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WP.No.5304/2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 17.07.2023

CORAM

THE HONOURABLE MR. JUSTICE C.V.KARTHIKEYAN

WP.No.5304/2017

G.Rajagopal

... Petitioner

Versus

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

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

3.The District Elementary Educational Officer
Namakkal District, Namakkal.

4.The Assistant Elementary Educational Officer
Erumaipatti Panchayat Union
Erumaipatti, Namakkal District.

... Respondents

Prayer :- Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of certiorarified mandamus calling for the records of the 2nd respondent in relation to the proceedings issued in Na.Ka.No.7406/D3/2016 dated -3-2016 and quash the same and to extend the benefit of G.O.Ms.No.70, School Education [Nee.V2] Department, dated 28.05.2014 and issue a consequential direction to the respondents to



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upgrade the petitioner as Secondary Grade Teacher from 18.11.1968 when the petitioner was appointed as Higher Grade Teacher and count the service for the purpose of awarding selection and special grade scale of pay in the post of Secondary Grade Teacher.

For Petitioner : Mr.R.Saseetharan
For Respondents : Mr.V.Nanmaran, AGP

ORDER

- (1) The writ petition has been filed in the nature of certiorarified mandamus, calling for the records of the 2nd respondent, Director of Elementary Education at Chennai, relating to the proceedings issued in March 2016, in Na.Ka.No.7406/D3/2016 and to quash the same and to extend the benefit of G.O.Ms.No.70, School Education [Nee.V2] Department dated 28.05.2014 and to upgrade the petitioner as Secondary Grade Teacher from 18.11.1968 when the petitioner was appointed as Higher Grade Teacher and count the service for the purpose of awarding selection and special grade scale of pay in the post of Secondary Grade Teacher.
- (2) In the affidavit filed in support of the writ petition, it had been stated that the petitioner was initially appointed as Higher Grade Teacher on



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18.11.1968 at Panchayat Union Elementary School at Orappam, Bargur Panchayat Union, Dharmapuri District. He however had possessed a certificate qualifying him to be appointed as Secondary Grade Teacher. He was appointed only as Higher Grade Teacher since there were no vacancies. On 25.09.1970, the petitioner was transferred to Erumaipatti Panchayat Union in the then Salem District. He was upgraded as Secondary Grade Teacher with effect from 01.01.1971 and he was awarded Secondary Grade Teacher scale of pay . He was then promoted as Primary School Headmaster with retrospective effect consequent to the order of the Administrative Tribunal. This was confirmed by an order dated 01.11.1991 passed by the Chief Educational Officer, Salem and this promotion was with retrospective effect from 27.06.1989. The petitioner was then promoted as B.Ed Middle School Headmaster at Erumaipatti Panchayat Union on 16.12.1994 and was posted at Panchayat Union Middle School at Pavithram, Erumaipatti Panchayat Union. He was then reverted from the post of B.Ed Middle School Headmaster to the post of Primary School Headmaster since there were no vacancies.



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Subsequently, he was promoted as B.Ed Middle School Headmaster on 01.06.2000.

- (3) There was an earlier writ petition filed in WP.No.28843/2015 before this Court and a Learned Single Judge, by an order dated 11.09.2015, had issued a direction to the 2nd respondent to consider the representation of the petitioner for extension of the benefit of G.O.Ms.No.70 dated 28.05.2014. That particular Government Order, namely, G.O.Ms.No.70, was actually issued consequent to an earlier direction of this Court in WP.No.34213/2006. By an order dated 27.01.2010, it was directed that the writ petitioners therein should be entitled to be treated as Higher Grade Teacher or as Secondary Grade Teacher for the service rendered before 01.01.1971 and to regularise their service as Secondary Grade Teachers with respect to the date of appointment which was prior to 01.01.1971. It is to be noted that the particular date 01.01.1971 was taken as a cut-off date and benefits were granted as above to those who had been appointed after 01.01.1971. By the order in WP.No.34213/2006, dated 27.01.2010, a Learned Single Judge of this Court in the said writ petition, had



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however granted that particular benefit even though the petitioners therein had been appointed prior to 01.01.1971. The petitioner herein had been initially appointed on 18.11.1968. It is for that reason, placing reliance on the order of this Court in the earlier writ petition, that the petitioner seeks parity and claims that he should be recognised as Secondary Grade Teacher with effect from the date of initial employment, namely, 18.11.1968 even though he was, at that time, appointed as Higher Grade Teacher alone.

- (4) There was a subsequent Government Order which had been passed, namely, G.O.Ms.No.347, School Education Department, dated 15.09.1998. It is stated that this particular Government Order, namely, G.O.Ms.No.347 of School Education Department, dated 15.09.1998, had given an arbitrary cut-off period as 01.01.1971 and questioning that particular ratio over the dates, writ petitions have been filed before this Court.
- (5) Learned counsel for the petitioner had brought to the notice of this Court, three writ petitions in WP.Nos.37456, 39069 and 42202/2006. A Learned Single Judge, by a common order dated 26.02.2010, had



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observed that the said cut-off dated 01.01.1971 is arbitrary and unreasonable. Reliance was placed on earlier orders of the Administrative Tribunal. It had been finally held as follows:-

"Indeed, there cannot be any intelligible difference between the secondary Grade Certificate holders served in the Higher Grade place after 1.1.71 or prior to 1.1.71. This is the well settled principle in a catena of decisions of the supreme court. It has been held by the Supreme Court in a decision reported in Vo.II SC SLJ 498 that equality of opportunity for the purposes of seniority, promotion and like matters of employment is available only for persons who fall subsequently within the same class or unit of service. The fundamental right of equality means that person in like situation under like circumstance are entitled to be treated alike. What is enjoined is that all citizens in matter of service under the state shall be treated alike under like circumstances and conditions. The primary aim is to prevent any person or class of persons from being singled out as a special subject for purposeful or invidious discrimination or hostile treatment. The purpose is to ensure similarly and equitable treatment and identity of treatment in matters relating to initial



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engagement, during continuance of that enjoyment and at the terminal end of that enjoyment. This principle has been laid down in the decision reported in A.I.R 1957 PAT 617, AIR 1962 SC 36.

