

(2011) 01 MAD CK 0268

In the Madras High Court

Case No : Writ Petition No. 26853 Of 2010 and M.P. No. 1 of 2010

Mrs. Carunia Vanitha

APPELLANT

Vs

The Director of Elementary Education and The District
Elementary Educational Officer

RESPONDENT

Date of Decision : 06-01-2011

Acts Referred:

Constitution of India, 1950 — Article 14, 226

Tamil Nadu Minority Schools (Recognition and Payment of Grants) Rules, 1977 — Rule 11(3), 15, 19, 68

Citation : (2011) 01 MAD CK 0268

Hon'ble Judges : Vinod K. Sharma, J

Bench : Single Bench

Advocate : G. Jeremiah, for the Appellant; E. Ranganayaki, Government Advocate, for the Respondent

Judgement

Vinod K. Sharma, J.—The Petitioner has invoked the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India

with a prayer for issuance of a writ in the nature of Certiorari for quashing the impugned order dated 19.08.2010 vide which the claim of the

Petitioner for grant of pay scale of Secondary Grade Teacher stands declined.

2. The Petitioner is a qualified Secondary Grade Teacher having undergone two years teachers Training course in the year 1983. The Petitioner on

completion of training, was issued a certificate by the Government of Tamil Nadu, which is equivalent to Diploma in Teachers Training of

Secondary Grade. Keeping in view the qualification of the Petitioner, she was appointed as a Secondary grade Teacher in Sivaraman Middle

School, Chindadaripet. The Petitioner thereafter resigned from the post of Secondary Grade Teacher and joined Tri Jagan Mohan Primary School

with effect from 12.01.1990.

3. The case of the Petitioner set out in the affidavit is, that due to oversight, the competent authority while countersigning the service register,

incorrectly endorsed the appointment of the 3 Petitioner as Higher Grade Teacher, even though no such category of teacher was in existence, as

the post of Higher Grade Teacher stood abolished in the year 1989. The request of the Petitioner for fixing her salary in the scale of Secondary

Grade Teacher was not accepted which compelled the Petitioner to file a writ petition No. 8582 of 2009. The said writ petition filed by the

Petitioner was allowed by this Court and directions were given to the Respondent to consider and pass orders on the representation made by the

Petitioner for grant of scale of Secondary Grade Teacher, in view of the qualification possessed by her. By way of impugned order, the

representation made by the Petitioner was declined.

4. The English transcription of the impugned order is extracted hereunder:

Tmt. Carunia Vanitha had been appointed as a elementary grade teacher since 12.01.1990 in the Tri Jagan Mohan Primary Aided School,

Royapuram Range Chennai on the time scale of Rs. 950-2-1150-25-1500 has been receiving her salary along with increments. From 01.12.2000

she is receiving enhanced salary in the time scale of Rs. 4000-100-6000 and continues to receive her emoluments.

In the year 83 she obtained a elementary grade teacher (Nursery Training School) certificate and at page 5 of her certificate an endorsement has

been made vide R.C. No. 3081/dated 18.11.50 that she is qualified to teacher only standards 1 and 2. As the teacher has not acquired secondary

grade qualification till date, a teacher holding the post of elementary grade teacher can only be paid salary in the grade of elementary grade teacher.

As per the directions of the High Court 1st referred above, it is informed that as the teacher does not possess secondary grade qualifications she is

not entitled to receive a secondary grade teachers salary and her request is denied.

5. The Petitioner challenged the impugned order on the ground that the order being arbitrary is hit by Article 14 of the Constitution of India. The

Respondents, while considering the representation did not bother to take note of the qualification possessed by the Petitioner.

6. In support of the contentions, the Petitioner filed an Additional typed Set containing a copy of the Service Register, as well as a copy of the

Teacher's Training Certificate issued by the Tamil Nadu Education Department. The Service Book as well as the certificate placed on record

shows that the Petitioner is a qualified Secondary Grade Teacher.

7. The writ petition is opposed by the learned Counsel for the Respondent by contending that as the Petitioner was not appointed as Secondary

Grade Teacher as per the service record, therefore, the Petitioner is not entitled to get the scale of pay of Secondary Grade Teacher, as she is only

entitled the grade of the post to which she was appointed.

