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W.P.No.36949 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.12.2024

CORAM:

THE HONOURABLE MRS. JUSTICE V.BHAVANI SUBBAROYAN

W.P.No.36949 of 2024 and
W.M.P.No.39895 and 39896 of 2024

Chitra

...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,
Pudhurpalaiyam – 621 711,
Tiruchy District.

...Respondents



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PRAYER: Writ Petition filed under Article 226 of the Constitution of India to issue 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.06533/AKD/2024 dated 16.05.2024 and the 5th respondent passed a consequential order in Na.Ka.No.111/2024 dated 01.08.2024 and quash the same and direct the respondents to continuously pay the petitioner 3% annual increment in their salary in the post of computer Instructor Grade -I and pass orders.

For Petitioner	: Mr.P. Mahalakshmi
For Respondents	: Mrs.S. Mythre Chandru Special Government Pleader

ORDER

This Writ Petition has been filed to issue 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.06533/AKD/2024 dated 16.05.2024 and the 5th respondent passed a consequential order in Na.Ka.No.111/2024 dated 01.08.2024 and quash the same and direct the



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respondents to continuously pay the petitioner 3% annual increment in their salary in the post of computer Instructor Grade -I and pass orders.

2. Mr.S. Mythre Chandru, Special Government Pleader takes notice for the Respondents. In view of the consent expressed by the learned counsel appearing for either side, this petition is taken up for final disposal.

3. The case of the petitioner is that he was appointed as a computer science teacher as computer science vocational instructor and the said appointment was approved and regularized by G.O.No.187 School Education (H.S.S.2) Department dated 04.10.2006. The petitioner was qualified to be appointed as computer science teacher to teach Higher Secondary classes. When this being the case the Government of Tamilnadu 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 Physical



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Education teacher and physical Education teachers in Schools. The core contention of the petitioner is that clause(v) of the G.O.MS.No.26 School Education (SEZ-11) Department dated 12.02.2019 needs interference by this Court and the same is as follows: “ (v) 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-I above by upgrading the post as computer Instructor Grade-I.* Hence, this petition.

4. The learned counsel for the petitioner submitted that para 2 clause (v) of the above Government Order has been challenged before this Court in W.P.No.6220 of 2018 and this Court has allowed the said writ petition and further observed that if the petitioners were denied promotion during the selection. Most of them will have a very beak 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. Hence prays to allow this petition.



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5. The learned Special Government Pleader 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, the petitioner is not entitled for the pay scale in the cadre of P.G.Assistant.

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

7. Admittedly, the pay scale was fixed not on the request made by the petitioners 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 their pay scale has been revised and they have been paid salary as per the revised salary. That apart, the post of Computer Instructor Grade-II has carried time scale of



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Rs.9,300-34,800+Grade-I and only the grade pay of Rs.200/- alone excess in the grade pay to Computer Instructors Grade-I

8. This Court while dealing with the identical facts of the case in a batch of Writ Petitions in W.P.No.27205 of 2023 has dealt with the G.OMs.No.26, School Education (SE7-1) Department dated 12.02.2019 and the relevant portion reads as follows:-

8. Further this Court also struck down the clause (v) in para 2 of the Government Order in G.OMs.No.26, School Education (SE7-1) Department dated 12.02.2019 and the relevant portion 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 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 as Computer Instructors will get their promotion to the next higher post.

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



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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 happening 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 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.



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9. From the above Judgment it is made clear that the petitioner is not entitled for pay scale equivalent to P.G.Assistant and he is entitled for the pay scale in the cadre of Computer Instructor-I. However, the excess amount which was already paid to the petitioner cannot be recovered, since it was not paid due to their representation or due to their fault.

10. In view of the above facts it is made clear that the impugned orders passed by the 4th respondent in his proceedings in Na.Ka.No.06533/AKD/2024 dated 16.05.2024 and the 5th respondent passed a consequential order in Na.Ka.No.111/2024 dated 01.08.2024 is liable to be quashed and the same is accordingly 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.9,300-34,800 + Grade Pay Rs.4,800 and pay the salary accordingly to the petitioner and arrears if any within a period of eight weeks from the date of receipt of a copy of this Order.



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11. With the aforesaid direction, this Writ Petition stands allowed of. No costs. Consequently the connected miscellaneous petitions are closed.

10.12.2024

Index: Yes/No

Speaking order/Non-speaking order
smn

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