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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESEVED ON : **23.08.2023**

DELIVERED ON : **29.09.2023**

CORAM:

THE HONOURABLE **DR.JUSTICE ANITA SUMANTH**
AND
THE HONOURABLE **MR.JUSTICE R.VIJAYAKUMAR**

W.A.(MD)Nos.1306 to 1308 of 2015 & 582 of 2016
and
M.P.(MD)Nos.1, 1, 1 and 1 of 2023
in
W.A.(MD)Nos.SR15689 to 15692 of 2013

W.A.(MD)No.1306 of 2015:

- 1.The State of Tamil Nadu,
Rep.by the Secretary to Government,
Backward Classes,
Most Backward Classes and Minority
Welfater (B.S.III) Department,
Fort St.George, Chennai-600 009.
- 2.The State of Tamil Nadu,
Rep by the Principal Secretary to Government,
School Education Department,
Fort St.George, Chennai-600 009.
- 3.The Commissioner of Most Backward Classes
and Denotified Communities,
Chepauk, Chennai-600 005.
- 4.The Joint Director,
Kallar Reclamation,



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Madurai-625 020.

5. The Headmaster,
Government Kallar Higher Secondary School,
Melakkal-625 234,
Madurai District.

...Appellants

/Vs./

M.Eswari

...Respondents

PRAYER:- Writ Appeal - filed under Clause 15 of Letters Patent Act, to set aside the order dated 07.03.2012 in W.P.(MD)No.2579 of 2012 etc., allow the writ appeal.

For Appellant	: Mr.V.Om Prakash
For R1 & R2	: Mr.B.Alagarsamy
For R3	: Mr.T.Lajapathi Roy
	Senior Counsel
	for Mr.S.Rajasekar

JUDGMENT

(Judgment of the Court was delivered by **DR.ANITA SUMANTH, J.**)

This batch of appeals has been filed by the State, represented by the Secretary to Government, Backward Classes, Most Backward Classes and Minority Welfare (B.S.III) Department/R1, the State, represented by the Principal Secretary to Government, School Education Department/R2, Commissioner of Most Backward Classes and



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Denotified Communities/R3, the Joint Director, Kallar Reclamation/R4, and the Headmaster, Government Kallar Higher Secondary School/R5, challenging the orders passed on various dates in the cases of the individual respondents (hereinafter referred to as 'writ petitioners'), who had sought mandamus directing the appellants to extend to them the benefit of G.O.Ms.No.258, School Education (M1) Department, dated 06.09.2010, that had been implemented in pursuance of order dated 14.07.2009 passed in W.P.No.8747 of 2009.

2.The writ petitioners were employed as Teachers in the Government Kallar Higher Secondary School under the administrative control of the first and third appellants. The writ petitioners had been appointed on various dates as Secondary Grade Teachers and had been awarded selection / special grades after completion of 10/20 years of service, respectively and have attained superannuation as well.

3.The writ petitioners were aggrieved by the fact that there was stagnation in their career as high/higher secondary school teachers had not been made eligible for promotion to the post of principal of



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secondary school based on their secondary grade qualification and seniority. Thus and routinely, secondary grade teachers rendered continuous services for 2 to 3 decades without any scope for promotion.

4.This was contrasted by them with the career prospects of primary school teachers in the Elementary Education Department, who, based on the same qualifications, were offered the opportunity of promotion as primary school head master. Prior to the V Pay Commission, both secondary grade teachers employed in high/higher secondary schools and primary school headmasters were extended similar time scale of pay benefit up to 01.06.1988.

5.The position changed post implementation of the V Pay Commission recommendations when secondary school teachers holding the post of primary school headmaster were given higher pay. The position pre and post V Pay Commission is as follows:

Before V Pay Commission:

<i>Secondary Grade Primary School Headmasters:-</i>	
<i>Ordinary Grade</i>	-- Rs.1400-50-2300-60-2600
<i>Selection Grade</i>	-- Rs.1640-60-2600-75-2900
<i>Special Grade</i>	-- Rs.2000-60-2300-75-3200



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Post V Pay Commission:

