

W.A(MD) No.1384 of 2014
and
W.P(MD)Nos.667 of 16 and 8147 of 2017

WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 13.03.2025
Delivered on : 02.04.2025

CORAM:

THE HONOURABLE **DR.JUSTICE G.JAYACHANDRAN**

AND

THE HONOURABLE **MS.JUSTICE R.POORNIMA**

W.A(MD)No.1384 of 2014

and

W.P(MD)No.667 of 2016

and

W.P(MD)No.8147 of 2017

and

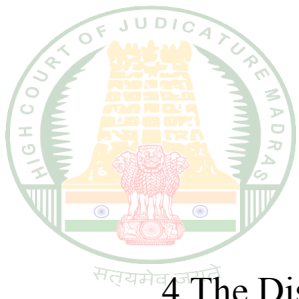
W.M.P(MD)Nos.6259 and 6260 of 2017

and

M.P(MD)No.1 of 2014

W.A(MD)No.1384 of 2014

- 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,
College Road,
Chennai-600 006.
- 3.The Chief Educational Officer,
Nagercoil,
Kanyakumari District.



W.A(MD) No.1384 of 2014
and
W.P(MD)Nos.667 of 16 and 8147 of 2017

4.The District Educational Officer,
Thuckalay, Kanyakumari District.

... Appellants/Respondents

-Vs-

1.M.Mary Jacklin Pushpa
Secondary Grade Teacher
All Saints Higher Secondary School,
Muttom and Post,
Kanyakumari District.

...1st Respondent/Writ Petitioner

2.The Correspondent,
All Saints Higher Secondary School,
Muttom and Post,
Kanyakumari District.

...2nd Respondent/5th Respondent

PRAYER: Writ Appeal filed under Clause XV of the Letters of Patent Appeal,
against the order of this Court dated 15.09.2014 made in W.P(MD)No.14870 of
2010.

For Appellant	: Mr.Om Prakash, Government Advocate
For R1	: Mr.Isaac Mohanlal, Senior Counsel
For R2	: No appearance

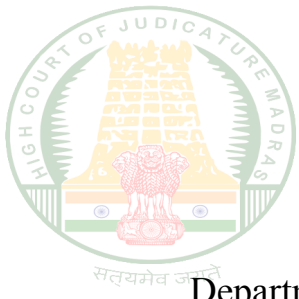
W.P(MD)No.8147 of 2017

K.Mary Stella Bai
BT Assistant (Science)
St.Joseph's High School,
Saral-629 203
Kanyakumari District.

... Petitioner

-Vs-

1.The State of Tamil Nadu
Rep by its Secretary



W.A.MD) No.1384 of 2014
and
W.P(MD)Nos.667 of 16 and 8147 of 2017

Department of School Education,
Fort St.George,
Chennai-600 009.

2.The Director of School Education,
College Road,
Chennai-600 006.

3.The Chief Educational Officer,
Nagercoil,
Kanyakumari District.

4.The District Educational Officer,
Thuckalay, Kanyakumari District.

5.The Correspondent,
All Saints Higher Secondary School,
Muttom and Post,
Kanyakumari District.

...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying the issuance of Writ of Certiorarified Mandamus, calling for the records relating to the impugned order issued by the fourth respondent District Educational Officer in O.Mu.No.4829/A3/2016 dated 03.11.2016, quash the same and further direct the respondents to sanction and pay forthwith the salary, allowances and other attendant benefits to the petitioner on par with the Graduate teachers appointed in Middle School Sections of recognized Private Schools for the period between 01.06.2006 to 31.05.2012.



WEB COPY



W.A.MD) No.1384 of 2014
and
W.P(MD)Nos.667 of 16 and 8147 of 2017

For Appellant : Mr.Isaac Mohanlal, Senior Counsel
For R1 to R4 : Mr.Om Prakash, Government Advocate
For R5 : No appearance

W.P(MD)No.667 of 2016

D.Anbusezhian

... 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,
College Road,
Chennai-600 006.

3.The District Elementary Educational Officer,
Pudukkottai,
Pudukkottai District.

