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W.P.No.7700 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.03.2024

CORAM:

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

W.P.No.7700 of 2024

and

W.M.P Nos.8613 & 8616 of 2024

Kavitha

...Petitioner

-Vs-

- 1.The Government of Tamil Nadu
Rep. by its Secretary
School Education Department
Fort St. George,
Chennai-600 009.
- 2.The Director of Schools
School Education Department
Chennai-600 006.
- 3.The Joint Director (Vocational) Education
School Education Department
College Road, Chennai-600 006.
- 4.The Chief Accounts Officer
Commissionerate of School Education
Chennai-600 006.
- 5.The Headmaster
Government Higher Secondary School
K.V Kuppam, Vellore District.

... Respondents



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Prayer : Writ Petition filed under Article 226 of Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus calling for the records relating to the Audit Objection of the 4th respondent in his proceedings in Na.Ka.No.53130/AKD/2023 dated 20.07.2023 and quash the same and direct the respondents to continuously pay the petitioner 3% annual increment in their salary in the post as Computer Instructor Grade-I.

For Petitioner : M/s.P.Mahalakshmi

For Respondents : Mrs.S.Mythreye Chandru for R1 to R4
Special Government Pleader

ORDER

This writ petition has been filed for the issuance of a Writ of Certiorarified Mandamus calling for the records relating to the Audit Objection of the 4th respondent in his proceedings in Na.Ka.No.53130/AKD/2023 dated 20.07.2023 and quash the same and direct the respondents to continuously pay the petitioner 3% annual increment in their salary in the post as Computer Instructor Grade-I.

2. The petitioner was appointed as computer science teacher as computer science vocational instructor and her appointment was duly approved and regularized by the government order in G.O.N.187 School Education (H.S.S.2) Department dated 04.10.2006. She was qualified to be appointed as computer science teacher to teach higher secondary classes. While being so, the



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government of Tamil Nadu issued order in G.O.Ms.No.26 School Education (SEZ-11) Department dated 12.02.2019, with reference to the National Council for Teacher Education (hereinafter referred to as “NCTE”) Regulations notified vide F.No.62-1/2012/NCTE/N&S dated 12.11.2014, thereby prescribing minimum qualification for persons to be recruited as education teacher and physical education teachers in schools. Insofar as the Computer Science teacher is concern, the said government order reads as follows :-

“2. The Director of School Education in the letter 2nd read above, has stated that 2689 Computer Instructors post have been sanctioned for the Higher Secondary Schools and 814 posts were now vacant. In view of filling up of the Computer Instructor posts with post graduate qualification, the Government, after careful examination, have decided to comply with the norms fixed by the NCTE Regulations, 2014 first read above, in respect of Computer Instructors/Vocational Instructors (Computer Science) and issue the following orders:-

(i) the existing Computer Instructors (BT Cadre) be re-designated as Computer Instructors Grade II

(ii) Accords sanction for creation / upgradation of new category of Computer Instructors Grade I (Post Graduate cadre, with the minimum educational qualifications based on NCTE norms in the Pre-revised scale of pay of (Rs.9300 - Rs



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34800 & GP 4800) in the minimum pay of Rs.36900/- (Level-18 36900-116600).

(iii) *Accords sanction for creation of 814 Computer Instructors Grade-I posts by surrendering corresponding 814 vacant B.T.Cadre posts out of the 2689 sanctioned posts. The details of vacant posts are indicated in the annexure.*

(iv) *the total number of the newly created post of computer Instructors Grade I should be filled up only through direct recruitment by Teachers Recruitment Board.*

(v) *the existing Computer Instructors shall be promoted as Computer Instructor Grade-I if they have 8 years of Service in the present post and possess the minimum qualification based on NCTE norms as mentioned in para-1 above by upgrading the post as computer Instructor Grade-I.”*

3. Aggrieved as against para 2 clause (v) of the above government order, the Computer Science Instructors challenged the said government order before this Court in W.P.No.6220 of 2019. This Court allowed the said writ petition and observed that if the petitioners were denied promotion during the selection, most of them will have a very bleak chance of getting further promotion to the post of Headmaster, Higher Secondary School. Denial of promotion during the selection will definitely have a cascading effect in the career of the petitioners.

4. Thereafter, the petitioner was promoted as Computer Instructor



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Grade-I. Originally, the petitioner was appointed as Computer Instructor Grade II, equivalent to Computer Instructor BT cadre. Now she was promoted to Computer Instructor Grade-I and her pay scale fixed as per the government order as Rs.9300 - Rs 34800 & Grade pay of Rs.4800. Further after her promotion, she was regularized and fixed pay scale of PG Assistant as promotional post. As per government order, she was upgraded to the new category of Computer Instructors-I and her pay scale has been fixed based on the NCTE norms. Therefore, there was audit objection and consequent to which the fifth respondent ordered for recovery.

