

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.03.2019

CORAM:

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

W.P.No.11071 of 2014

B.Ramachandran

..Petitioner

-Vs-

1.State of Tamil Nadu rep.by
its Secretary to Government
Higher Education Department
Secretariat, Chennai-600 009

2.The Commissioner of Technical Education
Guindy, Chennai-600 025

3.The Principal
Arulmigu Palaniandavar Polytechnic College
Palani-624 601
Dindigul Street

..Respondents

Prayer:- This Writ Petition is filed, under the Article 226 of Constitution of India, to issue a writ of Certiorarified Mandamus, calling for the records pertaining to the order passed by the 1st respondent in G.O.Ms.No.369, Higher Education Department, dated 09.11.2006 and the consequential order passed by the 1st respondent in Government Letter (1D).No.163, Higher Education Department, dated 04.09.2013 and quash the same in so far as the denial of classification of the post of Instructor in Stenography in Nachimuthu Polytechnic College, Pollachi, as teaching post retrospectively with effect from 25.05.1993 and direct the respondents to classify the Post of Instructor in Stenography, non-teaching post as teaching post with effect from 25.05.1993 and confer all the consequential benefit such as re-designation as Associate Lecturer, now as Lecturer, with effect from the same date.

For Petitioner : Mr.Ganesan

For Respondents : Mr.K.Karthikeyan,
Government Advocate
for R1 and R2
No appearance for R3

ORDER

The petitioner has filed this Writ Petition for issuance of writ of Certiorarified Mandamus, seeking to quash the order of the 1st respondent in G.O.Ms.No.369, Higher Education Department, dated 09.11.2006 and the consequential order passed by the 1st respondent in Government Letter (1D).No.163, Higher Education Department, dated 04.09.2013 and quash the same in so far as the denial of classification of the post of Instructor in Stenography in Nachimuthu Polytechnic College, Pollachi, as teaching post retrospectively with effect from 25.05.1993 and direct the respondents to classify the Post of Instructor in Stenography, non-teaching post as teaching post with effect from 25.05.1993 and confer all the consequential benefit such as re-designation as Associate Lecturer, now as Lecturer, with effect from the same date.

2. According to the learned counsel for the petitioner, 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.

3. 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.

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

"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. "

5. In the light of the above, the writ petition stands disposed of with a direction to the petitioner to make fresh representation to the second respondent-Commissioner of Technical Education, 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.

nvsri

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1. The Secretary to Government
Higher Education Department
Secretariat, Chennai-600 009
2. The Commissioner of Technical Education
Guindy, Chennai-600 025
3. The Principal
Arulmigu Palaniandavar Polytechnic College
Palani-624 601
Dindigul Street

WP.11071 of 2014

Kak (26/06/2019)