

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.08.2018

CORAM

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

W.P.Nos.25315 and 25316 of 2012

W.P.No.25315 of 2012:

- 1.L.Sekar
- 2.B.S.Karthikeyan
- 3.A.Chandrasekaran
- 4.G.Selvaraju
- 5.M.Kannan
- 6.M.Subramanian
- 7.G.Udayakumar
- 8.B.Alagesan
- 9.R.Paranthaman
- 10.R.Venkatesan
- 11.K.N.Murugappan

... Petitioners

Vs

- 1.The State of Tamilnadu,  
Rep. by the Secretary,  
School Education Department,  
Fort St. George, Chennai - 9.
- 2.The Director of School Education,  
College Road, Nungambakkam,  
Chennai - 6.
- 3.The Chief Educational Officer,  
Salem, Salem District.
- 4.The Chief Educational Officer,  
Cuddalore, Cuddalore District.
- 5.The Chief Educational Officer,  
Villupuram, Villupuram District.

.. Respondents

W.P.No.25316 of 2012

- 1.T.Benjamin
- 2.S.Vallinayagam
- 3.A.Arumugam
- 4.A.William Peterraj
- 5.N.Gopalapillai
- 6.K.Ramesh
- 7.K.G.Sankara Narayanan
- 8.C.Sampath
- 9.R.Venkataselam
- 10.S.Sakthivel

.. Petitioners

Vs.

- 1.The State of Tamilnadu,  
Rep. by the Secretary,  
School Education Department,  
Fort St. George, Chennai-9.
- 2.The Director of School Education,  
College Road, Nungambakkam,  
Chennai - 6.
- 3.The Chief Educational Officer,  
Vellore, Vellore District.
- 4.The Chief Educational Officer,  
Salem, Salem District.
- 5.The Chief Educational Officer,  
Tirunelveli, Tirunelveli District.
- 6.The Chief Educational Officer,  
Thoothukudi, Thoothukudi District.
- 7.The Chief Educational Officer,  
Kanyakumari District, Nagercoil.

.. Respondents

Prayer in W.P.No.25315 of 2012: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of certiorarified mandamus to call for the records pertaining to the order passed by the 1st respondent herein vide her proceedings No. Letter No. 36238/VE/2010-1 dated 13.7.2011 and quash the same as illegal arbitrary unreasonable being violative of rules and principles of natural justice and thereby direct the respondents to grant scale of pay to the petitioners on par with the scale of pay applicable to the post of Engineering Instructors with B.E. qualification doing the same work from the date of acquiring the Degree qualification.

Prayer in W.P.No.25316 of 2012: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of certiorarified mandamus to call for the records pertaining to the order passed by the 1st respondent herein vide her proceedings No. Letter No.33339/VE/2010-1, dated 1.6.2011 and quash the same as illegal arbitrary unreasonable being violative of rules and principles of natural justice and thereby direct the respondents to grant scale of pay to the petitioners on par with the scale of pay applicable to the post of Engineering Instructors with B.E. qualification doing the same work from the date of acquiring the Degree qualification.

For Petitioners : Mr.A.R.Suresh  
for Mr.V.Thirupathi

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

COMMON ORDER

These writ petitions have been filed by the petitioners challenging the order of the first respondent in Letter No.36238/VE/2010-1, dated 13.7.2011 and Letter No.33339/VE/2010-1, dated 1.6.2011 respectively, to quash the same as illegal, arbitrary, unreasonable, being violative of rules and principles of natural justice, and to direct the respondents to grant scale of pay to the petitioners on a par with the scale of pay applicable to the post of Engineering Instructors with B.E. qualification doing the same work from the date of acquiring the degree qualification.

2. Briefly stated, the case of the petitioners is as follows: The petitioners were working as Vocational Instructors, General Machinist in Government Higher Secondary Schools. Initially, the petitioners were appointed as part time Vocational Instructors and thereafter, their services were regularised. At the time of appointment as double part time Vocational Instructors, the petitioners were qualified with Diploma in Engineering in different faculties and subsequently, qualified themselves with Bachelor of Engineering in the respective faculties well before the Government Orders regularising the services and bringing them under full time Vocational Instructors were issued.

3. The Government had issued orders in G.O.Ms.No.712, dated 28.5.1990 to regularise fully qualified 800 double part time Vocational Instructors and subsequently, in G.O.Ms.No.967, dated 16.10.1992 to regularise 587 fully qualified double part time Vocational Instructors in B.T. Scale of pay. The aforesaid

government orders have been challenged before the Tamil Nadu Administrative Tribunal by the single part time Vocational Instructors. After considering the issue, the Tamil Nadu Administrative Tribunal set aside both the Government Orders.

