



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
RESERVED ON : 22.04.2022

DELIVERED ON : 24.06.2022
CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY
W.P. (MD)Nos.7530 of 2014 & 9577 of 2015

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W.P. (MD)No.7530 of 2014

S.Sankaranarayanan

... Petitioner

vs

1. The Secretary to Government,
High Education Department,
Secretariat, Chennai.

2. The Director of Collegiate Education,
EVK Sampath Malligai,
College Road, Chennai - 6.

3. The Regional Joint Director of Collegiate Education
Tirunelveli Region,
Perumalpuram, Tirunelveli - 7.

4. The Secretary,
Sri KGS Arts College,
Arul Nandhi Nagar,
Padmanabhamangalam,
Srivaikundam - 628 619,
Tuticorin District.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, to call for the records relating to the impugned order, vide letter, No.2938/E2/2013 - 7, dated 22/04/2014 passed by the first respondent and quash the same and consequently direct the respondents to place the petitioner in the pay scale of 16400-450-20900-500-22400 with effect from the date of his appointment as principal with all consequential benefits.

W.P. (MD)No.9577 of 2015

Dr.S.Sankaranarayanan

... Petitioner

vs

1. The Secretary to Government,
High Education Department,
Government of Tamil Nadu,
Fort.St.George, Chennai.



2. The Director of Collegiate Education,
Chennai - 6.

3. The Joint Director of Collegiate Education,
Tirunelveli Region,
Tirunelveli - 7.

4. Sri Kumara Gurupara Swamigal Arts College,
Rep by its Secretary,
Srivaikundam - 628 619,
Tuticorin District.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, to call for the records relating to the impugned order bearing O.Mu.NO.5267/A3/2013 dated 07.04.2015 issued by the third respondent and addressed to the fourth respondent and quash the same and consequently direct the respondents 2 & 3 to step up the pay of the petitioner as per the proposal bearing letter Na.Ka.No.37/KGS/2013-14, dated 30.04.2013 submitted by the fourth respondent with all consequential benefits.

(In both cases)

For Petitioner : Mr.M.E.Ilango

For Respondents : Mr.V.Omprakash

Government Advocate (Civil Side)

O R D E R

The Writ Petition in W.P.(MD)No.7530 of 2014 is filed to quash the impugned order dated 22.04.2014 and consequently direct the respondents to place the petitioner in the pay scale of 16400-450-20900-500-22400 with effect from the date of his appointment as Principal with all consequential benefits.

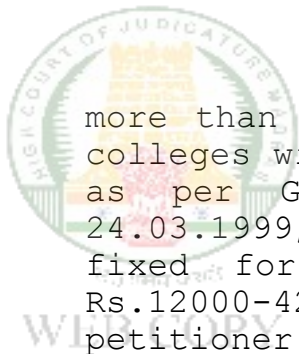
2. The Writ Petition in W.P.(MD)No.9577 of 2015 is filed to quash the impugned order dated 07.04.2015 and consequently direct the respondents 2 and 3 to step up the pay of the petitioner as per the proposal bearing letter in Na.Ka.No.37/KGS/2013-14 dated 30.04.2013.

3. The brief facts of the case are that the petitioner joined the fourth respondent college in the Economic Department as Assistant Professor on 28.12.1983. When a vacancy arose in the post of Principal in the fourth respondent college, the petitioner was directed to function as in-charge Principal. Subsequently, the petitioner was selected as Principal on a regular basis and appointed on 30.06.2001 and the same was approved by the third



respondent. The contention of the petitioner is that while issuing the proceeding dated 30.06.2001, the fourth respondent herein on the oral instruction of the third respondent fixed the pay scale of Rs.12000-50-16300. This pay scale is applicable to Grade II Principals working in Government Arts Colleges. A Grade I Principal was then in a pre-revised pay scale of 16400-450-20900-500-22400. The distinction between Grade I and Grade II Principal lies in the number of years of teaching experience. Both Grade I and Grade II possess a Master Degree with 55 marks and Ph.D., or equivalent qualification. If the candidature has 15 years of total experience then he is eligible to be appointed as Grade I Principal and if the candidature has 10 years of experience, then he is eligible to be appointed as Grade II Principal. This distinction of Grade I and Grade II Principal in the post of Principal applies to Government Colleges. As far as private and aided colleges are concerned, this distinction is not applicable. Any person who has completed 15 years of teaching experience, then alone he is eligible to be considered for the post of Principal. The petitioner was appointed as Assistant Professor in December, 1983. At that time, the petitioner was working as Selection Grade Lecturer (Reader's scale) and the petitioner has already put in 18 years of service. The contention of the petitioner is that he ought to have been appointed as Grade I Principal and not as Grade II Principal, since the petitioner is having more experience than the prescribed experience. The Government has issued G.O. Ms. No.111 dated 24.03.1999, wherein it has been stated that Professor Grade Principals are posted to colleges having a student strength of not less than 1000 students, while Reader Grade Principals are posted in other colleges. The contention of the petitioner is that this distinction is not applicable to Private Aided Colleges and this Government Order is applicable only to Government Arts Colleges. The University Grants Commission also in its various pay commission recommendations for Colleges and University Teachers recommends that colleges with more than two PG Courses are to be considered as PG College and the Principal of the PG courses should be appointed in the pay scale of 16400-450-20900-500-22400. The petitioner has filed a writ petition in W.P. (MD) No. 1280 of 2011 questioning the erroneous fixation and sought direction to place the petitioner in the pay scale of Principal Grade I with retrospective effect. This Court, vide order, dated 18.07.2013 directed the first respondent to consider and pass orders. Thereafter, a detailed representation was submitted along with the order copy made in W.A.No.1824 of 2004. The said decision directly applies to the petitioner's claim. But the first respondent did not pass an order within the stipulated time. Since the said order was not implemented, the petitioner has issued a contempt notice and filed Contempt Petition (MD) No. 359 of 2014.

