

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.03.2019

CORAM:

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

W.P.No.10228 to 10231 of 2014
and Miscellaneous Petitions 1 to 1 of 2014

1.K.R.Shanthi
2.D.Selvaraju
3.S.Vallinayagam
4.S.Saravanan

...Petitioners in W.P.10228/2014

1.R.Murugesan
2.A.Pandian
3.N.Vasanthakumar
4.M.P.Senthil
5.P.Saravanan
6.S.G.Nirmala
7.P.Shanmugam
8.R.Padmaja
9.N.Gopalsamy
10.T.Balasubramaniam
11.A.Arumugham

...Petitioners in W.P.10229/2014

1.V.Vijayalakshmi
2.R.Subburaj
3.S.Aranoli
4.K.Ganesamurthy
5.R.Manoharan
6.S.Jawahar
7.N.Kalaiarasan
8.R.Banumathi
9.V.Radhakrishnan
10.P.Roch Thanasamy
11.M.S.Rajendran
12.S.Karunanidhi

...Petitioners in W.P.10230/2014

1.A.Chinnapparaj
2.T.B.Gopalan
3.V.Geetha
4.T.Venkatachalam
5.S.Geetha
6.T.Palaniyappan
7. E.Selvi Joys Merry
8.K.Ayyanar
9.Amutha Elizabeth
10.G.Murugesan
11.N.Selvaraj

12.A.Soundarapandian
13.Y.Arokiaraj
14.G.D.P.Jothikumar
15.V.Venkataramanujam
16.S.Suguna

..Petitioners in
W.P.10231 of 2014

Vs

1.The State of Tamil Nadu
rep.by Secretary to Government
Department of Finance
Fort St.George
Chennai-600 009

2.The State of Tamil Nadu
Rep. by Secretary to Government
Department of Education
Fort St.George
Chennai-600 009

3.Director of School Education
DPI Complex
College Road
Chennai-600 006

4.Joint Director School Education (Vocational)
Office of Director of School Education
DPI Complex, College Road
Chennai

..Respondents 1 to 4
in W.P.No.10228/2014
to WP.10231/2014

5.The Chief Educational Officer
Chief Educational Office
Ariyalur, Ariyalur District-621 704

6.The Headmaster
Government Higher Secondary School
Ariyalur, Ariyalur District

7.The Headmaster
Government Higher Secondary School
Nadupatti, Salem District

..Respondents 5 to 7
in W.P.No.10228/2014

8.The Chief Educational Officer
Chief Educational Office
Salem, Salem District 621 704

- 9.The Chief Educational Officer
Chief Educational Office
Tiruppur, Tiruppur District-621 704.
- 10.The Headmaster
Government Higher Secondary School
Udumalpet, Tiruppur District.
- 11.The Headmaster
Government High Secondary School
Pulavadi, Udumalpet, Tiruppur District
- 12.The Headmaster
Government Boys Higher Secondary School
Udumalpet, Tiruppur District
- 13.The Headmaster
Government Higher Secondary School
Pannapatti, Omalur, Salem District
..Respondents 5 to 9
in W.P.No.10229 of 2014
- 14.The Chief Education Officer
Chief Educational Office
Ariyalur, Ariyalur District-621 704
- 15.The Headmaster
Government Higher Secondary School
Udayarpalayam
Ariyalur District
- 16.The Headmaster
Government High Secondary School
Thirumangalam, Madurai District
- 17.The HeadMaster
Government Higher Secondary School
Vilandai Andimadam, Ariyalur District.
- 18.The HeadMaster
Government Higher Secondary School
Kilapalur, Ariyalur District
- 19.The Headmaster
Government Higher Secondary School
Chettikulam, Perambalur District
- 20.The Headmaster
Government Higher Secondary School
Perambalur, Perambalur District

..Respondents 5 to 11
in WP.10230/2014

Prayer:- Writ Petitions are filed, under the Article 226 of Constitution of India, to issue a writ of Mandamus, directing the 1st respondent to declare that "petitioners as vocational instructors have no promotional avenues and hence are entitled to grade pay of Rs.5400 and consequently forbear the respondents from recovering excess salary from the petitioners by wrongly treating the grade pay of the Petitioners at Rs.4800 and pass such further orders.

