

THE HON'BLE SRI JUSTICE SANJAY KUMAR
AND
THE HON'BLE SRI JUSTICE M.GANGA RAO

WRIT PETITION NOS.26160, 26214, 26226,
28828 AND 28975 OF 2009

COMMON ORDER
(Per Sri Justice Sanjay Kumar)

Petitioners in this batch of cases are sixteen in number. All of them belong to Scheduled Tribes. They were appointed as Special Teachers in the year 1989 when the erstwhile State of Andhra Pradesh undertook recruitment to fill up backlog vacancies of Secondary Grade Teachers reserved for Scheduled Tribes. At that time, they did not possess Teacher Training Certificates, the requisite qualification to be appointed as teachers. However, the Government of Andhra Pradesh relaxed this qualification in so far as Scheduled Caste and Scheduled Tribe candidates were concerned, *vide* G.O.Ms.No.223, Education (Ser.III-2) Department, dated 01.07.1989. This G.O. referred to the fact that with a view to provide an impetus to agency areas in the field of education and to improve job opportunities of Scheduled Tribe candidates, G.O.Ms.No.302 dated 10.07.1986 had been issued providing that Scheduled Tribe candidates with X Class pass or fail should be appointed as teachers in Primary Schools, sanctioned and allotted to tribal areas, in the absence of qualified tribal candidates. The G.O. further recorded that as it had been represented that in certain districts, sufficient number of Scheduled Caste/Scheduled Tribe candidates possessing the qualifications prescribed under the relevant rules to hold the posts of Secondary Grade Teachers/Special Teachers were not available and certain concessions had been given to Scheduled Tribe candidates in Integrated Tribal Development Agency areas. As the Director of School Education, Andhra Pradesh, had also recommended it, the Government decided to relax

the existing training qualification prescribed under the relevant rules, i.e., Teacher Training Certificate for recruitment to the posts of Secondary Grade Teachers/Special Teachers in so far as Scheduled Caste and Scheduled Tribe candidates were concerned, wherever qualified candidates from those categories were not available in the District, subject to the condition that they should acquire the qualification within two years. It was by virtue of this relaxation that the petitioners in this batch of cases were appointed as Special Teachers though they did not possess Teacher Training Certificates. It is an admitted fact that they all acquired the requisite qualification thereafter. They were extended the minimum of the time scale applicable to Secondary Grade Teachers in July/August, 1992.

While so, the Government issued Memo dated 30/31.07.2003 informing the Director, State Audit, Hyderabad, that the Scheduled Caste and Scheduled Tribe candidates who were appointed as teachers pursuant to G.O.Ms.No.223 dated 01.07.1989 without possessing Teaching Training Certificates during the year 1989 were entitled to notional increments from the date of their appointment till they acquire the Teacher Training Certificates and monetary benefits would be allowed to them from the day following the last day of acquiring such Teacher Training Certificates. This, in effect, was what had been done in the petitioners' cases.

It appears that some Scheduled Caste and Scheduled Tribe Special Teachers, appointed in the year 1989, who were given only consolidated monthly pay of Rs.398/- filed O.A.No.6707 of 2004 before the Andhra Pradesh Administrative Tribunal, Hyderabad, (*for brevity*, 'the Tribunal'), which was disposed of on 13.12.2004 directing the Government to examine their representations with reference to their entitlement to the time scale of pay of Rs.1010-1800 from the date of their appointment. The District