*Secondary Grade Teachers in High /Higher
Secondary School:*

Ordinary Grade -- Rs.1200-30-1560-40-2040

Selection Grade -- Rs.1400-50-2300-60-2600

Special Grade -- Rs.1640-60-2600-75-2900

6.In order to bring the teachers on par and remove the disparity, G.O.Ms.No.216, Finance (Pay Cell) Department, 22.03.1993 had been passed. This Government Order recognized the aforesaid disparity and provides in paragraph 3(ii) as follows:

3(ii)In respect of Secondary Grade Teachers in High Schools there is no promotion post for them as on 28.03.90 (i.e the date of issue of the Government Order Second read above), although there is promotion post in Primary Schools. As a measure of uniformity in respect of all Secondary Grade Teachers, Government direct that the Teachers should be made eligible for Selection / Special grades as in Annexure-I in the Government Order second read above.”

7.After some litigation, the above Government Order was implemented by the second respondent by way of G.O.Ms.No.258, School Education (M.1) Department, dated 06.09.2010. Under those Government Orders, the benefit had been extended only to N.Govindarajan, who had initially filed O.A.No.8276 of 1997 before the Tamil Nadu Administrative Tribunal praying refixation of his pay as per



G.O.Ms.No.216, Finance (Pay Cell) Department, dated 22.03.1993.

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8.However, several similar/identically placed teachers sought the same benefit and approached this Court. The Full Bench of this Court in *Government of Tamil Nadu rep by the Secretary, School Education Department vs. G.Eswaran and others*, [(2017) 2 MLJ 257 (FB)], thus extended the benefit to all secondary grade teachers in high/higher secondary schools including special teachers, who attained selection /special Grade, during the period 01.06.1988 and 31.12.1995.

9.The Court made it clear that benefits would be extended only to those parties who were before the Court at that juncture and no fresh writ petitions would be entertained on and from 09.12.2016 being the date of that order. The writ petitioners would point out that their cases were all pending at that time having been filed long prior to 09.12.2016. This is one of the grounds upon which they too seek benefit under G.O.Ms.No.216, dated 22.03.1993.



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10.This then is the sum and substance of their prayer before the Court. The writ petitions came to be allowed by orders passed on various dates granting them the benefit of G.O.Ms.No.216 dated 22.03.1993 as sought for. As against that order, the respondents are in appeal.

11.Learned Government Advocate would, at the outset, point out that the distinction arises from the category of Schools in which the writ petitioners were employed. All writ petitioners were all employed by the Kallar Reclamation Schools, that are governed by a separate scheme, set out under various Government Orders, commencing from G.O.Ms.No.264, Social Welfare Department dated 26.04.1978. Along with compilation dated 17.08.2023, learned Government Pleader has also circulated written instructions obtained from the first appellant, enclosing letter dated 13.07.1992 and 01.04.2008.

12.His case is that there are sufficient opportunities available within the scheme of Kallar Reclamation schools to benefit the teachers. Firstly, he would refer to letter dated 13.07.1992 pointing out that secondary grade teachers in these schools were being upgraded to the



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post of primary school headmasters with effect from 01.06.1988, Thus there has been upgradation of their posts along with commensurate higher scale.

13.Though, admittedly, there were no sanctioned posts of headmasters of elementary and middle schools, the post of higher secondary school headmaster had been carved out and was functional and thus, the higher secondary teachers could well achieve that promotion.

14.A confirmation was sought from the GP as to what the opportunities were for primary school/middle school headmaster and the learned counsel was directed to produce the list of sanctioned posts in Kallar Reclamation Schools. No such list has been produced. Evidently, no such list is in existence as admittedly, the post of headmaster of primary/middle school is not one sanctioned under the Kallar Reclamation School Scheme as set out under G.O.Ms.No.264 dated 26.04.1978.



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15.However, and as a measure of responding to our query, our attention is drawn to the promotion order in the case of one Latha @ Kalaiselvi. This order is dated 18.02.2012 and has been issued in the context of her promotion from secondary school teacher to headmaster of the primary section. Thus, he maintains that though the Government Order might not reveal such posts specifically created and sanctioned, in practice such opportunities are available to the writ petitioners and similarly placed faculty.

16.In this context, he draws attention to a series of letters submitted by the writ petitioners renouncing/relinquishing their promotion to the post of primary school headmaster. According to him, offers of promotion to the post of primary school headmaster had been made to them as well, which they did not opt for. In such circumstances, where the writ petitioners had been offered but not chosen to avail promotional posts offered, the writ Court ought not have granted them the relief.