4. The second respondent has filed a counter affidavit that the Government issued orders in G.O.Ms.No.1785, Education Department, dated 05.12.1988, the post of Grade I Principal was sanctioned to



more than 1000. The post of Grade II Principal was sanctioned to colleges with less than 1000 students. It is further submitted that as per G.O.Ms.No.111, Higher Education (H1) Department dated 24.03.1999, in the scale of pay Rs.16400-450-20900-500-22400 was fixed for Grade-I Principal with effect from 01.01.1996 and Rs.12000-420-18300 was fixed for Grade-II Principal. Since the petitioner college is having less than 1000, the petitioner was appointed as Grade II Principal and the eligible salary is paid to the petitioner.

5. The brief facts in W.P.(MD)No.9577 of 2015 are that the petitioner is alleging pay anomaly by comparing with Dr. M. Sudalai who was appointed as Assistant Professor in Commerce on 28.08.1985. On the other hand, the petitioner was appointed as Assistant Professor on 28.12.1983.

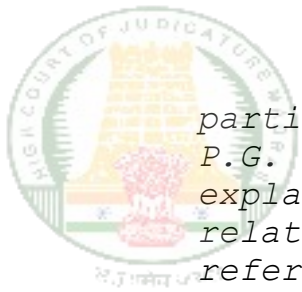
6. The second respondent has filed a counter affidavit stating that the fourth respondent college is an Aided College receiving 100% grant from the Government of Tamil Nadu. The petitioner was appointed and promoted in his teaching carrier in Economics Department and he cannot compare himself with the said Dr. Sudalai belonging to Commerce Department. The pay anomaly due to junior getting more pay should be settled between the individuals of the same Department teaching similar subjects and cannot be compare with the faculty members of other discipline. Already orders were issued by the second respondent for rectifying anomalies that arise among the teaching staff in the inter-discipline, but the order issued by the second respondent has been kept in abeyance until further orders by the Government. Therefore, the college cannot claim this as pay anomaly.

7. Heard the Mr.M.E.Ilango, the learned Counsel for the petitioner and Mr.V.Omprakash, the learned Government Advocate (Civil Side) for the respondents.

8. The issue of granting "grant-in-aid" and the G.O. Ms. No. 111 was dealt with by this Court in W.P. (MD) No. 7798 / 2013 and this Court has held as under:

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 27.06.2003. In the said order, this Court has held in paragraph Nos.8 and 9 as follows:

"8. So far as G.O.Ms.No.111, dated 24.03.1999 is concerned, it is apparent that the qualifications and pay scale prescribed by the UGC have been accepted. The Explanation is paragraph 2 of Annexure - II, does not lay down that in aided colleges, Principal of Professors Grade cannot be appointed unless a



particular students strength is increased unless two P.G. Courses is available in such college. The explanation only refers to the existing practice relating to Government Colleges and there is no reference to any private aided college. The U.G.C scale of pay which has been accepted by the Government is based on qualifications and experience. There is no requirement of any particular students strength or availability of any particular type of P.G. Course for obtaining the U.G.C scale of pay. The explanation only refers to the practice in Government Colleges, which is in vogue since 1989, will continue in Government Colleges. In other words, it would only mean that the Government should appoint Principal in Professors Grade to Colleges having two P.G Courses and students strength of not less than 1000 and Principals in Readers Grade should be posted to other colleges. This explanation is meant for the guidance of the Government in the matter relating to the posting of Principal in Government Colleges only.

9. Even assuming that the explanation is applicable to private aided Colleges and G.O.No.1785 is still applicable, there is no logic in the stand of the respondents to the effect that only approved post graduate courses and students in approved subjects shall be considered. If the College offers further Post Graduate courses which were recognized by the University, existence of such P.G. Courses should also be considered for the purpose of applying G.O.Ms.No.1785 of 1988. Similarly, there is no reason to exclude the students in other courses though teachers in other courses though teachers in such other courses may not be receiving aid from the Government."