4. Pursuant to the order of the Tamil Nadu Administrative Tribunal, the Government issued G.O.Ms.No.834, dated 23.9.1994 treating all the earlier regularisations made pursuant to G.O.Ms.No.712 and G.O.Ms.No.967 as irregular and directed the fully qualified single part time Vocational Instructors also to be absorbed in the B.T. Scale of pay on with the other double part time fully qualified Vocational Instructors.

5. The above said government order in G.O.Ms.No.834, dated 23.9.1994 came to be challenged by filing writ petitions. By an order dated 08.7.2004, a Division Bench of this Court set aside the Government Order insofar as it relates to the challenging the regularisation of doubt part time Vocational Instructors and further directed the single part time Vocational Instructors who were qualified to be deemed to have been regularised with effect from the date on which any double part time Vocational Instructors, junior to them has been regularised and their seniority and length of service would be treated as such from the deemed date of regularisation for all purposes.

6. Prior to the appointments of Vocational Instructors, there were another set of Instructors called Engineering Instructors and they were appointed as such in the then existing High Schools prior to 1978 and continued to work even after the introduction of the Higher Secondary course. No fresh appointment was made after 1978 and they were appointed in the erstwhile Bifurcated Courses during 1956 as per G.O.Ms.No.1834, dated 8.10.1956. There were two types of Engineering Instructors viz., Senior Instructors Engineering Course and Junior Instructors Engineering Course.

7. The scale of pay of Engineering Instructors qua seniors was fixed at Rs.140-5-180-10-250 plus special pay Rs.35/- per month and qua juniors, it was fixed at Rs.140-5-180-10-250 plus Rs.25/- per month. Both of them were teaching the same classes and doing same work. Both these cadres were merged from the second Pay Commission onwards and called as Engineering Instructors and there was no disparity in the pay structure. Both of them were given Rs.350-15-425-20-525-25-700. The principle of equal pay for equal work was adopted strictly.

8. It is stated that though the appointment of the petitioners was designated as Vocational Instructors with Diploma qualification, they are qualified with B.E. Degree as that of Engineering Instructors and are doing the same work as

that of Engineer Instructors, and there is disparity of pay for equal work which is against constitutional mandate.

9. Pursuant to the order passed by the Division Bench of this Court, the government issued G.O.Ms.No.68, School Education Department, dated 20.3.2007 notionally calculating the scale of pay with effect from the date of regularization and paying the monetary benefits from the date of issue of the said government order. Pursuant to the issuance of the said government order, the third respondent issued consequential proceedings on 31.5.2007.

10. It is stated that immediately thereafter, the association of the petitioners made a representation to the authorities concerned pointing out the disparity in pay of instructors, viz., Engineering Instructors and Vocational Instructors, who are having equal qualification and are doing equal work. Thereafter, the petitioners sent a representation to the respondents on 27.8.2010. Even though the said representation did not evoke any response, the government vide G.O.Ms.No.240, School Education (V.E.) Department, dated 18.8.2010 granted two incentive increments for the additional qualification of B.E. Degree from the date of issuance of the government order.

11. It is averred that finally pursuant to an order of this Court dated 3.9.2010 directing the respondent authorities to dispose of the representation sent by them, the first respondent vide the impugned proceedings dated 13.7.2011 and 1.6.2011 rejected the claim of the petitioners.

12. Assailing the said proceedings of the first respondent, the present writ petitions are filed for the relief stated supra.

13. The learned counsel appearing on behalf of the petitioners contended that treating equals with regard to qualification and work, viz., Engineering Instructors and Vocational Instructors, as unequals in pay alone is in violation of Articles 14 and 39(d) of the Constitution of India.

14. It is further contended that in the case of Engineering Instructors, both Junior and Senior Instructors cadres were merged and called as Engineering Instructors and there is no disparity in pay structure between B.E. Degree holders and Diploma Holders, whereas the same treatment is not applied to Vocational Instructors.

15. He also contended that Vocational Instructors in Crop Protection with B.Sc. (Agriculture) Degree were treated on a par with Vocational Instructors appointed prior to the introduction

of Higher Secondary System with same qualification and non granting of similar relief to the petitioners is untenable.

16. Per contra, the learned Special Government Pleader appearing on behalf of the respondents contended that the government had been extremely considerate towards the Vocational Instructors and granted two incentive increments vide G.O.Ms.No.240, School Education (VE) Department, dated 18.8.2010 from the date of issuance of the said government order and, therefore, the Vocational Instructors cannot claim parity of pay scale with Engineering Instructors, which is a vanishing category and whose mode of appointment is different when compared to Vocational Instructors.

