



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 18.10.2022

Pronounced on : 13.12.2022

CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P(MD)Nos.3136 of 2014 and 17152 of 2018
and W.M.P(MD).No.15084 of 2018

M.Starlet Grace,
Graft Teacer,
Bishop Arockiasamy Higher Secondary School,
Maravankudiruppu-629 002.
Kanyakumari District.

... Petitioner in both W.Ps

Vs.

- 1.The State of Tamil Nadu
Rep. by its Principal Secretary,
Department of School Education,
Fort St. George,
Chennai-600 009.
- 2.The Director of Elementary Education,
Chennai-6.
- 3.The Chief Educational officer,
Nagercoil,
Kanyakumari District.



WEB COPY

4.The District Educational Officer,
Nagercoil,
Kanyakumari District.

5.The Correspondent,
Bishop Arockiasamy Higher Secondary School,
Maravankudiruppu-629 002,
Kanyakumari District.

... Respondents
in both W.Ps

PRAYER in W.P(MD).No.3136 of 2014: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Mandamus, to direct the respondents to consider the claim of the petitioner for arrear of salary from 01.03.1989 to till dated for the service rendered by the petitioner in pursuance to the appointment as Graft instructor with effect from 01.07.1983 and the approval dated 11.11.1987 by the fourth respondent.

PRAYER in W.P(MD).No.17152 of 2018: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, to call for the impugned G.O.Ms.No.454 dated 08.05.1992 on the file of the first respondent and quash the same as it is injustice and illegal and consequently direct the respondents to pay the entire arrears of salary to the petitioner from 08.05.1992 till the date of superannuation after passing appropriate orders for the approval of the remaining period.



WEB COPY



For Petitioner : Mr.S.Xavier Rajini
(In both W.Ps) for Mr.R.Murugan
For R1 to R4 : Mr.V.Omprakash
(In both W.Ps) Government Advocate (Civil Side)
For R5 : Mr.K.Ragatheesh Kumar
(In both W.Ps) for M/s.Isaac Chamers

COMMON ORDER

The W.P.(MD)No.3136 of 2014 is filed by M.Starlet Grace for Mandamus to direct the respondents to consider for salary from 01.03.1989 to till date for the service rendered as Craft Instructor with effect from 01.07.1983 based on the approval of the respondents dated 11.11.1987.

2. The W.P.(MD)No.17152 of 2018 is filed by M.Starlet Grace for Certiorarified Mandamus to quash the impugned G.O.Ms.No.454 dated 08.05.1992 and consequently direct the respondents to pay the entire of salary from 08.05.1992 till the date of superannuation after passing appropriate orders for the approval of the remaining period.



WEB COPY

3. The brief facts as stated in the writ affidavit is that the petitioner was appointed by the 5th respondent school, which is a Private Minority School. The petitioner has not received any salary from 01.03.1989 to 31.05.1991 and the same is entered in the Service Register bearing No.1338/1987. But the government salary was stopped to the petitioner and the post was terminated as per the G.O.Ms.No.454 dated 08.05.1992. Thereafter the schools filed litigation, based on the orders of the Court salary was paid to the teachers from 01.06.1991, but the petitioner was not granted salary. The contention of the petitioner is that her service was terminated without giving any notice. Hence the petitioner and the 5th respondent school submitted representations to the concerned respondent to grant permanent craft teacher post to the school. The petitioner also submitted a representation to the Educational Minister and also submitted several representations to the concerned authorities. Then the petitioner filed W.P.No. 3873 of 1986 and the school had filed a writ petition in W.P.No.3874 of 1986 wherein the petitioner and the school had sought direction to the educational department to sanction teaching and non-teaching post and disburse grant-in-aid from the year of recognition i.e. from 1983 onwards as per the G.O.Ms.No.581



WEB COPY

Education dated 23.04.1964 and G.O.Ms.No.583 Education dated 23.04.1966 and other rules and regulations. The Hon'ble Court vide order dated 24.03.2008 directed to grant salary within 16 weeks. Then the authorities directed the school to submit particulars vide communication dated 11.08.2008 and the school had submitted the particulars on 25.08.2008, but then there was no reply from the department. Then the petitioner submitted several representations and since there was no reply, the petitioner had filed the W.P.(MD)No.3136 of 2014.

