

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.01.2018

CORAM

THE HON'BLE MR. JUSTICE M.V.MURALIDARAN

W.P.Nos.2018 to 2020 of 2012

Daisy Ragini

.. Petitioner in
W.P.No.2018/2012

N.Amutha

.. Petitioner in
W.P.No.2019/2012

K.Anandhi

.. Petitioner in
W.P.No.2020/2012

vs

1.The State of Tamil Nadu,
rep. by its Secretary to Government,
Education Department,
Chennai - 9.

2.The Director of Elementary Education,
College Road,
Chennai - 6.

3.The District Elementary Educational Officer,
Vellore District,
Vellore.

4.The Assistant Elementary Educational Officer,
Vellore District,
Vellore.

.. Respondents in
all Wps.

Prayer: Writ Petitions filed under Article 226 of the Constitution of India for issuance of a writ of mandamus directing the respondents 1 to 3 to upgrade the service of the petitioners as Secondary Grade Teacher with effect from 13.02.1989 (W.P.No.2018 of 2012); 14.02.1989 (W.P.No.2019 of 2012); 15.02.1989 (W.P.No.2020 of 2012) with all consequential benefits with exemption to get S.C.E.R.T.

For Petitioners : Mr.S.N.Ravichandran

For Respondents : Mr.R.Govindasamy
Spl. Government Pleader

COMMON ORDER

These writ petitions have been filed for issuance of a writ of mandamus directing the respondents 1 to 3 to upgrade the service of the petitioners as Secondary Grade Teachers with effect from 13.02.1989, 14.02.1989 and 15.02.1989 respectively with all consequential benefits with an exemption to get SCERT.

2. Since the issues involved in these writ petitions are one and the same, all three writ petitions were taken up together and disposed of by this common order.

3. The petitioner in W.P.No.2018 of 2012 had passed Higher Secondary in 1984 and had undergone 2 year teaching training for Secondary Grade from 1985 to 1987 at Lady Wellington College of Education. She had also passed B.A. (Tamil) through Correspondence Course. On 13.12.1989, the petitioner (Daisy Ragini) was appointed as Higher Grade Teacher in the Municipal school. Since the post of Higher Grade Teacher was abolished, the petitioner ought to have been appointed as Secondary Grade Teacher instead she was appointed as Higher Grade Teacher. By the proceeding dated 04.09.1990, the District Chief Educational Officer informed that promotion of Secondary Grade Teacher does not arise, as the teacher who had undergone Nursery/Montessori/Kindergarten training in Secondary Grade are only eligible for Higher Grade. Aggrieved by the same, the petitioner preferred appeal to the second respondent and had also sent a reminder dated 29.11.1991. Since no response from the second respondent, the petitioner filed O.A.No.7543 of 1993 before the State Administrative Tribunal. By an order dated 17.12.1993, the Tribunal directed the second respondent to consider the appeal with regard to relaxation. According to the petitioner, similarly placed teachers were given relaxation through G.O.Ms.No.453, dated 07.04.1986 and G.O.Ms.No.1088, dated 11.11.1987. Though on 11.01.1999, the Chief Educational Officer recommended for relaxation, till date the second respondent has not passed any order.

4. The petitioner in W.P.No.2019 of 2012 (N.Amutha) passed old SSLC and had undergone 2 years Kindergarten Training for Secondary Grade from 1975 to 1979 at Balar Kalvi Nilaiyam. In 1998, she passed B.Lit (Tamil) through Correspondence Course. On 14.02.1989, she was appointed as Higher Grade Teacher at

Gangatharasamy Primary School, Gudiyatham. On 01.07.1990, the petitioner was transferred to Municipal Middle School, Kakithapattrai, Vellore. Since the post of Higher Grade was abolished, the petitioner ought to have been appointed as Secondary Grade Teacher.

5. The petitioner in W.P.No.2020 of 2012 (K.Anandhi) passed old SSLC and had undergone 2 years Kindergarten Training for Secondary Grade from 1983 to 1985 at Balar Kalvi Nilayam. In 1998, she passed M.A. (History) through Correspondence Course. On 15.02.1989, the petitioner was appointed as Higher Grade Teacher at Municipal School. Since the post of Higher Grade was abolished, the petitioner ought to have been appointed as Secondary Grade Teacher.

