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W.P.No.23987 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 09.01.2024

PRONOUNCED ON : 03 .07.2024

CORAM :

THE HONOURABLE **DR. JUSTICE D.NAGARJUN**

W.P.No.23987 of 2016

B.Kulandairaj

...Petitioner

Vs.

1. The State of Tamil Nadu,
Rep. By its Secretary to Government,
Education Department,
Secretariat, Chennai – 9.
2. The Director of School Education,
College Road, Chennai – 6.
3. The District Elementary Educational Officer,
Salem.
4. The Chief Educational Officer,
Salem.
5. The Correspondent,
Little Flower Higher Secondary School,
Salem – 636 007.

..Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, to issue a writ of mandamus directing the respondents to upgrade the post of Secondary Grade Teacher held by the petitioner as B.T.Assistant w.e.f 01.06.2002 in the light of G.O.Ms.No.79 School Education Department dated 14.06.2002, with all consequential benefits in the light of the judgment passed on W.P.(MD) No.1664 of 2005 dated 02.11.2006,



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in the case of ***R.Padma Sheela Rani Vs. State of Tamil Nadu*** and others.

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For petitioner : Mr.S.N.Ravichandran

For respondents : Mr.P.Gurunathan
Additional Government Pleader

ORDER

This writ petition has been filed to issue a writ of mandamus directing the respondent to upgrade the post of Secondary Grade Teacher held by the petitioner as B.T. (Assistant) w.e.f. 01.06.2002 as per G.O.Ms.No.79 School and Education Department dated 14.06.2002 with consequential benefits in the light of the judgement in W.P.(MD).No.1665 of 2005 dated 21.01.2006.

2. The facts in brief as per the affidavit filed before this Court is as under:

2.1 The fifth respondent is a aided religious minority institution and the same is recognized by the Government of Tamil Nadu under the Tamil Nadu recognized Private School Regulation Act. The petitioner was appointed as Secondary Grade Teacher on 19.06.1995. The Senior Grade Teachers are in capable to handle revised subjects in English, Mathematics



and Science as there were not qualified to teach advanced English, Mathematics and Science in the new syllabus thereby, as per the expert opinion the Government has passed G.O.Ms.No.189 School Education S1 Department dated 04.06.1998 to upgrade the Senior Grade Teacher Post as Graduate post in Panchayat Middle Schools.

2.2. Pursuant to that, the Government has passed another G.O.Ms.No.79 (School Education) Department dated 14.06.2002 to upgrade the Senior Grade Teacher Posts in English, Mathematics and Science for 6th to 8th standard as B.T. (Assistant) posts in the Aided Middle Schools and directed the aided schools to appoint B.Ed. qualified persons for English, Mathematics and Science w.e.f. 01.06.2002.

2.3. After issuance of G.O.Ms.No.79, *ibid* dated 14.06.2002, the B.T. Teachers who were appointed in the Senior Grade Teachers vacancies were getting higher scale of pay applicable to the post of B.T(Assistant). On the other hand, the Senior Grade Teachers who were appointed prior to issuance of the above said Government Order with B.Ed qualification who were teaching the same subjects for the same 6th to 8th standards were getting less scale of pay and thereby, treating them differential in terms of



scale of pay. The Senior Grade Teacher with the same qualification and same amount of work were getting different scale of pay as nomenclature as different.

2.4. The petitioner has submitted representations dated 13.06.2015 to the respondents one to four requesting to upgrade his post of Senior Grade Teacher to that of B.T. (Assistant) in the light of G.O.Ms.No.79, *ibid* dated 14.06.2002 and further requested to approve his appointment as B.T.(Assistant) w.e.f. 01.06.2002. There was no response for the representations. Similarly placed persons were benefited as per G.O.Ms.No.79, *ibid* and their appointments were approved as B.T.(Assistant) in the aided Middle School/High School and also in the Government Middle Schools. As per G.O.Ms.No.100 dated 27.06.2003 several appointments were made in the Government and aided Middle School with B.Ed qualified persons in English, Mathematics and Science in the vacancies that arose for the post of Senior Grade Teachers. Further, the Government has also issued G.O.Ms.No.125 dated 12.11.2003 and the second respondent by way of consequential proceedings upgraded the post of Senior Grade Teacher as Junior B.T. in the Middle Schools and several appointments were made in the Government and Government



aided schools.