6. It is submitted that the respondents have preferred Writ Appeal and this Court has confirmed the order passed by the learned Single Judge, however the order passed in writ appeal was not produced by the parties. The contention of the petitioner is the 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 any discrimination in "Grade I" and "Grade II"



7. However, the Judgment has not considered the fact that 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 private colleges. 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 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.

7. With the above direction, the Writ Petition is disposed of.

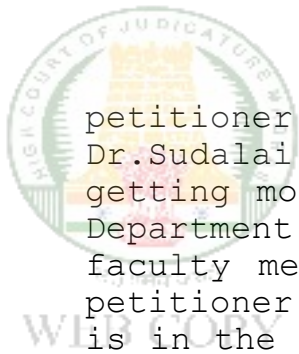


9. The learned Counsel for the petitioner submitted that the respondents have prescribed qualifications, which are against the qualifications prescribed by UGC and hence the G.O. Ms. No. 111 is against UGC regulation. On perusal of the said G.O. it is seen that the G.O. is not prescribing any qualifications, but it only states that the grant-in-aid would be granted in the prescribed scale of pay for the post where the students strength is less than 1000 and has fixed another pay where the students strength is more than 1000. This cannot be stated that the respondents have fixed any qualifications but it is only for the purpose of grant-in-aid. Hence the writ petition is devoid of merits.

10. Based on the order passed in W.P. (MD) No. 7798 / 2013, wherein this Court has remitted the case to the Government and directed the Government to pass orders after taking all the necessary facts and circumstances into consideration. Especially the government shall take the financial affordability of the Government shall be taken into consideration while passing orders. Therefore, this Court with the same direction as stated supra is directing the government to consider and pass orders within a period of twelve weeks from the date of receipt of the copy of the order.

11. As far as the writ petition filed in W.P.(MD)No.9577 of 2015 is concerned, the petitioner has challenged the impugned order dated 07.04.2015 denying to step up the pay by rectifying the pay anomaly. The service particulars are as under:

Dr. S. Sethu Sankara Narayanan M.A. M.Phil. and Ph.D. (writ petitioner)	Dr. M. Sudalai M.Com. M.Phil. and Ph.D.
Appointed as Assistant Professor on 28.12.1983	Appointed as Assistant Professor in Commerce on 28.08.1985
Initial scale of pay is identical 700-40-1100-50-1300-EB-50-1600	700-40-1100-50-1300-EB-50-1600
Granted selection scale of pay on 27.07.1996	Granted selection scale of pay on 27.07.1998
Principal with effect from 04.06.2001	As on 01.01.2006 he was Associate Professor and retired as Associate Professor in the year 2018



petitioner is in Economics department and the junior namely Dr.Sudalai is in Commerce department. Pay anomaly due to junior getting more pay should be settled between individuals of the same Department teaching similar subjects and cannot be compared with faculty members of other discipline. Moreover the pay band of the petitioner and Dr.Sudalai are different. The pay band of Dr.Sudalai is in the grade pay of Rs.9000/- but the petitioner is in the grade pay of Rs.10,000/-. The pay anomaly can be compared when the two individuals are in the same pay band, same grade pay and same scale of pay. Since the petitioner and the junior are in different grade pay, the petitioner cannot compare himself with that of Dr.Sudalai. Therefore this Court is of the considered opinion that the petitioner has not made out any case and hence the writ petition is liable to be dismissed. Hence the writ petition filed in W.P. (MD) No. 9577 of 2015 is dismissed.

13. Hence the W.P. (MD) No. 9577 of 2015 is dismissed. The W.P. (MD) No. 7530 of 2014 is disposed of with a direction. All connected miscellaneous petitions are closed. No costs.

Sd/-

Assistant Registrar (T&P)

// True Copy //

/07/2022

Sub Assistant Registrar(CS)

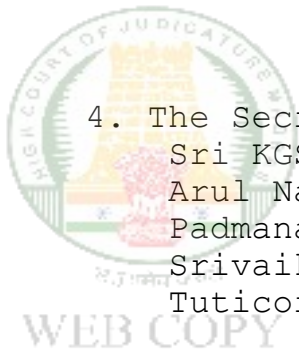
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Note:

In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the Advocate/litigant concerned.

To

1. The Secretary to Government,
High Education Department,
Secretariat, Chennai.
2. The Director of Collegiate Education,
EVK Sampath Malligai,
College Road, Chennai - 6.
3. The Regional Joint Director of Collegiate Education
Tirunelveli Region, Perumalpuram,
Tirunelveli - 7.



4. The Secretary,
Sri KGS Arts College,
Arul Nandhi Nagar,
Padmanabhamangalam,
Srivaikundam - 628 619,
Tuticorin District.

+1 CC to M/s.M.E. ILANGO, Advocate (SR-28078[F] dated 24/06/2022)

+1 CC to M/s.SPL.GP (SR-28181[F] dated 27/06/2022)

W.P. (MD) Nos. 7530 of 2014 & 9577 of 2015
24.06.2022

RD(04.07.2022) 9P 7C