5. The learned Additional Advocate General appearing for the respondents submitted that as per the government order in G.O.Ms.No.26, School Education Department dated 12.02.2019, to comply with the norms fixed by the NCTE regulations and also by considering the nature of work of Computer Instructors redesignated the Computer Instructors (B.T. Cadre) as Computer Instructors Grade-I and also accorded sanction to upgrade the qualified Computer Instructors Grade-II to Computer Instructors Grade-I, with effect from the date of issuance of order. Therefore, she is not entitled for the pay scale in the cadre of P.G. Assistants.

6. Heard the learned counsel appearing on either side and perused the material placed before this Court.



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Admittedly, the pay scale was fixed not on the request made by the petitioner and not on the fault committed by the petitioner and not on the false representation of the petitioner. Further insofar as pay scale is concerned as per government order, now her pay scale has been revised and she has been paid salary as per the revised salary. That apart, the post of Computer Instructor Grade-II has carried time scale of Rs.9,300-34,800+Grade Pay Rs.4,600. The post was upgraded as Computer Instructors Grade-I, and only the grade pay of Rs.200/- alone excess in the grade pay to Computer Instructors Grade-I.

8. Further this Court also struck down the clause (v) in para 2 of the government order in G.O.Ms.No.26, School Education (SE7-1) Department dated 12.02.2019 and the relevant portion is reads as follows:-

“9.The petitioners after they were ultimately appointed as Computer Instructors in the year 2015, were hoping that it will be sailing smooth atleast for the rest of their career. However, the respondents thought it otherwise. The petitioners are eligible to be considered for promotion under the NCTE Norms for the post of Computer Instructors Grade-I. However, a condition was added in the impugned Government Order which ensured that none of them who were directly appointed Computer Instructors will get their



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promotion to the next higher post.

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10. Under normal circumstances, this Court will never interfere with the service conditions since it is the prerogative of the employer. This Court is also aware of the fact that no one has a fundamental right for promotion and that there is only a fundamental right for being considered for promotion if the aspiring candidates fulfill the requirements. There is only one exception where this Court will question the condition imposed by the employer and that is where the condition is opposed to any Statute or Regulations or where it is added with a malafide intention to ensure that only a certain category of persons will be fulfilling the eligibility and the others will be relegated from the process of selection.

11. In the present case, right from the beginning, the respondents have always supported only those persons, who came in through ELCOT on contract basis. The same has already been commented upon in the earlier paragraphs of this judgment. The requirement of 8 years experience was not prescribed under the NCTE Regulations. Going by the previous happenings in the present case and the attitude of the respondents against the regularly employed Computer Instructors, it is clear that this 8 years experience has been added in the Government Order only to ensure that the petitioners are not considered for promotion to the post of Computer Instructor Grade-I during the present selection. It was tailor-made to avoid the petitioners from being promoted to



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the post of Computer Instructor Grade-I. If the petitioners are denied promotion during the present selection, most of them will have a very bleak chance of getting further promotion to the post of Headmaster, Higher Secondary School. Denial of promotion during the present selection will definitely have a cascading effect in the career of the petitioners.”

9. Therefore, the petitioner is not entitled for pay sale equivalent to P.G. Assistant and she is entitled for the pay scale in the cadre of Computer Instructor Grade-I. However, the excess amount which was already paid to the petitioner cannot be recovered, since it was not paid due to her representation or due to her fault.

10. In view of the above discussions, it cannot be said that the order passed by the Chief Accounts Officer, Chennai, finds with any infirmity. However, the order passed by the fourth respondent, insofar as the recovery of excess salary, cannot be sustained and it is liable to be quashed. Accordingly, the order passed by the fourth respondent dated 20.07.2023 is hereby quashed. The respondents are directed to fix the scale of pay to the petitioner in the cadre of Computer Instructor Grade-I in the pay scale of Rs.36400-115700 and pay the salary accordingly to the petitioner and arrears if any, within a period of



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eight weeks from the date of receipt of a copy of this Order.

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11. With the above directions, this Writ Petition stands disposed of. Consequently, connected miscellaneous petitions are closed. There shall be no orders as to costs.

25.03.2024

Internet: Yes
Index : Yes/No
Speaking/Non Speaking order
Neutral Citation : Yes/No
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To

1. The Secretary
School Education Department
Fort St. George, Chennai-600 009.
2. The Director of Schools
School Education Department
Chennai-600 006.
3. The Joint Director (Vocational) Education
School Education Department
College Road, Chennai-600 006.
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G.K.ILANTHIRAIYAN. J.

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