17. Heard the learned counsel on either side and perused the documents available on record.

18. The case of the vocational instructors working in the Higher Secondary Schools in the State of Tamilnadu has got a chequered history. It can be distinguishable into pre 1978 and post 1978, the year in which Higher Secondary Course was introduced in the State of Tamilnadu, i.e. to day 10+2 stream of education. Prior to 1978, there was 11<sup>th</sup> Standard Secondary Education Leaving and 1<sup>st</sup> year Pre-University Course and thereafter admitted to Degree colleges. In the year 1978, Higher Secondary Course namely, after the completion of 10<sup>th</sup> Standard itself, which is modified as Secondary Education, Higher Secondary Course was introduced for two years amounting to 10+2 prior to joining any degree course.

19. In the Higher Secondary Course, there are two streams of instructions namely, academic and vocational. The case on hand pertains to vocational stream. Prior to 1978 also there were vocational stream in so far as Engineering courses are concerned. There were single and double part time instructors and their grievance for regularisation into services ended in several rounds of litigations. Ultimately, the Engineering Instructors were declared to be vanishing category in the sense, after the post of Engineering Instructors falls vacant either due to retirement or death or voluntary retirement or for any other reason, the said post would be converted into a part time Instructor's posts and after the incumbent part time instructor also becomes vacant for the same reasons stated above, the post is declared to be vanished or abolished. However, the vacancy thus caused due to retirement or death or voluntary retirement or for any other reason in the regular Engineering Instructors they were not converted into part time posts and instead Vocational Instructors in Engineering were appointed to handle classes in the Higher Secondary Classes after 1978. In other words, only the nomenclature was changed of course with a little

difference in qualification namely Diploma or Degree in the relevant subject that is to mean Engineering. It is pertinent here to mention, that these posts are not meant for the individual Teachers/Instructors but only the post and hence the reasoning given by the 1<sup>st</sup> respondent cannot be countenanced.

20. After 1978, and in the interregnum, so many vocational instructors were appointed but with the name and designation of vocational Instructors (Engineering) having same responsibilities, qualification, and doing same work as that of erstwhile Engineering Instructors which is claimed to be vanishing by the petitioners herein at the time of filing of the writ petition and the last of such Engineering Instructor retired in the year 2013 itself. However, students are admitted in the said vocational course across the state and the vocational Instructors alone are handling those classes. In such circumstances, the reasoning attributed by the respondents for denying the petitioners their claim for the award of same scale of pay as that of the Engineering Instructors on some flimsy grounds cannot be countenanced especially when the petitioner's seek such scale of pay only from the date of acquiring the Degree qualification in Engineering i.e. B.E., it is immaterial whether they have undergone the said Degree either in the evening college or regular day college and that too after obtaining proper permission from the authorities concerned.

21. This Court is of the considered opinion that the petitioners have made out a clear case for the award of equal scale of pay as that of the Engineering Instructors since they are doing the same work and also fully qualified for the said post. Hence, there is no justification for the respondents to deny the scale of pay since there cannot be two sets of Instructors with different nomenclature for doing the same work of handling classes for higher secondary students in engineering namely, Engineering Instructors and vocational Instructors (Engineering) which is nothing but clear discrimination and in violation of Article 14 and Article 39(d) of the Constitution of India. The Hon'ble Apex Court in the latest decision in the State of Punjab and others v. Jagjit Singh and others reported in (2017) 1 SCC 148 has scaled down the principles in the case of equal pay for equal work which is squarely applicable to the facts and circumstances of the present case.

22. In the result:

(a) both the writ petitions are allowed and the impugned order in Letter No.36238/VE/2010-1 dated 13.07.2011 passed by the 1<sup>st</sup> respondent and the impugned order in Letter No.33339/VE/2010-1 dated 01.06.2011 passed by the 1<sup>st</sup> respondent are set aside;

(b) the respondents are directed to grant scale of pay to the petitioners in both the writ petitions on par with the scale of pay applicable to the post of Engineering Instructors with B.E. qualification doing the same work from the date of acquiring the Degree qualification;

(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/-  
Assistant Registrar(CS-III)

//True Copy//

vs Sub Assistant Registrar  
To

1. The Secretary, State of Tamilnadu,  
School Education Department,  
Fort St. George, Chennai - 9.
2. The Director of School Education,  
College Road, Nungambakkam, Chennai - 6.
3. The Chief Educational Officer,  
Salem, Salem District.
4. The Chief Educational Officer,  
Cuddalore, Cuddalore District.
5. The Chief Educational Officer,  
Villupuram, Villupuram District.
6. The Chief Educational Officer,  
Vellore, Vellore District.
7. The Chief Educational Officer,  
Tirunelveli, Tirunelveli District.
8. The Chief Educational Officer,  
Thoothukudi, Thoothukudi District.
9. The Chief Educational Officer,  
Kanyakumari District, Nagercoil.

+2 ccs to Mr.V.Thirupathi, Advocate, S.R.No.57477, 57478  
+1 cc to the Government Pleader, S.R.No.57918

W.P.Nos.25315 and 25316 of 2012

KAN(CO)  
SSM(25/03/2019).