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2.5. In an identical circumstances, the Madurai Bench of this Court in W.P.(MD).No.1664 of 2005 has held the following:

"5. The learned counsel for the petitioner submits that the petitioner having been appointed in a vacant post from 08.08.2002 and appointment being valid in terms of G.O.Ms.No.79 (School Education) Department dated 14.06.2002 and the petitioner being continuously worked in the 5th respondent school, he is entitled to get appointment approved from 08.08.2002, as Middle Grade Assistant Teacher with salary as fixed in the G.O.Ms.No.79 (School Education) Department, dated 14.06.2002. There is no justification to approve the appointment of the petitioner from 19.01.2004, that too on consolidated salary as the said salary is payable only to those teachers approved from 01.06.2003, as per G.O.MS.NO.125, School Education Department dated 19.01.2004. Admittedly, the date of appointment of the petitioner is 08.08.2002 and the same is not disputed. Since the petitioner has been working from the said date and the proposals having been received by the respondents, which were kept pending till the Director issued proceedings dated 27.01.2004, cannot be a ground to deny the approval of the petitioner's appointment from 08.08.2002. The Director Proceedings referred to in the counter affidavit is applicable to the teachers, who were appointed after 01.06.2003. The petitioner having been appointed as early as



on 08.08.2002, the petitioner's appointment shall be approved in terms of the G.O.Ms.No.79 (School Education) Department dated 14.06.2002, and the petitioner is entitled to get time scale of pay.

"6. Hence, the impugned order passed by the third respondent dated 24.09.2004, is set aside and a direction is issued to the third respondent to approve the appointment of the petitioner from 08.08.2002, in accordance with G.O.Ms.No.79 (School Education) Department dated 14.06.2002 and the revised order shall be passed within a period of four weeks from the date of receipt of copy of this order. The arrears of salary payable to the petitioner from 08.08.2002, after adjusting the salary paid from 19.01.20014, shall be calculated and paid within a period of three months from the date of receipt of copy of this order"

2.6. The learned counsel for the petitioner has circulated similar judgments for better appreciation of the facts.

1. In ***Vallalar High School, Cuddalore District vs. The Government of Tamil Nadu, School Education Department and Ors.*** in W.P.No.26403 of 2005 dated 16.04.2014 .

2. In ***M.Mary Jacklin Pushma vs. The State of Tamil Nadu, Department of School Education & Others*** in W.P.(MD).No.14870 of 2010 & M.P.(MD).No.1 of 2010 dated 15.09.2014.

3. In ***Pandita Malvia Aided Middle School, Vellore District vs.***



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The Director of Elementary Education, College Road Chennai and others in W.P.No.16698 of 2012 dated 08.03.2019

4. In ***The Director of Elementary Education, College Road Chennai and others vs. Pandita Malvia Aided Middle School, Vellore District***, in W.A.No.308 of 2022 dated 22.02.2022.

5. In W.P.Nos.2751 and batch dated 23.07.2023.

and sought for issuance of writ of mandamus as stated in the opening paragraph.

3. The fourth respondent has filed counter affidavit and the relevant portions are explained in brief:

3.1. The petitioner was appointed as a Senior Grade Teacher on 19.06.1995 in the fifth respondent school and he has been teaching in Middle School/Higher Secondary School. The Senior Grade Teacher are required to handle classes for 6th to 8th standard. However, as per G.O.Ms.No.189 School Education (S1) Department dated 04.06.1998 upgrading Senior Grade Teacher posts to Graduate Teacher posts in the Panchayat Union Middle Schools. The Government has issued G.O.Ms.No.79 School Education (U2) Department dated 14.06.2002



upgrading the Senior Grade Teacher posts for specific subjects from classes 6th to 8th standards as B.T.(Assistant) post in the Aided Middle Schools w.e.f. 01.06.2002. The petitioner was appointed in the year 1997 and at that point of time there was not such Government Order in force to consider higher qualified Secondary Grade Teachers to post as B.T.(Assistant).

