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WP.Nos.4943 & 4944/2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 27.09.2023

CORAM

THE HONOURABLE MR. JUSTICE C.V.KARTHIKEYAN

WP.Nos.4943 & 4944/2017

and

WMP.Nos.5174 to 5177 & 17564/2017 & 6148/2018

P.James

... Petitioner in
WP.No.4943/2017

D.Johnson

... Petitioner in
WP.No.4943/2017

Versus

- 1.The Government of Tamil Nadu
rep.by the Principal Secretary to Government
Finance [Pay Cell] Department
Fort St George, Chennai 600 009.
- 2.The Secretary to Government of Tamil Nadu
School Education Department
Fort St George, Chennai 600 009.
- 3.The Director of School Education,
College Road, Chennai 600 006.
- 4.The Chief Educational Officer
Cuddalore District, Cuddalore.



WP.Nos.4943 & 4944/2017

5.The District Educational Officer
Cuddalore District, Cuddalore.

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6.The Secretary
Neyveli Lignite Boys Higher Secondary School
Block No.10, Neyveli,
Cuddalore District.

... Respondents in
both Petitions

Prayer in WP.No.4943/2017: - 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 1st respondent in relation to Letter No.66858/CMPC/2013-2 dated 22.08.2014 and quash the same insofar as the petitioner is concerned and consequently issue a direction to the respondents to allow the petitioner to draw scale of pay of Rs.15,000-38100 plus Rs.5600 GP as selection grade from the eligible date.

Prayer in WP.No.4944/2017: - 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 1st respondent in relation to Letter No.66858/CMPC/2013-2 dated 22.08.2014 and quash the same insofar as the petitioner is concerned and consequently issue a direction to the respondents to allow the petitioner to draw scale of pay of Rs.15,000-38100 plus Rs.5600 GP as selection grade from the eligible date.

For Petitioners in both	
Writ Petitions	: Mr.R.Saseetharan
For RR 1 to 5 in both	
Writ Petitions	: Mr.S.Ravikumar, Spl.GP
For R6 in both Petitions	: Mr.N.Nithianandan



WP.Nos.4943 & 4944/2017

COMMON ORDER

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- (1) Since the issues involved in both the writ petitions are same, the only difference being that the petitioner in WP.No.4943/2017, P.James is an Athletic Coach and the petitioner in WP.No.4944/2017 is a Football Coach, but however both in the 6th respondent/School/Neyveli Lignite Corporation Boys Higher Secondary School and the learned counsel for the petitioners also relies on an earlier judgment of this Court in a batch of writ petitions / ***WP.Nos.3132 to 3134/2017 dated 02.12.2022 [S.Elizabeth Rani and 2 Others Vs. Government of Tamil Nadu rep.by the Secretary to Government, Finance [CMPC] Department, Chennai and 6 Others]***, a common order is passed.
- (2) It must also be stated that the 7th respondent in the judgment referred supra, namely, WP.Nos.3132 to 3134/2017, was the Neyveli Lignite Corporation Girls Higher Secondary School, the only difference being that the said respondent was Girls Higher Secondary School, but in the present case, it is Boys Higher Secondary School, but both run by the Neyveli Lignite Corporation at Neyveli in Cuddalore



WP.Nos.4943 & 4944/2017

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District. The other difference in the writ petitions is that the petitioners there were Vocational Instructors, but the petitioners herein, as stated, are Athletic Coach and Football Coach respectively.

(3) It is contended by the learned Special Government Pleader that the petitioners herein seek pay fixation but however, to this assertion, it is stated by the learned counsel for the petitioners that the post to which the petitioners today hold, do not have any promotional avenue and therefore, the pay protection is sought in the present writ petitions. It is also contended that it was the same issue which was addressed by a learned Single Judge of this Court in the aforementioned WP.Nos.3132 to 3134/2017.

(4) Even in that particular case, there was no promotional avenue available for the Vocational Instructors in the 7th respondent/School therein. While examining the issue therein, the learned Single Judge had placed reliance on an earlier batch of writ petitions in **WP.Nos.2654, 2924 and 2663/2018 dated 19.03.2018 [L.Natarajan Vs State of Tamil Nadu and Others]** and applied the same ratio, as stated, in the above judgment. In order to maintain consistency, it



WP.Nos.4943 & 4944/2017

WEB COPY

would only be appropriate that the same order is also passed and the same benefit is also accrued to the petitioners herein.

