



W.P.No.39127 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.11.2022

CORAM :

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.39127 of 2016

and

W.M.P.No.13455 of 2017

1. S.Ananda Kumar
2. N.Thilagam
3. C.S.Maheswari
4. G.Chellammal
5. K.Paramen
6. G.Selvaraj
7. K.Kanneswary
8. T.Santha
9. A.Shakila
10. V.Thilagamani
11. B.Manivanan
12. N.Tamilselvi
13. K.Krishnaveni
14. K.Ruckmani



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15. V.Chinnathambi

16. R.Balraj

17. M.B.Prakash

18. B.Ramachandran

19. M.K.Radhakrishnan

20. S.Easwaranayagi

21. M.Pasupathy

22. K.Jothimani

23. D.Devikarani

24. S.Kalavathy

25. K.Banumathy

26. G.Berenetha

27. K.R.Shyla

28. P.Kamaraj

29. R.Devaki

30. A.D.Shyamala

31. J.Meena

32. P.Rajkumar

33. A.Lydia



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34. V.Yasodadevi

35. J.Victor Kannikai Raj

36. K.Indra

37. R.Radhakrishnan

38. R.Sivagnanam

39. N.Yoganandan

40. K.Krishnan

41. A.Kannan

42. A.Desingh

43. P.Jude Lourdunathan

44. N.Ramasamy

45. V.Margret Roseline,
St. Marys Girls Higher Secondary School,
Kotagiri, The Nilgiris District.

... Petitioners

-Vs-

1. The Government of Tamil Nadu,
Rep by Secretary to Government,
School Education Department,
Fort St. George, Chennai-600 009.

2. The Director of School Education,
College Road, Chennai-600 006.

3. The Joint Director of Higher,
Secondary (Vocational Education),
College Road, Chennai-600 006.

... Respondents



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Prayer: Writ Petition filed under Article 226 of the Constitution of India to issue Writ of Mandamus, directing the respondents to grant time scale of pay of Rs.2000 - 3500 to the petitioners from the date of regularisation in the post of Vocational Instructors in Commerce Group and to grant arrears of salary.

For Petitioners : Mr.R.Saseetharan

For Respondents : Mrs.S.Mythreya Chandru
Special Government Pleader

ORDER

The writ of mandamus is filed to direct the respondents to grant a time scale of pay of Rs.2000-3500 to the petitioners from the date of regularisation in the post of Vocational Instructor in the Commerce Group and grant arrears of salary.

2. All the petitioners are now working as regular Vocational Instructors in Commerce Group in the Government Higher Secondary Schools, Corporation Higher Secondary Schools and Aided Higher Secondary Schools in Coimbatore, Tirupur & Nilgiri District. The



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petitioners were initially appointed either as Single Part-Time Vocational Instructor under the Commerce Group in Higher Secondary School, or as Double Part-Time Vocational Instructor under the Commerce Group and some of the petitioners were appointed as Double Part-Time Vocational Instructors from the post of Single Part-Time Vocational Instructors. All the petitioners were brought to the regular time scale of pay with effect from 01.04.1990, 16.10.1992 and 23.09.1994, respectively. The services of the writ petitioners were regularised by the proceedings of the Joint Director of School Education with effect from 01.04.1990, 16.10.1992, and 23.10.1994, respectively.

3. The grievances of the petitioners are that they were appointed and their services were regularized even before the issuance of the ad-hoc rules governing the post of the Vocational Instructors in G.O.Ms.No.6, School Education Department dated 04.01.2000. Thus, they are governed under the pre-existing position that prevailed before the issuance of the ad-hoc rules and thus, the scale of pay which was granted to other Vocational Instructors that are under G.O.Ms.No.840, Finance Department, dated 31.07.1990, to be granted to the writ petitioners. As per the G.O.Ms.No.840, the scale of pay fixed for Agricultural Instructors



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(for B.Sc.Agriculture Degree holder) was Rs.2000-3500. Claiming the said scale of pay, the petitioners had filed the present writ petition.