4. The facts as stated in the affidavit filed in W.P.(MD)No.17152 of 2018 is that when the aforesaid writ petition came up for hearing it was directed to challenge the said G.O.Ms.No.454 and hence the petitioner has challenged the said G.O. The contention of the petitioner is that the petitioner was appointed in the 5th respondent school in the year 1983 and during the year 1983 the school was not granted grant-in-aid by the government. Hence the school approached the High Court to direct the respondents sanction grant-in-aid and the High Court through interim order directed the respondents to sanction grant-in-aid for salary. Thereafter the respondent passed G.O.Ms.No.503 dated 26.03.1997 and



WEB COPY

temporarily sanctioned 10 posts including Craft Teacher and paid salary. Suddenly the respondents have issued G.O.Ms.No.454 and extended grant-in-aid to all the 9 posts, but stopped the grant-in-aid for the petitioner. But this sudden stoppage of salary was not informed by the government or the authorities or the 5th respondent school. But the petitioner was continuing in the said post. The 5th respondent had not terminated the petitioner from service and hence the petitioner was under the impression that the petitioner would be paid salary after the litigation are over. The petitioner approached the management, wherein the management has not informed the real situation, but informed there was some problem in sanctioning grant-in-aid and after completion of the formalities the salary would be paid. Infact the management had preferred contempt petition. Finally, the above writ petitions were disposed of vide order dated 24.03.2008 as per the remand order of the Supreme Court. Inspite of the direction of the High Court the respondents have not paid the salary to the petitioner. Hence the petitioner to quash the impugned G.O.Ms.No.454 and direct the respondents to pay salary.



WEB COPY

5. The respondents have filed counter stating that the school had filed writ petition and in order to comply with the interim order the respondents temporarily granted the posts of Headmaster, B.T. Assistant, Tamil Pandit, Physical Education Teacher, Secondary Grade Assistants, Craft Teacher and non-teaching staffs like Junior Assistant, Record Clerk, Office Assistant, Sweeper. After final disposal of the writ petition the government have examined carefully about the further continuance of grants for the above said posts with reference to the directions in the High Court Judgment dated 10.09.1990 in a batch of cases. And on the basis of the general orders in G.O.Ms.No.340 and 341 Education dated 01.04.1992 settling the norms to be followed. Accordingly, sanction was granted for staff grant based on the assessment of students' strength and the government issued the impugned G.O.Ms.No.454 and sanctioned permanent posts of Headmaster, B.T. Assistant, Tamil Pandit, Physical Education Teacher, Secondary Grade and non-teaching staffs of Junior Assistant and Office Assistant only. Hence respondents prayed to dismiss the writ petitions.



WEB COPY

6. Heard Mr.Xavier Rajini for Mr.R.Murugan, the Learned Counsel for the petitioner and Mr.V.Omprakash, the Learned Government Advocate for respondent 1 to 4 and Mr.Ragatheesh Kumar for the 5th respondent and perused the records.

7. The Government had sanctioned vide G.O.Ms.No.503 dated 26.03.1987 for creation of 10 posts temporarily which is based on the interim orders of the court. The government has also mentioned specifically that in case the Courts have held against the school, the salary paid ought to be remitted back to the government. Thereafter the writ petitions were disposed of directing the respondents to consider and sanction the post permanently. Based on the direction and based on the inspection of the school, students' strength the respondents have come to the conclusion that the school is entitled to get only 7 posts and has sanctioned only 7 posts. The petitioner has projected as if the respondents have left out the craft teacher post deliberately. But on verifying the records it is seen that the respondents have initially granted 10 posts based on interim orders, but subsequently granted seven permanent posts only. Therefore, the allegation that



WEB COPY

the Craft Teacher post alone was deliberately not granted in not true. This Court is of the considered opinion that, when the government has specifically granted permission for only seven posts by taking into consideration of the students' strength, then the petitioner is not entitled to the post. And the school is not entitled to 10 posts.