...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying the issuance of Writ of Mandamus, to direct the respondents to sanction and pay the salary and allowances and other attendant benefits to the petitioner on par with the Middle Grade Graduate Teachers appointed on 01.06.2002 on the basis of the petitioner's representation dated 23.10.2015, within a reasonable period fixed by this Court.



WEB COPY



*W.A.MD) No.1384 of 2014
and
W.P(MD)Nos.667 of 16 and 8147 of 2017*

For Petitioner : Mr.P.Ganapathi Subramanian
For R1 to R3 : Mr.Om Prakash, Government Advocate

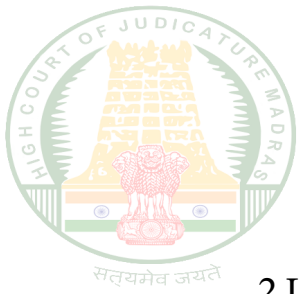
JUDGMENT

DR.G.JAYACHANDRAN, J.

AND

R.POORNIMA, J.

Ms.Mary Jacklin Pushpa, was appointed as Secondary Grade Teacher with effect from 11.06.1997 in the All Saints Higher Secondary School, a minority Educational Institution under the management of Roman Chatholic Diocese of Kottar. At the time of appointment, she possessed B.SC., B.Ed., degree. Since, she did not possess the requisite educational qualification for the post of Secondary Grade Teacher, the Education Department declined to approve her appointment. At the time of her appointment, B.T or B.Ed Degree holders were not eligible for the appointment of Secondary Grade Teacher post, as per G.O. Ms.No: 559 of the Education Department, dated 11.07.1995. The validity of G.O Ms.559 was upheld by this Court with a direction that the teachers, who were appointed prior to 19.05.1998 without qualification, must undergo one month child Psychology training and thereafter, the District Education Office to approve the appointments with effect from 02.06.2003.



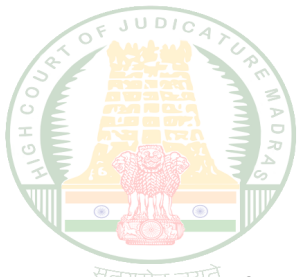
W.A.MD) No.1384 of 2014
and
W.P(MD)Nos.667 of 16 and 8147 of 2017

WEB COPY

2.Later, the Government took a policy decision to upgrade the post of Secondary Grade Teacher as Middle School Teacher and in future to appoint teachers with B.Ed degree qualification for the said post, with a specific time pay of scale and issued G.O Ms.No.79(Secondary Education) dated 14.06.2002.

3.Alleging that she and the persons appointed after 14.06.2002 as Middle School Teachers possess same qualification and discharging same work, ie., teaching students of 6th, 7th and 8th Standards, Writ Petition in W.P(MD)No. 114870 of 2014 filed to issue a Writ of Mandamus for considering her representation for pay parity along with Graduate Teachers in the Middle School.

4.The State through Education Department filed counter placing records and contended that though in G.O.559 dated 11.07.1995 there is a specific instruction not to appoint the persons with B.T.degree for the post of Secondary Grade teachers, the writ petitioner was appointed as a teacher in the minority institution with a higher qualification subsequent to the said GO. In reverence to the Judgment of the High Court rendered in the batch of writ petitions filed challenging G.O.559, the Government issued G.O.Ms.No.155 dated 03.10.2002 and her appointment was approved with effect 02.06.2003, after she got herself



W.A.MD) No.1384 of 2014

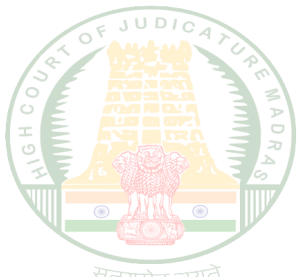
and

W.P(MD)Nos.667 of 16 and 8147 of 2017

WEB COPY

qualified in Child Psychology by getting trained for 6 months in District Institute of Education and Training (DIET). In view of change in syllabi, the Government took a policy decision to appoint in future the teachers for 6th to 8th standards with degree qualification. Accordingly G.O.No.79 dated 14.06.2002 was issued. The writ petitioner who was regularised in service pursuant to G.O.No.155 after getting qualified in Child Psychology cannot be treated par with the graduate teachers who were appointed after G.O.No.79. Her appointment in the vacancy of Lily Pushpa, a Secondary grade teacher. So, her pay scale can only be the pay scale of Secondary Grade Teacher. She will be entitled for Graduate Teacher pay scale only, when she is promoted in the vacancy of Graduate Teacher post. The writ petition filed belatedly seeking seniority and pay of Graduate teacher is not maintainable.