4. The learned counsel for the petitioners strenuously contended that all the writ petitioners are now working as regular Vocational Instructors and their services were regularised with effect from 1990, 1992 and 1994, respectively. In the context of G.O.Ms.No.840, this Court considered the issues in W.P.32121 of 2006, dated 05.01.2010, and in the said case, the learned Single Judge of this Court held that similarly placed Vocational Instructors cannot be discriminated and equal pay for equal work is to be granted and accordingly, directed to grant the scale of pay of Rs.2000-3500 to the petitioner one Mr. Narayanaswami in the said writ petition and the monetary benefits were also directed to be settled. Relying on the said orders passed in the writ petition, the learned counsel for the petitioners reiterated that the petitioners are also similarly placed, and thus, the scale of pay applicable during the relevant point of time, as per G.O.Ms.No.840, dated 31.7.1990, is to be extended to the petitioners also.



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5. The learned counsel for the petitioner contended that the Judgement of the Full Bench Court, dated 05.03.2021, passed in Writ Appeal(MD) No.201 of 2021, is not a bar for the petitioners to claim the scale of pay of 2000-3500, as per G.O.Ms.No.840. The case of **Mr.Narayanaswami** is referred by the Full Bench of this Court and the said order was not set aside or reversed. Therefore, the full bench drew a line with reference to the category of Vocational Instructors, appointed prior to the ad-hoc rules and after the ad-hoc rules and thus, the benefit is to be extended. Even regarding the delay in filing the writ petition, the learned counsel for the petitioners relied on the judgement of the Supreme Court of India in the case of **Union of India and others Vs. Tarsem Singh, reported in (2008) 8 SCC 648**, wherein, the Apex Court held that in respect of a continuing wrong, the delay cannot be a bar for granting the relief. In the case of the **State of Uttar Pradesh and others Vs. Arvind Kumar Srivastava reported in 2015 (1 SCC) 347**, the Apex Court held that once the Court delivered a judgement in rem with an intention to give benefit to all similarly situated persons, then other persons need not be driven to the Court unnecessarily and the said benefit is to be extended to all the similarly placed persons by the State, and in the present case, the benefit granted to the said Mr.Narayanaswami was



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not extended to these petitioners.

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6. The learned Special Government Pleader objected to the contentions raised by the petitioners by stating that the petitioners are not eligible for the scale of pay of Rs.2000-3500. The petitioners were initially appointed as a part time Vocational Instructors of Higher Secondary Schools for various subjects such as Commerce, Agriculture, Engineering, Horticulture and Home Science. The petitioners were appointed for the Bifurcated Courses by the Headmaster / Secretary / Correspondent of the Government / Aided / Corporation / Municipal Higher Secondary Schools in various Districts within the State and their services are governed by the School Education Department for teaching the vocational students in the newly started Vocational Course vide G.O.Ms.No.1719 / Education, dated 14.09.1978. The writ petitioners had acquired UG Degree only as General Educational Qualification obtained from recognized university at the time of initial appointment as a part-time Vocational Instructor. They were appointed with only Degree qualification in academic subject. The writ petitioners were one among the part-time Vocational Instructors who were brought up into regular time scale posts as Vocational Instructor Grade I, with effect from



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01.04.1990, with reference to G.O.Ms.No.712, Educational Department, dated 28.05.1990, on par with the B.T.Assistant time scale post, as the Government had already fixed only Degree and Diploma as an essential educational qualification in relevant vocational areas for part-time teachers. As such the scale of pay of the Vocational Instructor Grade I fixed by the Government is lesser to the scale of pay of the post of Post-Graduate Assistants. Their services were regularised with effect from 01.04.1990 and 16.10.1992, in Vocational Instructor Grade-1 posts.

