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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.04.2018

CORAM:

THE HON'BLE Dr. JUSTICE S.VIMALA  
AND  
THE HON'BLE MRS. JUSTICE S.RAMATHILAGAM

Writ Appeal No.28 of 2014  
& M.P.No.1 of 2014

1. The State of Tamil Nadu, Rep. by its Secretary to Government,  
School Education Department, Fort St. George, Chennai 600 009
  2. The Director of School Education,  
DPI Campus, College Road, Chennai 600 006
  3. The District Educational Officer,  
Namakkal, Namakkal District
- ... Appellants

versus

1. Tmt. A.Florence Alphonsa
  2. Correspondent, R.C.High School,  
Rasipuram, Namakkal District
- ... Respondents

Writ Appeal filed under Clause 15 of the Letters Patent,  
against the order, dated 10.09.2012, passed in W.P.No.11028 of  
2006.

W.P.No.11028 of 2006:

Writ Petition filed under article 226 of the constitution of  
India to issue a Writ of Certiorarified Mandamus calling for the  
records pertaining to the order passed by the Second Respondent  
in his proceedings Mu.Mu. No. 66133/D3(9)/00 dated 31.05.2003  
and quash the same and direct the respondents to award Selection  
Grade and Special Grade to the petitioner by counting entire  
length of service from the initial date of appointment and  
confer all the consequential benefits.

|               |   |                                                                                               |
|---------------|---|-----------------------------------------------------------------------------------------------|
| For Appellant | : | Mr. C.Munusamy, Spl.G.P., (Edn.),<br>Assisted by, Mr. K.Karthikeyan,<br>Govt. Advocate (Edn.) |
| For R-1       | : | P.Ganesan, for,<br>M/s. C.S.Associates,                                                       |
| For R-2       | : | No Appearance.                                                                                |



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J U D G M E N T

(Judgment of the Court was delivered by S.Vimala, J.,)

The issue raised in this writ appeal is, for the grant of selection grade and special grade pay, whether the services rendered by the writ petitioner in toto, in the post of Pre-Vocational Instructor, has to be taken into account or the services rendered by the writ petitioner after acquiring SSLC qualification alone has to be taken into account.

2. This writ appeal was filed by the appellants / State, challenging the order of the learned Single Judge, dated 10.09.2012, allowing the writ petition and directing the award of selection grade and special grade to the petitioner by counting the entire length of service from the date of initial appointment and to confer all consequential benefits.

3. The brief facts of the case are as follows:-

The petitioner was appointed as Pre-vocational Instructor in Embroidery and Dressing, on 14.11.1973 in the second respondent (in the appeal)-management school. The appointment was approved and at the time of joining of the petitioner, the second respondent-school was a Middle School and subsequently, the same was upgraded as High School. At the time of upgradation as High School, the vocational teachers, who were working in the Middle School, were also absorbed in the High School on the basis of the orders issued by the Government in G.O.Ms.No.1366, Education Department, dated 05.09.1986, wherein the Government insisted the persons, who were having SSLC qualification working in the Middle School and High School shall be given secondary grade scale of pay without any discrimination and in respect of those who did not have the SSLC qualification, they have been given three years time to acquire SSLC qualification and thereafter, those persons are eligible for secondary grade scale of pay.

3.1. The first respondent herein / writ petitioner has acquired the SSLC qualification, on 12.10.1988, i.e., within the period of three years as stipulated in the Government Order and therefore, the petitioner was given secondary grade scale of pay on 12.10.1988.

3.2. As the selection grade was not awarded to the first respondent / writ petitioner, he has made a representation to the management as well as to the Director of School Education, Chennai. The Management re-fixed the scale of pay of the first respondent in the cadre of selection grade secondary grade teacher from 13.10.1988 and he was also given special grade on 01.04.1994, by the order dated November 1999, by the Management.



However, the District Elementary Officer, Namakkal, by the order dated 20.06.2000, suspended his earlier order dated 28.02.2000, till clarification is received from the Director of School Education, Chennai, and subsequently, by his order, dated 09.11.2000, cancelled the order dated 28.02.2000 on the ground that the selection grade and special grade can be awarded only from the date of acquisition of SSLC qualification, i.e., from 12.10.1988 and not from 14.11.1973, which is the original date of appointment. Challenging the impugned order, the writ petition was filed by the claimant / petitioner.

4. In the writ petition, the learned Single Judge considered the issue as to whether the award of selection grade and special grade would include the services rendered by the petitioner in toto in the post of Pre-Vocational Instructor or the services rendered by the petitioner after acquiring SSLC qualification alone has to be counted. The said issue was answered by the learned Single Judge in favour of the petitioner and challenging the same, this writ appeal has been filed by the State.

5. The learned counsel appearing for the appellants / State submitted that the first respondent herein / writ petitioner is entitled to selection grade teacher's scale of pay only on and from 13.10.1988 as the writ petitioner completed the SSLC only on 12.10.1988. In other words, the contention is that the writ petitioner is entitled to secondary grade scale of pay only after getting the required qualification of SSLC and the services rendered by the writ petitioner while she was employed as the unqualified Pre-Vocational Instructor cannot be included in the service for the upgraded pay.