Educational Officer, Khammam, thereupon issued proceedings dated 15.10.2005, enclosing copies of the judgment dated 13.12.2004 in O.A.No.6707 of 2004, the Government instructions dated 18.01.2005 along with the Government Memo dated 30/31.07.2003, and requested the Mandal Educational Officers concerned to take appropriate action in the matter as per rules. Again, the District Educational Officer, Khammam, issued proceedings dated 15.04.2006 stating that Scheduled Tribe Special Teachers who were appointed during the year 1989 were entitled for notional increments from the date of their appointment as such, in reply to the representation made by such teachers. However, at that stage, things took a different turn owing to the views expressed by the Director, State Audit, Hyderabad, *vide* his letter dated 22.05.2004. Some of the Special Teachers had filed O.A.Nos.183 and 563 of 2004 seeking extension of the regular scale of pay attached to the post of Secondary Grade Teachers to them from the date of their initial appointment and the Tribunal, by order dated 20.01.2004, directed the authorities to examine the representations made by such teachers with reference to the rules and the instructions issued by the Government and pass appropriate orders. Thereupon, the Chief Executive Officer, Zilla Parishad, Warangal, issued proceedings allowing the regular scale from the date of their initial appointment along with notional increments. However, when the bills were presented for audit, an objection was raised to the effect that such Special Teachers were not eligible for the regular scale from the date of their initial appointment along with notional increments. The Director, State Audit, Hyderabad, sought a clarification as to whether such teachers were eligible for minimum of the time scale of Rs.1010-1800 from the date of their appointment and also for notional increments. The Director of School Education, Andhra Pradesh, thereupon

informed the Government that during the year 1989, the Chief Executive Officer, Zilla Parishad, Warangal, made recruitment to the posts of Special Teachers, pursuant to G.O.Ms.No.223 dated 01.07.1989, in the vacancies sanctioned in tribal area schools, *vide* G.O.Ms.No.302 dated 10.07.1986. He also pointed out that performance of these Special Teachers was to be observed for a period of three years and only those whose performance was satisfactory were to be considered for absorption. Thereupon, Memo dated 26.06.2006 was issued, wherein the Government opined that the applicants in the O.As. had been appointed as Special Teachers only on a consolidated monthly pay of Rs.398/- and were not eligible for time scale or notional increments. The Director of School Education, Andhra Pradesh, was requested to cancel the proceedings issued by the Chief Executive Officer, Zilla Parishad, Warangal, after affording an opportunity to the applicants in the O.As. and to reject their representations, along with those of similarly placed persons, by way of a speaking order.

Thereupon, the District Educational Officer, Khammam, who had earlier issued proceedings dated 15.10.2005 extending the time scale and notional increments to the Special Teachers, cancelled the same, *vide* office proceedings dated 20.10.2006. The District Educational Officer, Khammam, then issued proceedings dated 15.11.2006 informing the Mandal Educational Officers that if increments had been allowed to Special Teachers appointed during the year 1989, the same should be recovered and remitted to the concerned relevant head of account. Aggrieved by the proposed recoveries, the petitioners in these cases approached the Tribunal. The two petitioners in W.P.No.26160 of 2009 and the four petitioners in W.P.No.28975 of 2009 filed O.A.No.7664 of 2006 along with others; the petitioner in W.P.No.28828 of 2009 and the five petitioners in W.P.No.26226 of 2009 were amongst the

applicants in O.A.No.7461 of 2006; while the four petitioners in W.P.No.26214 of 2009 filed O.A.No.7832 of 2006. By common order dated 11.09.2009, the Tribunal dismissed the O.A.s, leading to these writ petitions.

The issue presently is whether it would be just to allow the authorities to effect recovery of the payments made to these teachers long ago.

It may be noted that the Government of Andhra Pradesh issued G.O.Ms.No.95, Education (EE.1) Department, dated 30.03.1990, adverting to G.O.Rt.No.378 dated 22.03.1988 and G.O.Ms.No.68 dated 23.02.1989, whereunder provision had been made for filling up the existing vacancies in the posts of Special Teachers by making appointments on a consolidated monthly pay of Rs.398/- and for absorption of those whose performance was satisfactory, after observation for a period of three years. This absorption was to be made into the regular time scale of pay, subject to availability of vacancies and the rules governing recruitment to the posts. The G.O. also recorded that the Director of School Education, Andhra Pradesh, had addressed letters dated 20.04.1989 and 10.06.1989 informing the Government that in the conference of the Chairmen of Zilla Praja Parishads held on 04.04.1989, it was decided to send proposals to the Government to delete the clause in relation to performance observation for a period of three years so as to enable quicker absorption of fully qualified and trained Special Teachers in the scale of Secondary Grade Teachers, whenever such posts became available. The Government thereupon issued a clarification that if vacancies of Secondary Grade Teachers arose due to retirements or creation of posts, Special Teachers could be absorbed against those vacancies strictly in accordance with the merit list prepared at the time of their recruitment, even if such Special Teachers had not completed three years of service, as specified in G.O.Ms.No.68 dated 23.02.1989. The Government further

