

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 26.02.2010

CORAM

THE HONOURABLE MR.JUSTICE R. SUDHAKAR

Writ Petition Nos. 37456, 39069, and 42202 of 2006 (T)
(OA.No.8289/98, 8171/99 and 8154/99)

A. Vadivelu .. Petitioner(In WP No.37456/2006)
M. Natarajan .. Petitioner(In WP No.39069/2006)
E. Sundaram .. Petitioner(In WP No.42202/2006)

vs

- 1.The State of Tamilnadu,
Secretary to Government,
School Education Dept.,
Fort St. George, Chennai.9.
2. The Director of Elementary Education,
College Road, Chennai.6. .. Respondents (In all the Wps.)

Prayer: Writ petition came to be re-numbered by transfer of O.A.No. 8171 of 1999 on the file of the Tamil Nadu Administrative Tribunal, praying to call for the records relating to the order of the first respondent dated 22.3.1999 issued in G.O.Ms.No.82 Education Dept. and quash the same insofar as it relates to excluding the Teacher, who were appointed in the Higher Grade with Higher Grade qualification but subsequently acquiring the Secondary Grade qualification from the benefit of G.O.Ms.No.347 Education(School) dated 15.9.1998 and direct the respondents to extend the benefit of G.O.Ms.No.347 Education dated 15.9.1998 to the petitioner and to award the consequential benefits.

Prayer: Writ petition came to be re-numbered by transfer of O.A.No. 8289 of 1998 on the file of the Tamil Nadu Administrative Tribunal, praying to call for the records relating to the order of the first respondent in connection with the order dated 15.9.1998 issued in G.O.Ms.No.347 School Education Dept. and quash the same in respect of fixing the cut of date as 1.1.71 and further direct the respondents herein to take into consideration the services rendered by the petitioner from the date of his first appointment and grant him all consequential and service benefits.

Prayer: Writ petition came to be re-numbered by transfer of O.A.No. 8154 of 1999 on the file of the Tamil Nadu Administrative Tribunal, praying to call for the records relating to the order of the first respondent dated 22.3.1999 issued in G.O.Ms.No.82 Education Dept. and quash the same insofar as it relates to excluding the Teacher, who were appointed in the Higher Grade with Higher Grade qualification but subsequently acquiring the Secondary Grade qualification from the benefit of G.O.Ms.No.347 Education(School) dated 15.9.1998 and direct the respondents to extend the benefit of G.O.Ms.No.347 Education dated 15.9.1998 to the petitioner and to award the consequential benefits.

For Petitioner in
(WPNo.37456/2006) : Mr. Krishnan for
Mr. M.Muthappan

For Petitioner/s in
(WPNo.39069/2006
and 42202/2006 : Mr. K. Thennan for
Ms. P. Saraswathi

For Respondents : Mr.S. Sivashanmugam
Govt.Advocate

COMMON ORDER

Three petitioners in these cases have qualified as Secondary Grade Teachers. At one point of time, they performed duties of higher grade teachers. Thereafter, they continued in the service of secondary grade teacher. The petitioners claim the benefit of scale of pay as applicable to the secondary grade teacher for the period during which they served in the post of higher grade teacher. This issue was resolved by the Tribunal in O.A.Nos. 282, 283 and 3441 of 1993 (A. Ilangovan - Vs. - The Director of Elementary Education and others), holding as follows:-

"Indeed, there cannot be any intelligible difference between the secondary Grade Certificate holders served in the Higher Grade place after 1.1.71 or prior to 1.1.71. This is the well settled principle in a catena of decisions of the supreme court. It has been held by the Supreme Court in a decision reported in Vo.II SC SLJ 498 that equality of opportunity for the purposes of seniority, promotion and like matters of employment is available only for persons who fall subsequently within the same class or unit of service. The fundamental right of equality means that person in like situation under like circumstance are entitled to be treated alike. What is enjoined is that all citizens

in matter of service under the state shall be treated alike under like circumstances and conditions. The primary aim is to prevent any person or class of persons from being singled out as a special subject for purposeful or invidious discrimination or hostile treatment. The purpose is to ensure similarly and equitable treatment and identity of treatment in matters relating to initial engagement, during continuance of that enjoyment and at the terminal end of that enjoyment. This principle has been laid down in the decision reported in A.I.R 1957 PAT 617, AIR 1962 SC 36.