8. I find force in the contention raised by the learned Counsel appearing for the Petitioner. Once a decision is taken by the Government to pay the

teacher as per the qualification acquired by them, and it is approved that the Petitioner is possessing the qualification of Secondary Grade Teacher,

she would be entitled to the grade, irrespective of her appointment as Elementary School Teacher.

9. This view finds supports from the decision of this Court in W.A. No. 604 of 2000 (N. Jerisi Deisi v. State of Tamil Nadu rep. by its Secretary

to Government, Education Department, Fort. St. George, Chennai) wherein, the Hon'ble Division Bench of this Court was pleased to lay down as

under:

16. It is seen from the findings of the learned single Judge that Rule 15 provides for qualifications, conditions of service of teachers and other

persons as well as for promotion. Annexure I to Rule 11(3) read with Annexure I provides for payment of grants from State funds towards Staff

Grant, Maintenance Grant, etc. Further, Rule 19 read with Annexure III prescribes the procedure for payment of pay and allowance to teachers

and other persons employed in private schools. Annexure v. prescribes the qualifications for appointment as teachers in private schools. In the

present case, we are concerned with the post of Secondary Grade teacher.

17. Now, the point which arises for consideration is whether the Appellant is qualified in accordance with law with reference to her date of

appointment after the passing of G.O. Ms. No. 564 Education Department dated 20.03.1978. In this case, the Appellant was appointed as

Secondary Grade teacher on 02.06.1997 and it has to be decided whether her

appointment is valid and she is entitled to have approval of her appointment.

18. Since the learned single Judge has distinguished the judgment in Mrs. Jemima's case, it would be proper for us to go into the relevant portion of the same which is relevant for our consideration.

9. That apart, assuming that the Government as a policy decision decided to abolish the Higher Grade Teachers with an avowed object to improve the standard of education and to enable the teachers to improve their qualifications suitably as mentioned above, unless and until the qualifications prescribed under Clause 3 of Annexure III to the Minority Schools (Recognition & Payment of Grant) Rules read with 8 of the said rules are suitably amended by the Government. I am of considered opinion, the Petitioner, who is having the necessary qualification for the post of

Secondary Grade Teachers and having been appointed as Secondary Grade Teacher in the fourth Respondent minority school, she cannot be

deprived of her salary payable to the Secondary Grade teachers merely because she has not completed her in-service training and she is entitled to

the salary payable to the Secondary Grade teachers continuously until the suitable amendments are made in the qualifications prescribed for the

Secondary Grade Teachers under the Rules.

10. For the reasons stated above, while upholding the G.O. Ms. No. 564, Education dated 20.03.1978, I am obliged to hold that the said G.O.

Ms. No. 564, Education, dated 20.03.1978 is not applicable to the minority institutions unless and until suitable amendments are made to Clause 3

of Annexure III to the Minority Schools (Recognition & Payment of Grant) Rules read with Rule 68 thereof and the Respondents are, therefore

directed to continue to pay to the Petitioner the salary payable to the Secondary Grade teachers until necessary amendments are made to the Rules

as stated above. The Respondents are further directed to pay the entire arrears of salary, at the scale of pay applicable to the Secondary Grade

teachers, payable to the Petitioner with effect from 01.07.1986. The Respondents shall pay the entire arrears of such salary within three months

from the date of receipt of copy of this order and shall continue to pay to the Petitioner salary as that of the Secondary Grade teacher until suitable

amendments are made in the Rules as stated above.

19. From a reading of the above decision, it is made clear that unless and until the Rules are amended, a person who has been appointed and who possesses the requisite qualification has to be continued to be paid his regular benefits.

10. Therefore by following the decision of Hon''ble Division Bench and for the reasons stated, the writ petition is allowed and impugned order is quashed. The Respondents are directed to release the salary as that of secondary grade teacher to the Petitioner from the date of appointment, however arrears due shall be restricted to 36 months prior to filing of this writ petition. No costs. Consequently, M.P. No. 1 of 2010 is closed.