



W.A.(MD)No.1616 of 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 21.11.2024

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**THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN
and
THE HONOURABLE MS.JUSTICE R.POORNIMA**

**W.A.(MD)No.1616 of 2018
and
C.M.P(MD)No.11735 of 2018**

- 1.The Director,
Directorate of School Education,
College Road,
Nungambakkam,
Chennai.
- 2.The District Educational Officer,
O/o.The District Educational Officer,
Devakottai Taluk,
Sivagangai District - 630 411. ... Appellants / Respondents 1 & 2

Vs.

- 1.R.Prakasi ... 1st Respondent / Writ Petitioner
- 2.The Correspondent,
St.Pauls High School,
Saruganeri Post,
Devakottai Taluk,
Sivagangai District - 630 411. ... 2nd Respondent / 3rd Respondent



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Prayer : Writ Appeal filed under Clause XV of Letters Patent, to set aside the order dated 21.07.2014 made in W.P.(MD)No.9778 of 2009 by allowing this writ appeal.

For Appellants : Mr.V.OM.Prakash,
Government Advocate.

For Respondents : Mr.V.Ragatheesh Kumar for R1.
No appearance for R2.

JUDGMENT

(Judgment of the court was delivered by G.R.Swaminathan, J.)

Heard the learned Government Advocate for the appellants and the learned counsel for the first respondent.

2.The husband of the first respondent, namely, Rethinam was appointed as craft instructor in the second respondent school on 20.09.1977. He passed away on 31.10.2005. After his demise, the first respondent submitted a representation for conferment of secondary grade pay scale for her husband and for payment of arrears. The request was rejected. Challenging the same, the first respondent filed W.P.(MD)No.9625 of 2007. The order impugned in the said writ petition



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was set aside on 29.01.2008 and the matter was remanded to the file of the authority. The first respondent was also granted liberty to file a fresh representation. Once again, the demand of the first respondent was rejected vide order dated 19.06.2009 by the District Educational Officer, Devakottai Taluk. Challenging the same, the first respondent filed W.P.(MD)No.9778 of 2009. The said writ petition was allowed on 21.07.2014 on the following terms:-

“13.Admittedly, at the time when Mr.Rethinam was appointed as Craft Instructor, he satisfied the then existing qualifications viz., VIII Standard Pass with Craft Instructor Certificate Course. That is why, his appointment was also approved. Now, the question is whether the Government Order in question is prospective in operation or retrospective in operation to those teachers who were appointed earlier to the said Government Order. This has been answered in W.P.(MD)No.12812 of 2009 and W.P.(MD)No.2116 of 2013 by orders dated 08.04.2011 and 13.02.2013 respectively. This Court has taken consistent view in those Writ Petitions that the said Government Order is prospective in operation and therefore the qualification prescribed under the said Government Order shall not be applicable to those candidates, who were appointed earlier to the said Government Order viz., 15.09.1986.



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4. *In the case on hand, since Mr.Rethinam was appointed prior to 15.09.1986, the said Government Order is not applicable to him and thus, though Mr.Rethinam had not passed S.S.L.C. within three years from the date given force by the said Government Order, that will not deter Mr.Rethinam from getting Secondary Grade Scale of Pay. That is the view taken in those two Writ Petitions also. In such view of the matter, the impugned order is liable to be set aside.*

5. *In the result, the Writ Petition is allowed and the impugned order of the second respondent dated 19.06.2009, is set aside and the respondents 1 and 2 are directed to refix the Scale of Pay of the petitioner's husband Mr.Rathinam with effect from 15.09.1986 and to pay arrears to the petitioner and also refix Pensionary benefits as per the revised Scale of Pay. It is further directed that such exercise shall be completed within a period of six months from the date of receipt of a copy of this order. No costs.*

Questioning the same, this intra-court appeal has been filed.

3.The learned Government Advocate for the appellants reiterated all the contentions set out in the memorandum of grounds of writ appeal and called upon this Court to set aside the impugned order and allow this writ appeal.



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4.Per contra, the learned counsel for the first respondent submitted that the impugned order is well reasoned and that it does not call for interference. He added that similarly placed persons were granted secondary grade pay scale and that therefore, this Court may not interfere with the order passed by the learned Single Judge.

5.We carefully considered the rival contentions and went through the materials on record. The only question that calls for consideration is whether the first respondent's husband / Rethinam was entitled to conferment of secondary grade pay scale.

6.G.O.(Ms)No.1366, Education Department dated 05.09.1986 reads as follows:-

“2.The Government after careful examination accept the above recommendation and accordingly direct that the general educational qualification for the post of craft teachers in the middle schools under all kinds of managements be raised to S.S.L.C. as prescribed in the Tamil Nadu Private Schools Regulation Act, 1973. The Craft teachers with the S.S.L.C. qualification shall be allowed Secondary Grade scale of pay of



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Rs.610-20-730-25-955-30-1075 irrespective of the fact, whether they are working in middle/High Schools. The unqualified craft teachers that is with the VIII Std. qualification, shall be allowed time for a minimum period of 3 years to qualify themselves and after that they shall be allowed Secondary Grades scale of pay of Rs.610-20-730-25-955-30-1075.”

7.A reading of the aforesaid government order indicates that a craft teacher who was appointed on the basis of his 8th standard pass qualification will be given enhanced pay scale, if he acquired SSLC qualification. Such craft teachers were also given three years time to acquire the additional qualification.

8.It is not in dispute that the first respondent's husband never acquired the additional qualification of SSLC pass. Therefore, by no stretch of imagination, he could have been conferred with secondary grade pay scale. That was probably why Rethinan did not file any writ petition when he was in service. Two years after his demise, the first respondent / his wife filed writ petition before this Court.



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9.It is true that the Hon'ble Division Bench had held that the aforesaid government order cannot be retrospectively applied. That can only mean that the persons who were appointed as craft teachers based on their 8th standard qualification, cannot be disturbed by citing the qualification set out in G.O.(Ms)No.1336 dated 05.09.1986.

10.The learned counsel for the first respondent claimed that similarly placed persons were granted secondary grade pay scale. A mistake committed by the department or even a mistake committed by this Court cannot form the basis for extending a benefit erroneously given.

11.We posed a direct question to the learned counsel for the first respondent. We called upon him to answer as to how a craft teacher who is placed in certain scale of pay can be conferred with an enhanced scale of pay with that of secondary grade teacher. The only basis for conferring such enhanced scale of pay is the aforesaid G.O.(Ms)No.1366 dated 05.09.1986. But for this government order, there is no way, a craft teacher can claim a higher scale of pay. The said government order



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contains a condition. The graft teacher who is only having 8th standard pass will have to acquire an additional qualification ie., SSLC pass. Unless this condition is fulfilled, one cannot claim a higher scale of pay. In this case, since the first respondent's husband did not acquire the additional qualification, the department rightly negated the request. This aspect of the matter was not taken note of by the learned Single Judge. In this view of the matter, the impugned order is set aside and the writ appeal is allowed. No costs. Consequently, connected miscellaneous petition is closed.

(G.R.S. J.) & (R.P. J.)
21.11.2024

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