



Writ Petition No.24689 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.01.2024

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THE HONOURABLE DR. JUSTICE D.NAGARJUN

Writ Petition No.24689 of 2014
& MP.No.1 of 2014

V.Vasuki

..Petitioner

vs.

1.The Principal Secretary to Government,
School Education Department,
Secretariat,
Chennai-600 009

2.The Director of School Education,
DPI Campus, College Road,
Chennai-600 006

3.The Chief Educational Officer,
Panagal Building,
Chennai-600 015.

... Respondents

PRAYER : Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, to call for the records relating to the order issued by the first respondent in G.O(ID) No.160, School Education (M1) Department dated 21.05.2012 and quash the same insofar as the Higher Grade Teacher and consequently, direct the respondents to make the payment of salary in the post of Secondary Grade



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Teacher by sanctioning increment from 01.04.1993 onwards with consequential revision of Selection Grade and Special Grade of pay with further revision of scale of pay including payment of retirement benefits in the post of Secondary Grade Teacher alongwith interest within the time frame to be fixed by this Court.

For Petitioner : Ms.J.Jayamalar for Mr.G.Sankaran

For Respondents : Mr.S.Ravikumar, Spl G.P.

ORDER

This Writ Petition has been filed for issuance of a Certiorarified Mandamus, to call for the records relating to the order issued by the first respondent in G.O(ID) No.160, School Education (M1) Department dated 21.05.2012 and quash the same insofar as the Higher Grade Teacher and consequently, direct the respondents to make the payment of salary in the post of Secondary Grade Teacher by sanctioning increment from 01.04.1993 onwards with consequential revision of Selection Grade and Special Grade of pay with further revision of scale of pay including payment of retirement benefits in the post of Secondary Grade Teacher alongwith interest within the time frame to be fixed by this Court.



2.The brief facts of the case as narrated in the affidavit filed in support of the Writ Petition, are stated below:

The petitioner was appointed as Secondary Grade Teacher on 21.06.1982 through Employment Exchange in Lady Wellington Higher Secondary School, Chennai. Subsequently, she was ousted from service and reappointed on 06.06.1984 from which date onwards, she continuously worked in the said post. Later, her services have been regularized in the post of Secondary Grade Teacher with effect from 06.06.1984 as per the proceedings of Principal, Lady Wellington College of Education, Chennai.

The annual increment to the petitioner was stopped with effect from 01.04.1993. She was issued with a show cause notice dated 09.08.1996, calling upon her to offer explanation as to why she should not be removed from service from the post of Secondary Grade Teacher since she does not possesses the requisite qualification. Aggrieved by the same, the petitioner has filed W.P.No.26086 of 2006 and the same was allowed on 20.12.2007 quashing the impugned order. However, the respondents have not obeyed the orders by not sanctioning the increment from 01.04.1993 onwards and also failed in making payment of arrears of salary applicable to the post of Secondary Grade Teacher. The petitioner was given lesser salary even after



the orders passed by this Court and her juniors were given higher salary and further granted with Selection Grade and Special Grades of pay. While so, the petitioner reached the age of superannuation and retired from service on 31.01.2012 and allowed to continue in service on re-employment till 31.05.2012. After repeated representations, the first respondent issued the impugned orders dated 21.05.2012 stating that the orders are passed, as a measure of concession by fixing the scale of pay in the post of Higher Grade from 31.10.2002. Hence, the petitioner has approached this Court by way of the present Writ Petition.

3.A detailed counter affidavit has been filed by the third respondent wherein, it is stated that pursuant to the orders of this Court, proceedings were issued, fixing the pay in the post of Junior B.T. as per G.O.Ms.No.172 S.E. Department dated 21.10.2022 by relaxing the Rules. Even after this revision of pay, the petitioner is claiming the benefits from the date of joining, i.e. from 1982 onwards which cannot be granted.

It is further stated in the counter affidavit that the question of equal pay for equal work has been deliberated upon by the Supreme Court in a number of cases and it is settled that if the duties, functions and



qualifications for recruitment were different from the class of employee with whom parity was claimed, then such employee could not claim parity.