clarified that only the vacancies of Special Teachers that existed as on 23.02.1989 were to be filled up and not those that arose consequent upon their absorption as Secondary Grade Teachers.

In this regard, it may also be noted that the Government of Andhra Pradesh promulgated the Andhra Pradesh School Educational Subordinate Service Rules, *vide* G.O.Ms.No.538, Education (Ser.II) Department, dated 20.11.1998, in exercise of power under Article 309 of the Constitution and in terms of Rule 2(ii) thereunder, the Andhra Pradesh School Educational Subordinate Service is to consist of five classes of posts. Category II in Class 3 of the service comprises Secondary Grade Teachers. Significantly, there is no post of 'Special Teacher' included in the cadre. In the light of G.O.Ms.No.95 dated 30.03.1990, it is clear that the ex-cadre posts of Special Teachers created under G.O.Ms.No.302 dated 10.07.1986 were only to meet the exigency of catering to the needs of tribal areas and the incumbents appointed to these posts were to be absorbed as Secondary Grade Teachers in Category II of Class 3 in the Andhra Pradesh School Educational Subordinate Service in due course of time.

Though no proper details are forthcoming from the pleadings, it is an admitted fact that all the petitioners have been absorbed and are presently working as Secondary Grade Teachers. The issue however is as to their entitlement to the regular scale of pay along with notional increments prior to such absorption. It may also be noted that it is an admitted position that backlog vacancies in the reservation category for Scheduled Tribes were very much available at the time recruitment was undertaken in the year 1989. That being so, the methodology adopted by the Government of appointing those who were selected in such recruitment process as Special Teachers on a consolidated monthly pay of Rs.389/- with the rider that their performance

would be watched for three years and only then, they would be entitled for absorption into the regular cadre posts of Secondary Grade Teachers, is inexplicable. This being the factual situation, the stand of the Government before the Tribunal that such absorption was to be made only upon retirements or creation of posts cannot be countenanced. If backlog vacancies were actually available at the time of the recruitment itself, the question of awaiting retirement of the existing incumbents or creation of new posts did not arise.

That apart, confusion and lack of clarity on the part of the authorities in dealing with these teachers is demonstrable. Orders were issued extending to them the time scale of pay along with increments but contrary orders were issued long thereafter. When the very grant of the time scale along with notional increments was under intimation to the Audit Department, it is surprising that the Government backtracked when the Audit raised an objection. The adverse effect of this indecisiveness on the part of the Government is now sought to be visited upon these hapless teachers.

Hon'ble Dr.A.P.J.Abdul Kalam, our respected former President, once said that if the country is to be corruption free and become a nation of beautiful minds, there were three key societal members who could make a difference and they were the father, the mother and the teacher. John Steinbeck, Nobel laureate and American author, echoed this sentiment differently when he said that teaching might be the greatest of the arts since the medium is the human mind and spirit. Unfortunately, the position of teachers has deteriorated in our Indian society. This noble profession is now held in low esteem notwithstanding the fact that wise men have sounded the death knell, time and again, for societies that do not respect their teachers. Be that as it may.

