



W.P.No.14079 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.02.2024

CORAM:

THE HONOURABLE DR.JUSTICE D. NAGARJUN

W.P.No.14079 of 2016

N. Viswanathan S/o. S.P. Neelaiya Gounder Petitioner

vs.

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

2. The Director of Elementay Education,
College Road, Nungambakkam, Chennai-600 006.

3. The District Elenentary Educational Officer,
Salem District.

4. The Assistant Elementary Educational Officer,
Thalaivasal, Salem District – 636 112.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus directing the respondents to dispose the representation of the petitioner dated 13.11.2014 to count her Higher Grade place service as Secondary Grade Assistant Service from 03.04.1969 to 31.12.1970 for determination of the petitioner's service



W.P.No.14079 of 2016

benefits and to grant the consequential benefits arising thereof.

WEB COPY

For Petitioner : Mr. K. Thennan

For Respondents : Mrs. P. Rajarajeswari,
Government Advocate.

JUDGMENT

(Judgment of the Court was made by DR. D. NAGARJUN, J.)

This Writ petition has been filed seeking to issue a Writ of Mandamus directing the respondents to dispose of the representation of the petitioner dated 13.11.2014 and by way of counting her Higher Grade place service as Secondary Grade Assistant Service from 03.04.1969 to 31.12.1970 for determination of the petitioner's service benefits including pension and to grant the consequential reliefs thereof.

2. The case of the petitioner is that he was qualified to work as Secondary Grade Teacher. However, he served as Higher Grade Teacher with effect from 03.04.1969 to 31.12.1970 for a period of 3 years at Thalaivasal Panchayat Union Unit, Salem District. Later he was promoted as Secondary Grade Teacher with effect from 01.01.1971 and continued as such until he retired from service on super annuation on 30.06.2002 after 32 years of service.



W.P.No.14079 of 2016

WEB COPY

3. It is submitted by the learned counsel appearing for the petitioner that since he possessed qualification of Secondary Grade Teacher, even when he was working as Higher Grade Teacher from 03.04.1969 to 31.12.1970, the said period also to be treated as service as Secondary Grade Teacher and to add the said period of service as Secondary Grade Teacher in his service including for calculation of pension etc., The petitioner had sent a representation to the respondents to consider his request, however it was not considered. Thereby, this Writ petition.

4. The learned Government Advocate representing the respondents has submitted that the relief sought for by the petitioner cannot be granted on the ground of delay and laches.

4.1. A counter affidavit has been filed by the respondents stating that due to non-availability of candidates of qualifier of High Grade Teacher Certificate or Junior Basic Certificate, the Secondary Grade trained persons were appointed in the higher grade teacher posts and they were allowed to the scale of pay applicable to Higher grade teacher posts in which they were appointed. Subsequently, the Government evolved a new policy to



W.P.No.14079 of 2016

WEB COPY

improve the standards in Elementary and Higher Elementary schools by providing Additional Secondary Grade teacher posts for the absorption of Secondary Grade teacher certificate holders in lieu of Higher Grade teacher posts in which they were working. Due to the financial burdens, Government decided to implement the policy in a phased manner from the year 1967-68. At that time 14,000 Secondary Grade Teacher Certificate holders were employed in the Higher Grade teacher posts from the year 1967-68 to 1970-71. As these posts were sanctioned in phased manner, they were distributed to school as per the seniority.

5. The petitioners herein, by virtue of their seniority, were absorbed as Secondary Grade Teachers in the newly sanctioned posts in the respective year. The claim of the petitioners to absorb them in the Secondary Grade teacher posts retrospectively from the date of their initial appointment in the higher grade teacher posts, is not maintainable. Their appointments were not converted as Secondary Grade Teacher posts. They are well aware the fact that they were employed in the lower post i.e., Higher Grade Teacher even though they are qualified to hold the post of Secondary Grade Teacher and they are also well known that they will be