5.In short, the State contention is that, the writ petitioner who did not possess Teacher Training Certificate/ Diploma in Teacher Training which was the required education qualification for the post of Secondary Grade Teacher, was appointed without that qualification. Her appointment was contrary to G.O.No. 559 dated 11.07.1995. However in the light of G.O.No.155 dated 03.10.2002 issued, pursuant to the judicial pronouncement, any person engaged in teaching



W.A.MD) No.1384 of 2014

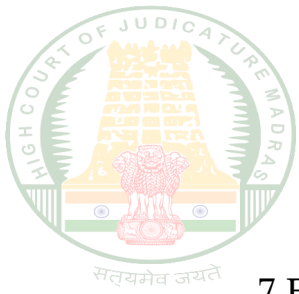
and

W.P(MD)Nos.667 of 16 and 8147 of 2017

WEB COPY

Middle School without Diploma in Teacher Education, their appointment is to be approved with effect from 02.06.2003, in case, they successfully undergone Child Psychology training for 6 months. In this case, the writ petitioner's appointment been approved with effect from 02.06.2003 after her successful completion of Child Psychology training. The Graduate teachers appointed after G.O.No.79 dated 14.06.2002 after upgrading the post in view of change in syllabi are class by themselves. The writ petitioner and similarly placed persons whose illegal appointment got regularised as one time measure after obtaining required qualification cannot get themselves equated to the Graduate teachers just because they also teach Maths, English and Science for the students of 6th to 8th standards.

6.The learned single Judge relying the principle equal work equal pay held that the writ petitioner cannot be discriminated in pay when she is discharging the same job, handling same clases and performing the functions that of the teachers appointed as Secondary Grade Teachers after 14.06.2002. Hence, opined that denying the same time scale of pay from 01.06.2006 is discriminatory and gross violation of Article 14 of the constitution.



W.A.MD) No.1384 of 2014

and

W.P(MD)Nos.667 of 16 and 8147 of 2017

WEB COPY

7. Being aggrieved, the State through its Education Department has preferred the appeal primarily on the ground that the writ petitioner and the similarly placed persons, who were appointed on consolidated pay without requisite qualification, got regularisation of service, as per GO.Ms.No.155, after obtaining the requisite qualification whereas the Graduate Teachers appointed as per G.O.Ms.No.79 on time scale of pay are not equals, to claim parity of pay. The graduate teachers were appointed in the vacancies of upgraded post known as “Middle Grade Graduate Teachers” filled up subsequently to teach the students of 6th to 8th standards. The up gradation prescribing higher qualification was due to the report that the secondary grade teachers appointed without adequate exposure to child psychology were unable to handle the classes. The writ petitioners and the similarly placed teachers were given service protection on condition they undergo training for 6 months in child Psychology. The approval of the appointment of writ petitioner on 02.06.2003 will not entitle her to claim monetary benefit par with Middle Grade Graduate teachers, who are not her equals.

8. The Learned Government Advocate appearing for the State/Appellants, submitted that, the learned Single Judge failed to take note of the factors like mode of recruitment, qualification and the differential classification while



W.A.MD) No.1384 of 2014
and
W.P(MD)Nos.667 of 16 and 8147 of 2017

applying the doctrine of Equal pay for equal work on the touchstone of Articles 14 and 16 of the Constitution. The Learned Judge also failed to take into consideration the latches in seeking the relief of mandamus.