It is however not in dispute that the recoveries sought to be effected pursuant to the proceedings dated 15.11.2006 were stayed all through. The petitioners had the benefit of interim orders to this effect during the pendency of the O.As. and upon admission of these writ petitions, similar interim relief was extended to them by this Court. The question is whether we should now undo the same. In this regard, Sri M.Surender Rao, learned senior counsel representing Sri Madiraju Srinivasa Rao, learned counsel for the petitioners in these cases, would place reliance on the decision of the Supreme Court in *STATE OF PUNJAB V/ s. RAFIQ MASIH (WHITE WASHER)*¹. Therein, the issue was whether the authorities could recover monetary benefits given to employees in excess of their entitlement, when the mistake was committed by the employer and the employees were not guilty of furnishing any incorrect information leading to commission of such a mistake. In these circumstances, the Supreme Court addressed various aspects relating to whether recovery of excess amounts could be permitted and if so, in which situations. Having examined a number of judgments on this point, the Supreme Court broadly opined that orders of recovery could only be interfered with in cases where such recovery would result in a hardship of a nature which would far outweigh the equitable balance of the employer's right to recover. In other words, *per* the Supreme Court, interference would be called for only in such cases where it would be iniquitous to recover the payments made. The Supreme Court ultimately concluded that though it would not be possible to postulate all situations of hardship which would govern the issue of recovery; a few situations could be summarized where recovery by the employer would be impermissible in law. One such situation is where the Court arrives at the conclusion that recovery,

¹ (2015) 4 SCC 334

if made from the employee, would be iniquitous or harsh or arbitrary to such an extent as would far outweigh the equitable balance of the employer's right to recover.

Before applying this legal principle to the cases on hand, we must again affirm that the procedure followed by the Government while making appointments in the year 1989 was not in accordance with the rules. Ex-cadre posts were filled up by way of direct recruitment, duly following a selection procedure, but after allowing relaxation of the necessary qualification. Further, there was no necessity to make such appointments to ex-cadre posts as backlog regular vacancies were actually available. In this context, the learned Government Pleader would contend that none of the petitioners in these cases had the requisite Teacher Training Certificates and therefore, they could not claim entitlement to the regular time scale in violation of the norms.

However, we are not persuaded to agree. It was the Government which came up with G.O.Ms.No.223 dated 01.07.1989, in its own wisdom, giving the benefit of such relaxation to them, in so far as the qualification was concerned, owing to the fact that these backlog vacancies in tribal areas were mounting and similar such relaxations had already been extended in Integrated Tribal Development Agency areas. This relaxation was therefore adopted so as to benefit the society and not the appointees. It is not in dispute that the petitioners acquired the requisite qualification thereafter and are continuing as Secondary Grade Teachers as on date. This would demonstrate that their performance was found to be adequate and they were regularized in service, in terms of G.O.Ms.No.95 dated 30.03.1990.

The paramount factor which would weigh with this Court in the present scenario is the indecision on the part of the authorities while dealing

with the entitlement of these teachers to regular time scale of pay and notional increments. It is not open to the State or its instrumentalities to manifest the kind of uncertainty and irresolution as has been done in the cases on hand. An employee needs to be given a sense of security and when the Government passes a particular order, the employee would be justified in assuming that it would not be reversed for the mere asking. It is therefore not open to the Government to backtrack upon its decision and vacillate like a pendulum. That apart, as already pointed out *supra*, the so-called recovery sought to be effected pursuant to the impugned proceedings dated 15.11.2006 never materialized. In such circumstances, it would be wholly iniquitous and unjust to allow such recoveries to be given effect to after the lapse of over twelve years. The cases on hand therefore squarely fall within the excepted category in *RAFIQ MASI H (WHITE WASHER)*¹. Unfortunately, the Tribunal took a rather dogmatic view and held against the petitioners on the issue of entitlement, without considering the iniquity of permitting the authorities to make such recoveries though three years had elapsed even by the date of dismissal of the O.As.

The writ petitions are accordingly allowed setting aside the common order dated 11.09.2009 passed by the Tribunal in the batch of O.As. along with the proceedings dated 15.11.2006 and the Memo dated 26.06.2006.

Pending miscellaneous petitions, if any, shall stand closed in the light of this final order. No order as to costs.

SANJAY KUMAR,J

M.GANGA RAO,J

27th SEPTEMBER, 2018
PGS