6. The common grievance of the petitioners is that the Government abolished the Higher Grade post and the abolition can only be prospective. In so far as the existing teachers are concerned, it is only an upgradation on acquiring required qualification as a Secondary Grade Teacher. The Government vide G.O.Ms.No.217 made a provision for training. According to the petitioners, while abolishing the post of part-time vocational instructor/craft teacher etc., a provision was made enabling the teachers to get trained and to be absorbed as Secondary Grade Teacher and in the case of the petitioners, the same has not been done. Earlier, the petitioners sent representations to give S.C.E.R.T. training, but the same was not considered by the respondent authorities. However, the concept of giving training in S.C.E.R.T. has lost its importance, in view of the petitioners' practical experience over two decades. According to the petitioners, they have acquired further educational qualifications so as to teach the subjects effectively and efficiently.

7. The further case of the petitioners is that despite several requests, upgradation has not been considered. Therefore, on 08.11.2011, the petitioners sent representations to the respondents 2 and 3 through the fourth respondent. On 25.11.2011, the petitioners have also sent representations to the first respondent to upgrade them as Secondary Grade Teacher with effect from the date of appointment with all consequential benefits by relaxing S.C.E.R.T. training. Since no action was taken by the first respondent, the petitioners have filed these writ petitions.

8. Resisting the writ petitions, the third respondent filed the counter stating that the question of giving training to upgrade the petitioner as Secondary Grade Teacher does not arise, as the petitioners were already in possession of Secondary Grade Training Certificate in Montessori/Nursery/Kindergarten. It is stated that abolition of

Higher Grade Post does not have any barring. The petitioners were in possession of Secondary Grade Training Nursery/Kinder garden/Montessori only and are eligible to teach standards I and II, for which the petitioners cannot compare the other Secondary Grade Teachers, who have acquired different qualification. It is stated that the question of giving exemption from SCERT training to upgrade the petitioners as Secondary Grade Teacher does not arise. According to the respondents, the petitioners were appointed to the post to which they were eligible and also awarded Selection Grade/Special Grade in that post with monetary benefits. Since the petitioners have not acquired the Secondary Grade Teacher qualification, the request of the petitioners to upgrade them as Secondary Grade Teacher and to allow Secondary Grade scale of pay does not require consideration. Hence, prayed for dismissal of the writ petitions.

9. I heard Mr.S.N.Ravichandran, learned counsel appearing for the petitioners and Mr.R.Govindasamy, learned Special Government Pleader appearing for the respondents. Perused the materials available on record.

10. The petitioners sought orders on the respondents 1 to 3 to upgrade the service of the petitioners as Secondary Grade Teacher with effect from the date of their joining with all consequential benefits with exemption to get trained in S.C.E.R.T.

11. The petitioners were initially appointed as Higher Grade Teachers and when the post of Higher Grade Teacher was abolished, they sought upgradation as Secondary Grade Teachers and the same was rejected by the Chief Educational Officer on the ground that Montessori certificate holders are eligible only for the post of Higher Grade Teachers. Since the grievance of the petitioners was not considered by the respondent authorities, one of the petitioners namely Daisy Ragini (W.P.No.2018 of 2012) approached the State Administrative Tribunal by filing O.A.No.7543 of 1993. By an order dated 17.12.1993, the Tribunal observed as under:

"The applicant had been appointed as higher grade teacher following completion of montessori secondary grade teacher training, by order dated 09.02.1989. Her representation to upgrad as secondary grade teacher was rejected by the Chief Educational Officer on the ground that montessori certificate holders are eligible only for the post of higher grade teachers. On her appeal to the Government filed immediately thereafter on 20.11.1990 followed by a reminder on 29.11.1991 no orders have been issued.

The applicant referred to the case of Rukmani in whose favour the Government have relaxed the rule to permit her promotion as secondary grade teacher. The applicant has also referred that petitions filed by Montessori trained teachers who have been appointed as secondary grade teacher and thereafter reverted and who were being allowed to continue following directions of the High Court. Such order of the High Court has not been produced.