9.Per contra, the Learned Senior Counsel for the private respondent/writ petitioner submitted that, the principle of equal work equal pay is a fundamental right protected under Article 14 of the Constitution as held by the Hon'ble Supreme Court in ***GrihKalyan Kendra Worker's Union –vs- Union of India (1991 (1) SCC 619)***. The disparity in pay between the teachers discharging same duty with same qualification rightly held as unconstitutional by the learned single Judge. The source of appointment and the change in the nomenclature of the post from Secondary grade teacher to Middle grade graduate teacher will not make them as two different class, despite they are similar in functional aspect. The writ petitioner being deprived of pay difference which is a recurring cause of action, the writ petition filed does not suffer any latches.

10..The learned Government Advocate submitted that, there are two Division Bench judgments of this Court wherein the effect of G.O.Ms.No.155 discussed at length. Afther explaining the circumstances under which G.O.Ms.No.



W.A.MD) No.1384 of 2014

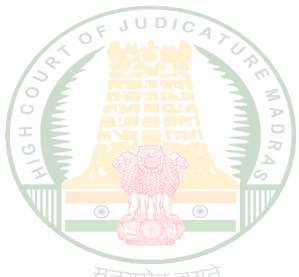
and

W.P(MD)Nos.667 of 16 and 8147 of 2017

WEB COPY

155 dated 03.10.2002 issued and the impact on the salary components and the other monetary benefits to the teachers whose appointment suffered irregularity and later regularised by G.O.Ms.No.155, he submitted that, in both the judgements, it has been categorically held that, the period of service without qualification not to be taken into account for any of the service benefit.

11.That apart, G.O.Ms.No.79 dated 14.06.2022 followed by G.O.Ms.No. 100, dated 27.06.2003 and G.O.Ms.No.125 dated 12.11.2013 on proper consideration clearly exposes the fact that, the Secondary Grade Teacher post which the writ petitioner officiating was the feeder category for the BT Assistant/ Graduate Grade Teacher post. Therefore, the post are not same or similar to claim pay parity. Merely, possessing degree will not make the writ petitioner par with the Graduate Grade Teacher, when the recruitment process was entirely different and for different post. The writ petitioner, who was appointed contrary to the G.O. Ms.No.559 and got appointment through back door without following the regular process of recruitment, got the irregular appointment ratified through judicial order passed as one time measurement to protect the service. She cannot claim parity with the persons appointed legally and officiating a different post. Discharge same work or similar work is not the only yardstick to give similar pay



W.A.MD) No.1384 of 2014

and

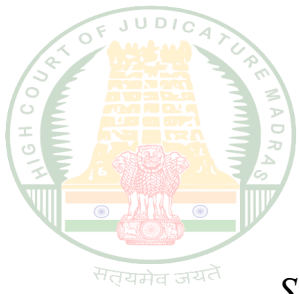
W.P(MD)Nos.667 of 16 and 8147 of 2017

if the other factors are different.

WEB COPY

12.It is an admitted fact and recorded by the Courts that the appointment made to the post of Secondary Grade Teacher without Certificate or Diploma in Teacher Training was contrary to Law and against the instruction issued under G.O.Ms.No.559 dated 11.07.1995. At this juncture, it is appropriate to refer the below observation of the Hon'ble High Court made while upholding G.O.Ms.No. 559:

“We appreciate the stand taken by the learned Additional Advocate General, which is a pragmatic stand and has an unshakable base of experience. In order to avoid an undue hardship to these teachers who have been serving for years together in the tower classes even after studying for a graduation degree that too on meager salaries, it will be better if an exercise is taken for the confirmation of these teachers. The modalities of which may be decided by the State Government. The state Government may decide to give the practical training or may even choose to individually examine each case on its own merits. There may be individual cases where the Management was absolutely justified in employing a graduate teacher and there could be others where there was no such justification. We do not wish to draw the details and leave to the



W.A.MD) No.1384 of 2014

and

W.P(MD)Nos.667 of 16 and 8147 of 2017

WEB COPY

State Government. However, the State Government shall take up the exercise as we have indicated above providing relief to at least such teachers who have been inducted prior to the dismissal of the writ petitions before the learned single Judge. We direct accordingly while dismissing the appeals and the writ petitions. No costs.”

