



W.P.(MD)No.10908 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

WEB COPY

DATED : 30.04.2024

CORAM

THE HONOURABLE MS JUSTICE R.N.MANJULA

W.P.(MD)No.10908 of 2024
and
W.M.P.(MD).Nos.9716 & 9718 of 2024

Lavakusavalan

... Petitioner

Vs.

- 1.The State of Tamil Nadu,
Rep. by its Secretary,
Department of School Education,
Fort St. George, Chennai – 600 009.
- 2.The Director of School Education,
DPI Campus, Nungambakkam,
College Road, Chennai – 600 006.
- 3.The Joint Director of School Education,
Higher Secondary, College Road,
Nungambakkam,
Chennai – 600 006.
- 4.The Financial Consultant and Chief Accounts Officer,
Commissionerate of School Education,
Chennai – 600 006.
- 5.The Chief Educational Officer,
Chief Educational Office,
Multi Offices Block – 1,
Behind the Collectorate,
Theni.



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6. The Headmaster,
Government Higher Secondary School,
Gandamanur,
Theni District.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, calling for the records relating to the Audit objection of the 4th respondent in his proceedings in ந.க.எண்.053/30/அகத/2023, dated 13.11.2023 and quash the same as illegal and direct the respondents to continue to disburse the same allowance to the petitioner without any reduction or recovery in the post as Computer Instruct Grade – I.

For Petitioner : Ms.A.Banumathy

For Respondents : Mr.T.Amjad Khan for R1 to R5
Standing Counsel

ORDER

By consent of both the parties, this writ petition is taken up for final disposal at the admission stage itself.

2. Heard Ms.A.Banumathy, learned counsel appearing for the petitioner, Mr.T.Amjad Khan, learned Government Advocate appearing for the respondents.



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3. This Writ Petition has been filed challenging the Audit objection of the fourth respondent in his proceedings in Na.Ka.No.053/30/aktha/2023, dated 13.11.2023 and consequently direct the respondents to continue to disburse the same allowance to the petitioner without any reduction or recovery in the post as Computer Instructor Grade – I.

4. The petitioner was appointed as Grade-II Computer Instructor in the sixth respondent School and thereafter, the petitioner was promoted as Grade-I Computer Instructor and his pay scale has been fixed based on the National Council for Teacher Education norms. The grievance of the petitioner is that the fourth respondent has issued impugned demand notice dated 13.11.2023 stating that the pay scale of the petitioner has been wrongly fixed from 12.02.2019 and therefore, the fourth respondent directed the sixth respondent / Headmaster to recover the excess amount of Rs.1,09,553/- from the petitioner. Aggrieved over the same, the petitioner has filed this present Writ Petition.

5. The matters in hand are no longer *res-integra*.. The issue raised in this Writ Petition has been elaborately discussed and covered in the earlier judgment passed in the batch of Writ Petitions in ***W.P.No.27205 of 2023 etc batch***



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(M.Rajmohan Vs. The Government of Tamil Nadu, Represented by its

Secretary, School Education Department, Fort. St. George, Chennai-600

009), wherein, the order has been analysed as under:

“7. Admittedly, the pay scale was fixed not on the request made by the petitioners and not on the fault committed by the petitioners and not on the false representation of the petitioners. 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 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 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 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.



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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 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. *Therefore, the petitioners are not entitled for pay sale equivalent to P.G. Assistant and they are entitled for the pay scale in the cadre of Computer Instructor Grade-I. However, the excess amount which was already paid to the petitioners cannot be recovered, since it was not paid due to their representation or due to their 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 orders passed by the Headmaster of the respective schools, insofar as the recovery of excess salary, cannot be sustained and it is liable to be quashed. Accordingly, the orders passed by the Headmaster of the respective schools, dated 24.08.2023, 25.08.2023, 23.08.2023, 19.07.2023, 21.08.2023, 09.06.2023, 29.05.2023, 14.09.2023, 13.09.2023, 21.09.2023, 07.11.2023, 04.11.2023 are hereby quashed. The respondents are directed to fix the scale of pay to the petitioners 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 petitioners 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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6. In view of the aforestated reasons, the Writ Petition stands allowed and

the order passed by the fourth respondent in his proceedings in Na.Ka.No. 053/30/aktha/2023, dated 13.11.2023 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.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. No costs. Consequently, connected miscellaneous petitions are closed.

30.04.2024

Index:yes/no

Internet:yes/no

Ncc : yes/no

TSG

To

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Department of School Education,
Fort St. George, Chennai – 600 009.
- 2.The Director of School Education,
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College Road, Chennai – 600 006.
- 3.The Joint Director of School Education,
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R.N.MANJULA, J.

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