The applicant continues that relaxation having been ordered in the case of Rukmani, denial of the benefit to the applicant is a clear discrimination. The G.O. refers to 19 cases of teachers who had been allowed the secondary grade and the cases are not reopened in view of the judgment of the High Court.

A relaxation of any rule cannot be put forward as a precedent. If such contention is accepted the rule will stand abrogated because the relaxation becomes the rule. Relaxation should follow certain norms and should not be ad hoc so that it could not lead to claim for similar relaxations. A relaxation should be ordered only in exceptional circumstances and needs of justice and equity would be the basis for ordering relaxation.

The appeal dated 29.09.1990 should be dealt with accordingly taking into account the circumstances in which relaxation has been ordered earlier whether, are the same norms the applicant would be eligible. In any case the length of service should be a basis for consideration in relaxing the qualification for advancement to a higher post. Consideration such a higher grade as such has been abolished such category continuing in the higher grade would possibly be considered for advancement to secondary grade, after a specific period of service. This is a matter of policy for Government's consideration."

12. On a perusal of the order of the Tribunal, I find that the Tribunal has recorded that in the case of Rukmani, the Government has relaxed the rule and given promotion as Secondary Grade Teacher as a special case, similar to those 19 cases of Montessori qualified teachers, who were allowed Secondary Grade scale of pay by the Education Department.

13. In G.O.Ms.No.1994, Education Department, dated 23.10.1970, it has been stated as under:

"3. The Higher Grade Teacher training has been abolished since many years ago and for the past many years all additional posts for sts. 1-5 of elementary schools are also sanctioned only as Secondary Grade Posts. Further from 67-68 onwards the Government have from time to time, been upgrading the Secondary Grade all the Higher Grade Posts held by Secondary Grade qualified teachers. As a culmination of this step, the Government have ultimately in G.O.No.569 Edn. Dated 25.4.79 issued generally and standing orders to the following effect.

a. When any Higher Grade teacher working in a Higher Grade Post acquires the Secondary Grade qualification he shall be allowed the pay of the Secondary grade post and his post shall be deemed to have been upgraded to the Secondary grade from the first to September in the subsequent academic year.

b. When Secondary Grade teachers are appointed hereafter that is, on or after 1.9.1979 in vacant higher grade posts due to retirement etc. such secondary grade teachers shall be allowed the secondary grade scale and Higher Grade posts shall be deemed to have been upgraded as Secondary Grade Posts."

14. Thus, the crux of the aforesaid Government Order is when any Higher Grade teacher working in a Higher Grade post acquires the Secondary Grade qualification, he shall be allowed the pay of the Secondary Grade post and his post shall be deemed to have been upgraded to the Secondary Grade.

15. There are two certificates, namely Trained Teachers Certificate of Elementary Grade and Nursery/Montessori and Kindergarten School Leaving Certificate Examination of Secondary Grade. As stated above, the petitioners have passed Nursery/Montessori and Kindergarten School Leaving Certificate Examination of Secondary Grade and therefore, they should be entitled to get upgradation as Secondary Grade Teachers. The respondent authorities have not disputed the factum of possessing of Nursery/Montessori and Kindergarten School Leaving Certificate by the petitioners.

16. In *Jemima v. State of Tamil Nadu*, reported in 1999 (III) CTC 760, this Court held that "as a policy decision, the Government decided to abolish the post, higher grade teachers, to improve standard of education and to enable the teachers to

improve their qualifications suitably, unless and until qualifications prescribed under Class 3 Annexure III of the Tamil Nadu Minority Schools (Recognition & Payment of Grant) Rules read with Rule 8 of the said Rules are suitably amended by the Government."