Mere similarity in designation or nature of quantum of work was not determinative of equality in the matter of pay scale and equality clause could not be invoked in the matter of pay scales only when there was wholesale identity between the holders of two posts. With these averments, the 3rd respondent sought for dismissal of the Writ Petition.

4. Heard the learned counsel appearing for the petitioner and the learned Special Government Pleader appearing for the respondents.

5. It is submitted by the learned counsel for the respondents that the petitioner was originally appointed as Secondary Grade Teacher in the year 1982 on temporary basis and from the year 1984 onwards, she was continuously working in the said post on regular basis as a Secondary Grade Teacher and her services were regularized with effect from 06.06.1984 in the said post and her probation was declared on 05.06.1986. However, in the year 1993, the petitioner was not given annual increment and also Selection Grade on the ground that the petitioner is not having required



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qualification for appointment as Secondary Grade Teacher. According to the respondents the petitioner was having Diploma in Kindergarten Secondary Grade Certificate instead of Diploma in Teacher Education.

6.The learned Special Government Pleader appearing for the respondents would contend that both the Diplomas are not equal thereby, the petitioner's appointment as Secondary Grade Teacher itself is irregular. Therefore, notice dated 09.08.1998 was issued asking the petitioner as to why she cannot be terminated from service. Aggrieved by the same, the petitioner has filed WP.No.26086 of 2006 and the same was disposed of on 20.12.2007, by quashing the said show cause notice holding that the petitioner is qualified with Teacher Certificate Secondary Grade in Kindergarten, which is two years course and the petitioner was qualified even as on the date of original appointment. Subsequently, increments were not granted. However, another impugned order has been passed on 21.05.2012 by the first respondent stating that on account of the directions of this Court in WP.No.26086 of 2006, since the petitioner has been handling the classes for 1 and 2 standard, she was given relaxation under Rule 9 of the Subordinate Services of School Education giving exemption



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from the qualification required for the post of Secondary Grade Teacher. In addition to that the impugned orders speak that the pay of the petitioner is reduced to the scale of both the teachers which would be at Rs.3050-75-3950-80-4500 in the post of junior teachers.

7. Once this Court has allowed the Writ Petition quashing the show cause notice, the respondents ought not to have issued any show cause notice again reducing the pay of the petitioner from the Secondary Grade Teacher to that of the junior teacher. Further, the orders have been issued giving relaxation to the petitioner under Rule 9 of the Subordinate Services of School Education. Once the relaxation has been given, it amounts that what ever impediment that was prevailing in respect of not having required qualification for appointment of Secondary Grade Teacher has been exonerated, thereby there is no issue in respect of continuation of the petitioner as Secondary Grade Teacher in respect of qualification is concerned. Therefore, once the relaxation has been given under Rule 9 A, again there is no justification on the part of the respondents in reducing the pay from Secondary Grade Teacher to the junior teacher.



8. Even otherwise, prior to reducing the pay scale of the petitioner from Secondary Grade Teacher to Junior Teacher, no notice was given, which is against the principles of natural justice. The petitioner has to be issued notice as to why her salary should not be reduced to the junior teacher cadre. In the counter affidavit, the respondents have stated "equal pay for equal work" since the petitioner is having Teachers Certificate of Secondary Grade in Kindergarten, which is two years course and the teachers who have been teaching in Kindergarten School have been paid pay of junior teachers, accordingly, they tried to justify their action. The said reasoning is totally not convincing inasmuch as the petitioner has been appointed and her services have been regularized as as Secondary Grade teacher and the pay scale has also been fixed and even her qualifications have been relaxed by virtue of Rule 9 and hence, she is entitled to the pay of Secondary Grade teacher. However, all of sudden, without issuing any notice, her pay cannot be reduced to that of the junior teacher in violation of principles of natural justice. Therefore, this Court is of the considered view that the impugned orders shall not be sustained and therefore, the impugned orders dated 21.05.2012 of the first respondent are liable to be set aside.



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9. Accordingly, the Writ Petition is allowed. No costs.

Consequently, connected miscellaneous petition is closed.

09.01.2024

Index : Yes/No
Speaking order: Yes/No
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To

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DPI Campus, College Road,
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Dr.D. NAGARJUN, J

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