7. No Vocational Instructor's scale of pay was increased to Rs.2000-3500 by the Government, as stated by the writ petitioners. The scale of pay of Rs.2000-3500 in 5th Pay Commission pointed out by the writ petitioners vide G.O.Ms.No.840, Finance, dated 31.07.1990, to those Vocational Instructors who rendered service in a Bifurcated Course in 11+2+3, old education pattern only. But in respect of Vocational Instructors, Grade-1, appointment in 10+2+3, new education pattern, ad-hoc rules were framed by the Government vide G.O.Ms.No.6, School Education, dated 04.01.2000, only in the year 2000 and the Vocational Instructors Grade-1 are not governed with the G.O.Ms.No.840, Finance, dated 31.07.1990. Therefore, the presumption of the writ petitioners i.e.,



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is the Vocational Instructors are liable to get salary in the scale pay of

Rs.2000-3500 is incorrect.

8. At the outset, it is contended on behalf of the respondents that the petitioners are not falling under the Government Order issued in G.O.Ms.No.840, regarding the Full Bench judgement referred by the petitioners and the respondents. The Full Bench has answered the following question :

“Is a Vocational Instructor recruited through Teachers Recruitment Board for the post created in G.O.Ms.N.129 School Education (HS3) Department dated 18.05.1999 and G.O.Ms.No.63, School Educational Department dated 13.03.2007 the scale of pay, having been prescribed in the ad-hoc Rules issued in the G.O.Ms.No.6, School Educational (VE) Department dated 04.01.2000, entitled to get higher salary on par with those who were appointed initially as double part time Vocational Instructors and brought under regular scale of pay subsequently but prior to the framing of ad-hoc Rules?”



9. With reference to the above question, the answer has been provided in paragraphs 18, 19, 20 & 21 of the order, which reads as under:

18. We still have to deal with the order dated 21.01.2019 made in W.A.No.1040 of 2019 (The Government of Tamil Nadu represented by its Principal Secretary, School Educational Department Vs. Kalarani & others). It is true that the case of the respondents therein is similar to that of the respondents herein. It also appears that the order dated 21.01.2019 in W.A.No.1040 of 2019 had attained finality. Yet, we are of the view that the present writ appeal cannot be governed by the order dated 21.01.2019 for more than one reason. The Division Bench which dismissed W.A.No.1040 of 2019 was under the impression that the vocational instructors (Agriculture) and vocational instructors in other streams though discharge identical duties, were placed in different time scales. It is not so. A mere look at G.O.Ms.No.6, dated 04.01.2000 is enough to dispel the same. The vocational instructors, whether for Home Science, Commerce and Business and Agricultural, Engineering and Technology, Health or Photography and Music, have been placed in the very same time scale of pay of Rs.5500-175-9000. Secondly, the Division Bench took the view that the decisions



rendered in G.Narayansamy and Vasimalai should be followed. We have already held that vocational instructors appointed under G.O.Ms.No.129, dated 18.05.1999, r/w G.O.Ms.No.6, dated 04.01.2000, constitute a separate class distinct from the one to which G.Narayanasamy and Vasimalai belonged.

*19.It is well settled that Article 14 of the Constitution of India cannot be invoked for perpetuating illegality. A wrong order passed in one case cannot be made the basis for compelling a public authority to pass similar order in any other case. Even if the State implements an erroneous order passed by the Court, it cannot be precluded from challenging a similar order passed in another case, simply because appeal was not preferred in the earlier case (Paragraph No.17 in **State of Madhya Pradesh Vs. Ramesh Chandra Bajpai, reported in (2009) 13 SCC 635**).*

20.To reiterate, vocational instructors recruited through the Teachers Recruitment Board for the posts created vide G.O.Ms.No.129, dated 18.05.1999, and G.O.Ms.No.63, dated 13.03.2007, who are governed by G.O.Ms.No.6, dated 04.01.2000 are not entitled to claim parity of pay scale with those appointed initially as



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double part-time vocational instructors and who were subsequently regularised under G.O.Ms.No.967, dated 16.10.1992.

