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W.P.Nos.17318 & 17324 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.09.2023

CORAM :

THE HONOURABLE MR. JUSTICE J.SATHYA NARAYANA PRASAD

Writ Petition Nos.17318 & 17324 of 2020

C.Joseph ... Petitioner in W.P.No.17318 of 2020

Tmt.N.Kannikai Mary ... Petitioner in W.P.No.17324 of 2020

Vs.

1.The Director of School Education,
College Road, Chennai – 6.

2.The Chief Educational Officer,
Salem.

3.The District Educational Officer,
Salem.

4.The Secretary,
Little Flower Higher Secondary School,
Salem – 9.

... Respondents

Common Prayer: Writ Petition filed under Article 226 of Constitution of India praying for issuance of Writ of Certiorarified Mandamus, calling the entire records connected with the impugned proceedings of the first respondent vide Na.Ka.No.080870/D1/E2/2019 dated 04.03.2020 & Mu.Mu.No.020680/D1/E2/2019 dated 18.03.2020 and quash the same and directing the respondents to upgrade the post of Secondary Grade Teacher,



W.P.Nos.17318 & 17324 of 2020

held by the petitioner, as B.T. Assistant (Tamil) with effect from 01.06.2022, as per G.O.Ms.No.79 School Education Department dated 14.06.2002 with all consequential monetary benefits, in the light of decision rendered by this Court in the case of R.Padma Sheela Rani Vs. State of Tamil Nadu, and others in W.P.(MD).No.1664 of 2005, dated 02.11.2006 and G.O.(3d).No.61 School Education (P1) Department dated 20.04.2012.

For Petitioner : Mr.S.N.Ravichandran
(In both writ petitions)

For Respondents : Mr.D.Gopal,
(In both writ petitions).

COMMON ORDER

These writ petitions have been filed challenging the order dated 04.03.2020 & 18.03.2020 passed by the first respondent in Na.Ka.No.08070/D1/E2/2019 & Mu.Mu.No.020680/D1/E2/2019 and directing the respondents to upgrade the post of Secondary Grade Teacher, held by the petitioner, as B.T. Assistant (Tamil) with effect from 01.06.2022, as per G.O.Ms.No.79 School Education Department dated 14.06.2002 with all consequential monetary benefits, in the light of decision rendered by this Court in the case of R.Padma Sheela Rani Vs. State of Tamil Nadu, and



others in W.P.(MD).No.1664 of 2005, dated 02.11.2006 and G.O.(3d).No.61

School Education (P1) Department dated 20.04.2012.

2. The petitioners were appointed in the post of Secondary Grade Teacher and their appointment were duly approved by the third respondent viz., The District Elementary Educational Officer. They are teaching Mathematics and English to the students of 6th to 8th Standards. According to the expert opinion, the revised syllabus in English, Mathematics and Science subjects, the Secondary Grade Teachers were incapable to handle the revised subjects and cannot be considered to be qualified to teach the advanced Mathematics, Science and English subjects in new syllabus. Therefore, as per the expert opinion, the Government passed G.O.Ms.No.189, School Education S1 Department, dated 04.06.1998, upgrading the Secondary Grade Teacher posts in the Panchayat Middle School. Pursuant to same, the Government passed another G.O.Ms.No.79, School Education U2 Department, dated 14.06.2002, upgrading the Secondary Grade posts of English, Mathematics and Science in the 6th to 8th Standards as BT Assistant posts in the Aided Middle schools and directed the aided schools to appoint B.Ed., qualified persons for English, Mathematics and Science subjects from 01.06.2002.



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3. After the issuance of G.O.Ms.No.79, dated 14.06.2002, the BT Teachers, who were appointed in the Secondary Grade, vacancy is getting higher scale of pay applicable to the post of BT Assistant. On the other hand, the Secondary Grade Teachers, who were appointed prior to issuance of the G.O. with B.Ed. qualification, teaching the same subjects to the 6th to 8th Standards, were getting different scale of pay and they were treated differentially in terms of scale of pay. The same runs contrary to the principle of “Equal pay for equal work” guaranteed under the Constitution. Based on G.O.Ms.No.100, dated 27.06.2003, several appointments were made in the Government and Aided Middle Schools with B.Ed. qualified person in Mathematics, Science, English subjects in the vacancy arose for the post of Secondary Grade.

