



W.A(MD)Nos.1348 and 1349 of 2016

WEB COPY **BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

DATED : 23.04.2024

CORAM:

**THE HON'BLE MR.JUSTICE N.SESHASAYEE
and
THE HON'BLE MR JUSTICE P.VADAMALAI**

**W.A.(MD)Nos.1348 and 1349 of 2016
and C.M.P.(MD)Nos.9788 to 9790 of 2016**

- 1.The State of Tamil Nadu
represented by its Secretary,
Department of School Education,
Fort St. George, Chennai 600 009.
 - 2.The Director of Elementary Education,
College Road, Chennai 600 006.
 - 3.The Assistant Elementary Educational Officer,
Tuticorin,
Tuticorin District.
 - 4.The Assistant Elementary Educational Officer,
Aalvarthirunagari at Thenthiruperai,
Thoothukudi District.
- ...Appellants in both W.As.

Vs.

B.Rajaram	... Respondent in W.A.(MD).No.1348 of 2016
G.Vethasigamoni Baskaran	... Respondent in W.A.(MD).No.1349 of 2016

PRAYER: Writ Appeals are filed under Clause 15 of the Letters Patent, against the order passed by this Court in W.P.(MD).Nos.10096 and 10097 of 2012, dated 27.07.2012.



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For appellants : Mr.D.Sadiq Raja
Additional Government Pleader

For Respondents : Mr.K.Ragadeesh Kumar
for M/s. S.Xavier Rajini

COMMON JUDGMENT

(Judgment was delivered by N.SESHASAYEE,J.)

This twin appeals arise out of an order of the learned single Judge of this Court in W.P.(MD).Nos.10096 and 10097 of 2012, dated 27.07.2012.

2. The short question before the learned single Judge was if benefit under G.O. (Ms.)No.210, School Education (G-1) Department, dated 14.08.2009, could be extended to the petitioners before him. In paragraphs 3 and 6 of the order, the learned Judge has described the petitioners as headmasters in various Panchayat Union Schools and has proceeded to direct the authorities to consider the case of the petitioners involved in these cases to accord the benefit in terms of G.O. (Ms.)No.210, dated 14.08.2009. The correctness of the order of learned single Judge is now questioned.



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3. Heard Mr.D.Sadiq Raja, the learned Special Government Pleader appearing for the appellants and Mr.K.Ragadeesh Kumar, learned counsel appearing for the respondents.

4. The learned the Additional Government Pleader appearing for the appellants submitted that:

- a) The nature of order passed by the learned single Judge is not a substantive writ of mandamus directing the authorities to extend the benefit under G.O. (Ms.)No.210, School Education (G-1) Department, dated 14.08.2009, but only to consider the case of these petitioners for being granted the benefit under the same.
- b) What however bothers the Government is that the learned single Judge has issued the direction on an impression that these respondents were working in Panchayat Union Schools. They however, were not working in Panchayat Union Schools, but were working in various Private Aided schools.
- c) The intent behind G.O.(Ms.)No.210, School Education (G-1) Department, dated 14.08.2009, is only to grant benefit to the Middle School



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d) The rationale behind G.O.(Ms.)No.210, dated 14.08.2009 was intended to set right certain anomalies created by the implementation of 5th Pay Commission on 01.06.1988, and this in fact was intended to address certain stagnation in the pay anomaly to the Primary School Headmasters and the Middle School Headmasters. To compensate it, a special pay was proposed to be given to the Middle School Headmasters, for which purpose, the entire period of service in the feeder category was required to be reckoned.

5.1 Explaining his arguments, the learned Special Government Pleader submitted that the schools in this stated can be divided into three categories:(a) Government and Panchayat Union Schools; (b) Aided Minority Schools; and (c) Aided Non-minority Schools. In the case of Aided Minority Schools, the choice of appointing an individual to the post of Headmaster rests exclusively with the Management, and therefore there will never arise a situation of addressing any pay anomaly between the Headmaster of the Primary School and the Headmaster of the Middle School. Indeed, the situation itself is generated when certain stagnation has felt in the feeder category. So far as the Aided Non-Minority Schools are concerned, in



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most cases, the management will be running a single School, in which case, the promotional avenues are dictated by Rule 15 of the Tamil Nadu Recognised Private Schools (Regulation) Rules, 1974. In a single School, as per the Rule, the promotion to the post of Middle School Headmaster is based on merit, ability and where merit and ability is found equal as between few, then inter se seniority will be reckoned for filtering the first among the equals.