- (5) Before going any further with respect to the ratio laid down in the earlier judgment, it would only be appropriate that brief facts are also stated.
- (6) The petitioner in WP.No.4943/2017, P.James, had been appointed as Athletic Coach in the pay scale of Rs.1600-2660 at the 6th respondent / School / Neyveli Lignite Corporation Sports School at Neyveli in Cuddalore District on 23.11.1992. The said School is an Aided Private Institution receiving teaching grant from the Government of Tamil Nadu. It had been stated that his pay is disbursed to the Secretary of the 6th respondent / School. The petitioner claims that he also has requisite qualifications to hold the post of Athletic Coach in the said School.
- (7) The petitioner in WP.No.4944/2017, D.Johnson, had stated in his affidavit that he had been appointed as Football Coach at a pay scale of Rs.1600-2660 at Neyveli Lignite Corporation Sports School at Neyveli, in Cuddalore District, which was an Aided Private School



WP.Nos.4943 & 4944/2017

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receiving grant from the Government of Tamil Nadu. Subsequently, the petitioner came to be attached to the 6th respondent / School / Neyveli Lignite Corporation Boys Higher Secondary School. He also claimed that he has necessary qualifications to work as Football Coach. It had been stated that Athletic Coachers / Football Coachers like the petitioners herein, are given the pay scale as that of B.T.Assistants. It was stated that the petitioners had been granted selection grade of pay in their respective posts in the scale of pay of Rs.6,500-10,500/- by an order of the District Educational Officer, Cuddalore. It was equivalent to the selection grade for B.T.Assistants, as granted by the Government of Tamil Nadu with effect from 01.01.1996. It had also been stated that the pay scales of the petitioner was fixed at Rs.22,280/- in the scale of Rs.9,300-34,800 + 4600 GP when they moved on to selection grade. An increase of pay of 3% was also given and when they moved to selection grade, and received selection grade pay from 23.11.2012.

- (8) It had been stated that the Government in G.O.Ms.No.234, dated 30.06.2009 had restricted the grade scale of pay to the scale of pay of



WP.Nos.4943 & 4944/2017

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first level promotion. It had been stated that the petitioners are entitled for the recommendations of the One Man Commission which was appointed to examine the reliefs given in the VI Pay Commission. It had been stated that the petitioners were entitled to revised scale of pay notionally from 01.01.2006 and with monetary benefits from 01.01.2011. It had been further stated that however, a Letter had been issued on 22.08.2014 by the Government of Tamil Nadu that Vocational Instructors with whom the petitioners align as Athletic Coachers/Football Coachers, have to be granted the selection grade of pay of Rs.9,300-34,800 +4800 GP as is granted for B.T.Assistants. The petitioners claim the same grade of pay. It is contended that therefore, the case cited by the learned counsel for the petitioners in WP.Nos.3132 to 3134/2017 would be directly applicable to the petitioners herein.

- (9) Counter affidavits had been filed in both the writ petitions by the 5th respondent, District Educational Officer, Cuddalore District in both the writ petitions and the learned Special Government Pleader had placed specific reliance on paragraph No.7 which is extracted below:-



WP.Nos.4943 & 4944/2017

"7.It is submitted that the Government in Finance Department have issued orders without mentioning any specific cadre for fixing selection grade scale of 15600-39100+GP of 540 in Government Letter No.63305/Fin[PC]2010-1 dated 08.11.2010. Based on the order the pay fixing authority fixed the writ petitioner's pay in the Selection Grade Athletic Coach/Football Coach Grade-1 in the scale of pay of Rs.15600-39100+GP of Rs.5400/- with a view that the Athletic Coach/Football Coach are getting scale of pay equivalent to Rs.9300-34800+GP4600/- with the condition that "objection if any raised in audit in future, the individual has to remit the excess amount that would be referred by the audit authorities." Moreover, the Grade scale of pay of Athletic Coach/Football Coach has been revised as Rs.9300-34800+GP of Rs.4600/- based on the recommendations of Pay Grievance Redressal Cell all notionally with effect from 01.01.2006 with monetary benefit from 01.04.2013. As such the orders issued in G.O.Ms.No.23, Finance [CMPC] Department, dated 12.01.2011 is not applicable to the petitioners."



WP.Nos.4943 & 4944/2017

WEB COPY

- (10) It had been stated that grant of pay parity by the Court would result in a cascading effect and would have adverse consequences in routine administrative exercise of the executive. It had been stated that the petitioners had failed to place the nature of duties. It had therefore been stated that the financial implementation should be examined by the Court before passing the orders. The learned Special Government Pleader also contended that fact with assertion and stated that the Court should be cautious while examining pay fixation and equalising the pay of the petitioners herein to that of Vocational Instructors.
- (11) In WP.Nos.3132 to 3134/2017, wherein the learned Single Judge had placed reliance on the ratio laid down in WP.Nos.2654, 2924 and 2663/2018, referred supra, it had been held as follows:-

"2. The issue regarding fixation of pay to the Vocational Instructors was considered by this Court in a batch of writ petitions in W.P.Nos. 2654, 2924 and 2663 of 2018 dated 19.03.2018 in the case of L.Natarajan Vs. The State of Tamil Nadu & others and the relevant portion of the order reads as follows:

"6. A Government letter cannot prevail over a Government order issued under Article



WP.Nos.4943 & 4944/2017

162 of the Constitution of India. But then, as per the proceedings of the Principal Accountant General, Chennai, the monetary benefits can be given only from 01.04.2013. If they have been mistakenly given from the earlier date, the excess pay has to be recovered.