17. In *State of Tamil Nadu v. B.Kamatchi*, reported in (2006) 4 MLJ 671, a Division Bench of this Court laid down a ratio decidendi that the pre-school teachers training certificate has been recognised by the State Government and is issued after proper conduct of examination. It is, therefore, legally valid for consideration of appointment as Secondary Grade Teacher. In paragraph 17, the Division Bench held as under:

"17. A plain reading of the portions which are extracted above would make it clear that though the Government had not included the above course under the Act, it has stated that the candidates holding Pre-Primary Certificates shall also be permitted to sit for screening test to be conducted by the Director of Government Examinations subject to the condition that such candidates selected for appointment will be permitted to handle classes I to III only. Therefore, it is clear that the Pre-Primary Certificate is a valid one and the Pre-School Teachers Training Course has been recognised by the Government and the State, on proper conduct of examination, has issued the certificate and the same is legally valid for consideration of appointment."

18. In W.P.No.1967 of 2008 (*S.Mary Saroja v. The State of Tamil Nadu and others*), the petitioner, who was possessing Secondary Grade Montessori Training School Leaving Certificate was appointed in a sanctioned post as Elementary Teacher, even though she had the qualification to be appointed as Secondary Grade Teacher. Her appointment was approved and she was working and receiving salary as Elementary Teacher. When the petitioner submitted a representation to the second respondent therein requesting for payment of salary as Secondary Grade Teacher, the same was rejected. Thereafter, the petitioner filed the writ petition. By an order dated 28.03.2008, the learned Single Judge of this Court after analysing the rival submissions held as under:

"9. It is clear from a reading of the above that the petitioner on the date of her appointment, had the qualifications for appointment as Secondary Grade Teacher, but yet was appointed as Elementary Grade Teacher. These are the categories of persons to which G.O.Ms.No.347 applies. The Government erred in rejecting the petitioner's representation and her claim by applying the rules as they stand

today and overlooking the fact that on the date of her appointment, a Secondary Grade Teacher who possessed a Montessori Course training Certificate in Secondary Grade had the qualifications for being appointed as Secondary Grade Teacher, but would only be appointed as a teacher of classes I and II because of the special training demands.

10. In these circumstances, the prayer of the writ petitioner deserves to be granted. The impugned order is set aside and the writ petition stands allowed. No costs. Consequently, M.P.Nos.1 and 2 of 2008 are closed."

19. Aggrieved by the order of the learned Single Judge, the Government preferred writ appeal being W.A.No.1501 of 2008. By the judgment dated 20.04.2010, a Division Bench of this Court, while dismissing the writ appeal preferred by the Government, observed as under:

"11. Therefore, it is clear that the teachers training certificate obtained by the first respondent is a Secondary Grade Teacher Certificate and it shows that the first respondent even on the date of her appointment, had the qualification for appointment as Secondary Grade Teacher. As such, she is eligible for Secondary Grade scale of pay for the period from 26.10.1973. Similar benefit was given to another teacher by the second respondent."

20. Aggrieved by the judgment of the Division Bench, the Government filed Special Leave to Appeal (Civil) No.9458 of 2011 before the Hon'ble Supreme Court. By an order dated 15.04.2011, the Hon'ble Supreme Court, dismissed the SLP filed by the Government.

21. As stated supra, it is the case of the petitioners that they ought to have been appointed as Secondary Grade Teachers, instead were appointed as Higher Grade Teachers. The petitioners also possessed Nursery/Montessori and Kindergarten School Leaving Certificate Examination of Secondary Grade. Therefore, on the date of appointment itself, the petitioners were entitled to be appointed as Secondary Grade Teacher.

22. In the normal course, it is the duty of the Government to make appropriate provisions to safeguard the interest of the teachers, who were already working in the post for the purpose of providing livelihood, while abolishing the post as a whole. Further, the petitioners have studied courses and got employment and also worked for long number of years before the Government took a policy decision to abolish the Higher Grade Teachers in

the State. Therefore, the Higher Grade Teachers who worked at that time have a legitimate expectation that they can continue in the job till the date of their superannuation.

23. On a perusal of the typed set of papers, I find that while abolishing the post of part-time vocational instructor/craft teacher etc., a provision was made enabling the teachers to get trained and to be absorbed as Secondary Grade Teachers, whereas in the case of the petitioners, the same was not done. According to the petitioners, already in the teacher training course, they studied child psychology, child behaviour and all other methodological aspects of handling small children and therefore, their capacity to handle small children and manage them effectively and efficiently is unquestionable. Therefore, the petitioners sought exemption from getting trained in S.C.E.R.T. I find some force in the arguments advanced by the learned counsel for the petitioners for the reason that prima facie the petitioners have fully qualified both educationally and technically to teach the small children in all aspects.