3.2. The petitioner was awarded Selection grade on 22.06.2005 and also Special Grade in the post of Senior Grade Teacher. The petitioner joined the service in the year 1997 known fully well that he has been appointed to the post of Senior Grade Teacher and that there were some undertakings given by the petitioner. The Government as a matter of policy decided to appoint B.T.(Assistant) to teach classes 6th to 8th standard. It is not correct on the part of the petitioner to contend that he has been unfairly treated amongst others working in the vacancy of Secondary Grade Teaching posts. Further the petitioner has suppressed certain vital facts relevant to the instant issue. The petitioner claims retrospective implementation of Government Order which is against the law and logic. The petitioner was already working in the post for 5 years when G.O.Ms.No.79 School Education (U2) Department dated 14.06.2002 was



issued.

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3.3. The judgments cited by the petitioner are not relevant. The claim of the petitioner is vexatious and malafide intentions and hence, sought for dismissal of this writ petition.

4. Heard both sides and perused the materials available on record.

5. The contention of the learned counsel for the petitioner is that on account of issuance of G.O.Ms.No.79, *ibid* the B.T. Teachers who were appointed in the Senior Grade vacancies are getting higher scale of pay applicable to the post of B.T.(Assistant). On the other hand, the Senior Grade Teachers who were appointed prior to issuance of Government Order with B.Ed qualification were teaching the same subjects for the same standards but were getting less scale of pay thereby, treated them with differential scale of pay against the principles of *equal pay for equal work*. The petitioner is qualified B.Ed Graduate teaching admittedly English, Mathematics and Science to classes 6th to 8th standard in the fifth respondent school.



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6. As rightly submitted by the learned counsel for the petitioner, on account of issuance of G.O.Ms.No.79, *ibid* after 10 years of the petitioner joining the fifth respondent school disparity arose between the teachers who were teaching prior to issuance of G.O.Ms.No.79, *ibid* with B.Ed qualification teaching classes 6th to 8th standard and between teachers who were teaching the same classes specifically after issuance of G.O.Ms.No.79, *ibid* with B.Ed qualification.

7. The learned counsel for the petitioner has circulated a judgment in W.P.Nos.17318 and 17324 of 2020 dated 07.09.2023 and the relevant portion of the same is extracted hereunder:

“9. In this regard the learned counsel appearing for the petitioners relied upon the Judgment of the Hon’ble Supreme Court of India reported in (1984) 2 SCC 167, in the case of P.K.Ramachandra Vs. Union of India, which reads as follows:

“17. ...The hard fact is that the petitioners were holding the posts of Professor when the revised scale became effective. In the letter dated January 20, 1971 sanctioning revised scale for the post of Professor, there is not even a whisper that the existing incumbent will be denied the benefit. In fact, it is well known that the University Grants Commission regularly



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*recommends revised scales for every plan period for teaching posts and the revision takes note of inadequate scales sanctioned till the date of revision. The only justification offered by the respondents for denying the petitioners the benefit of the revised scale is to be found in the counter- affidavit of Dr. M.S. Swaminathan. It is contended that the newly created post in the cadre of Professor is not the same as the then existing post and that there was marginal revision in the qualifications for not the posts of Professor in the revised scale and that petitioners were not discriminated because they were given an opportunity to contest for the posts in the revised Scale. The justification is too flimsy to merit any serious consideration more so in view of the fact that it is difficult to envisage a situation in such institutes, undertaking advance research in Agriculture and Animal Husbandry where persons holding Doctorate qualification and enjoying the status of the post of Professor would be governed by two different scales even though the duties, responsibilities and functions in various sister disciplines are identical. In such a situation Art. 39(d), trust assist us in reaching a fair and just conclusion. Elaborating the underlying intendment of Art. 39(d), Chinnappa Reddy, J. in *Randhir Singh v. Union of India & Ors.* (1) observed that construing Arts. 14 and 16 in the light of the Preamble and Art. 39(d), the Court was of the view that the principle 'equal pay for equal work' is deducible from those Articles and may be properly applied to the cases of unequal scales of pay based on no classification or irrational classification though those drawing the different scales of pay do identical work under the same employer. The case in hand is a glaring example of discriminatory treatment accorded to old experienced and highly*