13. Based on the above direction, G.O.Ms.No.155 dated 03.10.2002 was issued, with conditions that the Secondary Grade teachers with degree appointed contrary to G.O.Ms.No.559 has to undergo 6 months short term training in Child Psychology at DIET will be paid only the secondary grade teachers salary and no additional pay will be granted. The period of service rendered prior to the training is child psychology will not be considered for any purpose, including for the purpose of fixation of pay or retirement benefits.

14. The appointment of Middle Grade Graduate Teachers following G.O.Ms.No.79 dated 14.06.2002, was based on the decision of the Government to carve out the post of Secondary Grade teachers and henceforth appoint in the future vacancies with graduate teachers as Middle Grade Teachers to teach English, Maths and Science for students of 6th to 8th standards. This G.O., also



W.A.MD) No.1384 of 2014

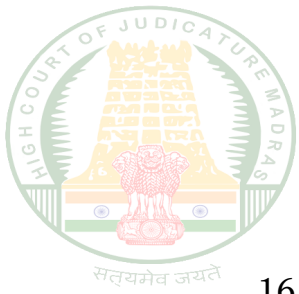
and

W.P(MD)Nos.667 of 16 and 8147 of 2017

WEB COPY

makes clear that as and when a post in Secondary Grade teacher falls vacant, it will be filled up by 'Graduates as Middle Grade Teacher' with one increment of the present pay scale of secondary grade teacher, who are handling classes 1 to 8. Thus, it is obvious that, the pay scale of Secondary Grade teacher (handling classes 1 to 8 standards) and the Middle Grade teachers (appointed to handle English, Maths and Science Subjects for classes 6th to 8th) were never the same even at the entry level and the recruitment of the writ petitioners and similarly placed persons whose service protected by G.O.Ms.No.155 and by the Court order were not same or equal to Middle Grade Teachers.

15.The fixation of pay scale for the secondary grade teachers got regularised by virtue of G.O.Ms.No.155 and the fixation of pay scale for Middle Grade Graduate teachers appointed as per GO.Ms.No.79 was taken into consideration by the Government and separate G.O.Ms.No.100 dated 27.06.2003 and G.O.Ms.No.125 dated 12.11.2003 were issued for different consolidated pay and acted upon. The writ petitioner had accepted the conditions imposed in G.O.Ms.No.155 dated 03.10.2002 and got her appointment approved. While so, after seven and a half years had sought parity of pay similar to the Middle Grade Graduate Teacher, who are not actually similarly placed.



W.A.MD) No.1384 of 2014

and

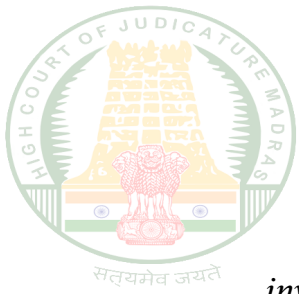
W.P(MD)Nos.667 of 16 and 8147 of 2017

WEB COPY

16.The source of recruitment, the purpose of recruitment of Graduates as Middle Grade Graduate Teachers to handle 6th to 8th standards exclusively for the subjects like English, Maths and Science clearly provides a reasonable difference between the classification. Indicating the writ petitioners and similarly placed persons whose appointments regularised and protected under G.O.Ms.No.155 are sui-generis and they cannot compare them as equal to Graduate teachers recruited after G.O.MsNo.79 dated 14.06.2002 for pay parity.

17.To buttress our view it is sufficient to cite the judgment of the Hon'ble Supreme Court rendered in ***T.Venkateswarulu –vs- Executive Officer, TirumalaTirupathiDevasthanam*** reported in ***(2009) 1 SCC 546*** wherein the Hon'ble Supreme Court had succinctly put that,

“ to examine on the touch stone of Article 14 and 16 of the Constitution, the burden upon the appellant to establish discrimination by placing record cogent materials. For this purpose, the crucial factor to be established is not only the functional parity of the two cadres, but also the mode of recruitment, qualification and the responsibilities attached to the two offices. All this information is necessary to analyse the rationale behind the State action in giving different treatment to two classes of its employees and then determine whether or not an



W.A.MD) No.1384 of 2014
and
W.P(MD)Nos.667 of 16 and 8147 of 2017

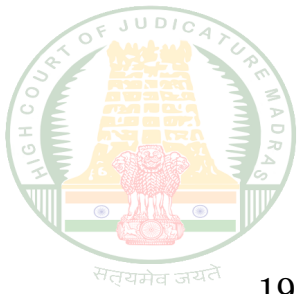
invidious discrimination has been practised.”