The pivotal question in the present case is whether the teacher similarly circumstanced in the same class or service or unit are treated alike. The factual position is that the teachers similarly situated in the same class category and unit are treated unequally. In other words, the equals are treated as unequals. Therefore, the question of hostile discrimination will arise. Moreover, in the instant case, fixing the cut off date as 1.1.71 itself is arbitrary and unreasonable in view of the decisions reported in 1988 (2) CAT 250 and 1988 (3) SLJ.53.

When the secondary grade qualified teacher service period in the place of Higher Grade is treated as Secondary Grade from 1.1.71 the same should also be extended to the secondary grade qualified teacher serving in the Higher grade prior to 1.1.71 also. Otherwise the same would amount to clear discrimination.

In the facts and circumstances of the case, the applications are allowed and we direct the respondents



to grant secondary grade scale of pay to the applicants for the period of service of the applicants in the Higher Grade place with the Secondary Grade qualification and it be counted as secondary Grade service for the purpose of seniority, selection/special grade and for promotional opportunities to the higher post. All consequential service and monetary benefits shall be made within two months from the date of receipt of this order or a copy thereof."

- (6) This ratio of the Tribunal had not been appealed and had been implemented by the respondents. It has also been observed that several orders have been passed by the Court, granting reliefs to the petitioners based on the aforementioned order of the Tribunal. The learned Single Judge had granted the same relief to the three petitioners in WP.Nos.37456, 29069 & 42202/2006.
- (7) However, this relief granted to the petitioner herein had been very strongly objected to by the respondents particularly because it had been stated that the petitioner had filed the writ petition in the year 2017 and therefore, there had been a delay on the part of the petitioner for nearly more than a decade and it had therefore been



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argued that the benefit should not revert back to the petitioner herein who himself has not explained the reasons for the delay and therefore, it has been urged that the lapse of the petitioner should also been considered by the Court.

- (8) The principle that the date 01.01.1971 has been arbitrarily fixed, has not been questioned or revisited by any Appellate Forum. The fact that all those who had been appointed as Higher Grade Teachers prior to 01.01.1971, had been recognized as Secondary Grade Teachers since they had the certificates and who had been appointed only because of non-availability of vacancies, has also been recognized. These two concepts accrue in favour of the petitioner. But the Court will also have to balance the delay on the part of the petitioner herein. He had approached the Court well after ten years. Learned counsel for the petitioner however stated that since others had been recognized, the petitioner should not be put in disadvantageous position and should also be granted the same relief.
- (9) A perusal of the records shows that in the impugned order, a reference had been made to the order in WP.No.28843/2015, wherein



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the representations of the petitioner which were dated 16.02.2015 and 28.08.2015 respectively, were directed to be examined in the manner known to law. It had been however reported that since, there is a cut-off date on 01.01.1971 and that the petitioner had retired from service on attaining the date of superannuation on 31.07.2006, the relief to the petitioner cannot be granted with retrospective effect. But, however the impugned order had not taken into consideration the orders passed by this Court and one of the orders had been extracted above. Similarly placed persons had been granted such relief. It had also been contended on the side of the respondents that there was an observation in the writ petitions that the earlier Government Order in G.O.Ms.No.70 dated 28.05.2014 would apply only to the petitioners therein and would not act as a precedent. But, that would not be a fact or for denial of relief to anybody who comes to Court. Anybody comes to Court expects consistency in the nature of orders passed. Therefore, I would grant the relief to the petitioner herein and the petitioner is entitled to the relief to be recognized as Secondary Grade Teacher with effect from the date of his initial employment, but



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however the issue of delay also stands in the place of the petitioner herein.

- (10) The petitioner had given the representation only on 16.02.2015 which is the earliest representation even though he had retired on 31.07.2006. This period of 9 years and above should be put against the petitioner as respondents should not be called upon to explain as to why they did not grant the relief in favour of the petitioner herein. It must be stated that any order of the High Court in a writ petition would enure to those writ petitioners alone. If the petitioner had been vigilant enough and had given a representation as soon as he had retired or as soon as the number of judgments came in, it would have been a different issue. But the petitioner had taken up a wait and watch attitude. He waited as to what would be the result of the orders of the High Court and then gave a representation. This attitude cannot be condoned and therefore, I hold that though the petitioner is entitled for all reliefs from the date of initial employment, which is 18.11.1968, still for the period when he had delayed in giving representation from the date of his retirement on attaining the age of



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superannuation, namely, from 31.07.2006 till 16.02.2015, the petitioner's service alone can be computed, but monetary benefits cannot be extended for that particular period. Thereafter, in accordance with the directions in WP.No.28843/2015, the benefits can accrue to the petitioner herein.

- (11) Giving that small break wherein only the period of service alone can be computed but not the pay for that particular period, the writ petition stands **disposed of**. Necessary orders has to be issued as aforesaid, reworking the monetary emoluments of the petitioner within a period of four months from the date of receipt of a copy of this order.

17.07.2023

AP

Internet : Yes

To

1.The Secretary to Government
Government of Tamil Nadu



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School Education Department
Fort St George, Chennai 600 009.

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C.V.KARTHIKEYAN, J.,

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