8. The government while sanctioning the permanent posts through the impugned G.O. have specifically stated that "the costs of these posts from the date of cessation of grant with reference to the interim sanction mentioned in paragraph one above till 31.05.1991 will have to be borne from funds of the management". Moreover, the said G.O. also states,

"3. As regards the other posts mentioned in paragraph 1 above which government have not approved for assessment of grant from 01.06.1991 their cost will have to be met by the management from its funds if it wants to continue them. The management is also free to disband these posts in its own discretion."



WEB COPY

The government has specifically imposed a condition that the unapproved posts shall be continued but the management should bear the responsibility of paying the salary to the employee. The temporary approval of the government based on the interim orders of the Court would not give a right to seek any financial assistance to the school. The petitioner has served as management employee from 01.06.1991 onwards and the petitioner was not working as government aided employee. Hence, the petitioner was working as management employee in an unsanctioned post and hence the petitioner is not entitled to any financial assistance from the respondents. The petitioner or the school is not having any constitutional right or any right to claim grant-in-aid.

9. The Grant-in-Aid Code has categorically stated that schools may be paid grant-in-aid subject to the orders and instructions issued by the government from time to time. When the order of approval was not granted, then as per Rule 6 the school is not entitled to claim grant-in-aid. Therefore, this Court is of the considered opinion that the plea that the said teacher was appointed and hence the school is entitled to grant-in-aid is rejected.



WEB COPY

10. The Learned Counsel appearing for the petitioner and the Learned Counsel appearing for the 5th respondent school submitted that the issue is already considered in W.A.No.1329 of 2000 and etc., batch and the same may be granted to the petitioner. However it is seen that the said issue was considered by the subsequent Hon'ble Coordinated Bench in REV.APLC(MD) No.180 of 2018 vide judgment dated 25.03.2021 in the case of Government of Tamil Nadu and others Vs the Correspondent, St.Joseph's Middle School, wherein it is held that the grant-in-aid is not automatic. The relevant portion of the judgment is extracted hereunder:

15. 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 not a neither fundamental 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, when the statute so prohibits.

16. In the case 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.”

17. Similarly, the Hon'ble Supreme Court in State of W.B. v. Subhas Kumar Chatterjee, [(2010) 11 SCC 694], has observed thus: “No court can issue mandamus directing the authorities to act in contravention of the rules as it would



WEB COPY

amount to compelling the authorities to violate law. Such directions may result in destruction of rule of law.”

18. When the validity of the amended Act itself was upheld by the Courts, this Court is of the view that the Courts cannot issue a mandamus contrary to the provisions of the Act. **In the case of State of Odisha and another vs. Anup Kumar Senapati and another [Civil Appeal No.7295 of 2019], in paragraph No.8, the Hon'ble Supreme Court had held that that grant-in-aid cannot be claimed as a matter of right merely on completion of the prescribed period and it is dependent upon fulfilment of various conditions. In this case, recognition itself was granted to the respondent on the undertaken not to claim any grant-in-aid.** Besides, Section 14-A of the Act, totally prohibits such grant. Therefore, we are of the view that merely because grant-in-aid has been granted to some schools in contravention of the provisions of Section 14-A of the Act, no validity can be sought for others as that tantamount to claim equality on the basis of illegality. In the case of Indore Development Authority [(2006) 2 SCC 604], the Hon'ble Supreme Court has held that merely because some persons have been granted benefit illegally or by mistake, it does not create right upon the appellants to claim equality. In Rajasthan State Industrial Development and Investment Corporation vs. Subhash Sindhi Cooperative Housing Society, and others [(2013) 5 SCC 427], this Court has held as follows:-

"19.Even if the lands of other similarly situated persons have been released, the Society must satisfy the Court that it is similarly situated in all respects, and has an independent right to get the land released. Article 14 of the Constitution does no envisage negative equality, and it cannot be used to perpetuate any illegality."