W.P.No.14079 of 2016

WEB COPY

pad salary for the post of Higher Grade. Hence they are estopped from claiming the benefit of Secondary Grade post salary when there is no sanctioned post at the time of their appointment. The cut off date fixed is valid and reasonable having regard to the huge financial burden to which the State would be subjected to in case the cut off date is extended beyond 01.06.1988. The retired teachers who were promoted as Primary School Headmasters on or after 01.06.1988 form a distinct and separate class than the petitioners who were promoted as Primary School Headmasters. Hence the question of discrimination does not arise. None of the petitioners have challenged the period prescribed i.e., 01.06.1988. The petitioners have filed the present Writ petition after a lapse of 30 years. Therefore, they are not entitled to get any relief at this distance of time. Hence the present Writ petition may be dismissed.

6. Heard both sides. Perused all the records.

7. It is brought to the notice of this Court by the learned counsel appearing for the petitioner that in similarly placed circumstances, the benefit as sought for by the petitioner, was already given by this Court in



W.P.No.14079 of 2016

WEB COPY

various Writ petitions. In the Writ petition in **W.P. No.30488 of 2006**, which was disposed of by this Court on 19.06.2008, the following orders have been passed:-

“3. It has been brought to my notice by the learned counsel appearing for the petitioner that in O.A. Nos.282, 283 and 3441 of 1993 (A. Ilangovan vs. The Director of Elementary Education and others), the Hon'ble Tamil Nadu Administrative Tribunal, while considering the matter in issue had passed the following order:-

“Indeed, there cannot be any intelligible difference between the Secondary Grade Certificate holders served in the Higher Grade place after 01.01.71 or prior to 01.01.71. 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



WEB COPY



W.P.No.14079 of 2016

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 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



WEB COPY



W.P.No.14079 of 2016

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”.

4. Admittedly no appeal had been preferred against the said order. In view of the said fact, learned counsel appearing for the petitioner strenuously contended that the judgment rendered by the Tribunal in the above case covers the case of the petitioner also. The said fact is not disputed by the learned Additional Government Pleader appearing for the respondents.

5. In view of the said facts and circumstances, I am inclined to grant the relief that has been sought for by the petitioner. The writ petition stands allowed. No costs. It is needless to say that the first respondent shall settle all the monetary benefits to the petitioner within eight weeks from the date of receipt of copy of this order”.

The similar orders have been passed in W.P. No.43235 of 2006,



W.P.No.14079 of 2016

48450 of 2006 and 34213 of 2006.

WEB COPY

8. In view of the above, the period of service rendered by the petitioner from 03.04.1969 to 31.12.1970 as Higher Grade Teacher by possessing a qualification of Secondary Grade Teacher, be treated as Secondary Grade Teacher, as so done in other similarly placed circumstances.

9. The learned Government Advocate appearing for the respondents has submitted that though earlier similar kind of orders have been passed as sought for by the petitioner in so far as the petitioner is concerned, the relief cannot be granted on account of delay and laches.

10. The learned counsel for the petitioner has cited the judgment of the Hon'ble Supreme Court reported in **2015 1 SCC 347**, wherein in Para 22, it is held as follows:-

“22. The legal principles which emerge from the reading of the aforesaid judgments, cited both by the appellants as well as the respondents, can be summed up as under:

22.1. The normal rule is that when a



WEB COPY



W.P.No.14079 of 2016

particular set of employees is given relief by the Court, all other identically situated persons need to be treated alike by extending that benefit. Not doing so would amount to discrimination and would be violative of Article 14 of the Constitution of India. This principle needs to be applied in service matters more emphatically as the service jurisprudence evolved by this Court from time to time postulates that all similarly situated persons should be treated similarly. Therefore, the normal rule would be that merely because other similarly situated persons did not approach the Court earlier, they are not to be treated differently.

22.2. However, this principle is subject to well-recognized exceptions in the form of laches and delays as well as acquiescence. Those persons who did not challenge the wrongful action in their cases and acquiesced into the same and woke up after long delay only because of the reason that their counterparts who had approached the Court earlier in time succeeded in their efforts, then such employees cannot claim that the benefit of the judgment rendered in the case of similarly situated persons be extended to them. They would be treated as fence-sitters and laches and delays, and / or the acquiescence, would be a valid ground to dismiss their claim.