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17. That apart, there had been no disclosure made by them in their writ petitions to the effect that such an offer had even been made and for this act of non-disclosure /suppression of fact, the writ petitions ought to have been dismissed in limine.

18. We have heard the rival contentions of learned counsel and have also considered the documents filed including the Government Orders. In recognition of the necessity to specifically address and promote the welfare of backward and de-notified classes, the State had constituted a special department to deal with their interests as early as on 28.04.1969.

19. This department is the Directorate of Backward Class and De-notified Tribes. Cadres have been created under G.O.Ms.No.618, Social Welfare Department, dated 17.05.1971 providing for officers and staff of this department. Under G.O.Ms.No.264, dated 26.04.1978, Special Rules had been drafted and notified for Tamil Nadu Backward Classes Welfare Subordinate Services to form Section 3(A) of the Madras Services Manual, Volume-III, 1970.



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20.The Special Rules came into effect on and from 02.05.1969 and constituted six categories of services comprising several classes of employees in schools and training institutions. Careful perusal of this Government Order will indicate that there has been no provision made for the post of headmaster of primary school and there is only a provision under Class-I, Serial No.1, for Headmaster and Headmistress of secondary schools.

21.However, talks have been on-going for creation of these categories, and in letter dated 13.07.1992, the Deputy Secretary to Government states that *‘no separate orders for upgradation are necessary as the Secondary Grade Teachers, who are working as Primary School Headmasters with effect from 01.06.1998 and before are deemed to have been upgraded due to the award of the higher scale of pay’*.

22.Learned Government Pleader confirms us that the upgradation in pay was in the region of 3%, but there is nothing on record to substantiate this submission. However, paragraphs 2 and 3 of



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letter dated 13.07.1992, do make reference to pay scale of elementary school headmaster and state as follows:

2.The ratification for the implementation of the revised pay scales for the Elementary School Headmasters with effect from 1.6.1988 in anticipation of the G.O.(Ms.) No. 1349, Finance (PC), dated 20.12.1990 by the Government is also not necessary since it has clearly been mentioned in the same Government Order that the amendment made regarding the pay scales are deemed to have come into force with effect from 1.6.1988.

3.I am also directed to state that as separate scales of pay have been provided to the Headmasters of Elementary and Middle Schools of this Department, it is necessary to amend the service rules so as to treat the Headmaster, Middle School as promotion to Headmaster, Primary School, alter acquiring B.Ed., and Headmaster, Primary School as promotion to Secondary Grade Assistant. I am, therefore, directed to request you to send necessary draft amendment proposal early.

23. One thing is clear from letter dated 13.07.1992, that the posts of primary/elementary school headmaster and middle school headmaster have been carved out and are fully functional though the Rules do not provide for such posts. Thus such promotional avenues were available to the Teachers and have also been availed by them over the years as the letters and orders noticed in the preceding paragraphs reveal.



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24. Though ratification has been sought for implementation of revised pay scale of Elementary School Headmaster in anticipation of G.O.Ms.No.1349, Finance (PC) dated 20.12.1990, the department proceeds on the basis that such ratification was implicit in the aforesaid Government Order itself as that very Government Order states that the enhanced pay scales are deemed to have been come into force with effect from 01.06.1998. Incidentally, we have made earnest efforts to obtain a copy of G.O.Ms.No.1349 as aforesaid, since a copy was not supplied by any of the parties, to no avail. The writ petitioners however do not produce any material to controvert the material now supplied by the appellants in support of their stand.

25. This then appears to be the position till date as no other and subsequent Government Orders have been placed before us to show that posts have been specifically sanctioned for the posts of primary /middle school headmaster. We also accede to the position that enhancement in pay scales has been in place from 01.06.1998 as revealed from letter dated 13.07.1992.



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26. We are also supplied with a copy of letter No.B1/402/06, dated 01.04.2008, where the then Commissioner of Most Backward Classes and Denotified Communities, writes to the District Revenue Officer of Kallar Reclamation, Madurai in regard to the preparation of panel for the vacancies in Kallar Reclamation School in the year 2008. He notes with displeasure that specific instructions had been given to the District Revenue Officer for constitution of panel but no action has been taken in that regard.