5.2 Now, both Aided Minority Schools and Aided Non- Minority Schools have to be excluded for conferring benefit under G.O.210 for the reasons stated. What remains are the Panchayat Union Schools and Government Schools. So far as the Panchayat Union Schools are concerned, a common seniority is maintained for all the teaching staff within the Panchayat Union, and here some may be stuck as Secondary Grade Teacher in the Primary Schools, and few will be stuck as Primary School Headmasters and few will be stuck as Secondary Grade Teachers in the Middle School. Prior to 5th Pay Commission, the Secondary Grade Teachers, the Primary School Headmasters and the Middle School Headmasters were all treated equally, but the 5th Pay Commission made a segregation by separating the Primary School Headmaster for a better treatment with a higher



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scale of pay scale from the Secondary Grade Teachers, and because a common seniority is maintained, travelling in the career-ladder became a difficulty, and in terms of the 5th Pay Commission recommendation only those actually occupied the posts are entitled to a higher scale of pay. To set right this anomaly, G.O. (Ms.)No.210, dated 14.08.2009, was brought into force. Therefore, the reason for bringing into existence of G.O.(Ms.)No.210, dated 14.08.2009, must be understood in the context. Reliance was placed on the Order of a Full Bench of this Court in R.A.No.227 of 2015 dated 09.12.2016, **Government of Tamil Nadu, rep. By the Secretary, School Education Department, Chennai - 600 009 Vs. G.Eswaran and Others** [(2017) 2 MLJ 257], which has accepted the aforesaid proposition.

6. Per contra, the learned counsel appearing for the respondents/writ petitioners submitted that the appellants themselves have admitted that G.O.(Ms.)No.210, dated 14.08.2009, will apply to Private Aided Schools vide Ground No.10 of the appeal Memorandum. This apart, this identical contention was earlier arise by the Government in Rev.Applc.(MD).No.35 of 2018. That review was dismissed and that it was relied on by another Division Bench of this Court in a batch of



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appeals in **Secretary to Government, School Education Department Vs S.Stanislaus** [W.A.Nos.34 of 2017 batch, dated 03.01.2019]. An identical view was also taken by yet another Division Bench in Rev.Aplc.(MD).Nos.236 to 241 of 2019 in W.A.(MD).Nos.1377 of 2014 etc., batch, dated 19.03.2018. He submitted that there is nothing in G.O.(Ms.)No.210, dated 14.08.2009, to indicate that it will not apply to Private Aided Schools and the dominant view of this Court is also in aid of the same. He added that the authorities of the earlier Division Bench were not placed before the Division Bench Rev.Application (MD).Nos.90 to 95 of 2014.

7. After carefully weighing the rival submissions, this Court finds that principally, the appellants herein cannot be said to have been aggrieved by the order passed by the learned single Judge, since he had merely directed the authorities to consider the case of the appellants for extending the benefit in terms of G.O. (Ms.)No.210, dated 14.08.2009. As regards the submission of the learned Special Government Pleader about the learned single Judge mentioning the petitioners as Headmasters in various Panchayat Union Schools is concerned, it is conceded that they are not working in Panchayat Union Schools, but working only in Aided



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Private Schools. The larger issue however is, irrespective of how the writ petitioners / respondents herein are described by the learned single Judge in his order, whether they are entitled to the relief which they claimed. Hence, this Court does not find any need to interfere with the final decision of the learned single Judge and it is left to the authorities concerned to consider in the light of the law as discussed in the earlier paragraphs. Now, it is for the second appellant, the Director of Elementary Education to decide the issue of these writ petitioners/respondents in these appeals, as per law.

8. These Writ Appeals are accordingly disposed of. No costs. Consequently, the connected Miscellaneous Petitions are closed.

[N.S.S.,J.] & [P.V.M.,J.]
23.04.2024

Index: Yes/No
Internet: Yes/No
NCC: Yes./No
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