



W.P.(MD) No.23365 of 2016

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

ORDERS RESERVED ON : 24.07.2023

ORDERS PRONOUNCED ON : 07.08.2023

CORAM

THE HON'BLE MR.JUSTICE BATTU DEVANAND

W.P.(MD) No.23365 of 2016

- 1.Bagavathi Kannupillai
- 2.Uchumahazhi
- 3.Charles
- 4.Savarimuthu
- 5.Aruldass
- 6.Muthu Nadar
- 7.Sundar Raj
- 8.Ayyappan

... Petitioners

Vs.

- 1.The State of Tamilnadu,
Rep., by the Secretary to Government,
Education Department,
St. George Fort, Chennai.
- 2.The Director of School Education,
Chennai.



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3.The Director of Elementary Education,
Chennai.

4.The District Elementary Education Officer,
Nagercoil,
Kanniyakumari District.

... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India praying for issue of Writ of Mandamus, directing the respondents to regularize the service of the petitioners as secondary grade teacher from the date of their appointment and also award selection grade and special grade to the petitioner with all monetary benefits.

For Petitioner : Mr.K.P.Narayanakumar

For Respondent : Mr.V.Nirmal Kumar
Government Advocate

ORDER

This writ petition has been filed seeking to issue a Writ of Mandamus to direct the respondents to regularise the services of the petitioners as Secondary Grade Teachers from the date of their appointment and to award Selection Grade and Special Grade with all monetary benefits by counting the said period.



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2. Heard the learned counsel for the petitioner and the learned Government Advocate appearing for the respondents and perused the material available on record.

3. The petitioners, who were initially appointed as Elementary Grade Teachers, were qualified for appointment to the post of Secondary Grade Teachers and later, they were absorbed as Secondary Grade Teachers. The particulars of the date of appointment as Elementary Grade Teachers and the date of absorption as Secondary Grade Teachers are given below:

Sl.No.	Name of the petitioner	Date of appointment as Elementary Grade Teacher	Date of absorption as Secondary Grade Teacher
1	Bagavathi Kannupillai	16.11.1962	01.10.1969
2	Uchumahazhi	28.10.1966	01.01.1971
3	Charles	01.11.1960	26.11.1963
4	Savarimuthu	10.09.1964	01.10.1969
5	Aruldass	27.10.1966	01.10.1970
6	Muthu Nadar	10.09.1964	01.10.1969
7	Sundar Raj	09.08.1966	01.01.1971
8	Ayyappan	29.01.1964	01.10.1969



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4. In this writ petition, the petitioners are seeking a direction to the respondents to regularise their services as Secondary Grade Teachers from the date of their initial appointment and also grant the Selection Grade and Special Grade accordingly.

5. Learned counsel for the petitioners submits that even though all the petitioners fully qualified to be appointed as Secondary Grade Teachers, they were appointed as Elementary Grade Teachers initially. Their services were regularised by the respondents as Secondary Grade Teachers from the date of absorption as Secondary Grade Teachers. But all the petitioners were entitled to be regularised as Secondary Grade Teachers from the date of their initial appointment as Elementary Grade Teachers, since on the dates itself they were fully qualified for the post of Secondary Grade Teachers.

6. The learned counsel further submits that the similarly situated persons like the petitioners approached this Court to regularise their services as Secondary Grade Teachers from the date of their appointment



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and the writ petitions filed by them were allowed by this Court by order dated 03.04.2009 and 27.01.2010 respectively in W.P.No.43235 of 2006 and W.P.No.34213 of 2006.

7. The learned counsel contends that pursuant to the orders passed by this Court, the 1st respondent passed G.O.Ms.No.70, dated 28.05.2014 by regularising the services of the petitioners therein and consequently, the 4th respondent passed an order on 20th October, 2014 regularising their services with all monetary benefits. The learned counsel for the petitioners further submits that the petitioners also similarly qualified and eligible persons and as such, their claim has to be considered on par with the above mentioned persons and the petitioners are entitled to get regularise their services from the date of appointment, otherwise, it is against Article 14 of the Constitution of India. The learned counsel also contends that the petitioners made several representations to the respondents to consider their request. But, there is no response from the respondents. Under these circumstances, the petitioners are constrained to file this writ petition and sought to allow the writ petition.