WEB COPY

The materials placed clearly establishes the fact that the parity of pay claimed by the writ petitioner is neither based on functional similarity nor by mode of recruitment. The cadres also not the same. While so, a generalised view that the teachers of both the cadre possess degree and they take classes for 6th to 8th standard alone been considered by the learned Judge ignoring the other differential factors which renders the classification rational.

W.P(MD)No.8147 of 2017:

18.This petitioner viz., **K.Mary Stella Bai**, was appointed as secondary grade teacher at St.Joseph High School, Saral-Kanyakumari District on 01.06.1997. Though the required qualification for the post of secondary grade teacher was i) SSLC, ii) TSLC of the Secondary grade teacher, this petitioner had B.Sc., B.Ed and M.Ed degree at the time of her appointment. Despite G.O.Ms.No. 559 dated 11.07.1995 she had been appointed by the minority institution and sought for approval by the Government, the same was declined and later by virtue of the High Court Judgment and G.O.Ms.No.155, she got her appointment approved subject to the conditions mentioned in the said GO.



W.A.MD) No.1384 of 2014

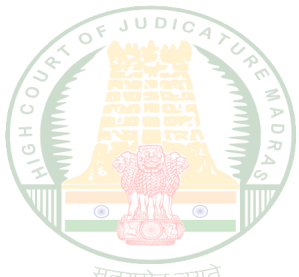
and

W.P(MD)Nos.667 of 16 and 8147 of 2017

WEB COPY

19.After, approval of her appointment as secondary grade teacher w.e.f 02.06.2003, claiming she is par with the Middle school Graduate teachers appointed under G.O.Ms.No.79, made representation dated 11.08.2006 to the authorities claiming pay scale par with Middle School Graduate Teachers from 01.06.2006 onwards based on G.O.Ms.No.174 dated 15.09.2006. The request made by her been considered and rejected by the District Educational Officer, vide letter dated 02.11.2016. The rejection proceedings of the District Educational Officer is impugned in the writ petition seeking issuance of writ of Certiorified-Mandamus.

20.G.O.Ms.No.174, dated 15.09.2016 was issued in respect of Middle Grade Graduate Teachers taking into consideration their appointment based on GO.Ms.No.79, dated 14.06.2002.It deals with the request of th Secondary grade teachers possessing Degree for considering 50% of the post in Middle Grade Graduate Teacher post to be filled by the Secondary Grade teachers. Obviously, this G.O., is issued to provide promotional opportunity in respect of Secondary grade teachers, who possess degree. They cannot claim parity with Middle Grade Graduate Teachers without being considered for that cadre as and when vacancy arise in future. The change in policy subsequently will never place them par with



W.A.MD) No.1384 of 2014
and
W.P(MD)Nos.667 of 16 and 8147 of 2017

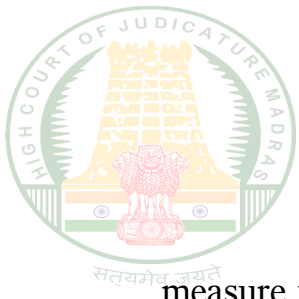
the up-graded post of Middle Grade Graduate teachers.

WEB COPY

W.P(MD).No.667 of 2016:.

21.The Writ petitioner viz., **Anbusezhian** in W.P(MD)No.667 of 2016, had made a representation to treat him similar to that of the first respondent in W.A(MD)No.1384 of 2014 and to sanction pay, allowance and other attendant benefits par with the Graduate Teachers appointed as Middle School teachers w.e.f 01.06.2012. This representation made after order passed in W.P(MD)No.14870 of 2010 dated 15.09.2014. Citing this writ petition as precedent, the writ petition is filed seeking Mandamus to consider his representation dated 23.10.2015. This writ petitioner claims that he got appointment in a private aided School at Thirumayam Taluk on 12.09.2001. He is entitled to get the pay of Middle Grade Graduate Teacher with retrospective effect from 01.06.2012, after G.O.Ms.No.174 dated 15.06.2006.