22.3. However, this exception may not apply in those cases where the judgment pronounced by the Court was judgment in rem with intention to give benefit to all similarly situated persons, whether they approached the Court or not. With such a pronouncement the obligation is cast upon the authorities to itself extend the benefit thereof to all similarly situated persons. Such a situation can occur when the subject-matter of the decision



WEB COPY



W.P.No.14079 of 2016

touches upon the policy matters, like scheme of regularisation and the like (see *K.C. Sharma v. Union of India*). On the other hand, if the judgment of the Court was in personam holding that benefit of the said judgment shall accrue to the parties before the Court and such an intention is stated expressly in the judgment or it can be impliedly found out from the tenor and language of the judgment, those who want to get the benefit of the said judgment extended to them shall have to satisfy that their petition does not suffer from either laches and delays or acquiescence”.

In **2010 3 MLJ 934**, wherein in Para 26, it is held as follows:-

“26. In cases where the re-fixation of pay or pension after retirement was based on the continuing wrong, it was held that even after long delay the injury can be rectified since it is not a case where it involves revision of seniority and promotion which may unsettle the settled issues. That was the view of the Hon'ble Supreme Court in *Union of India v. Tarsem Singh*, [2008] 8 SCC 648, wherein it was held as follows:-

5. To summarise, normally, a belated service related claim will be rejected on the ground of delay and laches (where remedy is sought by filing a Writ petition) or limitation (where remedy is sought by an application to the Administrative Tribunal). One of the exceptions to the said rule is cases relating to a continuing wrong. Where a service related claim is based on a continuing wrong, relief can be granted even if there is a long delay in seeking remedy, with reference to the date on which the continuing wrong commenced, if such continuing wrong creates a continuing source of inquiry. But there is an exception to the exception. If the grievance is in respect of any order or administrative decision which issue would



WEB COPY



W.P.No.14079 of 2016

affect the settled rights of third parties, then the claim will not be entertained. For example, if the issue relates to payment or refixation of pay or pension, relief may be granted in spite of delay as it does not affect the rights of third parties. But if the claim involved issues relating to seniority or promotion etc., affecting others, delay would render the claim stale and doctrine of laches / limitation will be applied. In so far as the consequential relief or recovery of arrears for a past period, the principles relating to recurring / successive wrongs will apply. As a consequence, High Courts will restrict the consequential relief relating to arrears normally to a period of three years prior to the date of filing of the Writ petition”.

In view of the above, the submissions made by the learned Government Advocate representing the respondents that the relief sought for by the petitioner cannot be granted on account of delay and laches cannot be appreciated.

11. The learned Government Advocate has tried to make a distinction between the Secondary Grade Certificate holders served in Higher Grade place prior to 01.01.71 and after 01.01.71. In fact, this aspect was also covered by the previous judgment referred by the petitioner in W.P. No.30488 of 2006 and the same was negated. Thereby, the objection raised by the learned Government Advocate in respect of the making



W.P.No.14079 of 2016

WEB COPY

distinction between the Secondary Grade certificate holders served in Higher Grade places prior and after 01.01.71 cannot be accepted.

12. In view of the above, this Writ petition is allowed. There shall be no order as to costs. Connected miscellaneous petition is closed.

14.02.2024
[2/2]

mjs

Internet : Yes

Index: Yes/No

Neutral Citation: Yes/No

To

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

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

3. The District Elementary Educational Officer,
Salem District.



W.P.No.14079 of 2016

WEB COPY

4. The Assistant Elementary Educational Officer,
Thalaivasal, Salem District – 636 112.

DR. D. NAGARJUN, J.,

(mjs)

W.P.No.14079 of 2016



WEB COPY



W.P.No.14079 of 2016

14.02.2024
[2/2]