For Petitioners
in all the above W.Ps: Ms.C.Uma

For Respondents : Mr.K.Karthikeyan
in all the above W.Ps Government Advocate

COMMON ORDER

The petitioners have filed the above Writ Petitions for issuance of Writ of Mandamus directing the 1st respondent to declare that "petitioners as vocational instructors have no promotional avenues and hence are entitled to grade pay of Rs.5400" and consequently forbear the respondents from recovering excess salary from the petitioners by wrongly treating the grade pay of the Petitioners at Rs.4800 and pass such further orders.

2. The petitioners would submit that they are working as Vocational Instructors in Higher Secondary Schools in Tamil Nadu. By report dated 01.01.1996 V Pay Commission fixed Rs.5500-175-9000 as scale of pay for BT Assistant. The same scale of pay was fixed for vocational instructors also as equivalent to BT Assistant Post which comes under the TN Subordinate Service Rules. By proceedings dated 15.07.2013, referring to the audit objection, it was stated that the grade pay of the Petitioners may be reduced from Rs.5400 to Rs.4800 and the excess pay paid to the petitioners may be recovered.

3. The petitioners would further submit that the scale of pay for the Professional Degree holders are equal to the academic degree holders. Hence, as against the fixation of equal pay in the V Pay Commission, the Association of Agricultural Graduates made a representation and One Man Commission was constituted and on seeing the professional degree possessed by the persons and taking classes in Higher Secondary Schools, the One Man Commission recommended the scale of pay at Rs.2,000/- for the Vocational Instructors working in the Higher Secondary Schools in spite of the fact that the P.G. Assistants working in the Higher Secondary Schools were given the scale of pay of Rs.1,840/-. The

recommendation of the One Man Commission was accepted by the Government and the Government issued Order in G.O.Ms.No.840, Finance Department, dated 31.07.1990. Since the pay scale of Rs.2,000/- was not fixed for the Agricultural Instructor with B.Sc. (Agriculture) Degree, they made a representation requesting to fix the scale pay at Rs.2,000/- as per the recommendation of the One Man Commission. Since their representation was not considered, they approached this Court by filing Writ Petitions and the same were allowed with a direction to the respondents to fix the scale of Rs.2,000/- to the Agriculture Instructors. Thereafter, the corresponding revision of pay under the Tamil Nadu Revised Scale of Pay Rules, 1996 was fixed at Rs.6,500/-. Similarly, subsequent Pay Commission revised the scale of pay at P.B. Rs.15,600/- with Grade Pay of Rs.5,400/- from 01.01.2006. Hence, they made a representation to the respondents requesting to fix the scale of pay at Rs.6,500/- under the Revised Scale of Pay Rules, 1996 and at Pay Band of Rs.15,600/- with Grade Pay of Rs.5,400/- as per the VI Pay Commission recommendation, because they were not given the fixation, whereas, they have been given the fixation at Rs.5,500/- and correspondingly, the Pay Band of Rs.9,300/- with Grade Pay Rs.4,600/- respectively.

4. In the light of the order dated 26.02.2019 passed in W.P.No.33959 of 2014, wherein this court, following the earlier orders passed by this court in W.P.(MD).No.5766 of 2008 dated 05.03.2012 and W.A.(MD).No.1344 of 2013 dated 14.08.2014, allowed the Writ Petitions, in the present writ petitions also, this court is of the view that the petitioners herein are 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.

5. It is relevant to extract the order passed by this court dated 26.02.2019 in W.P.No.33959 of 2014, as follows:-

"3. The issue involved in this Writ Petition is no longer res integra. Initially, similarly placed persons have approached Madurai Bench of this Court by filing a Writ Petition in W.P.(MD) No.5766 of 2008 and this Court, by an order dated 05.03.2012, allowed the Writ Petition. Against which, the Government preferred an appeal in W.A. (MD) No.1344 of 2013 and this Court, by an order dated 14.08.2014 dismissed the Writ Appeal. Thereafter, the State preferred SLP.C.No.235 of 2015 before the Hon'ble Apex Court and the Hon'ble Apex Court, dismissed the Special Leave Petition on 07.09.2015. Further, by referring the above said fact, this Court, by an order dated 14.09.2017 in W.P.Nos.9675 & 9676 of

2015, allowed the similar Writ Petitions. The relevant paragraphs would run thus:-

"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:

'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 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 these writ petitions are 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 these writ petitions stand quashed and the writ petitions stand 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.