22.This Court has explained why the persons without the qualification prescribed not eligible to hold the post of secondary grade teacher. The history of ratifying their appointment on conditions and their entitlement of service benefits after getting qualified in Child Psychology short time course. The one time



W.A.MD) No.1384 of 2014

and

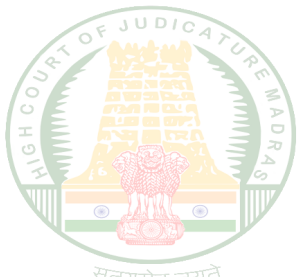
W.P(MD)Nos.667 of 16 and 8147 of 2017

WEB COPY

measure to ratify the irregular appointment and treating them a stand alone class, makes the classification rational.

23.The appointees contrary to G.O.Ms.No.559 and later got qualified for appointment as Secondary grade teachers by virtue of G.O.Ms.No.155 cannot claim parity with Middle Grade Graduate Teachers a distinct cadre created with reason and with different pay scale. The object for creating a cadre of Middle Grade Graduate teachers is to handle subjects like English, Maths and Science by qualified graduate teachers. The rational behind the classification is that Secondary Grade teachers appointment with minimum educational qualification of SSLC and TSLC with Secondary grade teacher certificate or Diploma in Teacher Training were not able to handle these subjects at 6th to 8th standards.

24.No doubt, the writ petitioners in these cases were graduates, but their recruitment was found not proper since they did not have exposure to child psychology which is necessary for a teacher handling children of 1st to 8th standards. Only in this contest, the Division Bench of this Court accepted the pragmatic proposal made by the Government, for the sake of ratifying the appointments of unqualified person to retain their appointment, made them to



W.A(MD) No.1384 of 2014
and
W.P(MD)Nos.667 of 16 and 8147 of 2017

undergo training for 6 months in child psychology at DIET.

WEB COPY

25.The plea for high pay scale par with the Middle School Graduate Teachers merely on the basis that they are also graduates and degree holder is not sufficient to clear the touchstone of Articles 14 and 16 of the Constitution since, the function and the mode of recruitment differs between these two categories of teachers.

26.As a result, Writ Appeal in W.A(MD)No.1384 of 2014 stands allowed and the Writ Petitions in W.P(MD)No.s667 of 2016 and 8147 of 2017 stand dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

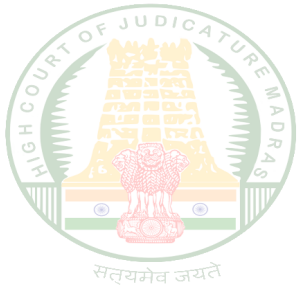
[G.J., J.] & [R.P., J.]

02.04.2025

NCC : Yes / No

Index : Yes / No

Ns



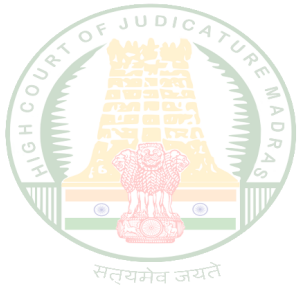
WEB COPY



W.A.MD) No.1384 of 2014
and
W.P(MD)Nos.667 of 16 and 8147 of 2017

To

- 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,
College Road,
Chennai-600 006.
- 3.The Chief Educational Officer,
Nagercoil,
Kanyakumari District.
- 4.The District Educational Officer,
Thuckalay, Kanyakumari District.



WEB COPY



W.A.MD) No.1384 of 2014
and
W.P(MD)Nos.667 of 16 and 8147 of 2017

DR.G.JAYACHANDRAN, J.

AND

R.POORNIMA, J.

Ns

Predelivery Judgment made in
W.A(MD)No.1384 of 2014 and
W.P(MD)No.667 of 2016 and
W.P(MD)No.8147 of 2017 and
W.M.P(MD)Nos.6259 and 6260 of 2017 and
M.P(MD)No.1 of 2014

02.04.2025