



WEB COPY

W.A(MD)Nos.1352 to 1354



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 11.03.2024

CORAM :

THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN
and
THE HONOURABLE MR.JUSTICE K.K.RAMAKRISHNAN

W.A(MD)Nos.1352 to 1354 of 2017

1. Mahalakshmi	... Appellant in W.A.1352/17
2. Saraswathy	... Appellant in W.A.1353/17
3. Rangini	... Appellant in W.A.1354/17

VS.

1. The Government of India,
Rep by its Secretary,
Ministry of Defence,
New Delhi.

2. The Heavy Alloy Penetrator Project,
Trichirappalli,
Rep. by its General Manager,
Heavy Alloy Penetrator Project,
Ministry of Defence,
Trichy-25.

3. HAPF Matriculation School,
Rep. by its General Manager,
Heavy Alloy Penetrator Project,
Ministry of Defence,
Trichy-25.

4. Sri Ramakrishna Thapovanam,
Tiruchirappalli,
Rep. by its President,
Sri Ramakrishna Thapovanam,
Thirupparaithurai,
Trichy District.

... Respondents in all WAs



Appeals filed under Clause 15 of Letters Patent, against the common order dated 05.01.2017 in W.P(MD)Nos.5477, 5478 & 5479 of 2012.

WEB COPY

For Appellant(in all WAs)	: Mr.M.Saravanan
For R1 to R3(in all WAs)	: Mr.D.Saravanan, Senior Panel Counsel
For R4(in all WAs)	: Mr.S.Rajesh Kanna

COMMON JUDGMENT

(Judgment of the Court was made by V.BHAVANI SUBBAROYAN, J.)

Challenging the common order dated 05.01.2017 made in W.P(MD)Nos. 5477, 5478 & 5479 of 2012, these writ appeals are filed by the writ petitioners.

2. The writ petitioners filed writ petitions for a Mandamus directing the respondents to pay salary to them from their dates of appointment namely, 07.10.2009, 08.11.2010 and 09.11.2010 respectively, contending that they were appointed as Secondary Grade Assistant in the 3rd respondent school which is an aided school paying salaries to the teaching and non teaching staff on par with Government School Teachers. According to the writ petitioners, they were paid salary on the basis of 5th Pay Commission and 6th Pay Commission was implemented from 01.01.2007 and therefore they are entitled to receive salary as per the 6th Pay Commission from the dates of their appointment. Similarly placed teachers working in 3rd respondent school filed writ petition in W.P(MD)No.12110 of 2009, in which,



this Court passed an interim order to pay salary to them as per 6th Pay Commission.

The grievance of the writ petitioners is that the said benefit was not extended to them. Hence, they filed writ petitions seeking similar order, but the Writ Court holding that the writ petitioners were not parties to the said writ petition as such they are not entitled to the similar relief, dismissed the writ petitions. Challenging the said common order, the writ petitioners have come up with these appeals.

3. Learned counsel appearing for the appellants/writ petitioners submitted that the learned Single Judge ought to have seen that as per Clause 19 of the agreement dated 21.03.2001 entered into between the 2nd and 4th respondents, the 2nd respondent is liable to pay the teachers and non teaching staff in the pay scale applicable to Ordnance Factory Schools (pay scale of Central Government) or Tamil Nadu Government Schools whichever is lower. He further submitted that by notification dated 04.06.2007 bearing No.11123/ Admisn/HAPP, the 2nd respondent invited application from outsiders to run the school and the same was challenged in W.P.(MD)No.5879 of 2007 and this Court directed the respondents therein to maintain status quo as on that date until further orders and the same order was granted in M.P.(MD)No.3 of 2009 in W.P.(MD)No.12110 of 2009 also. By virtue of the above interim orders, the 4th respondent continued to run the 3rd respondent school and the 2nd respondent paid the salary in the pay scale applicable to teachers working in the Tamil Nadu Government Schools.



4.

It is also submitted that as per the agreement entered into between the 2nd and 4th respondents, the 2nd respondent is duty bound to pay salary as per the recommendation of the 6th Pay Commission. Though similarly placed teachers were given the said benefit by this Court pursuant to the interim order passed in W.P. (MD)No.12110 of 2009, the learned Single Judge holding that the appellants herein were not parties to the said writ petition and therefore, they cannot seek similar benefits granted therein, dismissed the writ petitions which is totally erroneous, as time and again, Courts have held that denying similar benefits to similarly situated employees would amount to discrimination and violation of Articles 14 and 16 of the Constitution. Thus, the learned counsel prayed for interference with the impugned order passed by the learned Single Judge.

5. Separate counter affidavits have been filed by the respondents 1 to 3. Learned Senior Panel Counsel appearing for the respondents 1 to 3 submitted that by virtue of the interim status quo orders passed in W.P.(MD)No.5879 of 2007 and the subsequent continuance of status quo order in M.P.(MD)No.3 of 2009 in W.P(MD)No.12110 of 2009, the 4th respondent was allowed to run the school beyond the agreement period of 30.06.2008. While so, the appellants were appointed as Secondary Grade Assistant in the 3rd respondent school with effect 07.10.2009, 08.11.2010 and 09.11.2010 respectively, in the vacant posts purely on temporary basis at the minimum scale of pay applicable as per the Government Orders existed



on the date of status quo order namely, 12.12.2007. The appellants also accepted the same and joined the posts.