4. Following the said Government Order, the first respondent issued G.O.Ms.No.12, dated 18.07.2006, wherein the consolidated payment came to an end, since the second respondent, by proceedings dated 21.05.2007, approved the appointments in the time scale of pay with effect from 01.06.2006. Therefore, the petitioners made representations to the



respondents and requested to upgrade their post of Secondary Grade Teacher as BT Assistant with effect from 01.06.2002 as per G.O.Ms.No.79, dated 14.06.2002. The request made by the petitioners were rejected by the impugned orders and the other petitioners request were pending without any consideration.

5. The counter affidavit was filed by the District Elementary Education Officer in both the writ petitions which revealed that in G.O.Ms.No.79, dated 14.06.2002, while planning for development in quality of education, it was considered that the post of Secondary Grade posts in the classes of 6th to 8th Standards handled by the Secondary Grade Teachers will be filled in a phased manner by converting the posts of Secondary Grade Teachers posts in the Middle Schools, who were handling the classes of 6th to 8th Standards into Middle Grade Graduate Teachers post. This phased manner conversion will be done in a Middle School from the academic year 2003-2004 (the vacant posts including for the year 2002), when a teacher retires, resigns where vacancy arose on death of a teacher or on any other reason will be filled with B.Ed. qualified teacher in the scale of pay of the Secondary Grade Teacher (4500-125-4000) by awarding one advance increment (4625-125-7000).



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6. In the said counter affidavit it was clarified that (i) in the phased manner conversion will be made when the teacher retires, resigns, death or vacancy arises due to other various reasons (ii) insofar as the conversion is concerned it is not extended to the teachers who are working in the existing Secondary Grade posts in the middle schools (iii) the conversion as regard to the aided school, the management has to submit a proposal and obtain permission from Government. If the government permits, the expenditure has to be borne by the management. Therefore, whether the petitioners are working, there is no vacancy of any Secondary Grade post in the said School, if any vacancy arose, the management has to obtain permission with a condition that the management will bear the expenditure. But the management has not applied to the Government for upgradation of the post, but, instead, the teachers working in the school have sought for the said upgradation.

7. Heard both sides and perused the materials available on record.

8. Admittedly, all the petitioners were qualified B.Ed. and they were



capable to teach Mathematics, Science and English. In fact, all are teaching Mathematics, Science and English to the students of 6)(to 8)(Standards from the date of G.O.Ms.No.79, dated 14.06.2002 with effect from 01.06.2002. Further, they have fulfilled all the requisite qualifications prescribed for the upgraded post of NT and they have requisite experience and they were performing the same and identical work. Therefore, the denial of equal pay for equal work to the petitioners is a clear case of discrimination and violative of Article 14 of the Constitution of India. That apart, Article 39(d) of the Constitution of India envisages equal pay for equal work.

9. In this regard the learned counsel appearing for the petitioners relied upon the Judgment of the Hon'ble Supreme Court of India reported in (1984) 2 SCC 167, in the case of P.K.Ramachandra Vs. Union of India, which reads as follows :

“17. ...The hard fact is that the petitioners were holding the posts of Professor when the revised scale became effective. In the letter dated January 20, 1971 sanctioning revised scale for the post of Professor, there is not even a whisper that the existing incumbent will be denied the benefit. In fact, it is well



known that the University Grants Commission regularly recommends revised scales for every plan period for teaching posts and the revision takes note of inadequate scales sanctioned till the date of revision. The only justification offered by the respondents for denying the petitioners the benefit of the revised scale is to be found in the counter-affidavit of Dr. M.S. Swaminathan. It is contended in the revised scale. The justification is too flimsy to merit any serious consideration more so in view of the fact that it is difficult to envisage a situation in such institutes, undertaking advance research in Agriculture and Animal Husbandry where persons holding Doctorate qualification and enjoying the status of the post of Professor would be governed by two different scales even though the duties, responsibilities and functions in various sister disciplines are identical. In such a situation Art. 39(d), trust assist us in reaching a fair and just conclusion. Elaborating the underlying intendment of Art. 39(d), Chinnappa Reddy, J. in Randhir Singh v. Union of India & Ors.(1) observed that construing Arts. 14 and 16 in the light of the Preamble and Art. 39(d), the Court was of the view that the principle



equal pay for equal work' is deducible from those Articles and may be properly applied to the cases of unequal scales of pay based on no classification or irrational classification though those drawing the different scales of pay do identical work under the same employer. The case in hand is a glaring example of discriminatory treatment accorded to old experienced and highly qualified hands with an evil eye and unequal hand and the guarantee of equality in all its pervasive character must enable this Court to remove that the newly created post in the cadre of Professor is not the same as the then existing post and that there was marginal revision in the qualifications for not the posts of Professor in the revised scale and that petitioners were not discriminated because they were given an opportunity to contest for the posts discrimination and to restore fair play in action. No attempt was made to sustain the scales of pay for the post of Professor on the doctrine of classification because the classification of existing incumbents as be distinct and separate from newly recruited hand with flimsy change in essential qualification would be wholly irrational and arbitrary. The case of the petitioners



for being put in the revised scale of Rs. 1100-1600 from the date on which newly created posts of Professors in sister disciplines in IVRI and other institutes were created and filled in revised scale is unanswerable and must be conceded."