21.The reference is answered accordingly. The order of the learned single Judge is set aside. W.A.(MD)No.201 of 2021 is allowed. No costs. Consequently, C.M.P(MD)No.622 of 2021 is also dismissed.

10. The Full Bench referred the case of the ***State of Madhya Pradesh vs. Ramesh Chandra Bajpai, reported in (2009) 13 SCC 635***, and in paragraph 19 of its order, it settled the principles with reference to the orders passed in the ***Ramesh Chandra Bajpai's*** case by following the same order in perpetuity under the guise of Article 14 of the Constitution of India.

11. In the context of the above principle, this Court is of an opinion that there is no elaborate discussion about the applicability of G.O.Ms.No.840, dated 31.07.1990, in the order passed in W.P.No.32121 of 2006, dated 05.01.2010 (***Narayanswami's*** case). The order had been passed merely based on the scale of pay stated by the petitioners therein



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as Rs.2000-3500. Even there is no mention of the Government Order passed in G.O.Ms.No.840. When the scope of the order of the Government issued in G.O.Ms.No.840 dated 31.07.1990 has not been considered by the Court, the same cannot be followed at this distance of time by this Court. More specifically, the Government has elaborately stated that the said Government Order is inapplicable to the petitioners who were appointed as part-time Vocational Instructors.

12. Thus, the order passed in W.P.No.32121 of 2006 cannot be followed in a routine manner since there was no elaborate adjudication of the applicability of the Government Order issued in G.O.Ms.No.840, dated 31.07.1990. The said order is to be confined only with reference to the petitioner therein and the same cannot be followed as a precedent for the purpose of extending the benefit of the scale of pay to all other vocational teachers at this distance of time.

13. It is not in dispute that the petitioners were regularised from the year 1990, 1992 and 1994, respectively. They filed the present writ petition in the year 2016, after a lapse of about 24 years from the date of their regularisation. The Government Order relied on by the petitioners



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ie.G.O.Ms.No.840, was issued on 31.07.1990, and even after their regularisation they have not claimed the benefit of the said Government Order for several years. Such a long lapse of time is also to be taken into consideration in the present case and also the judgement relied on by the petitioners may not have any application in respect of the facts of the present case. In the case on hand, the cause cannot be considered as a continuing wrong, in view of the fact that the Government issued G.O.Ms.No.840 on 31.07.1990 and therefore, the cause of action arose when the Government passed an order and the services of the writ petitioners were regularised.

14. However, the petitioners have filed the writ petition after a lapse of about 24 years from the date of regularisation and therefore, this Court is of the considered opinion that the judgements relied on by the petitioners are of no avail for the purpose of getting over the long delay of more than 20 years in approaching the authorities and the High Court. Regarding the reliance placed by the petitioners about the judgement in rem, this Court has not passed an order in rem in W.P.No.32121 of 2006. It is a judgement in personam and cannot be construed as rem. In the absence of any elaborate adjudication regarding the principles, eligibility



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and a direction to that effect, the said judgement cannot be taken as a judgement in rem and therefore, the said contention also deserves no merit consideration.

15. The petitioners have slept over the matter for several years. Even their eligibility is questioned by the respondents. The respondents have stated that the scale of pay of Rs.2000-3500 was not granted to any Vocational Instructor, who all are working on par with the petitioners in the present writ petition. The scale of pay prescribed in G.O.Ms.No.840 is not applicable to the writ petitioners.

16. For all these reasons, this Court does not find any acceptable reason for the purpose of considering the relief. Accordingly, this writ petition stands **dismissed**. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

24.11.2022

Index : Yes
Speaking order
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To



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1. The Government of Tamil Nadu,
Rep by Secretary to Government,
School Education Department,
Fort St. George, Chennai-600 009.
2. The Director of School Education,
College Road, Chennai-600 006.
3. The Joint Director of Higher,
Secondary (Vocational Education),
College Road, Chennai-600 006.



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S.M.SUBRAMANIAM.J.,

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