WEB COPY

6. Learned counsel further submitted that this Court in W.P(MD)No.12110 of 2009, after taking into account the fact that the petitioners therein were paid salary from 1988 onwards on par with the staff in Tamil Nadu Government High Schools, issued a direction to revise their salary that was given to the Tamil Nadu Government employees from the date of filing of the application namely, 14.11.2009. According to the learned counsel, the said order is in the nature of *right in personam* applicable to the petitioners therein, as such, the appellants herein cannot claim similar relief. Further, the appellants were appointed after the expiry of the agreement and during the period of status quo order. Ultimately, W.P(MD)No.12110 of 2009 was dismissed by this Court by order dated 05.01.2017, holding that the prayer of the petitioners therein to take over the school and to absorb them as regular employees without any privity of contract with the 2nd respondent is devoid of merit. The writ appeal filed thereagainst also ended in dismissal on 21.04.2017 in W.A(MD)No.165 of 2017. The recall petition and review petition filed subsequently also met the same fate. Thus, the learned counsel submitted that the appellants' appointments being temporary in nature made during the expiry of the agreement period but during the continuance of agreement because of the status quo order, they are not entitled to the prayer sought for. Thus, he prayed for dismissal of the appeals.



7. We have heard the learned counsel for the appellants as well as the respondents.

8. It is the contention of the counsel for appellants that as per Clause 19 of the agreement dated 21.03.2001 entered into between the 2nd and 4th respondents, the 2nd respondent is liable to pay the teachers and non teaching staff in the pay scale applicable to Ordnance Factory Schools (pay scale of Central Government) or Tamil Nadu Government Schools whichever is lower. In this regard, it is relevant to extract below the said Clause 19:-

"19. Teaching and Non-Teaching Staff will receive Pay & Allowances as applicable to the similarly placed persons in Ordnance Factory Schools or Tamil Nadu Govt. Schools whichever is lower. The members of staff will be fixed at the minimum of the Scales at the time of appointment. However, higher pay may be granted with the approval of First Party in case of higher education/experience, but not exceeding total emoluments which a member of staff may draw at the maximum of scale. For temporary movements, if any, the same will be decided by the First Party as and when the movement is required which will not exceed the prescribed rates for the similarly placed persons in Ordnance Factory Schools or Tamilnadu Government Schools whichever is lower. The terms and conditions in this respect will remain unchanged during the period of this agreement."

9. Though the appellants relied upon Clause 19 of the said agreement, as rightly contended by the counsel for the respondents 1 to 3, the said agreement came to an end 30.06.2008 and no material has been placed to prove extension of such



agreement. Though by virtue of status quo order in W.P.(MD)No.5879 of 2007 (The said writ petition on withdrawal was closed) and W.P(MD)No.12110 of 2009, the 4th respondent was allowed to run the school beyond 30.06.2008, it is seen that W.P(MD)No.12110 of 2009 itself was dismissed by this Court by order dated 05.01.2017 holding that the prayer of the petitioners therein to absorb them as regular employees without any privity of contract with the 2nd respondent is devoid of merit. Merely because the interim order granted in W.P(MD)No.12110 of 2009, conferred the petitioners therein with revision their salary on par with the Tamil Nadu Government School Teachers, the appellants herein cannot claim said benefit because the said writ petition was subsequently dismissed as devoid of merits. Further, the appointment orders of the appellants itself disclose that their appointments were purely on temporary basis that too upto 30.04.2010, 31.05.2011 and 31.05.2011 respectively, without prejudice to the status quo order granted in W.P(MD)No.5879/2007 with the pay scale of Rs.4500-125-7000/- per month. Having accepted such appointment orders with the above terms, the appellants are estopped from raising contention that they should be given 6th Pay Commission salary on par with the Government School teachers.

10. As stated supra, only in compliance of the status quo order, the 4th respondent was allowed to run the school beyond the agreement period and the appellants's appointments were purely temporary for a particular period. The



appellants are not regular employees and no absorption/regularisation orders passed for them to claim the benefit of 6th Pay Commission. Even assuming that the appellants are similarly placed employees as that of petitioners in W.P(MD)No.12110 of 2009, as rightly contended by the counsel for respondents 1 to 3, the said order is in the nature of *right in personam* applicable to the petitioners therein only and not *right in rem* applicable to all, as such, the appellants herein cannot claim similar relief. Further, as stated supra, W.P(MD)No.12110 of 2009 itself was subsequently dismissed as devoid of merit. There is no privity of contract between the respondents 2 and 4. Though the learned Single Judge dismissed the writ petitions holding that the appellants were not parties to W.P(MD)No.12110 of 2009 and therefore, they are entitled to the relief on par with the petitioners therein, in view of the above discussion, we find that on merits also, the appellants have not made out a case for grant of salary as per 6th Pay Commission.

11. For all the reasons stated above, the Writ Appeals are dismissed. No costs.

(V.B.S., J.)

(K.K.R.K., J.)

11.03.2024

Index : Yes / No

Neutral Citation : Yes / No

bala



W.A(MD)Nos.1352 to 1354

To

WEB COPY

1. The Secretary,
Government of India,
Ministry of Defence,
New Delhi.
2. The General Manager,
Heavy Alloy Penetrator Project,
richirappalli,
Heavy Alloy Penetrator Project,
Ministry of Defence,
Trichy-25.
3. The General Manager,
HAPF Matriculation School,
Heavy Alloy Penetrator Project,
Ministry of Defence,
Trichy-25.



WEB COPY



W.A(MD)Nos.1352 to 1354

V.BHAVANI SUBBAROYAN, J.
and
K.K.RAMAKRISHNAN, J.

bala

COMMON JUDGMENT MADE IN
W.A(MD)Nos.1352 to 1354 of 2017
DATED : 11.03.2024