24. Therefore, considering the pathetic situation of the petitioners, their age, and the service rendered by them for long number of years, as also like placed persons/posts were upgraded, the petitioners who were appointed as Higher Grade Teachers working in a Higher Grade post acquired Secondary Grade qualification, shall be allowed the pay of the Secondary Grade Post and their post shall be deemed to have been upgraded from the date of their appointment i.e., 13.02.1989, 14.02.1989 and 15.02.1989 respectively with all consequential benefits.

25. In the result:

(a) the writ petitions are allowed;

(b) the respondents are directed to upgrade the service of the petitioners as Secondary Grade Teachers with effect from 13.02.1989, 14.02.1989 and 15.02.1989 respectively with all consequential benefits with an exemption from getting trained by the S.C.E.R.T., Government of Tamil Nadu;

(c) the said exercise shall be done within a period of eight weeks from the date of receipt of a copy of this order. No costs.

Sd/-
Deputy Registrar

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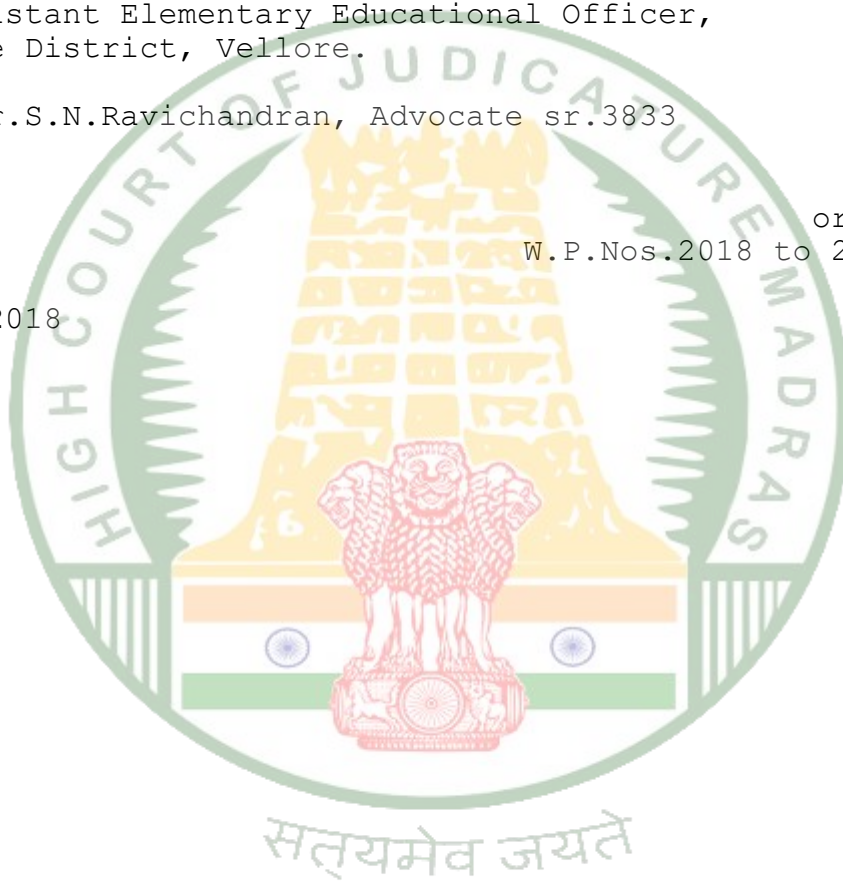
Sub Assistant Registrar

To

- 1.The Secretary to Government,
Education Department, Chennai - 9.
 - 2.The Director of Elementary Education,
College Road, Chennai - 6.
 - 3.The District Elementary Educational Officer,
Vellore District, Vellore.
 - 4.The Assistant Elementary Educational Officer,
Vellore District, Vellore.
- +1cc to Mr.S.N.Ravichandran, Advocate sr.3833

order made in
W.P.Nos.2018 to 2020 of 2012

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