

Director of School Education and Another

Vs

A. N. Kandaswamy and Another

Civil Appeal No. 4582 of 1997

(G.T. Nanavati, S.R. Babu JJ)

29.10. 1998

JUDGMENT

NANAVATI, J. -

1. The appellants have challenged in this appeal the decision of the Tamil Nadu Administrative Tribunal in OA No. 2010 of 1992.
2. Both the respondents were initially appointed as teachers in the Panchayat Union Primary School. In the year 1985, they were serving as teachers in the Middle School of the Panchayat Union at Alangombu. The said Middle School was upgraded as Government High School with effect from 28-10-1985. The respondents opted for absorption in the Government High School and therefore became a part of the secondary education service. Some junior teachers who had continued as teachers in the Panchayat Union Primary Schools were subsequently promoted as Headmasters in the Primary and the Middle Schools run by the Panchayat Union. They were allowed to draw their pay in the scale of Rs. 2000-3200 from 1-6-1988, following GO No. 1381 dated 5-10-1990. The result was that they started getting more pay than the respondents and other teachers in the Government High Schools who continued to draw the selection grade which happened to be less than the pay scale of the Headmasters in Primary and Middle Schools of the Panchayat Union. The respondents, therefore, approached the Tamil Nadu Administrative Tribunal with a prayer to direct the Government to fix their pay on a par with the pay of the Headmasters in Panchayat Union Schools in the scale of Rs. 2000-3200 with effect from 1-6-1988 and then to award selection/special grade and other benefits after taking into consideration their higher grade service period of three years and six months in Panchayat Union Schools. The contention of the respondents was that if they had continued in their parent unit, i.e., Panchayat Union Schools, they would have become Headmasters in Primary/Middle Schools on the basis of their seniority and thus entitled to the pay scale of Rs. 2000-3200.
3. The Tribunal relying upon GOs dated 27-1-1960 and 1-6-1978 held that teachers of Elementary and Middle Schools and teachers of High Schools constituted one service. It rejected the contention of the appellants that on introduction of the new system of education and the Government upgrading Middle Schools as High Schools and taking them over and the respondents having opted for High School service, they became members of a different service. It further held that the respondents were entitled to be paid on a par with their juniors in the Elementary/Middle School Headmasters' pay scale. Relying upon GO dated 5-10-1990, it also held that just as the teachers holding the posts of Elementary/Middle School Headmasters were awarded selection/special grade by counting their entire lower cadre secondary grade service, the respondents should also be given that benefit to avoid discrimination. The Tribunal allowed the application and directed the appellants to fix pay of

the respondents on a par with secondary/special grade Headmaster with effect from 1-6-1988 and to give them consequential benefits also. Aggrieved by the decision of the Tribunal, the Director of School Education and the Chief Education Officers have approached this Court.

4. Learned counsel for the appellants contended that the view taken by the Tribunal that even after the Middle Schools were upgraded as High Schools and taken over by the Government, teachers of those High Schools and teachers of the Panchayat Union Schools constituted one service is wholly erroneous. He submitted that on the Middle Schools being upgraded as High Schools and taken over by the Government, the teachers of such schools became government servants and ceased to be a part of the Panchayat Union service. He further submitted that the two services being different, the respondents were not entitled to claim benefit of special/selection grade payable to the Headmasters of Elementary/Middle Schools of the Panchayat Union. Learned counsel for the respondents tried to support the decision of the Tribunal by relying upon the above-mentioned and some more GOs.

5. The fact that the Middle School of the Panchayat Union at Alangombu was upgraded and became a Government High School with effect from 28-10-1985 was not in dispute. The fact that the respondents continued to serve in that High School was also not disputed. The case of the appellants was that the respondents had opted for government service. According to the respondents, they were compelled to work in the Government High School for administrative reasons. As no proof in support of their statement in the reply-affidavit was produced by the appellants before the Tribunal, it held that such an option was not exercised by the respondents. The appellants have now produced in this Court the letters written by the respondents. Therein the respondents have categorically stated that they were opting for being retained in Government High School. The respondents have not denied the genuineness of those documents. What was contended on their behalf was that the said letters do not bear any date and therefore they should be regarded as non est or invalid options. No good reason could be advanced by the learned counsel in support of this contention. From 1985 to 1992, the respondents had not challenged their alleged compulsory retention in the High School. In their reply to the OA, the appellants had categorically stated that the respondents had willingly exercised an option to remain in the upgraded High School and on being absorbed in the Government High School, their link with the Panchayat Union had snapped. The respondents had not stated in their application to the Tribunal that no option was exercised by them. They had not produced any material thereafter to dispute the correctness of the statement made by the appellants. We have therefore allowed the appellants to reply upon those letters. In view of the material on record and the said two letters, the finding of the Tribunal that the respondents had not opted for government service and had continued to be a part of the Panchayat Union service has to be regarded as erroneous.

6. The material on record also discloses that Primary Schools, Middle Schools and High Schools were earlier run by local bodies. After 1981, the Government started upgrading Middle Schools run by the Panchayat Union or the District Board as High Schools. Simultaneously the Government was also taking over those schools. What was to happen to the teachers working in such upgraded High Schools has been stated by the Chief Education Officer in his reply-affidavit filed in the Tribunal. He has stated therein that the teachers on being absorbed in such Government High Schools became a part of the secondary education service of the Government and ceased to be the members of the education service of the Panchayat Union/District Board and that the rules and regulations governing their service conditions were different. Instead of taking note of this factual position, the Tribunal relied upon GO dated 27-1-1960, which really had no relevance. As the schools were earlier under local bodies, the Government by their order dated 27-1-1960 had accepted the recommendation of the Director of Public Instruction to have a common seniority list of all

secondary grade teachers whether serving in the Elementary Schools or in the Secondary Schools. Obviously, the said GO had no application where the schools were taken over by the Government from the local bodies. By GO dated 1-6-1978, what the Government had decided was that the total service put in by a BT Assistant Teacher in a particular category should be taken into account for the purpose of computing the length of service for giving selection grade on percentage basis. The Government had taken that decision because as a result of the take-over of the Panchayat Union Schools by the District Boards in certain districts, the teachers had lost the benefit of service under the Panchayat Union. This GO of 1978 had also no relevance to the new situation that emerged after 1981 as a result of taking over of the Schools by the Government. It also indicates that the teachers of the Panchayat Union Higher Schools when absorbed into the District Board service on account of take-over of those schools by the District Board lost their service under the Panchayat Union and their seniority was fixed on the basis of the dates on which they were absorbed into the District Board service.

7. The Tribunal was therefore wrong in inferring from those government orders that the teachers working in the Primary and Middle Schools run by the Panchayat Union and the teachers working in High Schools taken over and run by the Government constituted one service. Reliance placed upon GO dated 22-3-1971 by the learned counsel for the respondents is equally misplaced. No order passed by the Government subsequent to 1981 has been pointed out by the respondents in support of their contention.

8. The respondents had willingly joined Government High School service, and therefore, they thereafter belonged to a separate cadre known as secondary education service. On their absorption in government service, they ceased to be a part of the cadre of teachers serving in schools run by the Panchayat Union. Merely because their past services were counted for the purpose of protecting their "pay" and awarding selection or special grade, it cannot be said that they continued to belong to the same old cadre. The very basis on which the Tribunal proceeded was wrong and therefore its decision stands vitiated.

9. We, therefore, allow this appeal, set aside the order passed by the Tribunal and dismiss the OA filed by the respondents.