



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 21.12.2021
Pronounced on : 12.01.2022

WEB COPY

CORAM:
THE HONOURABLE MRS.JUSTICE S. SRIMATHY
W.P(MD) No.7798 of 2013

B. Parthasarathy

:Petitioner

..VS..

1.The Government of Tamil Nadu,
Rep. By its Principal Secretary,
Department of Higher Education,
Fort. St. George, Chennai.

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

3.The Joint Director of Collegiate Education,
Madurai Region,
Madurai.

4.Madurai Kamaraj University,
rep. By its Registrar,
Palkalai Nagar, Madurai
(R4 is impleaded vide Court order dated 09.11.2021
in WMP(MD).No.12156 of 2012 in
WP(MD).No.7798/2013)

: Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of to issue a Writ of Certiorarified Mandamus calling for the records pertaining to the impugned order passed by the 1st respondent in G.O (2D).No.38, Higher Education (E2) Department, dated 03.09.2012, quash the same in so far as the petitioner is concerned and direct the first respondent to fix the pay scale of the petitioner at Rs.16,400-22,400/- from 29.04.1998 and disburse all attendant benefits from 29.04.1998.

For Petitioner : Mr. M. Saravanan

For R1 to R2 : Mr. D. Sachi kumar
Additional Government Pleader

For R4 : Mr. D. Ragatheesh Kumar
for M/s. Isaac Chambers



O R D E R

The Writ Petition is filed to quash the G.O.(2D).No.38, Higher Education (E2) Department, dated 03.09.2012 and directed the first respondent to fix the Scale of Pay of the petitioner at Rs.16,400-22,400/- and disburse the all attendant benefits from 29.04.1998.

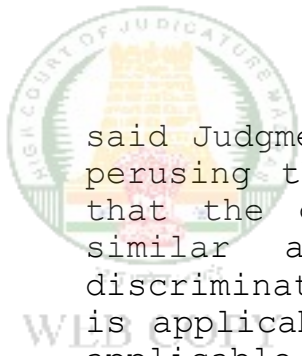
2. The petitioner joined as Assistant Professor on 03.07.1970 and subsequently, migrated to another college on 29.04.1998. As per the Government of India, the revised scale of pay is applicable to the College and University teachers with effect from 01.01.1996 and the revised scale of pay are also implemented by the State Governments as well. The first respondent Government adopting the pay scales of College teachers and staffs as accepted by the Government of India but made a deviation with respect of pay scales of Principals of Arts and Science Colleges alone. Instead of fixing the same scale of pay, the first respondent has created two separate grades for Principals on the basis of the students strength and Post Graduate courses vide Annexure II Clause 2 of G.O. Ms. No. 111, dated 24.03.1999. The same was challenged by the petitioners in W.P. (MD). No. 19429 of 2000 and this Court vide order dated 14.12.2009 directed the petitioners to submit a representation to the first respondent and in turn the first respondent pass orders within a period of three months as per the directions in W.P. (MD). No. 23775 of 2001. The petitioner submitted a representation, but the first respondent has passed the impugned G.O. Aggrieved over, the present Writ Petition is filed.

3. The second respondent has filed a detailed counter that the Grade -I and Grade II Categories were created based on the students strength and number of PG Courses. Initially, when the Professor gets promoted to Grade -II, he should have experience of Administrative work in the Principal Cadre after the fullest satisfaction of the Head of the Department and if the candidate is possessing 15 years of teaching experience along with other criteria for the promotion, the individual shall be included in the promotion panel. The Grade II, Principal would be posted in colleges smaller than Grade - I Colleges considering the student's strength as well as the courses offered. So there is no violation of Article 14 of the Constitution of India.

4. Heard the learned counsel appearing on either side and perused the materials available on record.

5. The submission of the petitioner is that the issue is considered by this Court in W.P. No. 23775 of 2001 vide order dated





said Judgment is squarely applicable to the petitioner as well. On perusing the order passed in the above writ petition, it is seen that the qualification prescribed for Grade I and Grade II are similar and the Hon'ble Court has held there cannot be discrimination for the said two categories. Moreover, the said G.O. is applicable to the Government colleges and this condition is not applicable to the private aided colleges. This Court is of the considered opinion that there cannot be discrimination from Grade I and Grade II post.

7. However, the Judgment has not considered the Government has power to impose conditions if grant-in-aid is granted. The Government has imposed the said condition to increase the students strength in the college. The private institutions were allowed to start in order to impart education wherever there are no government institutions and the government had come forward to pay grant-in-aid. The concept of grant was initiated to give a support to the institutions. In earlier period the numbers of institutions in an area were taken, then for each institution a percentage is fixed and but now 100% support is granted. The support is only through "grant" and the same is not a right. However now the private institutions are demanding the grant-in-aid as a right. Therefore, while granting 100% grant-in-aid then the government has every right to impose condition that the grant of so much amount would be disbursed if the students strength is so much and if less students strength is there then less amount would be disbursed. The balance amount the institution ought to manage and pay on par with the UGC Regulations. The issue of grant-in-aid is considered by the Hon'ble Supreme Court in the State of Bihar v. Sachindra Narayan, [(2019) 3 SCC 803], the Hon'ble Supreme Court took note of the discretionary nature of a grant and observed as under:-

"The release of grant is in discretion of the grantor and cannot be forced by the grantee."

While upholding Section 14-A of the Act, the Hon'ble Division Bench of this Court in Maria Grace Rural Middle School vs. The Government of Tamil Nadu [(2007) 2 MLJ 497], has also held that grant-in-aid is neither fundamental right nor a constitutional right. Therefore, once it is held that grant-in-aid is the not a fundamental right, obviously no mandamus would lie to compel the Government to grant such aid. Therefore this Court is of the considered opinion that grant-in-aid is not automatic and it is the discretionary power of the Government. The Government after taking into the financial affordability has power to fix certain conditions, since the Government is dealing with the public money and Government has also responsibility to deal with the finance with due diligent. Therefore, this Court deems it fit to remit the case to the Government and the



Government after taking all the necessary facts and circumstances into consideration and especially the financial affordability of the Government shall be taken into consideration and pass orders. If still the Government wants to segregate the said two post the Government shall pass fresh Government order after taking into consideration of the grant-in-aid also.

8. With the above direction, the Writ Petition is disposed of. No costs.

Sd/-

Assistant Registrar (As)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

trp

To

- 1.The Principal Secretary,
The Government of Tamil Nadu,
Department of Higher Education,
Fort. St. George, Chennai.
- 2.The Director of Collegiate Education,
College Road, Nungambakkam,
Chennai - 600 006.
- 3.The Joint Director of Collegiate Education,
Madurai Region,
Madurai.
- 4.The Registrar,
Madurai Kamaraj University,
Palkalai Nagar, Madurai

+1 CC to M/s.R.SUBRAMANIAN, Advocate (SR-1621[F] dated 12/01/2022)

+1 CC to M/s.ISAAC CHAMBERS, Advocate (SR-1670[F] dated 19/01/2022)

+1 CC to M/s.SPL.GP (SR-1727[F] dated 19/01/2022)

W.P(MD) No.7798 of 2013
12.01.2022

MGJ(28.01.2022) 5P 8C