19. In the case of State of Orissa and another vs. Mamata Mohanty, [(2011) 3 SCC 436], this Court has observed as follows:-

"56.It is a settled legal proposition that Article 14 is not meant to perpetuate illegality and it does not envisage negative equality. Thus, even if some other similarly situated persons have been granted some benefit inadvertently or by mistake, such order does not confer any legal right on the petitioner to get the same relief. (Vide Chandigarh Administration & Anr v. Jagjit Singh & Anr., AIR 1995 SC 705; Yogesh Kumar & Ors. v. Government of NCT Delhi & Ors., AIR 2003 SC 1241; M/s Anand Buttons Ltd. etc. v. State of Haryana & Ors., AIR 2005 SC 565; K.K. Bhalla v. State of M.P. & Ors., AIR 2006 SC 898; Maharaj Krishan Bhatt



WEB COPY

& Anr. v. State of Jammu & Kashmir & Ors., (2008) 9 SCC 24; Upendra Narayan Singh, (2009) 5 SCC 65 and Union of India vs. Kartick Chandra Mondal [(2010) 2 SCC 422]."

20. In Union of India v. International Trading Co., [(2003) 5 SCC 437], the Supreme Court observed as under:

"13. What remains now to be considered, is the effect of permission granted to the thirty two vessels. As highlighted by learned counsel for the appellants, even if it is accepted that there was any improper permission, that may render such permissions vulnerable so far as the thirty two vessels are concerned, but it cannot come to the aid of the respondents. It is not necessary to deal with that aspect because two wrongs do not make one right. **A party cannot claim that since something wrong has been done in another case direction should be given for doing another wrong.** It would not be setting a wrong right, but would be perpetuating another wrong. In such matters there is no discrimination involved. The concept of equal treatment on the logic of Article 14 of the Constitution of India (in short "the Constitution") cannot be pressed into service in such cases. What the concept of equal treatment presupposes is existence of similar legal foothold. It does not countenance repetition of a wrong action to bring both wrongs on a par. Even if hypothetically it is accepted that a wrong has been committed in some other cases by introducing a concept of negative equality the respondents cannot strengthen their case. They have to establish strength of their case on some other basis and not by claiming negative equality."

21. Similarly in Vishal Properties (P) Ltd. v. State of U.P., [(2007) 11 SCC 172], the Supreme Court observed as follows:-

"13. Even otherwise, Article 14 is not meant to perpetuate an illegality. It provides for positive equality and not negative equality. Therefore, we are not bound to direct any authority to repeat the wrong action done by it earlier."

22. These principles were reiterated in a recent decision of the Supreme Court in RWMWI Borgoyary v. Union of India, [(2020) 15 SCC 546], wherein it was observed:

"13. The learned counsel for the appellants contended that non-consideration of the appellants for appointment as TEO is vitiated by



WEB COPY

hostile discrimination as two other persons who were similarly situated were appointed as TEOs and are continuing. It is trite law that the right to equality cannot be claimed in a case where a benefit has been given to a person contrary to law. If a mistake has been committed by the authorities in appointing few persons who were not eligible, a claim cannot be made by other ineligible persons seeking a direction to the authorities to appoint them in violation of the instructions. After referring to several judgments, this Court in *State of Odisha v. Anup Kumar Senapati* [*State of Odisha v. Anup Kumar Senapati*, (2019) 19 SCC 626] held that there is no concept of negative equality under Article 14 of the Constitution of India. The appellants cannot, as a matter of right, claim appointment on the basis of two ineligible persons being given the benefit and no direction can be given to the respondents to perpetuate illegality.”

23. Having regard to the above settled position of law, merely on the basis that some similarly placed institutions were already granted grant-in-aid illegally or by mistake, as held by the Hon'ble Apex Court, no one can claim equality. Admittedly, in this case, recognition itself was granted on the condition that no grant will be paid. Besides, the validity of Section 14-A is upheld. The said facts were not taken by us into consideration and the learned Single Judge. Merely because in the earlier round of litigation the respondent succeeded in making the petitioners to consider the request for grant-in-aid notwithstanding the voluntary undertaking given acknowledging the non-entitlement of grant-in-aid, the rigor of Section 14-A cannot be overlooked. The said provision does not facilitate such a benefit. It also takes its sweep, those cases, where orders were obtained from the Court. It is trite that Act can be retrospective. In any case, the respondent does not have the vested right, which is sought to be taken away. No doubt, the Hon'ble Apex Court in the case of *State of Uttar Pradesh and others vs. Pawan Kumar Divedi and others* [(2014) 9 SCC 692], had dealt that whether the State Government is liable for for payment of salaries of Teachers and other employees. The said judgment may not be applicable to the facts of the present case, particularly grant of grant-in-aid was included as a condition by the Government while granting recognition. The amendment prohibits such grant after certain period.