27. Letter reads as follows:

“ , I.A.S., Telephone-. . . .
Commissioner, e-mai:dir-mbhc@tn.nic.in
Most Backward Classes and Telegram:DIKMOS/TBACK
Denotified Communities Ezhilagam Extn.Building
Chennai.

D.o.Lr.No.P1/402/06 dt 1-04-08

Dear ,
Sub:Establishment-Kallar Reclamation-Schools –
Preparation of panel for the year 2008-Reg.
Ref:Connected records.

Kindly recall the discussion had with you during the Review Meeting held on 17-03-2008, wherein you have been instructed to send / prepare panel for the



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vacancies reserved to be filled up by promotion / recruitment by transfer for the year 2008 immediately. But the report has not yet been received by this office which is noted with displeasure

Further, I request you to take action to fill up the post of Primary School HM. and Middle School H.M. by following the method adopted by School Education Department since there is no special rule / adhoc rule ned for these posts for this department.

Also I request you to send a copy of panels published by you for the categories in which you are the appointing authority and send the proposal for panel for the posts of Higher Secondary School H.M. and PG Assistant for the year 2008 immediately.

*Yours Sincerely,
Signed
(Name)”*

28. The above extract establishes that the Commissioner had suggested that the posts of primary and middle school headmaster be filled in following the method adopted by the School Education Department, since there had been no Rules framed for the purpose. This thus appears to be the manner in which vacancies for primary and middle school headmaster had been filled in Kallar Reclamation Schools.

29. While no sanction had been accorded for creation of such posts as per G.O.Ms.No.264 dated 26.04.1978, on the ground, a need was



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felt for the same. Hence, a rough and ready method was put in place and is being followed. Seen from the letters that had been submitted by the writ petitioners declining the option granted to them, it appears clear, and we thus infer that offers were being made to existing teachers based on seniority, seeking their willingness for appointment as primary school/middle school headmaster.

30. The criteria for such offers is unknown and it is perhaps unnecessary and too late in the day to revisit/review this issue now. One way or another, the schools are following a methodology of promotions that offers career advancement and enhanced pay to the teachers which is, after all, the request of the writ petitioners too. The prayer of the petitioner for benefit of G.O.Ms.No.216 dated 22.03.1993 is wholly premised upon the fact that there are no promotional opportunities available to teachers in the higher secondary stream of the Kallar Reclamation schools.

31. This contention is seen to be factually incorrect as higher secondary school teachers have an opportunity for inclusion in the panel



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for the post of higher secondary school headmaster and primary and middle school teachers were also being considered for the post of primary school/middle school headmaster, though such selection was neither borne out by any Government Order or Rules. Though not ideal, the department appears to have evolved this methodology for promotion over the years even in the absence of any specific and enabling Government Orders.

32. In the interests of clarity, we reiterate that on a conjoint reading and understanding of G.O.Ms.No.264, Social Welfare Department, dated 26.04.1978 and letter of the Deputy Secretary to Government, Most Backward Classes and Notified Communities, dated 13.07.1992, we find that the Kallar Reclamation Schools did follow a scheme of internal promotions and postings for the Teachers in the schools.

33. In parallel, the scheme as far as the Higher Education Department is concerned emanates from G.O.Ms.No.304 stipulating parity in pay to Higher Secondary School Teachers on account of



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stagnation fixing the effective date as 01.06.1988. G.O.Ms.No.216 dated 22.03.1993 is relatable only to G.O.Ms.No.304 dated 28.03.1990 and since both these Government orders have been issued by the School Education Department, they are relatable to the schools coming under that department only.

34.The writ petitioners thus cannot be seen to say that they have been denied promotional opportunities, particularly since there are records produced by the appellants indicating offers for promotional posts made to them, which they have not opted to accept.

35. The orders of the Writ Court are set aside and these writ appeals are allowed as are the Writ Appeals in SR stage. No costs. Consequently, connected Miscellaneous Petitions are closed.

[A.S.M.J.] & [R.V.J.]
29.09.2023

NCC :Yes/No
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Internet :Yes
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DR.ANITA SUMANTH, J.
AND
R.VIJAYAKUMAR, J.

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Order made in
W.A.(MD)Nos.1306 to 1308 of 2015 & 582 of 2016

Dated:
29.09.2023