The pivotal question in the present case is whether the teacher similarly circumstanced in the same class or service or unit are treated alike. The factual position is that the teachers similarly situated in the same class category and unit are treated unequally. In other words, the equals are treated as unequals. Therefore, the question of hostile discrimination will arise. Moreover, in the instant case, fixing the cut off date as 1.1.71 itself is arbitrary and unreasonable in view of the decisions reported in 1988 (2) CAT 250 and 1988 (3) SLJ.53.

When the secondary grade qualified teacher service period in the place of Higher Grade is treated as Secondary Grade from 1.1.71 the same should also be extended to the secondary grade qualified teacher serving in the Higher grade prior to 1.1.71 also. Otherwise the same would amount to clear discrimination.

In the facts and circumstances of the case, the applications are allowed and we direct the respondents to grant secondary grade scale of pay to the applicants for the period of service of the applicants in the Higher Grade place with the Secondary Grade qualification and it be counted as secondary Grade service for the purpose of seniority, selection/special grade and for promotional opportunities to the higher post. All consequential service and monetary benefits shall be made within two months from the date of receipt of this order or a copy thereof."

2. This order of the Tribunal was not appealed and was implemented by the respondents. Several orders have been passed by this Court granting relief to the petitioners based on the order of the Tribunal as above.

3. In the present case also, the petitioners, who hold the secondary grade teacher qualification are entitled to the benefit of secondary grade scale of pay for the services rendered by them in higher grade during the relevant time. All these writ petitions are allowed as prayed for. No costs.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

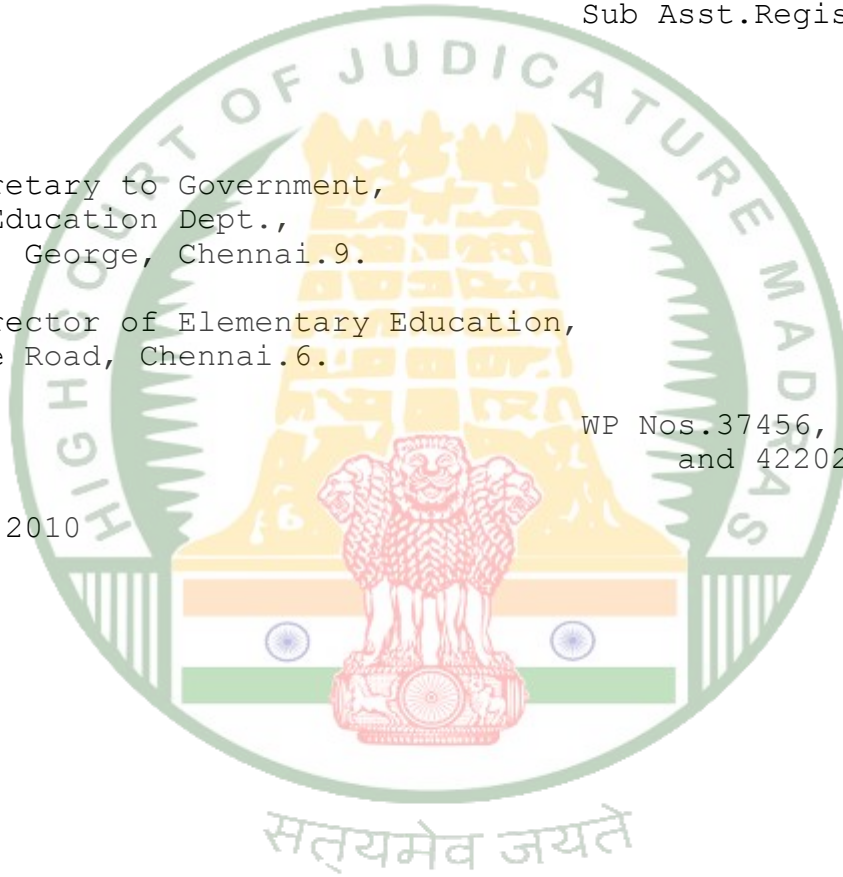
ra

To

- 1.The Secretary to Government,
School Education Dept.,
Fort St. George, Chennai.9.
2. The Director of Elementary Education,
College Road, Chennai.6.

WP Nos.37456, 39069
and 42202/2006

TEJ(CO)
RVL 23.03.2010



WEB COPY