

**(1999) 10 MAD CK 0075**

**In the Madras High Court**

**Case No : Writ Petition No. 4311 of 1994**

Mrs. Jemima

APPELLANT

Vs

The State of Tamil Nadu and 3 others

RESPONDENT

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**Date of Decision : 04-10-1999**

**Acts Referred:**

Constitution of India, 1950 — Article 14, 226, 39

Tamil Nadu Minority Schools (Recognition and Payment of Grants) Rules, 1977 — Rule 68, 8

**Citation : (1999) 3 CTC 760 : (2000) 1 MLJ 699**

**Hon'ble Judges : P.D. Dinakaran, J**

**Bench : Single Bench**

**Advocate : Mr. Doraisamy, for the Appellant; Mr. S. Vadivel, Government Advocate, for the Respondent**

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## **Judgement**

P.D. Dinakaran, J.—Admittedly, even though the petitioner had undergone the Nursery Secondary Grade Teacher's Training course, which is not equivalent to the Secondary Grade Teacher's Training Course, she was appointed as Secondary Grade Teacher Fourth respondent school. The Government, by G.O.Ms. No. 564 (Education) dated 20.3.1978, by way of a policy decision, decided to abolish the cadre of Higher Grade Teachers, but at the same time protected the interests of the then working Higher grade Teachers and enabled them to undergo In-service Training conducted by State Council for Educational Research and Training (SCERT) so that they can be upgraded as Secondary Grade Teachers. In view of the fact that the petitioner was not having the Secondary Grade Qualification at the time of her appointment, i.e. On 5.9.1979, which is subsequent to the passing of the G.O.Ms. No. 564 (Education) dated 20.3.1978, the petitioner, could not be treated as Secondary Grade Teacher. However, the other two teachers, viz. Renuka Livingston and Priyanisha, who were appointed prior to the passing of the G.O.Ms. No. 564 (Education) dated 20.3.1978, were allowed to draw the same salary payable to the Secondary Grade Teachers without their undergoing the in-service course conducted by SCERT. But in the case of the

petitioner and another teacher by name Joyce, who were appointed on 5.9.1979 and 4.10.1978 respectively, which were subsequent to the passing of the G.O.Ms. No. 564 (Education) dated 20.3.1978, while Joyce was permitted to draw the salary payable to the Secondary Grade Teachers as she completed the in-service training course, but the petitioner was not permitted to draw the salary payable to the Secondary Grade Teachers for want of in-service training course by G.O.Ms. No. 921 Education dated 30.9.1993. Hence the above writ petition.

2. Mr.Doraisami, learned Counsel for the petitioner contends that by the G.O.Ms. No. 564 Education dated 26.3.1978 the respondents are trying to cause a discrimination among the Higher Grade Teachers who were appointed prior to the passing of the said G.O. and those teachers who were appointed after the passing of the said G.O. Learned Counsel for the petitioner further contends that when the Nursery Grade Teachers who are appointed in the Social Welfare Department are being paid the same salary as that of the Secondary Grade Teachers, the petitioners are entitled for the same salary of the Secondary Grade Teachers and, therefore, the petitioner is entitled for the relief as prayed for in the writ petition.

3. Per contra, Mr.S.Vadivel, learned Government Advocate contends that the benefit given to the teachers who were appointed prior to the passing of G.O.Ms. No. 564 Education dated 20-3-1978 cannot be compared with that of the petitioner and Joyce who were appointed subsequent to the issue of G.O.Ms. No. 564 Education dated 20.3.1978. The passing of the said G.O. by the Government as a policy decision is a crucial factor to be taken into consideration in deciding the allegation of the petitioner that the respondents are causing discrimination between the teachers who were appointed before the issuance of G.O.Ms. No. 564 Education dated 20.3.1978 and after the issuance of the said G.O. Learned Government Advocate further contends that the comparison of the Nursery Teachers working in the Social Welfare Department in the mentally retarded schools is baseless as they are considered as a special category and the nature of work Tendered by them is entirely different as they are imparting education to the physically handicapped, crippled and mentally retarded students and therefore they form a special category by themselves.