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qualified hands with an evil eye and unequal hand and the guarantee of equality in all its pervasive Character must enable this Court to remove discrimination and to restore fair play in action. No attempt was made to sustain the scales of pay for the post of Professor on the doctrine of classification because the classification of existing incumbents as be distinct and separate from newly recruited hand with flimsy change in essential qualification would be wholly irrational and arbitrary. The case of the petitioners for being put in the revised scale of Rs. 1100-1600 from the date on which newly created posts of Professors in sister disciplines in IVRI and other institutes were created and filled in revised scale is unanswerable and must be conceded.”

10. This Court, in W.P.No.26483 of 2005 by an order dated 16.04.2014, already held that for those who were appointed prior to G.O.Ms.No.79 dated 14.06.2002, the School should get approval from the Government prior to the appointment of those teachers as per the said G.O. Therefore, the rejection of the request made by the petitioners is totally arbitrary and erroneous. This Court, in W.P.(MD) No.14870 of 2010 in the case of M.MaryJacklinPushpa Vs. The State of Tamil Nadu, already held that it is crystal clear that the law on this subject has been well settled by the Hon'ble Supreme Court that though equal pay for equal work is not expressly stated in any of the provision of the CC Fundamental Rights, it falls within the ambit of Article 14 of the Constitution of India in view of Article 39(d) of the Constitution of India and the same is Those teachers who were appointed after enforceable by the Courts. 14.06.2002 and the petitioners are equal in all respects. Therefore, the doctrine of equal pay for equal work should be applied in the case on



hand. When the teachers, who were appointed on or after 14.06.2002 are equal in all respects, the petitioners are also entitled for the same scale of pay for the post of BT Assistant with effect from 01.06.2006. Whereas, in the case on hand, all the petitioners were appointed as Secondary Grade Teacher even prior to G.O.Ms.No.79 dated 14.06.2002. Therefore, all the teachers are entitled to be regularised when the date of G.O.Ms.No.79 dated 14.06.2002 i.e., from 01.06.2002.

11. In view of the above, the impugned orders passed by the first respondent are hereby quashed. The second respondent is directed to upgrade to the post of Secondary Grade Teacher hold by the petitioners' BT Assistant with effect from 01.06.2002 in the light of G.O.Ms.No.79 dated 14.06.2002 with all consequential benefits within a period of eight weeks from the date of Receipt of a copy of this order.

12. Insofar as the other writ petitions are concerned, the first and second respondents are directed to upgrade the post of Secondary Grade Teachers hold by the petitioners as BT Assistant with effect from 01.06.2002 in the light of G.O.Ms.No.79 dated 14.06.2002 with all consequential benefits within a period of eight weeks from the date of receipt of a copy of this order.

13. In the result, all the writ petitions are allowed. There shall be no order as to costs."

8. In view of the above judgment, considering the facts of the case and the impugned order passed by the first respondent are hereby



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quashed and the second respondent is directed to upgrade the post of Senior Grade Teacher held by the petitioner as B.T.(Assistant) w.e.f. 01.06.2002 in the light of G.O.Ms.No.79, *ibid* dated 14.06.2002 with consequential benefits within a period of eight weeks from the date of receipt of a copy of this order.

9. In the result, the writ petition is allowed. No costs.

03.07.2024

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Index : Yes/No
Internet : Yes/No
Citation : Yes/No

To,

1. The Secretary to Government,
Education Department,
Secretariat, Chennai – 9.
2. The Director of School Education,
College Road, Chennai – 6.
3. The District Elementary Educational Officer,
Salem.
4. The Chief Educational Officer,
Salem.



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5. The Correspondent,
Little Flower Higher Secondary School,
Salem – 636 007.

Dr.D.NAGARJUN,J.

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Pre-Delivery order made in
W.P.No.23987 of 2016

03.07.2024