vocational Instructor (Agriculture) with all consequential service and monetary benefits.

For Petitioners: Mr.P.Ganesan

For Respondent : Mr.S.Gunasekaran,
Additional Government Pleader

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O R D E R

Heard Mr.P.Ganesan, learned counsel appearing for the petitioners and Mr.S.Gunasekaran, learned Additional Government Pleader appearing for the respondent.

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2.The grievances sought to be redressed in this writ petition is in relation to the claim of equal pay between the equivalent cadres of Vocational Instructors in Agriculture.

3.The learned counsel appearing for the writ petitioners made a submission that the writ petitioners are holding the post of Vocational Instructors (Agriculture) and they have been granted a time scale of pay as per G.O.(1D) No.327, Education Department dated 18.11.2013 and the scale of pay was Rs.2,000-3,500 or the corresponding pay of Rs.6,500 - 11,000. However, it is brought to the notice of this Court for the same cadre of Vocational Instructors in respect of other Vocational Instructors. The Government issued G.O.Ms.No.840, Finance (Pay Commission) Department dated 31.07.1990 fixing higher scale of pay. This discrimination created a cause for the writ petitioners to move this writ petition under Article 226 of the Constitution of India, claimed equal pay on par with other Vocational Instructors working in the same department.

4.The learned Additional Government Pleader appearing on behalf of the respondent made a submission that the writ petitioners were recruited through Teachers' Recruitment Board and the other instructors were recruited without following the recruitment Rules. Therefore, different scales are fixed for these two categories. However, the learned Additional Government Pleader is unable to oppose the factor that these two sets of Vocational Instructors are working in the same department and performing the similar nature of duties. The mode of recruitment may be different, however, the duties and the responsibilities are similar in nature. If any appointment was made in violation of the recruitment Rules, it is altogether a different matter, an action to be taken is also different. No appointment can be made through back door entry and also in respect of regularization of service. However, in relation to the fixation of time scale of pay, there cannot be any discrimination between the same cadres and further the nature of duties and responsibilities are also similar. Such being the factum of the case, there cannot be any discrimination amongst the same homogeneous clause and such a discrimination is certainly in violation of Article 14 and 16 of the Constitution of India. Irregularities or illegalities in the mode of recruitment is entirely a different matter to be dealt with separately and in respect of time scale of pay an uniformity is to be followed to maintain equal work for equal pay.

5.The similar issue was already adjudicated by this Court in the case of G.Vasimalai -Vs- State of Tamil Nadu in W.P (M.D) No.5766 of 2008. The learned Single Judge passed an order on 05.03.2012 is extracted here under:

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"The issue involved in this case is as to whether the petitioner is entitled to get the salary in accordance with G.O.Ms.No.840 Finance (Pay) Commission dated 31.7.1990 when he is holding B.Sc (Agri) degree. The learned Judge has categorically found in the above referred order that when the petitioner is also doing the same work as that of the other Vocational Instructors, there is no justification to deny the scale of pay applicable to Vocational Instructors. The learned Judge has also categorically found that there cannot be two sets of Vocational Instructors drawing the different scale of pay and doing the similar work. The learned Judge has granted relief in the said Writ Petition to fix the scale of pay as Rs.2000-3500. Accordingly, in this case also the petitioner is entitled to relief of re-fixation of the scale of pay in terms of G.O.Ms.No.840 (Finance (Pay Commission) dated 31.7.1990. Therefore, the reasons assigned in the impugned order are not justifiable and the same is unsustainable in view of the findings given by this Court in other Writ Petition in W.P.No.32121 of 2006 dated 5.1.2010. Accordingly, the impugned order is set aside and the Writ Petition is allowed and the respondent is directed to re-fix the scale of pay of the petitioner in terms of G.O.Ms.No.840 (Finance (Pay Commission) dated 31.7.1990 from the date of regularization namely, 16.10.1992 and pass orders and to pay monetary benefits within a period of eight weeks from the date of receipt of copy of this order. No costs."

6.The state preferred W.A.(MD) No.1344 of 2013 against the order cited supra and the Hon'ble Division Bench considered the issues elaborately and delivered a Judgment on 14.08.2014 and the relevant paragraphs are extracted here under:

"21.Keeping in mind the ratio laid down in the aforesaid decisions of the Honourable Apex Court as well as this Court, we have no hesitation to conclude that the impugned order herein passed by the learned Judge (K.Ravichandra Baabu,J.), in W.P.(MD) No.5766 of 2008, dated 05.03.2012, by following the order passed by the learned Judge (D.Hariparanthaman,J.) in W.P.No.32121 of 2006, dated 05.01.2010, is tenable.

22.Further, on a deep scrutiny of the materials available on record, we find that there is no need to refer the matter to a Larger Bench, since there are no conflict verdicts on the issue on hand and it cannot be said that the order passed by the Division Bench of this Court (EDRJ & RPSJ) is a non-speaking order, for the reason that the Division Bench of this Court had considered the issue and upheld the order passed by the

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learned Judge (D.Hariparanthaman,J.) in W.P.No.32121 of 2006. It is also not correct to state that the Honourable Supreme Court simply dismissed the Special Leave Petition without dealing with the correctness of the matters.

23.In such circumstances, we find that the order passed by the learned Judge (K.Ravichandra Baabu, J) in W.P.(MD) No.5766 of 2008, dated 05.03.2012, by following the earlier order passed by the learned Judge (D.Hariparanthaman, J), in W.P.No.32121 of 2006, dated 05.01.2010, which was ultimately confirmed by the Honourable Apex Court, is in accordance with law and no interference at the hands of this Court is warranted. Accordingly, we find no cause or reason to differ with the same.

24.In fine, the writ appeal stands dismissed. Consequently, the connected miscellaneous petitions is dismissed. No costs."

7.The State preferred SLP C No.237 of 2015 before the Apex Court and the Hon'ble Supreme Court of India dismissed the Special Leave Petition on 07.09.2015. Thus, the matter reached finality and the learned counsel for the writ petitioner further brought to the notice of this Court that the order passed in the above cases were implemented by the respondent State by issuing G.O.(3D) No.91, School Education Department dated 26.05.2016. Thus, this Court is of the opinion that the writ petitioners in this writ petition is also entitled to get the same benefit of equal time scale of pay in accordance with the G.O.Ms.No.840, Finance (Pay Commission) dated 31.07.1990.

8.Accordingly, the orders impugned in this writ petition stands quashed and the writ petition stands allowed in terms of the orders passed by this Court in W.P. (MD) No.5766 of 2008 dated 05.03.2012 and the W.A. (MD) No.1344 of 2013 dated 14.08.2014. The respondent is directed to pass appropriate orders as early as possible. However, there is no order as to costs.

Sd/-
Asst.Registrar (CS VIII)

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Sub Asst. Registrar

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To

The Secretary,
Government of Tamil Nadu,
School Education Department,
Fort St.George,
Chennai - 600 009.

+1cc to Government Pleader sr.67713

W.P.No.17296 of 2015

kk(co)
ss(25/10/2017)

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