24. Such view of the matter, we are of the view that the judgment, made in the writ appeal by us without considering the scope of Section 14-A of the Act and the condition, on which recognition was granted, is liable to reviewed. Accordingly,



WEB COPY

the review petition is ordered and the judgment of the learned Single Judge is hereby set aside. No costs.

In the aforesaid judgment the Hon'ble Division Bench has elaborately dealt with the issue of grant-in-aid. The said case was one of such cases which was filed after remand back from the Hon'ble Supreme Court. The issue of grant-in-aid was dealt in the light of section 14A of the Tamil Nadu Private School Regulation Act also. The said section is extracted hereunder:

[14-A. Grant not payable to new private schools and new class and course of instruction. - Notwithstanding anything contained in this Act or in any other law for the time being in force or in any judgment, decree or order of any court or other authority, no grant shall be paid to, -
(a) any private school established and any class or course of instruction opened in such private school, on or after the date of commencement of the academic year 1991-1992;
(b) any private school in existence on the date of commencement of the academic year 1991-1992 to which no grant has been paid by the Government immediately before the date of such commencement;
(c) any class or course of instruction in a private school in existence on the date of commencement of the academic year 1991-1992 to which no grant has been paid by the Government immediately before the date of such commencement; and
(d) any class or course of instruction opened on or after the date of commencement of the academic year 1991-1992 in a private school in existence on the date of such commencement.

Explanation. - For the purpose of this section, private school includes a minority school.]



WEB COPY

The said section was amended with retrospective effect from the academic year 1991-1992 through the Act 11 of 1999. As per the aforesaid provision under sub clause (c) any school if not receiving any grant-in-aid before the academic year 1991-1992 then the same is not entitled to any grant-in-aid. In the present case the school was granted permission to run the school from 1983 without grant-in-aid and therefore as per the sub clause (c), the school is not entitled to grant-in-aid even thereafter. However, in the present case the government has sanctioned seven posts through the impugned G.O.Ms.No.454 and salary was also released from 01.06.1991. Even though the said G.O. is passed in the 1992, the same is hit by the sub clause (c) of section 14A, since the provision is given retrospective effect. Therefore, the judgement rendered in the review application in REV.APLC(MD) No.180 of 2018 is squarely applicable in the present case. Therefore the petitioner is not entitled to approval from 1983 onwards and consequently the petitioner is not entitled to any monetary benefits for the period from 01.06.1991.



WEB COPY

11. The petitioner is claiming that some other persons in Kanyakumari were granted benefits and the said plea is also answered in the aforesaid judgment wherein it is held that “a party cannot claim that since something wrong has been done in another case direction should be given for doing another wrong”. Therefore, this Court is also of the considered opinion that Article 14 cannot be applicable to perpetuate the wrong benefits granted to some person. Hence on this ground also the petitioner is not entitled to.

12. Accordingly, the Writ Petition in W.P.(MD)No.3136 of 2014 is dismissed. The impugned G.O.Ms.No.454 is sustained and the Writ Petition in W.P.(MD)No.17152 of 2018 is also dismissed. No Costs. Consequently, the connected miscellaneous petitions are closed.

13.12.2022

Index : Yes / No
Internet : Yes
tta



WEB COPY

To

- 1.The Secretary,
Department of School Education,
Fort St. George,
Chennai-600 009.
- 2.The Director of School Education,
College Road,
Chennai-600 006.
- 3.The Chief Educational officer,
Virudhunagar District,
Virudhunagar-626 001.
- 4.The District Educational Officer,
Virudhunagar District,
Virudhunagar-626 001.
- 5.The Correspondent,
Bishop Arockiasamy Higher Secondary School,
Maravankudiruppu-629 002,
Kanyakumari District.



WEB COPY



S.SRIMATHY, J

tta

W.P(MD)Nos.3136 of 2014 and 17152 of 2018
and W.M.P(MD).No.15084 of 2018

13.12.2022