6. The learned counsel appearing for the first respondent herein / petitioner in the writ petition relied upon the case of a similarly placed person, who raised the same issue, which was answered in Writ Petition No.32447 of 2005, dated 02.02.2006, and that the view taken by this Court was ultimately upheld by the Hon'ble Supreme Court and therefore, the appeal is unsustainable. It is relevant to extract the reasonings given in W.P.No.32447 of 2005 for consideration, as to the applicability of the proposition in this case:-

"6. I have considered the submissions made on either side. As far as awarding of selection grade and special pay to the employees is concerned, it is post oriented and not pay oriented. The selection grade awarded to the petitioner is for the service rendered by her in the post of craft instructor. Originally, when she was appointed in the year 1982 as a craft instructor the required qualification is not a pass in S.S.L.C. Subsequently, in the year 1986 the qualification has been raised along with a raise in the pay scale and the Government has also introduced



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selection grade and special grade to the post of craft instructors by G.O.Ms.No.1366, Education Department, dated 5.9.1986. In the above said Government Order there is no whisper for award of selection grade and special grade to the craft instructors taking into account the service rendered by them after acquiring the qualification of pass in S.S.L.C. In fact, the Government issued an instruction to that effect in the year 1990 that has been challenged in O.A.No.1335 of 1993 in which the Tribunal has given a finding that the total service rendered has to be taken into account for awarding selection grade and special grade and not the service rendered in the High School alone should be taken into account. This order of the Tribunal has been confirmed by an order dated 27.05.2001 passed by the Division Bench of this Court in W.P.No.12066 of 1999 and subsequently, this was also confirmed by the Hon'ble Supreme Court. As such, the reason given in the impugned order that basing on the acquiring of pass in S.S.L.C. Alone the petitioner is entitled to selection grade and special grade is totally erroneous and also contrary to the orders passed by the Division Bench of this Court..."

7. Similarly, in the case of one K.Govindarajan, who is a similarly placed person, with a similar claim, writ petition No.16202 of 2006, was filed in which the learned Single Judge set-aside the impugned order where-under the contention of the Education Department was that the writ petitioner had to complete ten years of service after acquiring SSLC qualification for the award of selection grade and twenty years of service for the award of the special grade. There also, the matter was taken in Writ Appeal No.323 of 2013, in which the Division Bench pointed out that there is no reason to interfere with the order of the learned Single Judge, especially when the learned Single Judge has followed the Division Bench judgment, against which the Special Leave Petition filed before the Supreme Court was also dismissed.

8. The principles enunciated in those cases, in respect of similarly placed persons had acquired finality and therefore the appellants cannot be permitted to reopen the question which has been upheld up to the Hon'ble Supreme Court.

9. We have no reasons to defer from the view taken by the learned Single Judge, which relied upon the Division Bench judgment of this Court as well as the Hon'ble Supreme Court.

10. It would be appropriate to quote the decision of the



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Hon'ble Supreme Court reported in AIR 2001 SC 499 (Government of Andhra Pradesh and Ors v. A.P.Jaiswal and Ors.), in which it has been held that when the rules and principles based on public policy are not followed by Courts, then there will be chaos in administration of justice:-

"Consistency is the corner stone of administration of justice. It is consistency which creates confidence in the system and this consistency can never be achieved without respect to rule of finality. It is with a view to achieve consistency in judicial pronouncements, the Courts have evolved the rule of precedents, principle of stare decisis etc., These rules and principles are based on public policy and if these are not followed by Courts then there will be chaos in the administration of justice."

11. Needless to point out that we are bound by the decisions of the Hon'ble Apex Court and the appeal filed by the State cannot be justified. Therefore, the writ appeal has to be dismissed.

12. The first respondent is reported dead on 06.06.2017 and the Legal Heir Certificate has also been produced showing the husband, two daughters and one son (four of them) as LR's of the deceased / first respondent herein. Who will be entitled to receive the family pension is the issue to be considered in future proceedings? Therefore, it is open to the LR's to workout their remedies before the appropriate forum in accordance with law. Subject to the LR's moving the authorities concerned, the appropriate authorities are directed to complete the exercise within a reasonable time and not later than three months from the date of application by the LR's of the first respondent herein.

13. In the result, the writ appeal is dismissed, thereby confirming the order of the learned Single Judge. No costs. Consequently, the connected MP is closed.

-s/d-

Assistant Registrar (CS-IV)

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Sub-Assistant Registrar

srk



To

1. The Secretary to Government,  
School Education Department,  
Fort St. George, Chennai 600 009
  2. The Director of School Education,  
DPI Campus, College Road, Chennai 600 006
  3. The District Educational Officer,  
Namakkal, Namakkal District
- +1 CC to Mr.C.S. Associates sr 25343.  
+1 CC to Govt. Pleader sr 25649.

W.A.No.28 of 2014  
& M.P.No.1 of 2014

NMI (CO)  
SP(20/04/2018)