10. This Court, in W.P.No.26483 of 2005 by an order dated 16.04.2014, already held that for those who were appointed prior to G.O.Ms.No.79 dated 14.06.2002, the School should get approval from the Government prior to the appointment of those teachers as per the said G.O. Therefore, the rejection of the request made by the petitioners is totally arbitrary and erroneous. This Court, in W.P.(MD) No.14870 of 2010 in the case of M.Mary Jacklin Pushpa Vs. The State of Tamil Nadu, already held that it is crystal clear that the law on this subject has been well settled by the Hon'ble Supreme Court that though equal pay for equal work is not expressly stated in any of the provision of the Fundamental Rights, it falls within the ambit of Article 14 of the Constitution of India in view of Article 39(d) of the Constitution of India and the same is enforceable by the Courts. Those teachers who were appointed after 14.06.2002 and the petitioners are equal in all respects. Therefore, the doctrine of equal pay for equal work should be



applied in the case on hand. When the teachers, who were appointed on or after 14.06.2002 are equal in all respects, the petitioners are also entitled for the same scale of pay for the post of BT Assistant with effect from 01.06.2006. Whereas, in the case on hand, all the petitioners were appointed as Secondary Grade Teacher even prior to G.O.Ms.No.79 dated 14.06.2002. Therefore, all the teachers are entitled to be regularised when the date of G.O.Ms.No.79 dated 14.06.2002 i.e., from 01.06.2002.

11. In view of the above, the impugned orders passed by the first respondent are hereby quashed. The second respondent is directed to upgrade to the post of Secondary Grade Teacher hold by the petitioners' BT Assistant with effect from 01.06.2002 in the light of G.O.Ms.No.79 dated 14.06.2002 with all consequential benefits within a period of eight weeks from the date of receipt of a copy of this order.

12. Insofar as the other writ petitions are concerned, the first and second respondents are directed to upgrade the post of Secondary Grade Teachers hold by the petitioners as BT Assistant with effect from 01.06.2002 in the light of G.O.Ms.No.79 dated 14.06.2002 with all consequential benefits



W.P.Nos.17318 & 17324 of 2020

within a period of eight weeks from the date of receipt of a copy of this order.

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13. In the result, all the writ petitions are allowed. There shall be no order as to costs.

07.09.2024

Index : Yes/No
Speaking /Non-speaking Order
kmm

To:

- 1.The Director of School Education,
College Road, Chennai – 6.
- 2.The Chief Educational Officer,
Salem.
- 3.The District Educational Officer,
Salem.
- 4.The Secretary,

Page No.12 of 16



W.P.Nos.17318 & 17324 of 2020

Little Flower Higher Secondary School,
Salem – 9.

WEB COPY

J.SATHYA NARAYANA PRASAD,J.

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WEB COPY



W.P.Nos.17318 & 17324 of 2020

W.P.Nos.17318 & 17324 of 2020

07.09.2023

W.P.Nos.17318 & 17324 of 2020

J.SATHYA NARAYANA PRASAD, J.

This matter is listed today under the caption 'for being mentioned' at the instance of the learned counsel for the petitioner.

2. It is brought to the notice of this Court that some omissions have been crept in the cause title of the order vide W.P.Nos.17318 & 17324 of 2020 dated

Page No.14 of 16



W.P.Nos.17318 & 17324 of 2020

07.09.2023. Accordingly, the following corrections shall be incorporated in the order:

***“4. The Secretary,
Little Flower Higher Secondary School,
Salem -9. R4 in W.P.No.17318 of 2020***

***4. The Secretary,
St.Mary Girls Higher Secondary School,
Arisipalayam,
Salem – 9. R4 in W.P.No.17324 of 2020”***

Thereby, the learned counsel for the petitioner would request that the aforesaid cause title may be corrected and copy may be issued accordingly.

3. Registry is directed to carry out the necessary corrections in the order and issue corrected order copy.

25.11.2024

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J.SATHYA NARAYANA PRASAD, J.

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W.P.Nos.17318 & 17324 of 2020

W.P.Nos.17318 & 17324 of 2020

25.11.2024