4. I have given careful consideration to the submissions of either side.

5. No doubt the policy decision taken by the Government under the G.O.Ms. No. 564, Education, dated 20.3.1978 cannot be challenged by the petitioner by way of judicial review, especially when the said Government Order was passed to improve the standard of education and to fix the minimum qualification for the teachers to achieve the above object.

6. I am unable to appreciate the contention of the learned counsel for the petitioner that the respondents, by issuing G.O.Ms. No. 564, Education, dated 20.3.1978 are trying to cause a discrimination among the teachers who were

appointed prior to the passing of the G.O.Ms. No. 564, Education, dated 20.3.1978 and those who were appointed subsequent to the issue of the said G.O inasmuch as, as rightly pointed out by the learned Government Advocate, that such classification is based on the policy decision taken by the Government. I do not see any arbitrariness or unreasonableness in taking such a policy decision intending to upgrade the Higher Grade Teachers and Secondary Grade Teachers with an object to improve the standard of education and requiring the teachers to improve their qualification suitably. Therefore the classification, in my considered opinion does not create any discrimination among the teachers who were appointed prior to the issue of G.O.Ms. No. 564, Education, dated 20.3.1978 and those who were appointed after the issue of the said G.O. attracting Art.14 of the Constitution of India.

7. I am also unable to accept the argument of the learned counsel for the petitioner that the Nursery Grade Teachers appointed in the Social Welfare Board are paid salary equal to that of the Secondary Grade Teachers whereas the petitioner is being paid less salary and therefore there is discrimination between the petitioner and the Nursery Grade Teachers appointed in the Social Welfare Department in the matter of salary payable to them. The services of the Nursery Grade Teachers employed in Social Welfare Department, viz. imparting education to the physically handicapped, crippled and mentally retarded children is quite different from the services of the petitioners and others who are employed in the ordinary schools. Therefore, the Nursery Grade Teachers employed in Social Welfare Board is a special class by themselves and therefore I do not see any discrimination or unreasonableness in this regard. Hence, the argument advanced by the learned counsel for the petitioner that G.O.Ms. No. 564, Education, dated 20.3.1978 causes a discrimination among the petitioner and the Nursery Grade Teachers employed in Social Welfare Board also fails.

8. However, clause 3 of Annexure III to the Minority Schools (Recognition and Payment of Grant) Rules read with Rule 8 of the said Rules prescribes the qualifications for appointment as teachers in minority schools (Regular). clause 3 of Annexure III reads as follows:

"3. Secondary Grade Teacher

(i) S.S.L.C

(ii) T.S.L.C. of Secondary Grade or its equivalent provided that the teachers who have passed the Nursery, Montessori and Kindergarten School Leaving Certificate Examination of Secondary Grade shall be employed to handle standards I to II only,"

Admittedly, the fourth respondent school where the petitioner is employed, is a minority institution. Therefore clause 3 of Annexure III read with Rule 8 of the Minority Schools (Recognition & Payment of Grant) Rules is applicable to them. As per the qualification prescribed in the said rule, the petitioner is entitled to continue as Secondary Grade Teacher and to draw the salary payable to the

Secondary Grade Teachers unless and until appropriate amendments are made by the Government for the said qualifications. It is not in dispute that as on date teachers with S.S.L.C., T.S.L.C of Secondary Grade or its equivalent, provided that the teachers who have passed the Nursery, Montessori and Kindergarten School Leaving Certificate Examination of Secondary Grade shall be employed to handle standards I to II only, in which case the petitioner is fully qualified to be employed as a Secondary Grade Teacher as per clause 3 of Annexure III read with Rule 8 of the said Rules. Therefore it cannot be said that the very appointment of the petitioner as Secondary Grade Teacher has been erroneously made subsequent to the passing of G.O.Ms. No. 564, Education, dated 20.3.1978 inasmuch as her appointment is fully protected under clause 3 of Annexure III to the Minority Schools (Recognition & Payment of Grant) Rules read with Rule 8 thereof.

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 20.3.1978 I am obliged to hold that the said G.O.Ms. No. 564, Education, dated 20.3.1978 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 1.7.1986. 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.

11. The writ petition is partly allowed. no costs.