7. The learned counsel appearing on behalf of the writ petitioner placing reliance of the Hon-ble Supreme Court of India in 2015 (4) SCC 334 [State of Punjab v. Rafiq Masih] held that an order of recovery may not be made. Though the Hon-ble Supreme Court made it clear that only if it would cause hardship, recovery ought not be effected. In this case, some of the writ petitioners who have retired are very much getting pension. Therefore, the order of recovery will not cause hardship to them.

8. The Standing Counsel appearing on behalf of the Principal Accountant General, Chennai, submits that the objection was made in the year 2011. That apart, the proceedings dated 14.07.2014 of the Principal Accountant General, Chennai, are not under challenge.



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WP.Nos.4943 & 4944/2017

9. Therefore, these writ petitions are partly allowed by holding that selection grade Vocational Instructor are entitled to be paid selection grade scale of pay Rs.15600~39100+GP 5400 admissible with monetary benefits from 01.04.2013. No costs. Consequently, connected miscellaneous petitions are closed.“

3. The said order passed by this Court was implemented by the Government and a Government Order was issued in G.O.Ms.No.306, Finance (CMPC) Department, dated 12.09.2018. The said Government order reads as under:

“7. As there is no promotional avenues for the post of vocational instructors it would not be appropriate to restrict their Selection Grade/ Special Grade scales of pay as that of BT Assistant who are having promotional prospects of elevating to the post of Head Master High School/ Head Master Higher Secondary School/ District Educational Officer in the light of the above facts. The Government has decided to implement the orders of the Madurai Bench of Madras High Court dated 19.03.2018 in W.P.(MD).No.2694, 2924 & 2663 of 2018 and 15980 & 17197 of 2014. Accordingly, the Government direct that the Selection Grade Scale of Pay of Vocational Instructors who were awarded Selection Grade



WEB COPY



WP.Nos.4943 & 4944/2017

prior to 01.01.2016 and in the case of employees who have exercised their opinion to come over to the revised scales of pay on the date of their award of Selection Grade between 01.01.2006 and 31.05.2009 shall be refixed in the scale of pay of Rs.1600~39100 + G.P.5400 notionally with effect from 01.01.2006 on the date of award of Selection Grade in the post of Vocational Instructor with monetary benefits from 01.04.2013.

8. The above orders shall be applicable to all the Vocational Instructors who were awarded Selection Grade prior to 01.01.2006 and those awarded Selection Grade between 01.01.2006 and 31.05.2009 and opted for the revised scales of pay on that date irrespective of the fact as to whether they filed separate writ petitions or not."

4. In view of the above order of this Court and the Government Order passed in G.O.Ms.No.306, Finance (CMPC) Department, the cases of the petitioners are also directed to be considered and accordingly, appropriate orders are to be passed based on the said G.O., dated 12.09.2018, within a period of twelve (12) weeks from the date of receipt of a copy of this order."

- (12) In view of the above orders passed consistently by this Court and also the Government Order in G.O.Ms.No.306, Finance [CMPC]



WP.Nos.4943 & 4944/2017

WEB COPY

Department dated 12.09.2018, the cases of the petitioners are also directed to be considered and accordingly, appropriate orders are to be passed by the 2nd respondent and concurred by the 1st respondent, on the basis of the said Government Order No.306 dated 12.09.2018 within a period of twelve weeks from the date of receipt of a copy of this order.

- (13) With the said directions, the writ petitions stand **disposed of**. No costs. Consequently, connected miscellaneous petitions are closed.

27.09.2023

AP
Internet : Yes



WP.Nos.4943 & 4944/2017

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Government of Tamil Nadu
Finance [Pay Cell] Department
Fort St George, Chennai 600 009.
- 2.The Secretary to Government of Tamil Nadu
School Education Department
Fort St George, Chennai 600 009.
- 3.The Director of School Education,
College Road, Chennai 600 006.
- 4.The Chief Educational Officer
Cuddalore District, Cuddalore.
- 5.The District Educational Officer
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- 6.The Secretary
Neyveli Lignite Boys Higher Secondary School
Block No.10, Neyveli,
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WP.Nos.4943 & 4944/2017

C.V.KARTHIKEYAN, J.,

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WP.Nos.4943 & 4944/2017

27.09.2023