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8. The learned Government Advocate appearing for the respondents submits that in service matters, pertaining to the services of individuals, there could be no judgment in *rem* and each and every case depends on its own facts and merits and hence, there is always judgment in *personam* in service matters. He further contends that accordingly, the contention of the petitioners that their case has to be considered, in the light of the judgments in W.P.No.43235 of 2006, dated 03.04.2009 and W.P.No. 34213 of 2006, dated 27.01.2010 and as per G.O.Ms.No.70, dated 28.05.2004, is not legally enforceable.

9. The learned Government Advocate finally submits that all the petitioners retired from service on various dates from 1996 to 2000 and they filed the present writ petitions with an inordinate delay of nearly 16 years and as such, they are not entitled for the relief sought and requested to dismiss the writ petition.



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10. Having heard the submissions of the respective counsels and upon careful perusal of the materials available on record, it appears that the facts in the present case are not in dispute.

11. The only issue to be considered in this writ petition is whether the petitioners are entitled for regularisation of their services as Secondary Grade Teachers from the date of their initial appointment as Elementary Grade Teachers for awarding Selection Grade and Special Grade with all monetary benefits or not.

12. Having considered the facts and circumstances of the case, admittedly, the issue arises in the present writ petition is no longer *res integra* and already a learned Single Judge of this Court allowed the writ petitions as stated *supra*. The relevant paragraphs of order dated 03.04.2009 in W.P.(MD) No.43235 of 2006 are extracted hereinunder:

“3. It is brought to my notice by the learned counsel appearing for the petitioners that in O.A.Nos.



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282, 283 and 3441 of 1993 (*A.Ilangovan Vs. The Director of Elementary Educational and others*), the Hon'ble Tamilnadu Administrative Tribunal, while considering a similar matter passed the following order:

“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 fundament 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 individuals discrimination or hostile treatment. The purpose is to ensure similarly and equitable treatment and identity of treatment in matters relating to initial engagement, during continuance of that enjoyment and



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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



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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 of a copy thereof.”

4. The learned Additional Government Pleader submitted that no appeal had been preferred against the said order. In view of the said fact, the learned counsel appearing for the petitioners strenuously contended that the judgment rendered by the Tribunal in the above case covers the case of the petitioners also. The learned Additional Government Pleader appearing for the respondents is unable to dispute the same.

5. In view of the said facts and circumstances, I am inclined to grant the relief as prayed for by the petitioners. The writ petition stands allowed. No costs. The first respondent shall settle all the monetary benefits to the petitioners within eight weeks from the date of receipt of copy of this order. No costs.”



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13. Paragraph No.6 of order dated 27.01.2010 in W.P.(MD) No. 34213 of 2006 reads as hereinunder:

“6.The learned Government Advocate submits that the writ petition filed by the similarly situation persons were allowed by this Court and the orders were also implemented. Hence, the writ petition is allowed as prayed for and direction is issued to the respondents to regularise the service of the petitioners as Secondary Grade Teacher from the date of their initial appointment and accordingly to award Selection Grad. The respondents are directed to complete the exercises within twelve weeks from the date of receipt of a copy of this order.”

14. There is no dispute that these two orders of this Court have become final and the respondents therein implemented the said orders. As such, this Court has no different opinion to follow the said orders in *toto*.



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15. For the afore stated reasons, this Writ Petition is allowed as prayed for with the following directions:

- i. The respondents are directed to regularise the services of the petitioners as Secondary Grade Teachers from the date of their initial appointment as Elementary Grade Teachers and accordingly, to award Selection Grade and Special Grade with all consequential benefits.;
- ii. The respondents are directed to complete the exercise within a period of six weeks from the date of receipt of a copy of this order; and
- iii. No costs.

07.08.2023

Note: Issue order copy by 09.08.2023

NCC : Yes/No

Index : Yes/No

Internet : Yes

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To

- 1.The Secretary to Government,
State of Tamilnadu,
Education Department,
St. George Fort, Chennai.
- 2.The Director of School Education,
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BATTU DEVANAND, J.

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Pre-delivery Order made in
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