4. In the light of the above, the orders impugned in the writ petition stands quashed and the writ petition is allowed. It is open to the petitioners to make fresh representation to the second respondent within a period of two weeks from the date of receipt of a copy of this order. On such receipt, the second respondent is directed to consider the representation in terms of the orders passed by this Court in W.P.(MD) No.5766 of 2008 dated 05.03.2012 and W.A. (MD) No.1344 of 2013 dated 14.08.2014 and pass appropriate orders, as early as possible. However, there is no order as to costs. "

6. In the light of the above, the writ petitions are allowed. It is open to the petitioners to make fresh representation to the third respondent-Director of School Education, DPI Complex, College Road, Chennai-600 006, within a period of two weeks from the date of receipt of a copy of this order. On such receipt, the third respondent is directed to consider the representation in terms of the orders passed by this Court in W.P.(MD) No.5766 of 2008 dated 05.03.2012 and W.A. (MD) No.1344 of 2013 dated 14.08.2014 and pass appropriate orders, as early as possible. However, there is no order as to costs. Consequently, connected MPs are closed.

Sd/-

Assistant Registrar(CS IV)

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Sub Assistant Registrar

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To

1.The Secretary to Government, Department of Finance
Fort St.George, Chennai-600 009

2.The Secretary to Government, Department of Education
Fort St.George, Chennai-600 009

3. Director of School Education, DPI Complex
College Road, Chennai-600 006

4. Joint Director School Education (Vocational)
Office of Director of School Education
DPI Complex, College Road, Chennai

5. The Chief Educational Officer, Chief Educational Office
Ariyalur, Ariyalur District-621 704

6. The Chief Educational Officer, Chief Educational Office
Salem, Salem District 621 704

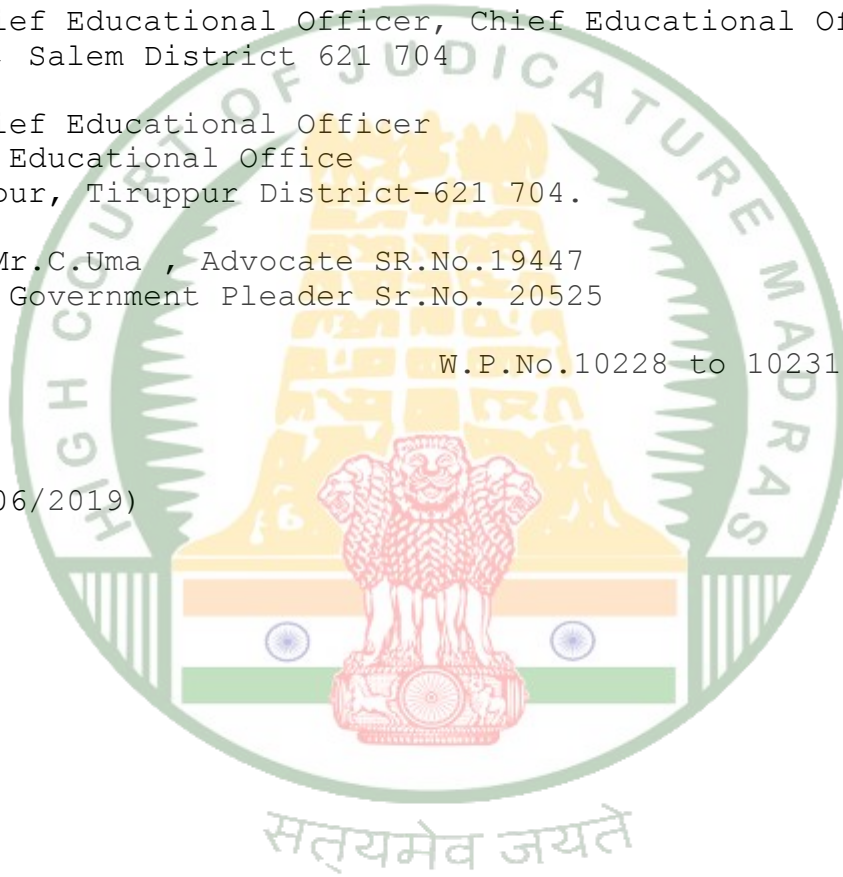
7. The Chief Educational Officer
Chief Educational Office
Tiruppur, Tiruppur District-621 704.

+1cc to Mr.C.Uma , Advocate SR.No.19447

+1 cc to Government Pleader Sr.No. 20525

W.P.No.10228 to 10231 of 2014

ad (CO)
A.SK(28/06/2019)



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